

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO *EX REL.* MICHAEL DEWINE, ATTORNEY GENERAL, *et al.*,

Case No. 2011-0890

Petitioners,

On Review of Certified Questions from the United States District Court for the Northern District of Ohio

vs.

GMAC Mortgage, LLC, *et al.*,

U.S. District Court Case Nos. 3:10-cv02537, 1:10-cv-02709

Respondents.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL MATERIALS OUTSIDE THE RECORD OF RESPONDENTS GMAC MORTGAGE, LLC AND ALLY FINANCIAL, INC.

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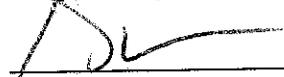
*Counsel for Respondent Jeffrey Stephan*

*Counsel for Plaintiffs Lois Blank, et al.*

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL MATERIALS**  
**OUTSIDE THE RECORD**

Pursuant to Rule 5.8, Respondents GMAC Mortgage, LLC and Ally Financial, Inc. respectfully move the Court for leave to file supplemental materials relating to issues discussed in the Merit Brief that are outside the record. This matter is before the Court on certified questions. As noted in Respondents' preliminary brief filed in this Court, the U.S. District Court certified the questions before a factual record was developed. The supplemental materials reflect matters outside the record that Respondents respectfully submit are necessary for the Court's review and that will assist the Court in answering the certified questions in this case. These materials are not in dispute as to authenticity, and Petitioners and their amici have referred to and attached materials outside the record within their Merit Briefs. A copy of the supplemental materials for which leave is being sought (Exhibits A through N) is attached to this motion.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion For Leave to File Supplemental Materials Outside the Record of Respondents GMAC Mortgage, LLC and Ally Financial, Inc. was served via ordinary U.S. mail, postage prepaid, this 28th day of November 2011, upon the following:

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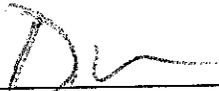
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SUPPLEMENTAL MATERIALS OUTSIDE THE RECORD  
IN SUPPORT OF MERIT BRIEF OF RESPONDENT

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# Exhibit A

- [Ally Home](#)
- [About Ally](#)
- [Company Profile](#)
- [Home](#)

## **Ally Financial Statement on Mortgage Servicing Consent Order**

**(DETROIT, April 13, 2011)** -- Ally Financial Inc. (Ally) and certain of its subsidiaries have executed the Consent Order issued by the Board of Governors of the Federal Reserve and the Federal Deposit Insurance Corporation related to the servicing operation of its mortgage business.

The company deeply regrets the error in processing certain affidavits and has acted with urgency and rigor in addressing and remediating the issue. Through our review to date, Ally has not found any instance where a homeowner was foreclosed upon without being in significant default.

GMAC Mortgage has substantially upgraded its operations over the past two years and today has a Tier 1 servicer rating from the Department of Housing and Urban Development (HUD) and ranks first among large servicers in borrower workouts by Fannie Mae. In addition, the company has been a leader in loan modifications and has completed more than 610,000 borrower workouts since 2008 on a servicing portfolio averaging 2.7 million loans.

Ally continues to remain committed to offering borrowers in financial distress affordable and sustainable payment relief whenever possible. Over the last several months, Ally has continued to pursue ways in which it can further enhance its processes to provide additional assistance to homeowners, including streamlining written communications to borrowers, participating in programs such as the Hardest Hit Fund, and implementing additional quality control measures, among many other enhancements.

Ally has placed the highest priority on meeting the requirements of the Order. In this regard, the company has designated an internal executive team, with senior management from Ally Financial, GMAC Mortgage and Ally Bank, which will have oversight for the timely and high-quality compliance with the Order. Given the importance of this effort, Ally has also reassigned its general auditor, Mark Weintraub, to lead these initiatives at the Ally Financial level, working closely with the businesses.

Weintraub will have day-to-day responsibility for ensuring that all areas of the company are meeting the requirements of the Order on a timely basis.

### **Contact:**

Gina Proia  
646-781-2692  
[gina.proia@ally.com](mailto:gina.proia@ally.com)

# Exhibit B

## **1345.01 Consumer sales practices definitions.**

As used in sections 1345.01 to 1345.13 of the Revised Code:

(A) "Consumer transaction" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer transaction" does not include transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code and transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services.

(B) "Person" includes an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or other legal entity.

(C) "Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer. If the consumer transaction is in connection with a residential mortgage, "supplier" does not include an assignee or purchaser of the loan for value, except as otherwise provided in section 1345.091 of the Revised Code. For purposes of this division, in a consumer transaction in connection with a residential mortgage, "seller" means a loan officer, mortgage broker, or nonbank mortgage lender.

(D) "Consumer" means a person who engages in a consumer transaction with a supplier.

(E) "Knowledge" means actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.

(F) "Natural gas service" means the sale of natural gas, exclusive of any distribution or ancillary service.

(G) "Public telecommunications service" means the transmission by electromagnetic or other means, other than by a telephone company as defined in section 4927.01 of the Revised Code, of signs, signals, writings, images, sounds, messages, or data originating in this state regardless of actual call routing. "Public telecommunications service" excludes a system, including its construction, maintenance, or operation, for the provision of telecommunications service, or any portion of such service, by any entity for the sole and exclusive use of that entity, its parent, a subsidiary, or an affiliated entity, and not for resale, directly or indirectly; the provision of terminal equipment used to originate telecommunications service; broadcast transmission by radio, television, or satellite broadcast stations regulated by the federal government; or cable television service.

(H)(1) "Loan officer" means an individual who for compensation or gain, or in anticipation of compensation or gain, takes or offers to take a residential mortgage loan application; assists or offers to assist a buyer in obtaining or applying to obtain a residential mortgage loan by, among other things,

advising on loan terms, including rates, fees, and other costs; offers or negotiates terms of a residential mortgage loan; or issues or offers to issue a commitment for a residential mortgage loan. "Loan officer" also includes a loan originator as defined in division (E)(1) of section 1322.01 of the Revised Code.

(2) "Loan officer" does not include an employee of a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; an employee of a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an employee of an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

(I) "Residential mortgage" or "mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state containing two or fewer residential units or on which two or fewer residential units are to be constructed and includes such an obligation on a residential condominium or cooperative unit.

(J)(1) "Mortgage broker" means any of the following:

(a) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration readily convertible into money for providing this assistance;

(b) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker or a person that makes residential mortgage loans, and charges or receives from either of them money or other valuable consideration readily convertible into money for providing the information;

(c) A person engaged in table-funding or warehouse-lending mortgage loans that are residential mortgage loans.

(2) "Mortgage broker" does not include a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration; or an employee of any such entity.

(K) "Nonbank mortgage lender" means any person that engages in a consumer transaction in connection with a residential mortgage, except for a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state,

or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an affiliate that (1) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (2) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

(L) For purposes of divisions (H), (J), and (K) of this section:

(1) "Control" of another entity means ownership, control, or power to vote twenty-five per cent or more of the outstanding shares of any class of voting securities of the other entity, directly or indirectly or acting through one or more other persons.

(2) "Credit union service organization" means a CUSO as defined in 12 C.F.R. 702.2.

Amended by 128th General Assembly File No. 17, SB 124, § 1, eff. 12/28/2009.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 05-17-2000; 01-01-2007; 2008 HB545 09-01-2008

See 128th General Assembly File No. 17, SB 124, §5.

See 128th General Assembly File No. 9, HB 1, §745.60.

## **1345.02 Unfair or deceptive acts or practices.**

(A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) Without limiting the scope of division (A) of this section, the act or practice of a supplier in representing any of the following is deceptive:

(1) That the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have;

(2) That the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;

(3) That the subject of a consumer transaction is new, or unused, if it is not;

(4) That the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(5) That the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not, except that the act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this section;

(6) That the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(7) That replacement or repair is needed, if it is not;

(8) That a specific price advantage exists, if it does not;

(9) That the supplier has a sponsorship, approval, or affiliation that the supplier does not have;

(10) That a consumer transaction involves or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false.

(C) In construing division (A) of this section, the court shall give due consideration and great weight to federal trade commission orders, trade regulation rules and guides, and the federal courts' interpretations of subsection 45 (a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C.A. 41, as amended.

(D) No supplier shall offer to a consumer or represent that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers, or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit is contingent upon an event occurring after the consumer enters into the transaction.

(E)(1) No supplier, in connection with a consumer transaction involving natural gas service or public telecommunications service to a consumer in this state, shall request or submit, or cause to be requested or submitted, a change in the consumer's provider of natural gas service or public telecommunications service, without first obtaining, or causing to be obtained, the verified consent of the consumer. For the purpose of this division and with respect to public telecommunications service only, the procedures necessary for verifying the consent of a consumer shall be those prescribed by rule by the public utilities commission for public telecommunications service under division (D) of section 4905.72 of the Revised Code. Also, for the purpose of this division, the act, omission, or failure of any officer, agent, or other individual, acting for or employed by another person, while acting within the scope of that authority or employment, is the act or failure of that other person.

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100(a)(3), of commercial mobile radio service providers from the verification requirements adopted in 47 C.F.R. 64.1100, 64.1150, 64.1160, 64.1170, 64.1180, and 64.1190 by the federal communications commission, division (E)(1) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (E)(1) of this section shall apply to such a provider.

(3) The attorney general may initiate criminal proceedings for a prosecution under division (C) of section 1345.99 of the Revised Code by presenting evidence of criminal violations to the prosecuting attorney of any county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the attorney general may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries.

(F) Concerning a consumer transaction in connection with a residential mortgage, and without limiting the scope of division (A) or (B) of this section, the act of a supplier in doing either of the following is deceptive:

(1) Knowingly failing to provide disclosures required under state and federal law;

(2) Knowingly providing a disclosure that includes a material misrepresentation.

Effective Date: 05-17-2000; 01-01-2007

## **1345.03 Unconscionable consumer sales acts or practices.**

(A) No supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration:

(1) Whether the supplier has knowingly taken advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement;

(2) Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers;

(3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;

(4) Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;

(5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;

(6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment;

(7) Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment at the time of the sale a sign stating the supplier's refund policy.

(C) This section does not apply to a consumer transaction in connection with a residential mortgage.

Effective Date: 09-23-1977; 01-01-2007

# Exhibit C

STEP 2—ADJUSTED TRIAL BALANCE (INCREASE MONTHLY BALANCES TO ELIMINATE NEGATIVE BALANCES)

	Single-Item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	600	0	0	270
Jul	100	500	200	30	0	300
Aug	100	0	300	30	0	330
Sep	100	0	400	30	360	0
Oct	100	0	500	30	0	30
Nov	100	0	600	30	0	60
Dec	100	700	0	30	0	90
Jan	100	0	100	30	0	120
Feb	100	0	200	30	0	150
Mar	100	0	300	30	0	180
Apr	100	0	400	30	0	210
May	100	0	500	30	0	240
Jun	100	0	600	30	0	270

STEP 3—TRIAL BALANCE WITH CUSHION

	Single-Item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	800	0	0	330
Jul	100	500	400	30	0	360
Aug	100	0	500	30	0	390
Sep	100	0	600	30	360	50
Oct	100	0	700	30	0	90
Nov	100	0	800	30	0	120
Dec	100	700	200	30	0	150
Jan	100	0	300	30	0	180
Feb	100	0	400	30	0	210
Mar	100	0	500	30	0	240
Apr	100	0	600	30	0	270
May	100	0	700	30	0	300
JUN	100	0	800	30	0	330

[59 FR 53908, Oct. 26, 1994, as amended at 60 FR 8816, Feb. 15, 1995. Redesignated at 61 FR 59479, Nov. 15, 1996; 73 FR 69259, Nov. 17, 2008.]

APPENDIX MS-1 TO PART 3500

[Sample language; use business stationery or similar heading]

[Date]

**SERVICING DISCLOSURE STATEMENT NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED**

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2901 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

*Servicing Transfer Information*

[We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.]

[or]

[We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.]

[or]

[The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.]

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under "Servicing Transfer Information." The model format may be annotated with further information that clarifies or enhances the model language.]

