

# Trust ME, Yea Right

By James McGuire

Is a Fannie Mae MBS a Trust or is it a Real Estate Mortgage Investment Conduit (REMIC)? Just because they call it a Trust, does it mean it is a Trust, i.e. *Bank of Old Yellow as Trustee for Asset-Backed Security 2000 ABC-XYZ*?

In looking at *Fannie Mae's Amended and Restated 2007 Single-Family Master Trust Agreement*<sup>1</sup>, Fannie howls that it is the Issuer, Master Servicer and Guarantor in its capacity as Trustee. Woof, Woof, Guarantor!

Grand Pappy taught: **Trust No One**, especially the hound dog after he stole your shorts. In the same Trust Agreement under section 7.5 (5) Fannie Mae clearly states: *The Guaranty is solely a corporate obligation of Fannie Mae. Neither the Certificates nor payments of principal and interest on the Certificates are guaranteed by the United States and neither constitutes a debt or obligation of the United States or any agency or instrumentality of the United States other than Fannie Mae.* This pot of stew suggests the American Taxpayers in their capacity as People needs to tighten up their belts as they pay for Fannie's private guarantee.

Fitch today reported that the United States of America's credit rating is AAA. Holly T-Rex, the faith of the American Taxpayer has been rescued; praise be, the FED decides to wait on throwing more dinosaur bones into the stew.

American people know when they are being slick legged. Noted is new language contained within an August 6, 2011 Bank of America N.A. letter: *IMPORTANT NOTICE: THIS NOTICE IS BEING FURNISHED FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED AS AN ATTEMPT TO COLLECT AGAINST YOU PERSONALLY. WHILE YOUR OBLIGATION TO BANK OF AMERICA, N.A. MAY HAVE BEEN DISCHARGED, BY OPERATION OF LAW, BANK OF AMERICA HAS RETAINED THE ABILITY TO ENFORCE ITS RIGHTS AGAINST THE PROPERTY SECURING THE LOAN IN EVENT OF A DEFAULT.* Owie! That hurts...a new doggy Bone.

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<sup>1</sup> [http://www.fanniemae.com/mbs/pdf/singlefamilytrustagreement\\_amended2007.pdf](http://www.fanniemae.com/mbs/pdf/singlefamilytrustagreement_amended2007.pdf)

As Fannie Mae states, Fannie Mae is a Guarantor for a Fannie Mae Trust payments owed to Investors, but Fannie Mae is not a Grantor granting the Trusts' mortgage documents to any Secured Investors. A Fannie Mae Trust is secured only by the promise that Fannie Mae will make payments to the Fannie Mae Trust owners. Note: Fannie Mae charges a money laundering fee to disburse payments to the Trust owners paid for by the Trust owners.

For Fannie Mae to receive mortgage payments, Fannie Mae flips the bone and changes roles from being a Guarantor to being a Trustee for a Secured Party.

Fannie Mae as Trustee/Servicer for a Secured Party is entitled to the payment proceeds made on the Payment Intangible. As each Fannie Mae Trust could contain thousands of mortgage loans, Fannie Mae as Servicer usually substitutes a Subservicer to collect the payments made on the Payment Intangible, less a servicing fee, and such Subservicer then tenders the funds to Fannie Mae. Here lies a degree of confusion, who is the Secured Creditor? It's not Fannie Mae, as Fannie Mae is either a Trustee for a Secured Creditor or Guarantor of a Fannie Mae Trust. What is the contractual relationship between Fannie Mae as Trustee for a Secured Creditor and Fannie Mae as Guarantor? Which fleas get which paw?

Traveling on down the Fannie Mae food chain, the Secured Creditor is entitled to the mortgage payment stream (Payment Intangible) secured by the pooled Mortgages, where each Mortgage consists of a Mortgage Note secured by a properly continuous perfected security instrument (lien) per laws of local jurisdiction.

Private label securities do have one major difference from a Fannie Mae Trust: the Trustee for a private label security holds the Payment Intangible's security in trust for the benefit of the Secured Investors. Herewith is the major issue with a private label, the Payment Intangible's security (Mortgage Note and the Mortgage Note's security) was not in compliance with all applicable law.

## **In God We Trust...Do They?**