

Fannie Mae / Freddie Mac

Single Family Uniform Instruments¹

With processes and procedures defining actions required for the Mortgage Note and Security Instrument being identified in the document titled, "Amicus Curiae,"² we will now address Fannie Mae and Freddie Mac.

The writer will not YET address Fannie Mae's Principal & Interest Only Splits. This writing is limited to the MERS required changes to the Single Family Uniform Instruments (The Security Instrument) to incorporate MERS as "Nominee for Lender." Fannie Mae and Freddie Mac's Single Family Uniform Instruments in all 50 states are numbered as Forms 3001 to 3051. Additionally, the document titled "Authorized Changes to Security Instrument for MERS" can be found at: <http://www.freddiemac.com/uniform/doc/unifmersauth.doc>, which provides direction on how to modify Forms 3001 to 3051 to incorporate MERS as "NOMINEE."

(Alabama's MERS required modification to the Security Instrument as example)

"MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.³

We shall try to identify MERS as an agent named as "nominee" to each party claiming ownership of the Mortgage Note with rights of enforcement to the Security Instrument throughout negotiation of the Mortgage Note to subsequent purchasers. Prior to negotiation and indorsement of the Mortgage Note, MERS must have established an agent relationship as acting solely as a nominee for Lender. In replacing the statement, "Lender is the mortgagee under this Security Instrument," with, "MERS is the mortgagee under this Security Instrument," it appears the lender owns the Mortgage Note and MERS as an agent for the lender owns the Mortgage (Security Instrument). For the argument to proceed we shall assume that actions thus far are in compliance with all applicable laws, however unlikely. Thus we have the Lender being the Owner and Holder of the Note with rights as Holder in Due Course to enforce the Mortgage Note and the Security Instrument if perfected of record in MERS's name as "Agent" for the Lender.

¹ <http://www.freddiemac.com/uniform/unifsecurity.html#highlights>

² <http://www.scribd.com/doc/45894095/Amicus-Curiae-NJ-R2-Lr1>

³ <http://www.freddiemac.com/uniform/doc/unifmersauth.doc>

MERS claims if the lien is perfected in MERS's name and registration is maintained on the MERS system then perfection extends by agency relationship to a subsequent purchaser of the Mortgage Note. When the Mortgage Note is indorsed "In Blank" to a subsequent purchaser and that subsequent purchaser fails to identify oneself then they are nothing more than an "Unidentified Indorsee." Similar to MBS securitization, there is a series of purchases required of the "Mortgage Note" and each of these purchases requires indorsements upon the face of the Mortgage Note. The Uniform Commercial Code section 3-203 in part, states, "negotiation of the instrument does not occur until the indorsement is made." Consequently, the "Unidentified Indorsee In Blank," by remaining unidentified, has not indorsed the Mortgage Note to a subsequent purchaser, and any additional "Unidentified Indorsee In Blank" would lack any authority to indorse the Mortgage Note and the lack of these indorsements is a failure to negotiate. As such, Holder in Due Course with rights to enforce the Mortgage Note was not obtained. With an "Unidentified Indorsee In Blank" remaining unidentified, there cannot be an agent relationship between MERS and any unidentified party or any subsequent unidentified parties, and as a result the Security Instrument is rendered a "NULLITY."

Scenario 1. As an agency relationship cannot exist between MERS and an "Unidentified Indorsee In Blank" the lien once perfected in MERS name as agent has lost perfection as MERS now represents an unknown party.

Scenario 2. As an agency relationship does not exist between MERS and an "Unidentified Indorsee In Blank" the "Unidentified Indorsee In Blank" cannot assign/transfer/etc any type of agency relationship to a subsequent "Unidentified Indorsee In Blank" and again perfection in MERS name is lost as MERS represents an unknown party.

The Uniform Commercial Code and the states equivalence allow for proving up the Mortgage Note by adding the missing indorsement so that rights to enforce the Mortgage Note can be achieved but proving up the Mortgage Note will not repair the nullification of the Security Instrument.

**The Elevator Version:
Fannie Mae and Freddie Mac have purchased an "Unsecured
Mortgage Note" that lacks proper indorsement.**

All 50 Single Family Uniform Instrument forms contain within the body the three following notices:

Notice 1

(“Applicable Law” means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.)

Notice 2

(Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word “may” gives sole discretion without any obligation to take any action.)

Notice 3

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower’s covenants and agreements under this Security Instrument and the Note. For this purpose, ***Borrower irrevocably mortgages, grants and conveys to Lender***, with power of sale, the following described property located in the: [Type of Recording Jurisdiction] of [Name of Recording Jurisdiction]

The 50 States Single Family Uniform Instrument List ⁴

ALABAMA	Form 3001	"Deed of Trust"
ALASKA	Form 3002	"Deed of Trust"
ARIZONA	Form 3003	"Deed of Trust"
ARKANSAS	Form 3004	"Mortgage"
CALIFORNIA	Form 3005	"Deed of Trust"
COLORADO	Form 3006	"Deed of Trust"
CONNECTICUT	Form 3007	"Mortgage Deed"
DELAWARE	Form 3008	"Mortgage"
DISTRICT OF COLUMBIA	Form 3009	"Deed of Trust"
FLORIDA	Form 3010	"Mortgage"
GEORGIA	Form 3011	"Security Deed"
HAWAII	Form 3012	"Mortgage"
IDAHO	Form 3013	"Deed of Trust"
ILLINOIS	Form 3014	"Mortgage"
INDIANA	Form 3015	"Mortgage"
IOWA	Form 3016	"Mortgage"
KANSAS	Form 3017	"Mortgage"
KENTUCKY	Form 3018	"Mortgage"
LOUISIANA	Form 3019	"Mortgage"
MAINE	Form 3020	"Mortgage"
MARYLAND	Form 3021	"Deed of Trust"
MASSACHUSETTS	Form 3022	"Mortgage"
MICHIGAN	Form 3023	"Mortgage"
MINNESOTA	Form 3024	"Mortgage"
MISSISSIPPI	Form 3025	"Deed of Trust"
MISSOURI	Form 3026	"Deed of Trust"
MONTANA	Form 3027	"Deed of Trust"
NEBRASKA	Form 3028	"Deed of Trust"
NEVADA	Form 3029	"Deed of Trust"
NEW HAMPSHIRE	Form 3030	"Mortgage"
NEW JERSEY	Form 3031	"Mortgage"
NEW MEXICO	Form 3032	"Deed of Trust"
NEW YORK	Form 3033	"Mortgage"
NORTH CAROLINA	Form 3034	"Deed of Trust"
NORTH DAKOTA	Form 3035	"Mortgage"
OHIO	Form 3036	"Mortgage"
OKLAHOMA	Form 3037	"Mortgage"
OREGON	Form 3038	"Deed of Trust"
PENNSYLVANIA	Form 3039	"Mortgage"
RHODE ISLAND	Form 3040	"Mortgage"
SOUTH CAROLINA	Form 3041	"Mortgage"
SOUTH DAKOTA	Form 3042	"Mortgage"
TENNESSEE	Form 3043	"Deed of Trust"
TEXAS	Form 3044	"Deed of Trust"
UTAH	Form 3045	"Deed of Trust"
VERMONT	Form 3046	"Mortgage"
VIRGINIA	Form 3047	"Deed of Trust"
WASHINGTON	Form 3048	"Deed of Trust"
WEST VIRGINIA	Form 3049	"Deed of Trust"
WISCONSIN	Form 3050	"Mortgage"
WYOMING	Form 3051	"Mortgage"

⁴ <http://www.freddiemac.com/uniform/unifsecurity.html#highlights>