[73 FR 68269, Nov. 17, 2008]

APPENDIX MS-2 TO PART 3500

[Sample language; use business stationery or similar heading]

**NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS**

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from \_\_\_\_\_ to \_\_\_\_\_, effective \_\_\_\_\_.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice].

Your present servicer is \_\_\_\_\_. If you have any questions relating to the transfer of servicing from your present servicer call \_\_\_\_\_ [enter the name of an individual or department here] between \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m. on the following days \_\_\_\_\_. This is a [toll-free] or [collect call] number.

Your new servicer will be \_\_\_\_\_.

The business address for your new servicer is: \_\_\_\_\_

The [toll-free] [collect call] telephone number of your new servicer is \_\_\_\_\_. If you have any questions relating to the transfer of servicing to your new servicer call \_\_\_\_\_ [enter the name of an individual or department here] at \_\_\_\_\_ [toll free or collect call telephone number] between \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m. on the following days \_\_\_\_\_.

The date that your present servicer will stop accepting payments from you is \_\_\_\_\_. The date that your new servicer will start accepting payments from you is \_\_\_\_\_. Send all payments due on or after that date to your new servicer.

# Exhibit D

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under "Servicing Transfer Information." The model format may be annotated with further information that clarifies or enhances the model language.]

[73 FR 68269, Nov. 17, 2008]

APPENDIX MS-2 TO PART 3500

[Sample language; use business stationery or similar heading]

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The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice].

Your present servicer is \_\_\_\_\_. If you have any questions relating to the transfer of servicing from your present servicer call \_\_\_\_\_ [enter the name of an individual or department here] between \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m. on the following days \_\_\_\_\_. This is a [toll-free] or [collect call] number.

Your new servicer will be \_\_\_\_\_.

The business address for your new servicer is: \_\_\_\_\_

The [toll-free] [collect call] telephone number of your new servicer is \_\_\_\_\_. If you have any questions relating to the transfer of servicing to your new servicer call \_\_\_\_\_ [enter the name of an individual or department here] at \_\_\_\_\_ [toll free or collect call telephone number] between \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m. on the following days \_\_\_\_\_.

The date that your present servicer will stop accepting payments from you is \_\_\_\_\_. The date that your new servicer will start accepting payments from you is \_\_\_\_\_. Send all payments due on or after that date to your new servicer.

[Use this paragraph if appropriate; otherwise omit] The transfer of servicing rights may affect the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner:

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and you should take the following action to maintain coverage:

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You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 5 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

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Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

[INSTRUCTIONS TO PREPARER: Delivery means placing the notice in the mail, first class postage prepaid, prior to 15 days before the effective date of transfer (transferor) or prior to 15 days after the effective date of transfer (transferee). However, this notice may be sent not more than 30 days after the effective date of the transfer of servicing rights if certain emergency business situations occur. See 24 CFR § 3500.21(d)(1)(ii). "Lender" may be substituted for "present servicer" where appropriate. These instructions should not appear on the format.]

\_\_\_\_\_  
PRESENT SERVICER [Signature not required]      Date

[and][or]

\_\_\_\_\_  
FUTURE SERVICER [Signature not required]      Date

[61 FR 13252, Mar. 26, 1996]

## PART 3800—INVESTIGATIONS IN CONSUMER REGULATORY PRO- GRAMS

- Sec.  
3800.10 Scope of rules.  
3800.20 Subpoenas in investigations.  
3800.30 Subpoena enforcement in district court.  
3800.40 Investigational proceedings.  
3800.50 Rights of witnesses in investigational proceedings.  
3800.60 Settlements.

AUTHORITY: 12 U.S.C. 2601 *et seq.*; 15 U.S.C. 1714; 42 U.S.C. 8535(d) and 5413.

SOURCE: 61 FR 10441, Mar. 13, 1996, unless otherwise noted.

### § 3800.10 Scope of rules.

This part applies to investigations and investigational proceedings undertaken by the Secretary, or the Secretary's designee, pursuant to the following:

- (a) The Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 *et seq.*;
- (b) The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.*; and
- (c) The Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.*

### § 3800.20 Subpoenas in investigations.

(a) The Secretary may issue subpoenas relating to any matter under investigation. A subpoena may:

- (1) Require testimony to be taken by interrogatories;
- (2) Require the attendance and testimony of witnesses at a specific time and place;
- (3) Require access to, examination of, and the right to copy documents; and
- (4) Require the production of documents at a specific time and place.

(b) A subpoenaed person may petition the Secretary or the Secretary's designee to modify or withdraw a subpoena by filing the petition within 10 days after service of the subpoena. The petition may be in letter form, but must set forth the facts and law upon which the petition is based.

### § 3800.30 Subpoena enforcement in district court.

In the case of contumacy of a witness or a witness's refusal to obey a subpoena or order of the Secretary, the United States district court for the jurisdiction in which an investigation is carried on may issue an order requiring compliance with the subpoena. HUD headquarters in Washington, DC, is one of the locations in which the Secretary

# Exhibit E

Execution

INV # 40268

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FLOW SALE AND SERVICING AGREEMENT  
Dated and effective as of June 1, 2002

LEHMAN BROTHERS BANK, FSB,  
(Initial Owner)

and

GMAC MORTGAGE CORPORATION  
(Company)

Residential Fixed Rate  
FHA-Insured and VA-Guaranteed Mortgage Loans  
Group No. 2002-Flow

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This is a Flow Sale and Servicing Agreement, dated and effective as of June 1, 2002, and is executed between Lehman Brothers Bank, FSB as purchaser and initial Owner (hereinafter, the "Initial Owner"), and GMAC Mortgage Corporation, a Pennsylvania corporation, as seller and servicer (the "Company").

WITNESSETH:

WHEREAS, the Company desires to sell to the Initial Owner, and the Initial Owner desires to purchase, from time to time, from the Company, certain FHA insured and VA guaranteed, fixed rate, one-to-four family residential first lien mortgage loans (the "Mortgage Loans"), retaining the Company to service such Mortgage Loans;

WHEREAS, each Mortgage Loan is secured by a mortgage, deed of trust or other security instrument creating a first lien on a residential dwelling located in the jurisdiction indicated on the related Mortgage Loan Schedule;

WHEREAS, all of the Mortgage Loans are secured by first mortgages or deeds of trust on residential dwellings situated within these state(s) indicated on the Mortgage Loan Schedule.

WHEREAS, the Initial Owner and Company wish to prescribe the manner of purchase by the Initial Owner and the management, servicing and control of the Mortgage Loans.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth, the Initial Owner and the Company agree as follows:

ARTICLE I

DEFINITIONS

Whenever used herein, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

"Acknowledgment and Conveyance Agreement": The agreement, substantially in the form of Exhibit A-2 hereto, to be executed by the Company and the Initial Owner on each Closing Date.

"Act": The National Housing Act of 1934, as amended.

"Additional Mortgage Loan Documents": Has the meaning set forth in Section 2.03.

"Aggregate Loss Amount": As of any Determination Date and with respect to a Mortgage Loan Package, the sum of all Nonrecoverable Advances made by the Company hereunder with respect to the Mortgage Loans included in such Mortgage Loan Package from and after the related

Cut-off Date and not previously reimbursed; provided, that the Aggregate Loss Amount shall exclude (i) any Monthly Advances to the extent made pursuant to Section 4.01 or resulting from an interest rate reduction under the Soldiers and Sailors' Relief Act of 1940, as amended and (ii) any Realized Losses or Nonrecoverable Advances incurred as a result of any breach of this Agreement by the Company or any error or omission by the Company in connection with the servicing or administration of the Mortgage Loans or otherwise relating to any other events that would give rise to the Company's obligation to repurchase a Mortgage Loan or indemnify the Owner under this Agreement.

"Agreement": This Flow Sale and Servicing Agreement, including all exhibits hereto, and all amendments hereof and supplements hereto.

"ALTA": The American Land Title Association or any successor organization.

"Appraised Value": The amount set forth in an appraisal in connection with the origination of each Mortgage Loan as the value of the Mortgaged Property. The Appraised Value shall equal the amount indicated on the Company's servicing system as the appraised value of the Mortgaged Property.

"Assignment of Mortgage": An assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form (but not recorded) that, when properly completed and recorded, is sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect of record the sale of the Mortgage Loan to the Owner.

"Assumed Principal Balance": As to each Mortgage Loan as of any date of determination, (i) the principal balance of the Mortgage Loan outstanding as of the Cut-off Date after application of payments due on or before the Cut-off Date, whether or not received, minus (ii) all amounts previously distributed to the Owner with respect to the Mortgage Loan pursuant to Section 5.01 and representing (a) payments or other recoveries of principal or (b) Monthly Advances made pursuant to Section 5.03.

"BIF": The Bank Insurance Fund, or any successor thereto.

"Business Day": Any day other than (i) a Saturday or Sunday, or (ii) a day on which banking or savings and loan institutions in the Commonwealth of Pennsylvania or State of New York are authorized or obligated by law or executive order to be closed.

"Closing Date": Means a date on which the Company shall sell and the Initial Owner shall purchase Mortgage Loans under this Agreement as set forth in the related Purchase Price and Terms Letter or Trade Confirmation, as the case may be.

"Code": The Internal Revenue Code of 1986, as it may be amended from time to time or any successor statute thereto, and applicable U.S. Treasury Department regulations issued pursuant thereto.

"Company": GMAC Mortgage Corporation, a Pennsylvania corporation, or its successor in interest or any successor to the Company under this Agreement appointed as herein provided.

“Condemnation Proceeds”: All awards or settlements in respect of a Mortgaged Property, whether permanent or temporary, partial or entire, by exercise of the power of eminent domain or condemnation, to the extent not required to be released to a Mortgagor in accordance with the terms of the related Mortgage.

“Curtailment”: Any Principal Prepayment made by a Mortgagor that is not a Full Principal Prepayment.

“Custodial Account”: The separate account or accounts created and maintained pursuant to Section 4.04.

“Custodial Agreement”: The agreement for the retention of each Mortgage Note, Mortgage, Assignment of Mortgage and other documents, which agreement is in the form annexed hereto as Exhibit C, as the same may be amended, modified or replaced from time to time.

“Custodian”: The Custodian under the Custodial Agreement, or its successor in interest or assigns or any successor to the Custodian under the Custodial Agreement as provided herein.

“Customary Servicing Procedures”: Procedures (including collection procedures) using the same care that the Company customarily employs and exercises in servicing and administering mortgage loans of the same type for its own account giving due consideration to accepted mortgage servicing practices and the mortgage loan servicing standards and procedures prescribed by FHA, with respect to any FHA Mortgage Loan, or by VA, with respect to any VA Mortgage Loan, in each case as set forth in the Ginnie Mae guides and FHA Regulations or VA Regulations, as applicable, and in the directives or applicable publications of such agency, as such may be amended or supplemented from time to time.

“Cut-off Date: With respect to any Mortgage Loan purchased on a Closing Date, the first day of the month in which the related Closing Date occurs, or such other date as may be set forth in the related Purchase Price and Terms Letter or Trade Confirmation, as the case may be.

“Deleted Mortgage Loan”: A Mortgage Loan replaced or to be replaced with a Qualified Substitute Mortgage Loan in accordance with this Agreement.

“Determination Date”: The 16th day (or if such 16th day is not a Business Day, the Business Day immediately preceding such 16<sup>th</sup> day) of the month of the related Remittance Date.

“Due Date”: The day of the month on which each Monthly Payment is due on a Mortgage Loan, exclusive of any days of grace.

“Due Period”: With respect to each Remittance Date, the period commencing on the second day of the month preceding the month of such Remittance Date and ending on the first day of the month of such Remittance Date.

“Eligible Depository Institution”: Either a (i) depository the accounts of which are insured by the FDIC through the BIF or the SAIF and the debt obligations of which are rated A (or Aa3) or

better by S&P or Moody's or (ii) the corporate trust department of any bank the debt obligations of which are rated at least A-1 (or P-1) by S&P or Moody's.

"Eligible Investments": Any one or more of the following obligations or securities:

(i) obligations of or guaranteed as to principal and interest by the (a) United States, Freddie Mac, Fannie Mae or any agency or instrumentality of the United States when such obligations are backed by the full faith and credit of the United States; provided, that such obligations of Freddie Mac or Fannie Mae shall be limited to senior debt obligations and mortgage participation certificates except that investments in mortgage-backed or mortgage participation securities with yields evidencing extreme sensitivity to the rate of principal payments on the underlying mortgages shall not constitute Eligible Investments hereunder;

(ii) repurchase agreements (which must be fully collateralized) on obligations specified in clause (i) maturing not more than one month from the date of acquisition thereof;

(iii) federal funds, certificates of deposit, demand deposits, time deposits and bankers' acceptances (which shall each have an original maturity of not more than 90 days and, in the case of bankers' acceptances, shall in no event have an original maturity of more than 365 days or a remaining maturity of more than 30 days) denominated in United States dollars of any U.S. depository institution or trust company incorporated under the laws of the United States or any state thereof or of any domestic branch of a foreign depository institution or trust company;

(iv) commercial paper (having original maturities of not more than 270 days) of any corporation incorporated under the laws of the United States or any state thereof which are rated at least A-1 or P-1 by S & P Corporation ("S & P") and Moody's Investor Services, Inc. ("Moody's"), respectively;

(v) obligations of major foreign commercial banks, limited to Eurodollar deposits, time deposits, certificate of deposits, bankers acceptances, Yankee Bankers acceptances and Yankee certificate of deposits;

(vi) obligations of major foreign corporations limited to commercial paper, auction rate preferred stock, medium term notes, master notes and loan participations;

(vii) money market funds comprised of securities described in the aforementioned clauses (i-iv) and having a stated policy of maintaining a set net asset value per share (a "Money Market Fund"). All Money Market Funds will conform to Rule 2a-7 of the Investment Company Act of 1940;

provided, however, that no instrument shall be an Eligible Investment if it represents, either (1) the right to receive only interest payments with respect to the underlying debt instrument or (2) the right to receive both principal and interest payments derived from obligations underlying such instrument

and the principal and interest with respect to such instrument provide a yield to maturity greater than 120% of the yield to maturity at par of such underlying obligations.

"Escrow Account": The separate account or accounts created and maintained pursuant to Section 4.06.

"Escrow Payments": With respect to any Mortgage Loan, the amounts constituting taxes, assessments, mortgage insurance premiums, fire and hazard insurance premiums and other payments required to be escrowed by the Mortgagor with the mortgagee pursuant to any Mortgage Loan and the requirements of the FHA or VA, as applicable.

"Essential Mortgage Loan Documents": Has the meaning set forth in Section 2.03.

"Event of Default": Any one of the conditions or circumstances enumerated in Section 9.01.

"Fannie Mae": The Federal National Mortgage Association or any successor organization.

"FDIC": The Federal Deposit Insurance Corporation or any successor organization.

"FHA": The Federal Housing Administration, which is a subdivision of HUD, or any successor, including the Federal Housing Commissioner and the Secretary of Housing and Urban Development where appropriate under the FHA Regulations.

"FHA Approved Mortgagee": A corporation or other entity approved as a mortgagee by FHA under the Act and applicable FHA Regulations, and eligible to own and service, as applicable, the FHA Mortgage Loans.

"FHA Insurance": An insurance policy granted by the FHA with respect to each FHA Mortgage Loan under the applicable section of the Housing Act.

"FHA Mortgage Loan": At any time, any Mortgage Loan that is subject to FHA Insurance and eligible for reimbursement thereunder.

"FHA Regulations": Regulations promulgated by HUD under the Act, codified in 24 Code of Federal Regulations, and other HUD issuances relating to FHA Mortgage Loans, including, without limitation, related handbooks, circulars, notices and mortgagee letters.

"FHA/VA Claim Proceeds": Either (i) the amount of insurance proceeds received from the FHA under FHA Insurance in the event of a default with respect to an FHA Mortgage Loan or (ii) the amount of proceeds received from the VA under a VA Guaranty in the event of a default with respect to a VA Mortgage Loan.

"Fidelity Bond": A fidelity bond required to be maintained by the Company pursuant to Section 4.13.

"Foreclosed Mortgage Loan": Any Mortgage Loan with respect to which title to the related Mortgaged Property has been conveyed to the Owner, the Company, the FHA or VA, whether by foreclosure, deed in lieu of foreclosure or otherwise.

"Freddie Mac": The Federal Home Loan Mortgage Corporation or any successor organization.

"Full Principal Prepayment": A Principal Prepayment made by a Mortgagor of the entire principal balance of a Mortgage Loan.

"Ginnie Mae": The Government National Mortgage Association, a wholly owned corporate instrumentality of HUD, and any successor thereto.

"Ginnie Mae Credit and Collection Policy": Those credit and collection policies and practices of Ginnie Mae relating to mortgage loans and the related mortgages as may be modified from time to time by Ginnie Mae.

"GMAC": General Motors Acceptance Corporation.

"HUD": The Department of Housing and Urban Development or any successor organization.

"Initial Owner": Lehman Brothers Bank, FSB

"Insurance Proceeds": Proceeds of any title policy, hazard policy or other insurance policy covering a Mortgage Loan or the related Mortgaged Property, if any, to the extent such proceeds are not to be applied to the restoration of the related Mortgaged Property or released to the Mortgagor in accordance with Customary Servicing Procedures or in accordance with the terms of the related Mortgage Loan or applicable law.

"Liquidated Mortgage Loan": Any defaulted Mortgage Loan as to which the Company has determined that all amounts that it expects to recover on behalf of the Owner from or on account of such Mortgage Loan have been recovered.

"Liquidation Advance": With respect to any Foreclosed Mortgage Loan or Liquidated Mortgage Loan, an amount equal to the related Realized Loss, if any, less the amount of any Monthly Advances and any Liquidation Advances previously made with respect to such Mortgage Loan and not reimbursed, to the extent required to be advanced by the Company pursuant to Section 5.03(b).

"Liquidation Proceeds": Cash, other than Insurance Proceeds, Condemnation Proceeds or REO Disposition Proceeds, received in connection with the liquidation of a defaulted Mortgage Loan, whether through the sale or assignment of the Mortgage Loan, trustee's sale, foreclosure sale or otherwise.

"Loan-to-Value Ratio" or "LTV": With respect to any Mortgage Loan, the original principal balance of such Mortgage Loan divided by the Appraised Value of the related Mortgaged Property.

"Maximum Loss Amount": With respect to any Mortgage Loan Package, an amount equal to the percentage set forth in the Purchase Price and Terms Letter or related Trade Confirmation, as the case may be, of the aggregate outstanding principal balance of the Mortgage Loans included in the related Mortgage Loan Package on the related Cut-off Date, after deduction of payments due on or before such date, whether or not paid.

"MERS": Mortgage Electronic Registration Systems, Inc., a Delaware corporation, or any successor in interest thereto.

"MERS Mortgage Loan": Any Mortgage Loan as to which the related Mortgage, or an Assignment of Mortgage, has been recorded in the name of MERS, as agent for the holder from time to time of the Mortgage Note.

"MIN" a MERS Mortgage Identification Number assigned to a Mortgage Loan in accordance with the MERS Procedures Manual.

"MOM Loan" means a Mortgage Loan where the related Mortgage names MERS as the original mortgagee thereof, as to which a MIN has been assigned, and which Mortgage has not been assigned to any other Person.

"Monthly Advance": With respect to each Remittance Date and each Mortgage Loan, an amount equal to the Monthly Payment (with the interest portion of such Monthly Payment adjusted to the Mortgage Loan Remittance Rate) which was due on the Mortgage Loan, and (i) which was delinquent at the close of business on the immediately preceding Determination Date or which was deferred, modified or reduced pursuant to Section 4.01 and (ii) which was not the subject of a previous Monthly Advance.

"Monthly Payment": The scheduled monthly payment of principal and interest on a Mortgage Loan which is payable by a Mortgagor under the related Mortgage Note.

"Monthly Remittance Advice": The statement provided by the Company to the Owner or its designees on or prior to each Remittance Date pursuant to Section 5.02, containing the data listed on Exhibit F attached hereto.

"Moody's": Moody's Investors Service, or any successor in interest.

"Mortgage": The mortgage, deed of trust or other instrument creating a first lien on or first priority ownership interest in an estate in fee simple, or a leasehold estate, in real property securing a Mortgage Note, including any rider incorporated by reference therein.

"Mortgage File": The documents, records and other items referred to in Exhibit A annexed hereto pertaining to a particular Mortgage Loan.

"Mortgage Insurance Certificate": With respect to each FHA Mortgage Loan, the mortgage insurance certificate that evidences the FHA Insurance applicable to such Mortgage Loan.

"Mortgage Interest Rate": The annual rate at which interest accrues on any Mortgage Loan in accordance with the provisions of the related Mortgage Note, without regard to any reduction in such rate as a result of any modification of the Mortgage Note or application of the Soldiers' and Sailors' Relief Act of 1940, as amended.

"Mortgage Loan": An individual Mortgage Loan that is the subject of this Agreement, each such Mortgage Loan originally sold and subject to this Agreement being identified on the Mortgage Loan Schedule, which Mortgage Loan includes without limitation the Mortgage File, the Policy, the Monthly Payments, Principal Prepayments, Liquidation Proceeds, Condemnation Proceeds, Insurance Proceeds, REO Disposition Proceeds, FHA/VA Claim Proceeds and all other rights, benefits, proceeds and obligations arising from or in connection with such Mortgage Loan.

"Mortgage Loan Package": A group of Mortgage Loans sold to the Initial Owner by the Company on a Closing Date and set forth on the Mortgage Loan Schedule annexed to the related Acknowledgment and Conveyance Agreement.

"Mortgage Loan Remittance Rate" or "Remittance Rate": As to each Mortgage Loan, the annual rate of interest required to be remitted hereunder to the Owner, which shall be equal to the related Mortgage Interest Rate minus the related Servicing Fee Rate.

"Mortgage Loan Schedule": The schedule of Mortgage attached hereto as Annex 1 to each Acknowledgment and Conveyance Agreement, each such schedule setting forth the following information as to each Mortgage Loan, as applicable: (a) the Mortgage Loan identifying number, (b) the Mortgagor's name, (c) the street address of the Mortgaged Property, including the state and zip code, (d) the Mortgage Interest Rate, (e) the original principal balance of the Mortgage Loan, (f) principal balance of the Mortgage Loan as of the Cut-off Date after deduction of payments of principal due on or before the Cut-off Date, whether or not collected, (g) the first payment date, (h) a code indicating whether the Mortgaged Property is occupied by the owner (and, if so, whether it is occupied as a primary, secondary or vacation residence), (i) the purpose of the Mortgage Loan and (j) a code indicating whether the Mortgage Loan is an FHA Mortgage Loan or a VA Mortgage Loan.

"Mortgage Note": The note or other evidence of the indebtedness of a Mortgagor secured by the related Mortgage.

"Mortgaged Property": The real property and improvements subject to a Mortgage, constituting security for repayment of the debt evidenced by the related Mortgage Note.

"Mortgagor": The obligor on a Mortgage Note.

"No-Bid Notice": A written notice from the VA that it will not accept conveyance of the property securing a VA Mortgage Loan after such VA Mortgage Loan has been placed in foreclosure.

"No-Bid-Mortgage Loan": A VA Mortgage Loan for which a No-Bid Notice has been received.

"Nonrecoverable Advance": Any Servicing Advance, Monthly Advance or Liquidation Advance which the Company has determined in its good faith business judgment will not or, in the case of a proposed Servicing Advance or Monthly Advance, would not, be ultimately recoverable, by the Company from late payments, Insurance Proceeds, Liquidation Proceed, Condemnation Proceeds, FHA/VA Proceeds or other amounts received or receivable with respect to the related Mortgage Loan or REO Property. Upon request of the Owner, the determination by the Company that it has made a Nonrecoverable Advance shall be evidenced by an Officer's Certificate delivered to the Owner setting forth such determination and the procedures and considerations of the Company forming the basis of such determination, which shall include a copy of any information or reports obtained by the Company which may support such determination.

"Officers' Certificate": A certificate signed by the President, a Senior Vice President or a Vice President and by the Treasurer or the Secretary or one of the Assistant Secretaries of the Company, or by other duly authorized officers or agents of the Company, and delivered to the Owner as required by this Agreement.

"Opinion of Counsel": A written opinion of counsel, who may be salaried counsel employed by the Company.

"Owner": The Initial Owner and any successor or assign to this Agreement by the Initial Owner or an Owner.

"Pass-Through Transfer": The sale or transfer of some or all of the Mortgage Loans by the Initial Owner to a trust to be formed as part of a publicly issued or privately placed mortgage-backed securities transaction.

"Person": Any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Policy": With respect to any Mortgage Loan, the applicable FHA Insurance or VA Guaranty.

"Prepayment Interest Shortfall": As to any Remittance Date and any Mortgage Loan, (a) if such Mortgage Loan was the subject of a Full Principal Prepayment during the related Principal Prepayment Period, the excess of one month's interest (adjusted to the Mortgage Loan Remittance Rate) on the Assumed Principal Balance of such Mortgage Loan outstanding immediately prior to such prepayment, over the amount of interest (adjusted to the Mortgage Loan Remittance Rate) actually paid by the Mortgagor in respect of such Principal Prepayment Period, and (b) if such

Mortgage Loan was the subject of a Curtailment during the related Principal Prepayment Period, an amount equal to one month's interest at the Mortgage Loan Remittance Rate on the amount of such Curtailment.

"Principal Prepayment": Any payment or other recovery of principal on a Mortgage Loan which is received in advance of its scheduled Due Date, including any prepayment penalty or premium thereon, and is not accompanied by an amount of interest representing scheduled interest due on any date or dates in any month or months subsequent to the month of prepayment.

"Principal Prepayment Period": As to any Remittance Date, the calendar month preceding the calendar month in which such Remittance Date occurs.

"Purchase Price": Has the meaning set forth in Section 2.01.

"Purchase Price and Terms Letter": That certain letter dated as of June 13, 2002, between the Company and the Initial Owner, as modified with respect to each Mortgage Loan Package beyond the initial Mortgage Loan Package by the related Trade Confirmation.

"Qualified Appraiser": An appraiser who (a) satisfies the requirements of Title XI of the Financial Institutions Reform, and Enforcement Act of 1989, as amended, and the regulations promulgated thereunder, (b) is acceptable to Fannie Mae or Freddie Mac and (c) approved by the Company.

"Qualified Substitute Mortgage Loan": A mortgage loan substituted by the Company for a Deleted Mortgage Loan which must, on the date of such substitution, (i) have a principal balance at the time of substitution not in excess of the principal balance of the Deleted Mortgage Loan (the amount of any difference being deemed to be a principal payment to be credited to or deposited by the Company in the Custodial Account), (ii) have a Mortgage Interest Rate not less than and not more than 1% greater than that of the Deleted Mortgage Loan, (iii) have a remaining maturity not later than and not more than one year less than the remaining maturity of the Deleted Mortgage Loan, (iv) be an FHA Mortgage Loan if the Deleted Mortgage Loan was an FHA Mortgage Loan, or be a VA Mortgage Loan if the Deleted Mortgage Loan was a VA Mortgage Loan and (v) be, in the reasonable determination of the Company, of the same type, quality and character as the Deleted Mortgage Loan as if the breach had not occurred.

"Readjustment Act": The Servicemen's Readjustment Act of 1944, as amended.

"Realized Loss": With respect to each Foreclosed Mortgage Loan, an amount equal to (i) the unpaid principal balance of such Mortgage Loan as of the date that the Mortgage Loan became a Foreclosed Mortgage Loan (without regard to any reduction relating to a VA Buydown), plus (ii) interest at the applicable Mortgage Loan Remittance Rate from the date as to which interest was last paid up to the last day of the month that the Mortgage Loan became a Foreclosed Mortgage Loan, minus (iii) Liquidation Proceeds and FHA/VA Claim Proceeds received. With respect to each Liquidated Mortgage Loan, an amount equal to (i) the unpaid principal balance of such Mortgage Loan as of the date of liquidation (without regard to any reduction relating to a VA Buydown), plus (ii) interest at the applicable Remittance Rate from the date as to which interest was last paid up to the last day of the month of such liquidation, minus (iii) Liquidation Proceeds and FHA/VA Claim

Proceeds received. In determining the extent to which a Realized Loss is a Realized Loss of interest or principal, Liquidation Proceeds shall be allocated first to accrued unpaid interest and second to reduce the principal balance of the related Mortgage Loan, and FHA/VA Claim Proceeds shall be allocable to interest or principal as specified by FHA or VA, as applicable.

"Reconstitution Agreement": The agreement or agreements entered into by the Company and the Initial Owner and certain third parties on the Reconstitution Date or Dates with respect to any or all of the Mortgage Loans serviced hereunder, in connection with a Whole Loan Transfer, a Pass-Through Transfer or Agency Transfer as provided in Section 12.01.

"Reconstitution Date": The date or dates on which any or all of the Mortgage Loans serviced under this Agreement shall be removed from this Agreement and reconstituted as part of a Whole Loan Transfer, Pass-Through Transfer or Agency Transfer pursuant to Section 12.01 hereof. On such date, the Mortgage Loans transferred shall cease to be covered by the servicing provisions of this Agreement and the Company shall cease to service such Mortgage Loans under this Agreement.

"Record Date": The close of business of the last Business Day of the month preceding the month of the related Remittance Date.

"Refinanced Mortgage Loan": A Mortgage Loan that was made to a Mortgagor who owned the Mortgaged Property prior to the origination of such Mortgage Loan.

"Regulations": FHA Regulations or VA Regulations, as the case may be.

"REMIC": A "real estate mortgage investment conduit" within the meaning of Section 860D of the Code.

"Remittance Date": The 18th day of any month, beginning in June, 2002, or if such 18th day is not a Business Day, the first Business Day immediately following.

"REO Disposition": The final sale by the Company of a Mortgaged Property acquired by the Company in foreclosure or by deed in lieu of foreclosure.

"REO Disposition Proceeds": All amounts received with respect to an REO Disposition pursuant to Section 4.14.

"REO Property": A Mortgaged Property acquired by the Company through foreclosure or deed in lieu of foreclosure, as described in Section 4.14.

"Repurchase Price": With respect to any Mortgage Loan to be repurchased by the Company pursuant to Section 3.03, an amount equal to the Assumed Principal Balance of such Mortgage Loan as of the date of such repurchase, plus interest on such Assumed Principal Balance at the Mortgage Loan Remittance Rate from the date to which interest has last been paid up to and including the day prior to repurchase.

"S&P": Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc., or any successor in interest.

"Servicing Advances": All customary, reasonable and necessary "out of pocket" costs and expenses incurred in the performance by the Company of its servicing obligations, including, but not limited to, the cost of (a) the preservation, restoration and protection of the Mortgaged Property, (b) any enforcement or judicial proceedings, including foreclosures, (c) the management and liquidation of REO Property pursuant to Section 4.14 and (d) compliance with the Company's obligations described in Section 4.08.

"Servicing Fee": The amount of the annual fee the Owner shall pay to the Company, equal to 0.44% (forty-four basis points) of the outstanding principal amount of each Mortgage Loan. Such fee shall be payable monthly from the interest portion (including recoveries with respect to interest from the Liquidation Proceeds and FHA/VA Claim Proceeds) of each Monthly Payment collected by the Company (or as otherwise provided under Section 4.05) and shall be computed on the basis of the same principal amount and for the period respecting which any related interest payment on a Mortgage Loan is computed. The obligation of the Owner to pay the Servicing Fee is limited to, and the Servicing Fee is payable solely from, the interest portion (including recoveries with respect to interest from Liquidation Proceeds and FHA/VA Claim Proceeds) of each Monthly Payment collected by the Company, or as otherwise provided under Section 4.05.

"Servicing Officer": Any officer of the Company involved in, or responsible for, the administration and servicing of the Mortgage Loans whose name appears on a list of servicing officers furnished by the Company to the Owner upon request, as such list may from time to time be amended.

"Trade Confirmation": With respect to each purchase of a Mortgage Loan Package hereunder (other than the initial Mortgage Loan Package purchased hereunder), that certain confirmation letter in the form of Exhibit A-1 hereto supplementing the Purchase Price and Terms Letter and setting forth the general terms, conditions and portfolio characteristics for each Mortgage Loan Package to be purchased hereunder as of any Closing Date.

"Transfer Date": The meaning set forth in Section 10.02.

"VA": The Veterans Administration or any successor thereto.

"VA Approved Lender": A lender approved by the VA under the VA Regulations to act as a lender in connection with the origination of VA Mortgage Loans.

"VA Buydown": With respect to a Mortgage Loan as to which a No-Bid Notice has been received, the waiver or satisfaction by the Company of a portion of the indebtedness of the Mortgage Loan--which can take the form of a reduction of the principal, a credit to escrow or unapplied funds accounts, the forgiveness of accrued interest or any combination of the foregoing--which causes the VA to pay off the remaining amount of the indebtedness owed and acquire the collateral securing the Mortgage Loan.

"VA Buydown Loss": The dollar amount of the indebtedness of a Mortgage Loan that is required to be waived or satisfied in order to effect a VA Buydown.

"VA Guaranty": A guaranty granted by the VA with respect to any Mortgage Loan.

"VA Loan Guaranty Certificate": With respect to each VA Mortgage Loan, the loan guaranty certificate that evidences the VA Guaranty applicable to such Mortgage Loan.

"VA Mortgage Loan": At any time, any Mortgage Loan that is subject to a VA Guaranty and eligible for reimbursement thereunder.

"VA Regulations": Regulations promulgated by VA pursuant to the Readjustment Act, codified in 38 Code of Federal Regulations, and other VA issuances relating to VA Mortgage Loans, including, without limitation, related handbooks, circulars, notices and mortgage letters.

"Whole Loan Transfer": Any sale or transfer of all of the Mortgage Loans by the Initial Owner to a third party.

## ARTICLE II

### CONVEYANCE OF MORTGAGE LOANS; POSSESSION OF MORTGAGE FILES; BOOKS AND RECORDS; CUSTODIAL AGREEMENT; DELIVERY OF MORTGAGE LOAN DOCUMENTS

#### Section 2.01 Conveyance of Mortgage Loans; Possession of Mortgage Files.

On each Closing Date, the Company, simultaneously with the execution and delivery of the related Acknowledgment and Conveyance Agreement, does hereby sell, transfer, assign, set over and convey to the Owner, without recourse, but subject to the terms of this Agreement, all the right, title and interest of the Company in and to the Mortgage Loans included in the related Mortgage Loan Package, including all interest and principal received by the Company on or with respect to the Mortgage Loans after the related Cut-off Date (other than payments of principal and interest due on the Mortgage Loans on or before such Cut-off Date, whether or not received), together with all of the Company's right, title and interest in and to each Custodial Account and all amounts from time to time credited to and the proceeds of such Custodial Account, all amounts from time to time credited to and the proceeds of any Escrow Account, any Liquidation Proceeds or Condemnation Proceeds, any REO Property and the proceeds thereof, the Company's rights under any insurance policies related to the Mortgage Loans, the Policy related to each Mortgage Loan and all rights of the Company thereunder, any Insurance Proceeds, any FHA/VA Claim Proceeds, the Company's security interest in any collateral pledged to secure the Mortgage Loans, including the Mortgaged Properties, and any proceeds of the foregoing.

Pursuant to Section 2.03 hereof, the Company has delivered a portion of each Mortgage File to the Custodian. The contents of each Mortgage File not delivered to the Custodian are and shall be held in trust by the Company for the benefit of the Owner as the owner thereof and the Company's possession of the portion of each Mortgage File so retained is at the will of the Owner

for the sole purpose of servicing the related Mortgage Loan, and such retention and possession by the Company is in a custodial capacity only. On the Closing Date, the ownership of each Mortgage Note, Mortgage and each related Mortgage File is vested in the Owner and the ownership of all records and documents with respect to each related Mortgage Loan prepared by or which come into the possession of the Company shall immediately vest in the Owner and shall be retained and maintained, in trust, by the Company at the will of the Owner in such custodial capacity only. The Mortgage File may be retained in microfilm, microfiche, optical storage or magnetic media in lieu of hard copy. The Company shall maintain records (i) confirming the sale of the related Mortgage Loan to the Owner and (ii) confirming the Owner's ownership interest in the Mortgage File. The Company shall release from its custody the contents of any Mortgage File only in accordance with written instructions from the Owner, unless such release is required as incidental to the Company's servicing of the Mortgage Loans or is in connection with a repurchase of any Mortgage Loan or the removal of any Mortgage Loan or related REO Property from the terms of this Agreement pursuant to Section 3.03 such written instructions shall not be required.

In full consideration for the purchase of each Mortgage Loan Package by the Owner, on each Closing Date, the Owner shall pay to the Company the purchase price calculated in accordance with the provisions of the related Acknowledgment and Conveyance Agreement (the "Purchase Price") by wire transfer in immediately available funds pursuant to the wiring instructions as provided by the Company to the Owner. If, subsequent to any Closing Date, the amount on which the related Purchase Price with respect to a Mortgage Loan was based is found to be in error, or if, for any other reason, the Purchase Price or such other amounts are found to be in error, within ten (10) Business Days of the receipt of information sufficient to provide notice that payment is due the party benefiting from the error shall pay an amount sufficient to correct and reconcile the Purchase Price plus interest thereon at an agreed upon market rate or such other amounts and shall provide a reconciliation statement and such other documentation sufficient reasonably to satisfy the other party concerning the accuracy of such reconciliation.

It is intended that the conveyance pursuant to this Agreement of the Company's right, title and interest in and to the property described in the first paragraph of this Section shall constitute, and shall be construed as, a sale of such property and not a grant of a security interest to secure a loan. However, if such conveyance is deemed to be, or to be made as security for, a loan, it is intended that: (1) the rights and obligations of the parties shall be established pursuant to the terms of this Agreement; (2) the Company hereby grants to the Owner a first priority security interest in all of the Company's right, title and interest in, to and under, whether now owned or hereafter acquired, the property described in the first paragraph of this Section 2.01; and (3) this Agreement shall constitute a security agreement under applicable law.

#### Section 2.02 Books and Records.

Notwithstanding the sale of a Mortgage Loan Package to the Owner, record title to each Mortgage and the related Mortgage Note in such Mortgage Loan Package shall continue in the name of the Company and be retained by the Company in trust for the Owner for the sole purpose of facilitating the servicing and the supervision of the servicing of the Mortgage Loans; provided however, that the Company agrees to cooperate with the Initial Owner in the event the Initial Owner requests recordation of the Assignments of Mortgage in connection with a reconstitution of this Agreement as contemplated under Article XII. It being further understood that this Assignment of

Mortgage may necessitate putting the Assignments in the name of the Trust or some other third party. All rights arising out of the Mortgage Loans included in each Mortgage Loan Package including, but not limited to, all funds received on or in connection with a Mortgage Loan shall be held by the Company in trust for the benefit of the Owner as the owner of the Mortgage Loans, subject to subsequent deduction of amounts to which the Company is entitled pursuant to the terms of this Agreement.

The sale of each Mortgage Loan shall be reflected on the Company's balance sheet and other financial statements as a sale of assets by the Company. After the Closing Date, the Company agrees to cooperate with the Owner or any parties to a reconstitution of the Mortgage Loans on one or more occasions as more fully set forth in Article XII, at the Owner's or such other party's expense, in providing such reasonable documentation or confirmation, as may be reasonably requested by the Owner or such parties to a reconstitution. The Company shall be responsible for maintaining, and shall maintain, a complete set of books and records for each Mortgage Loan which shall be clearly marked to reflect the ownership of each Mortgage Loan by the Owner.

Section 2.03 Custodial Agreement: Delivery of Mortgage Loan Documents.

By no later than the date set forth in the related Purchase Price and Terms Letter or Trade Confirmation, as the case may be, the Company shall have delivered to the Custodian each of the following documents for each Mortgage Loan (the "Essential Mortgage Loan Documents") and the Custodian shall have certified its receipt of all such documents to the Initial Owner as of or prior to the related Closing Date:

- (a) The original Mortgage Note endorsed, "Pay to the order of \_\_\_\_\_, without recourse" and signed in the name of the Company by an authorized officer. Such signature may be an original signature or a facsimile signature of such officer. If the Mortgage Loan was acquired by the Company in a merger, the endorsement must be by "GMAC Mortgage Corporation, successor by merger to [name of predecessor]"; and if the Mortgage Loan was acquired or originated by the Company while doing business under another name, the endorsement must be by "GMAC Mortgage Corporation, formerly known as [previous name]". The Mortgage Note shall include all intervening endorsements showing a complete chain of title from the originator to the Company. In lieu of the original Mortgage Note, the Owner will accept lost note affidavits in a form acceptable to the Owner for up to five percent (5%) of the Mortgage Loans (measured by unpaid principal balance);
- (b) An original blanket Assignment of Mortgage in blank covering all of the Mortgage Loans (rather than a separate Assignment for each Mortgage Loan);
- (c) Originals or certified true copies from the appropriate recording offices of all assumption and modification agreements, if any or if the original has not yet been returned from the recording office, a copy of such original certified by the Company; and

- (d) Original Mortgage Insurance Certificate with respect to each FHA Mortgage Loan and the original VA Loan Guaranty Certificate with respect to each VA Mortgage Loan, or in each case a "duplicate original" thereof in accordance with applicable Regulations.

In addition, the Company is in possession of the following documents for each Mortgage Loan (the "Additional Loan Documents"), which shall be delivered to the Owner or a Custodian designated by the Owner if required in connection with an Agency Transfer, a Whole Loan Transfer or a Pass-Through Transfer entered into pursuant to this Agreement:

- (a) The original Mortgage, or a copy of the Mortgage with evidence of recording thereon certified by the appropriate recording office to be a true copy of the recorded Mortgage, or, if the original Mortgage has not yet been returned from the recording office, a copy of the original Mortgage together with a certificate of a duly authorized representative of the Company (which certificate may consist of stamped text appearing on such copy of the Mortgage), the closing attorney or an officer of the title insurer which issued the related title insurance policy, certifying that the copy is a true copy of the original of the Mortgage which has been transmitted for recording in the appropriate recording office of the jurisdiction in which the Mortgaged Property is located;
- (b) The original Assignment of Mortgage, executed in blank, but otherwise in form and substance acceptable for recording; provided, however, that certain recording information will not be available if, as of the Closing Date, the Company has not received the related Mortgage from the appropriate recording office. If the Mortgage Loan was acquired by the Company in a merger, the assignment must be by "GMAC Mortgage Corporation, successor by merger to [name of predecessor]"; and if the Mortgage Loan was acquired or originated by the Company while doing business under another name, the assignment must be by "GMAC Mortgage Corporation, formerly known as [previous name]"; provided, further, that if the Mortgage Loan is a MERS Mortgage Loan (and, except in the case of a MOM Loan where no intervening assignment shall be required, the original or certified true copy of the recorded Assignment of Mortgage to MERS is provided pursuant to clause (d) below) no Assignment of Mortgage shall be required;
- (c) The original policy of title insurance or, if such insurance is in force but the original policy of title insurance has not been delivered to the Company by the issuing title insurer, the report of title insurance or other evidence of title insurance generally acceptable to Fannie Mae or Freddie Mac or, if the Mortgage Loan is the subject of a Fannie Mae or Freddie Mac approved master title insurance policy, a certified copy of the certificate of title insurance issued thereunder; and
- (d) Originals, or certified true copies from the appropriate recording offices, of any intervening assignments of the Mortgage with evidence of recording thereon, or, if the original intervening assignment has not yet been returned from the recording office, a certified copy of such assignment.

Notwithstanding any delivery of the Essential Mortgage Loan Documents or the Additional Mortgage Loan Documents by the Company to the Owner or the Custodian, the Company shall retain, in its capacity as servicer of the Mortgage Loans, all other items included in the Mortgage File, all of which shall be available for inspection by the Owner and which may be retained in microfilm, microfiche, optical storage or magnetic media in lieu of hard copy.

If, in connection with any reconstitution of the Mortgage Loans, any of Fannie Mae, Freddie Mac or Ginnie Mae, as applicable, in the case of an Agency Transfer, the third party purchaser in the case of a Whole Loan Transfer, or the trustee or master servicer in the case of a Pass-Through Transfer, requires that Assignments of Mortgage be delivered and/or recorded with respect to each Mortgage Loan, then within the time period required by the applicable Reconstitution Agreement, the Company, at the Company's expense, shall deliver to the Initial Owner or its designee an Assignment of Mortgage with respect to each Mortgage Loan in the name designated by the Initial Owner and in form and substance acceptable for recording in the jurisdiction in which the related Mortgaged Property is located. It is understood and agreed that such Assignment of Mortgage shall not be required if the Mortgage Loan is a MERS Mortgage Loan, and the Assignment of Mortgage naming MERS has been duly recorded and is included in the Mortgage File held by the Company or delivered to the Owner or the Custodian to the extent required by this Agreement.

The Custodian has certified its receipt of each such document as evidenced by its Initial Certification in the form annexed to the Custodial Agreement.

The Company shall forward to the Custodian original documents evidencing any assumption, modification, consolidation or extension of any Mortgage Loan entered into in accordance with Section 4.01 or Section 6.01 within fifteen (15) days of its execution; provided, however, that the Company shall provide the Custodian with a certified true copy of any such document submitted for recordation within fifteen (15) days of its execution, and shall provide the original of any document submitted for recordation or a copy of such document certified by the appropriate public recording office to be a true and complete copy of the original promptly upon receiving the same from the appropriate public recording office.

On or prior to each Closing Date, or within the period following such Closing Date that is prescribed by applicable Regulations, or otherwise at the request of the Owner, the Company shall complete all forms and take such other actions as may be required by FHA and VA, as applicable, in connection with the transfer of the Mortgage Loans to Owner, including notifying FHA of the change in ownership with respect to all FHA Mortgage Loans and the giving of notice to the VA of a transfer of insurance credits, if applicable, with respect to VA Mortgage Loans on the form prescribed by the VA, in each case as are required under applicable Regulations, and shall, at the request of the Owner, provide evidence reasonably satisfactory to the Owner that such notices have been provided as so required.

#### Section 2.04. Examination of Mortgage File.

At the Owner's request upon reasonable advance notice prior to or after the Closing Date, the Owner or its designee or any other third party may, at such Person's cost and expense, conduct a due diligence review of a reasonable sample of the Mortgage Files for the purpose of selling,

assigning or reconstituting the Mortgage Loans, ensuring conformity with Ginnie Mae standards and to insure that the Mortgage Loans meet the characteristics set forth in this Agreement, the Purchase Price and Terms Letter and in the Schedules and Exhibits hereto and thereto.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY; REPURCHASE AND SUBSTITUTION; REVIEW OF MORTGAGE LOANS

##### Section 3.01 Representations and Warranties of the Company.

The Company represents, warrants and covenants to the Owner, as of each Closing Date or as of such other date specified below, that:

(i) The Company is a validly existing corporation in good standing under the laws of the Commonwealth of Pennsylvania and is qualified to transact business in, is in good standing under the laws of, and possesses all licenses necessary for the conduct of its business in, each state in which any Mortgaged Property is located or is otherwise exempt or not required under applicable law to effect such qualification or license and no demand for such qualification or license has been made upon the Company by any such state, and in any event the Company is in compliance with the laws of each such State to the extent necessary to ensure the enforceability of each Mortgage Loan;

(ii) The Company has full power and authority to hold each Mortgage Loan, to sell each Mortgage Loan pursuant to this Agreement and to execute, deliver and perform, and to enter into and consummate all transactions contemplated by this Agreement and to conduct its business as presently conducted, has duly authorized the execution, delivery and performance of this Agreement, has duly executed and delivered this Agreement, and this Agreement is enforceable against it in accordance with its terms subject to bankruptcy laws and other similar laws of general application affecting rights of creditors and subject to the application of the rules of equity, including those respecting the availability of specific performance;

(iii) None of the execution and delivery of this Agreement, the origination of the Mortgage Loans by the Company, the sale of the Mortgage Loans to the Owner, the consummation of the transactions contemplated hereby, or the fulfillment of or compliance with the terms and conditions of this Agreement will conflict with any of the terms, conditions or provisions of the Company's articles of incorporation or by-laws or materially conflict with or result in a material breach of any of the terms, conditions or provisions of any legal restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or constitute a default or result in an acceleration under any of the foregoing, or result in the material violation of any law, rule, regulation, order, judgment or decree to which the Company or its property is subject;

(iv) Each Mortgage Note and any other documents required pursuant to this Agreement to be delivered to the Owner or its assignee for each Mortgage Loan have been, on or before the Closing Date, delivered to the Owner or its designee;

(v) There is no litigation pending or to the best of Company's knowledge threatened with respect to the Company which is reasonably likely to have a material adverse effect on the sale of the related Mortgage Loans, the execution, delivery or enforceability of this Agreement, or which is reasonably likely to have a material adverse effect on the financial condition of the Company, or which would draw into question the validity of this Agreement or the Mortgage Loans or if any action taken in connection with the obligations of the Company contemplated herein, or which would be likely to impair materially the ability of the Company to perform under the terms of this Agreement;

(vi) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Company of or compliance by the Company with this Agreement, the sale of the Mortgage Loans or the consummation of the transactions contemplated by this Agreement except for consents, approvals, authorizations and orders which have been obtained;

(vii) The consummation of the transactions contemplated by this Agreement is in the ordinary course of business of the Company, and the transfer, assignment and conveyance of the Mortgage Notes and the Mortgages by the Company pursuant to this Agreement are not subject to bulk transfer or any similar statutory provisions in effect in any applicable jurisdiction;

(viii) The Mortgage Loans were selected on a random basis from among the outstanding residential mortgage loans contained in the Company's government loan portfolio immediately prior to the Closing Date as to which the representations and warranties set forth in this Section 3.01 and Section 3.02 could be made;

(ix) There has been no change in the business, operations, financial condition, properties or assets of the Company since the date of the Company's financial statements that would have a material adverse effect on its ability to perform its obligations under this Agreement;

(x) The Company does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant contained in this Agreement. The Company is solvent and the sale of the Mortgage Loans will not cause the Company to become insolvent. The sale of the Mortgage Loans is not undertaken with the intent to hinder, delay or defraud any of the Company's creditors;

(xi) The Company is an approved seller/servicer of residential mortgage loans for Fannie Mae and Freddie Mac, an approved Ginnie Mae Issuer/Servicer, an FHA Approved Mortgagee and a VA Approved Lender. No event has occurred, including but not limited to a change in insurance coverage, which would make the Company unable to comply with Fannie Mae, Freddie Mac, Ginnie Mae, FHA and VA eligibility requirements or which would require notification to any of Fannie Mae, Freddie Mac, Ginnie Mae, FHA or VA;

(xii) The execution of this Agreement by the parties hereto and the assignment of the Mortgage Notes to the Owner shall be effective to transfer and assign to and vest in the Owner all right, title and interest in and to each Mortgage Loan and the Policy related thereto, including all rights of the related mortgagee thereunder, excluding therefrom the right to service the Mortgage

Loans and the liability for the Maximum Loss Amount, and following such execution and assignment no Person other than the Owner and the Company, in its capacity as servicer of the Mortgage Loans to the extent provided in this Agreement, will have any right under or interest in any Policy, including without limitation any right to receipt of FHA/VA Claim Proceeds;

(xiii) The Company has not retained any broker, finder, investment banker or financial advisor in connection with this Agreement or any of the transactions contemplated hereby that would be entitled to a broker's, finder's, investment banker's, financial adviser's or similar fee in connection therewith; and

(xiv) Neither this Agreement nor any statement, report or other document furnished pursuant to this Agreement or in connection with the transactions contemplated hereby contains any untrue statement of fact or omits to state a fact necessary to make the statements contained therein not misleading;

### Section 3.02 Representations and Warranties as to Individual Mortgage Loans.

The Company hereby represents and warrants to the Owner, as to each Mortgage Loan included in the related Mortgage Loan Package as of each Closing Date or such other date as may be specified below with respect to such Mortgage Loan Package, that:

(i) The information set forth in the Mortgage Loan Schedule is true, complete and correct in all material respects as of the Cut-off Date;

(ii) The Mortgage creates a first lien or a first priority ownership interest in an estate in fee simple in real property securing the related Mortgage Note, free and clear of all adverse claims, liens and encumbrances having priority over the first lien of the Mortgage subject only to (1) the lien of non-delinquent current real property taxes and assessments not yet due and payable, (2) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording which are acceptable to mortgage lending institutions generally and, with respect to any Mortgage Loan for which an appraisal was made prior to the Cut-off Date, either (A) which are referred to or otherwise considered in the appraisal made for the originator of the Mortgage Loan, or (B) which do not adversely affect the appraised value of the Mortgaged Property as set forth in such appraisal, and (3) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property. Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Mortgage Loan establishes and creates a valid, subsisting and enforceable first lien and first priority security interest on the property described therein. The Mortgage Note is not and has not been secured by any collateral except the lien of the corresponding Mortgage and the security interest of any applicable security or chattel mortgage ;

(iii) There are no defaults under the terms of the Mortgage Loan; and the Company has not advanced funds, or induced, solicited or knowingly received any advance of funds from a party other than the owner of the Mortgaged Property subject to the Mortgage, directly or indirectly, for the payment of any amount required by the Mortgage Loan;

(iv) There are no delinquent taxes which are due and payable, ground rents, assessments or other outstanding charges affecting the related Mortgaged Property;

(v) The terms of the Mortgage Note of the related Mortgagor and the Mortgage have not been impaired, waived, altered or modified in any respect, except by written instruments which have been recorded to the extent any such recordation is required by applicable law or is necessary to protect the interests of the Owner, and which have been approved by the title insurer and the FHA or VA, as applicable, and copies of which written instruments are included in the Mortgage File. No other instrument of waiver, alteration or modification has been executed, and no Mortgagor has been released, in whole or in part, from the terms thereof except in connection with an assumption agreement, which assumption agreement is part of the Mortgage File and the terms of which are reflected on the Mortgage Loan Schedule. To the best of the Company's knowledge, no Mortgagor was in debtor in any state or federal insolvency proceeding at the time the Mortgage Loan was originated;

(vi) The Mortgage Note and the Mortgage are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor will the operation of any of the terms of the Mortgage Note and the Mortgage, or the exercise of any right thereunder, render the Mortgage Note or Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto;

(vii) All buildings upon the Mortgaged Property are insured by a generally acceptable insurer pursuant to standard hazard policies conforming to the requirements of Fannie Mae and Freddie Mac. All such standard hazard policies are in effect and on the date of origination contained a standard mortgagee clause naming the Company and its successors in interest as loss payee and such clause is still in effect and all premiums due thereon have been paid. If the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as having special flood hazards under the Flood Disaster Protection Act of 1973, as amended, such Mortgaged Property is covered by flood insurance by a generally acceptable insurer in an amount not less than the requirements of Fannie Mae and Freddie Mac. The Mortgage obligates the Mortgagor thereunder to maintain all such insurance at the Mortgagor's cost and expense, and on the Mortgagor's failure to do so, authorizes the holder of the Mortgage to maintain such insurance at the Mortgagor's cost and expense and to seek reimbursement therefor from the Mortgagor;

(viii) Any and all requirements of any federal, state or local law including, without limitation, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity or disclosure laws applicable to the Mortgage Loan have been complied with, and the Company shall maintain in its possession, available for the Owner's inspection, evidence of compliance with all such requirements;

(ix) The Mortgage has not been satisfied, canceled or subordinated, in whole or in part, or rescinded, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part nor has any instrument been executed that would effect any such satisfaction, release, cancellation, subordination or rescission;

(x) The Mortgage Note and the related Mortgage are original and genuine and each is the legal, valid and binding obligation of the maker thereof, enforceable in all respects in accordance with its terms subject to bankruptcy, insolvency and other laws of general application affecting the rights of creditors, and the Company has taken all action necessary to transfer such rights of enforceability to the Owner. All parties to the Mortgage Note and the Mortgage had the legal capacity to enter into the Mortgage Loan and to execute and deliver the Mortgage Note and the Mortgage. The Mortgage Note and the Mortgage have been duly and properly executed by such parties. The proceeds of the Mortgage Note have been fully disbursed and there is no requirement for future advances thereunder, and any and all requirements as to completion of any on-site or off-site improvements and as to disbursements of any escrow funds therefor have been complied with;

(xi) Immediately prior to the transfer and assignment to the Owner, the Mortgage Note and the Mortgage were not subject to an assignment or pledge, and the Company had good and marketable title to and was the sole owner thereof and had full right to transfer and sell the Mortgage Loan to the Owner free and clear of any encumbrance, equity, lien, pledge, charge, claim or security interest;

(xii) The Mortgage Loan is covered by an ALTA lender's title insurance policy or other generally acceptable form of policy of insurance, with all necessary endorsements, issued by a title insurer qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring (subject to the exceptions contained in clause (b) (1), (2) and (3) above) the Company, its successors and assigns, as to the first priority lien of the Mortgage in the original principal amount of the Mortgage Loan. Such title insurance policy affirmatively insures ingress and egress and against encroachments by or upon the Mortgaged Property or any interest therein. The Company is the sole insured of such lender's title insurance policy, such title insurance policy has been duly and validly endorsed to the Owner or the assignment to the Owner of the Company's interest therein does not require the consent of or notification to the insurer and such lender's title insurance policy is in full force and effect and will be in full force and effect upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such lender's title insurance policy, and no prior holder of the related Mortgage has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy;

(xiii) There is no default, breach, violation or event of acceleration existing under the Mortgage or the related Mortgage Note and, to the Company's knowledge, no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event permitting acceleration; and neither the Company nor any prior mortgagee has waived any default, breach, violation or event permitting acceleration;

(xiv) To the best of the Company's knowledge, there are no mechanics, or similar liens or claims which have been filed for work, labor or material affecting the related Mortgaged Property which are or may be liens prior to or equal to the lien of the related Mortgage;

(xv) All improvements subject to the Mortgage lie wholly within the boundaries and building restriction lines of the Mortgaged Property (and wholly within the project with respect to a condominium unit) and no improvements on adjoining properties encroach upon the Mortgaged Property except those which are insured against by the title insurance policy referred to

in clause (xii) above and all improvements on the property comply with all applicable zoning and subdivision laws and ordinances;

(xvi) The Mortgage Loan was originated by the Company or by an eligible correspondent of the Company. The Mortgage Loan was originated in accordance with applicable Regulations (including, without limitation, all underwriting and insuring guidelines) of FHA or VA, as applicable; The Mortgage Notes and Mortgages are on forms acceptable to FHA or VA, as applicable;

(xvii) The Mortgage Loan contains the usual and enforceable provisions of the originator at the time of origination for the acceleration of the payment of the unpaid principal amount if the related Mortgaged Property is sold without the prior consent of the mortgagee thereunder. The Mortgage Note is payable in monthly installments of principal and interest, with interest calculated and payable in arrears, sufficient to amortize the Mortgage Loan fully by the stated maturity date, over an original term of not more than thirty years from commencement of amortization (or, in the case of a Mortgage Loan that is subject to a modification as indicated on the Mortgage Loan Schedule, with a modified term not more than the lesser of 10 years beyond the original maturity date nor more than 30 years from the month that the first installment required under the modification agreement is due) and with a principal balance at origination not in excess of the limits established by FHA and VA, as applicable. The mortgage loan provides for accrual of interest on the basis of a 360-day year consisting of twelve 30-day months. Except as otherwise set forth on the Mortgage Loan Schedule, the Mortgage Loan does not contain terms or provisions which would result in negative amortization nor contain "graduated payment" features;

(xviii) The Mortgaged Property at origination of the Mortgage Loan was and, to the Company's knowledge, currently is free of damage and waste and at origination of the Mortgage Loan there was, and, to the Company's knowledge, there currently is, no proceeding pending for the total or partial condemnation thereof. At the time of the origination of the Mortgage Loan, the Mortgaged Property was lawfully occupied;

(xix) The related Mortgage contains enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (1) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (2) otherwise by judicial foreclosure. Upon default by a Mortgagor on a Mortgage Loan and foreclosure on, or trustee's sale of, the related Mortgaged Property pursuant to the proper procedures, the holder of such Mortgage Loan will be able to deliver to the FHA or VA, as the case may be, title of the quality required by the Regulations to the related Mortgaged Property. To the Company's knowledge, there is no homestead or other exemption available to a Mortgagor that would interfere with the ultimate sale of the related Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage;

(xx) If the Mortgage constitutes a deed of trust, a trustee, duly qualified if required under applicable law to act as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by the Owner to the trustee under the deed of trust, except in connection with a trustee's sale or attempted sale after default by the Mortgagor;

(xxi) If required by the applicable processing style, the Mortgage File contains an appraisal of the related Mortgaged Property made and signed prior to the final approval of the mortgage loan application by a Qualified Appraiser. The appraisal, if applicable, is in a form generally acceptable to Fannie Mae or Freddie Mac;

(xxii) All parties which have had any interest in the Mortgage, whether as mortgagee, assignee, pledgee or otherwise, are (or, during the period in which they held and disposed of such interest, were) (A) in substantial compliance with any and all applicable licensing requirements of the laws of the state wherein the Mortgaged Property is located, and (B) (1) organized under the laws of such state, or (2) qualified to do business in such state, or (3) federal savings and loan associations, national banks, a Federal Home Loan Bank or the Federal Reserve Bank, or (4) not doing business in such state;

(xxiii) To the best of the Company's knowledge, there does not exist any circumstances or conditions with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that could reasonably be expected to cause private institutional investors to regard the Mortgage Loan as an unacceptable investment, to cause the Mortgage Loan to become delinquent, or to materially adversely affect the value or marketability of the Mortgage Loan;

(xxiv) Each of the Mortgaged Properties consists of a single parcel of real property with a detached single-family residence erected thereon, or a two- to four-family dwelling, or a townhouse, or an individual condominium unit in a condominium project or an individual unit in a planned unit development. Any condominium unit or planned unit development conforms with applicable FHA, Ginnie Mae and Fannie Mae requirements regarding such dwellings or is covered by a waiver confirming that such condominium unit or planned unit development is acceptable to FHA, Ginnie Mae and Fannie Mae. No such residence is a mobile home or manufactured dwelling or is used for commercial purposes;

(xxv) The loan-to-value ratio of the Mortgage Loan did not, at the time of origination, exceed the maximum amount permitted by the FHA or VA, as applicable, for such Mortgage Loan; the appraisal prepared in connection with the Mortgaged Property was prepared by a qualified appraiser with no direct or indirect interest in the Mortgaged Property, and both the appraisal and the appraiser satisfied the Regulations and other applicable laws;

(xxvi) the Company is in possession of each of the Additional Mortgage Loan Documents with respect to each Mortgage Loan;

(xxvii) The Company is either, and each Mortgage Loan was originated by, a savings and loan association, savings bank, commercial bank, credit union, insurance company or similar institution which is supervised and examined by a federal or State authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to Section 203 and 211 of the National Housing Act;

(xxviii) The origination, collection and servicing practices with respect to each Mortgage Note and Mortgage have been legal in all material respects and in accordance with

Customary Servicing Procedures , and have been in all material respects in compliance with all applicable laws and regulations, including without limitation applicable Regulations and the Ginnie Mae Credit and Collection Policy. With respect to escrow deposits and Escrow Payments, if any, all such payments are in the possession of, or under the control of, the Company and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. All Escrow Payments have been collected in full compliance with state and federal law and regulation, including applicable Regulations. With respect to each Mortgage Loan that provides for Escrow Payments and where Escrow Payments have been collected, an escrow of funds is not prohibited by applicable law and has been established in accordance with Customary Servicing Procedures. The amount of all Escrow Payments have been computed in accordance with Applicable Requirements. No escrow deposits or Escrow Payments or other charges or payments have been capitalized under the Mortgage or the Mortgage Note;

(xxix) Omitted.

(xxx) The Mortgage Loan is an FHA Mortgage Loan or a VA Mortgage Loan. With respect to each Mortgage Loan, the applicable Policy is in full force and effect, and there exists no defense or impairment to full recovery thereunder to the maximum extent provided thereby, without, in the case of any FHA Mortgage Loan, indemnity to HUD or FHA. Each policy is the valid, binding and enforceable obligation of FHA and VA, respectively, to the full extent provided thereby, without surcharge, set-off or defense, and all actions that are necessary to ensure that each Policy remains so valid, binding and enforceable have been taken. The guaranty amount with respect to each VA Mortgage Loan is equal to the maximum amount applicable to such Mortgage Loan as provided under Section 5.02, Part I of the VA Lenders Handbook, without regard to the applicable veteran's available entitlement. All provisions of such Policy have been and are being complied with, such policy is in full force and effect, and all premiums due thereunder have been paid. The Mortgage Loan obligates the Mortgagor thereunder to maintain the Policy and to pay all premiums and charges in connection therewith. The Mortgage Interest Rate for the Mortgage Loan as set forth on the Mortgage Loan Schedule is net of any such insurance premium;

(xxxii) No Mortgage Loan contains provisions pursuant to which Monthly Payments will in the future be paid or partially paid with funds deposited in any separate account established by the Company, the Mortgagor or anyone on behalf of the Mortgagor, or paid by any source other than the Mortgagor nor does it contain any other similar provisions currently in effect; no Mortgage Loan is a VA vendee loan, an FHA Section 235 loan, an FHA Section 203(k) loan, an FHA coinsured loan, a graduated payment loan or a reverse mortgage loan; no Mortgage Loan is secured by a cooperative property, or by manufactured housing that is not affixed to a permanent structure;

(xxxiii) Each Mortgage File contains each of the documents and instruments required to be maintained by the Regulations and this Agreement and such documents and instruments are duly executed and genuine, and, to the Company's knowledge, the information contained therein is true, accurate and complete; to the Company's knowledge, the documents, instruments and agreements submitted for loan underwriting were not falsified and contain no

untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the information and statements therein not misleading;

(xxxiii) No action, inaction, event or circumstance has occurred and no state of facts exists that has resulted or will result in the exclusion from, denial of, or defense to coverage under, or any curtailment or reduction of coverage under, any applicable insurance policy or Policy.

### Section 3.03 Repurchase and Substitution.

The representations and warranties set forth in Sections 3.01 and 3.02 shall survive the sale of the Mortgage Loans and shall inure to the benefit of the Owner, notwithstanding any restrictive or qualified endorsement on any Mortgage Note or Assignment of Mortgage or the examination of any Mortgage File. Upon discovery by either the Company or an Owner of a breach of any of the representations and warranties set forth in Sections 3.01 and 3.02 (notwithstanding the Company's lack of knowledge of such representation and warranty), which breach materially and adversely affects the value of the Mortgage Loans or the interest of the Owner (or which materially and adversely affects the interest of the Owner in the related Mortgage Loan in the case of a representation and warranty relating to a particular Mortgage Loan), the party discovering such breach shall give prompt written notice to the other. Upon the earlier of either discovery by or notice to the Company of any such breach, the Company shall use its best efforts to promptly cure such breach in all material respects within 60 days, and, if such breach cannot be cured during such time period, the Company shall, at the Owner's option, repurchase such Mortgage Loan at the Repurchase Price. If any such breach shall involve any representation or warranty set forth in Section 3.01, and such breach cannot be cured within 60 days of the earlier of either discovery by or notice to the Company of such breach, all the Mortgage Loans shall, at the Owner's option, be repurchased by the Company at the Repurchase Price; provided, however, that in the event of a breach of representation and warranty set forth in Section 3.01 that relates to less than all of the Mortgage Loans in the related Mortgage Loan Package, the Company shall repurchase only the Mortgage Loans to which such breach relates. However, the Company may, at its option, replace a Mortgage Loan as to which a breach of representation or warranty has occurred as described in the foregoing sentences of this Section 3.03 and substitute in its place with a Qualified Substitute Mortgage Loan or Loans, provided, however, that any such substitution shall be effected not later than 120 days after the Closing Date. Any repurchase of a Mortgage Loan or Loans pursuant to the foregoing provisions of this Section 3.03 shall be accomplished by deposit in the Custodial Account of the amount of the Repurchase Price (after deducting therefrom any amounts received in respect of such repurchased Mortgage Loan or Loans and being held in the Custodial Account for future distribution).

The Company shall effect any substitution of a Qualified Substitute Mortgage Loan by delivering to the Custodian the documents as are required to be delivered by Section 2.03, with the Mortgage Note endorsed as required by Section 2.03. No substitution will be made in any calendar month after the Determination Date occurring in such month. The Company shall deposit in the Custodial Account the Monthly Payment less the Servicing Fee due on such Qualified Substitute Mortgage Loan or Loans in the month following the date of such substitution. Monthly Payments due with respect to Qualified Substitute Mortgage Loans in the month of substitution will be

retained by the Company. For the month of substitution, distributions to the Owner will include the Monthly Payment due on such Deleted Mortgage Loan in the month of substitution, and the Company shall thereafter be entitled to retain all amounts subsequently received by the Company in respect of such Deleted Mortgage Loan. The Company shall give written notice to the Owner that such substitution has taken place and shall amend the Mortgage Loan Schedule to reflect the removal of such Deleted Mortgage Loan from the terms of this Agreement and the substitution of the Qualified Substitute Mortgage Loan. Upon such substitution, such Qualified Substitute Mortgage Loan or Loans shall be subject to the terms of this Agreement in all respects, and the Company shall be deemed to have made with respect to such Qualified Substitute Mortgage Loan or Loans, as of the date of substitution, the covenants, representations and warranties set forth in Sections 3.01 and 3.02, except to the extent a representation contained in Section 3.02 relates to an expressly specified percentage of the Mortgage Loans.

For any month in which the Company substitutes one or more Qualified Substitute Mortgage Loans for one or more Deleted Mortgage Loans, the Company will determine the amount (if any) by which the aggregate principal balance of all such Qualified Substitute Mortgage Loans as of the date of substitution is less than the aggregate Assumed Principal Balance of all such Deleted Mortgage Loans (after application of scheduled principal payments due in the month of substitution). The amount of such shortfall shall be distributed by the Company in the month of substitution pursuant to Section 5.01. Accordingly, on the date of such substitution, the Company will deposit from its own funds into the Custodial Account an amount equal to the amount of such shortfall.

In addition to such repurchase obligation, the Company shall indemnify the Owner for any expenses reasonably incurred by the Owner in enforcing its remedies hereunder in connection with any breach by the Company of any representation or warranty set forth in this Agreement. It is understood and agreed that the obligations of the Company set forth in this Section 3.03 to cure or to repurchase a defective Mortgage Loan and to indemnify the Owner as provided in this Section 3.03 constitute the sole remedies of the Owner respecting a breach of the foregoing representations and warranties.

#### ARTICLE IV

##### ADMINISTRATION AND SERVICING OF MORTGAGE LOANS

###### Section 4.01 Company to Act as Servicer.

The Company, as independent contract servicer, shall service and administer the Mortgage Loans for the benefit of the Owner in accordance with the terms of this Agreement and in conformity with Customary Servicing Procedures. In performing its obligations hereunder, the Company shall exercise no less than the same care that it customarily employs and exercises in servicing and administering mortgage loans for its own account, but shall perform such obligations without regard to the Company's obligation to make Servicing Advances, Monthly Advances and Liquidation Advances, or to the Company's right to receive compensation for its services hereunder.

Subject to the above-described servicing standards, the specific requirements and prohibitions of this Agreement and the respective Mortgage Loans, and the provisions of any Policy, the Regulations and applicable law, the Company shall have full power and authority, acting alone, to do any and all things in connection with such servicing and administration which the Company may deem necessary or desirable. Without limiting the generality of the foregoing, the Company shall, and is hereby authorized and empowered to (i) execute and deliver on behalf of itself and the Owner, any and all instruments of satisfaction or cancellation, or of partial or full release, discharge and all other comparable instruments, with respect to the Mortgage Loan and with respect to the Mortgaged Property and (ii) waive, modify or vary any term of any Mortgage Loan or consent to the postponement of strict compliance with any such term or in any manner grant indulgence to the related Mortgagor if in the Company's reasonable and prudent determination such waiver, modification, postponement or indulgence is not materially adverse to the interests of the Owner and is not prohibited by the Policy; provided, however, that the Company may not, unless it has obtained the consent of the Owner, permit any modification with respect to any Mortgage Loan that would vary the Mortgage Interest Rate, defer or forgive the payment of interest or of any principal, reduce the outstanding principal amount (other than as a result of its actual receipt of payment of principal on) or extend the final maturity date of such Mortgage Loan. In addition, the Company shall not permit any such modification that would have any adverse effect on the Policy applicable to any Mortgage Loan and shall, in connection with any such modification, comply with applicable Regulations, including all Regulations relating to loss mitigation. In the event of any such modification which permits the deferral or reduction of interest or principal payments on any Mortgage Loan, the Company shall, on the Business Day immediately preceding the Remittance Date in any month in which any such principal or interest payment has been deferred or reduced, make a Monthly Advance in accordance with Section 5.03, in an amount equal to the difference between (a) such month's principal and one month's interest at the Remittance Rate on the unpaid principal balance of such Mortgage Loan and (b) the amount paid by the Mortgagor. The Company shall be entitled to reimbursement for such advances to the same extent as for all other Monthly Advances made pursuant to Section 5.03; provided, that any such advances shall not be included in the determination of the Aggregate Loss Amount. If reasonably required by the Company, the Owner shall furnish the Company with any powers of attorney and other documents necessary or appropriate to enable the Company to carry out its servicing and administrative duties under this Agreement.

In servicing and administering the Mortgage Loans, the Company shall employ procedures (including collection procedures consistent with the Ginnie Mae Credit and Collection Policy and loss mitigation procedures consistent with the Regulations) and exercise the same care that it customarily employs and exercises in servicing and administering mortgage loans for its own account, giving due consideration to Customary Servicing Procedures where such practices do not conflict with the requirements of this Agreement. The Company shall at all times comply strictly with the Act, FHA Regulations, the Readjustment Act, VA Regulations, and any administrative guidelines issued thereunder. Notwithstanding anything to the contrary in this Agreement, the Company shall take all actions necessary under the applicable Policy in order to receive all applicable FHA/VA Claim Proceeds.

#### Section 4.02 Liquidation of Mortgage Loans: Servicing Advances and Foreclosure.

If any payment due under any Mortgage Loan and not postponed pursuant to Section 4.01 is not paid when the same becomes due and payable, or if the Mortgagor fails to perform any other covenant or obligation under the Mortgage Loan and such failure continues beyond any applicable grace period, the Company shall take such action, including action relating to delinquency management, loss mitigation and foreclosure, as is required by or consistent with the Regulations and as it shall deem to be in the best interests of the Owner. If any payment due under any Mortgage Loan and not postponed pursuant to Section 4.01 remains delinquent for a period of 90 days or more, the Company shall (a) act in the best interests of the Owner and in accordance with the Regulations, and such action may include the commencement of foreclosure proceedings, (b) if the Company commences foreclosure proceedings, notify the Owner thereof on the monthly remittance report delivered pursuant to Section 5.02 on the first Remittance Date following such commencement and (c) respond to reasonable inquiries of the Owner with respect to the Mortgage Loan or related REO Property. The Owner shall be entitled to compensation for loss mitigation, as permitted by FHA, Fannie Mae or Freddie Mac.

Whether in connection with the foreclosure of a Mortgage Loan or otherwise, the Company shall from its own funds make all necessary and proper Servicing Advances; provided, however, that the Company is not required to make a Servicing Advance unless the Company determines in the exercise of its good faith reasonable judgment that such Servicing Advance would ultimately be recoverable from REO Disposition Proceeds, Insurance Proceeds, FHA/VA Claim Proceeds or Condemnation Proceeds (with respect to each of which the Company shall have the priority described in Section 4.05 for purposes of withdrawals from the Custodial Account). In the event that any Servicing Advance or any commitment to pay Servicing Advances in connection with any Mortgage Loan exceeds \$5,000 in the aggregate, the Company shall secure the written approval of the Owner.

In the event that the Company believes or has reason to believe that a Mortgaged Property is contaminated by hazardous or toxic substances or wastes, the Company shall not proceed with foreclosure or acceptance of a deed in lieu of foreclosure, except to the extent required under applicable Regulations in order to secure the benefits of the applicable Policy.

#### Section 4.03 Collection of Mortgage Loan Payments.

Continuously from the date hereof until the principal and interest on all Mortgage Loans are paid in full, the Company will proceed diligently, in accordance with this Agreement, to collect all payments due under each of the Mortgage Loans when the same shall become due and payable, and will take special care in ascertaining and estimating annual taxes, assessments, fire and hazard insurance premiums, mortgage insurance premiums, and all other charges that, as provided in any Mortgage, will become due and payable in order that the installments payable by the Mortgagors will be sufficient to pay such charges as and when they become due and payable.

#### Section 4.04 Establishment of Custodial Account: Deposits in Custodial Account.

The Company shall segregate and hold all funds collected and received pursuant to each Mortgage Loan and REO Property separate and apart from any of its own funds and general assets

and shall establish and maintain one or more Custodial Accounts (collectively, the "Custodial Account"), in the form of non-interest bearing time deposit or demand accounts. The Custodial Account shall be established with an Eligible Depository Institution. The creation of any Custodial Account shall be evidenced by a letter agreement in the form of Exhibit B hereto. A copy of such certification or letter agreement shall be furnished to any Owner upon request.

The Company shall deposit in a mortgage clearing account on a daily basis and in the Custodial Account no later than the second Business Day thereafter and retain therein:

- (i) all scheduled payments due after the Cutoff Date on account of principal, including Principal Prepayments collected after the Cutoff Date, on the Mortgage Loans;
- (ii) all scheduled payments on account of interest on the Mortgage Loans (minus the portion of any such payment which is allocable to the period prior to the Cutoff Date) adjusted to the Mortgage Loan Remittance Rate;
- (iii) all Liquidation Proceeds and FHA/VA Claim Proceeds;
- (iv) all Insurance Proceeds, including amounts required to be deposited pursuant to Section 4.10 and Section 4.11, other than proceeds to be held in the Escrow Account and applied to the restoration or repair of the Mortgaged Property or released to the Mortgagor in accordance with Customary Servicing Procedures, the Mortgage Loan documents or applicable law;
- (v) all Condemnation Proceeds with respect to any Mortgaged Property which are not released to the Mortgagor in accordance with Customary Servicing Procedures, the Mortgage Loan documents or applicable law;
- (vi) any amounts payable in connection with the repurchase of any Mortgage Loan pursuant to Section 3.03 and all amounts required to be deposited by the Company in connection with shortfalls in principal amount of Qualified Substitute Mortgage Loans pursuant to Section 3.03;
- (vii) any amount required to be deposited in the Custodial Account pursuant to Sections 4.01, 4.11, 4.14, 4.15, 5.01, 5.03, 5.04, 5.05 and 6.02, or otherwise under this Agreement.

The foregoing requirements for deposit in the Custodial Account shall be exclusive. Without limiting the generality of the foregoing, payments in the nature of late payment charges, fees for special services provided to a Mortgagor and assumption fees need not be deposited by the Company in the Custodial Account.

The Company may invest the funds in the Custodial Account in Eligible Investments designated in the name of the Company for the benefit of the Owner, which shall mature not later than the Business Day next preceding the Remittance Date next following the date of such investment (except that (i) any investment in the institution with which the Custodial Account is maintained may mature on such Remittance Date and (ii) any other investment may mature on such

Remittance Date if the Company shall advance funds on such Remittance Date, pending receipt thereof to the extent necessary to make distributions to the Owner) and shall not be sold or disposed of prior to maturity. Notwithstanding anything to the contrary herein and above, all income and gain realized from any such investment shall be for the benefit of the Company and shall be subject to its withdrawal or order from time to time. The amount of any losses incurred in respect of any such investments shall be deposited in the Custodial Account by the Company out of its own funds immediately as realized.

Section 4.05 Withdrawals From the Custodial Account.

The Company shall, from time to time, withdraw funds from the Custodial Account for the following purposes:

- (i) to make payments to the Owner in the amounts and in the manner provided for in Section 5.01;
- (ii) to reimburse itself for Monthly Advances, the Company's right to reimburse itself pursuant to this subclause (ii) being limited as provided in Section 5.03;
- (iii) to reimburse itself for unreimbursed Servicing Advances, and for any unpaid Servicing Fees, the Company's right to reimburse itself pursuant to this subclause (iii) with respect to any Mortgage Loan being limited as provided in Section 5.03;
- (iv) to reimburse itself for unreimbursed Liquidation Advances made with respect to any Foreclosed Mortgage Loan, the Company's right to reimburse itself pursuant to this subclause (iv) with respect to any Foreclosed Mortgage Loan being limited as provided in Section 5.03;
- (v) to pay itself investment earnings on funds deposited in the Custodial Account;
- (vi) to withdraw Amounts Held For Future Distribution to the extent permitted under Section 5.03(a);
- (vii) to withdraw funds deposited in error in the Custodial Account; and
- (viii) to clear and terminate the Custodial Account upon the termination of this Agreement.

On each Remittance Date, the Company shall withdraw all funds from the Custodial Account except for those amounts which, pursuant to Section 5.01(a)(iv) and (v), the Company is not obligated to remit on such Remittance Date. The Company may use such withdrawn funds only for the purposes described in this Section 4.05.

Section 4.06 Establishment of Escrow Account; Deposits in Escrow Account.

The Company shall segregate and hold all funds collected and received pursuant to each Mortgage Loan which constitute Escrow Payments separate and apart from any of its own funds and general assets and shall establish and maintain one or more Escrow Accounts (collectively, the "Escrow Account"), in the form of non-interest bearing time deposit or demand accounts. The Escrow Account shall be established with an Eligible Depository Institution. The creation of any Escrow Account shall be evidenced by a letter agreement in the form of Exhibit C hereto. Upon request, the Company shall provide the Owner with a copy of a letter agreement evidencing the establishment of each Escrow Account.

The Company shall deposit in a mortgage clearing account on a daily basis and no later than the second Business Day thereafter in the Escrow Account and retain therein: (i) all Escrow Payments held or collected on account of the Mortgage Loans, for the purpose of effecting timely payment of any such items as required under the terms of this Agreement, (ii) all Insurance Proceeds that are to be applied to the restoration or repair of any Mortgaged Property and (iii) all revenues received with respect to the management, conservation, protection and operation of the REO Properties pursuant to Section 4.14. The Company shall make withdrawals therefrom only to effect such payments as are required under this Agreement, and for such other purposes as shall be set forth in or in accordance with Section 4.07. The Company shall pay to the Mortgagor interest on escrowed funds to the extent required by law notwithstanding that the Escrow Account is non-interest bearing.

#### Section 4.07 Withdrawals From Escrow Account.

Withdrawals from the Escrow Account may be made by the Company only (a) to effect timely payments of taxes, assessments, Policy premiums, fire and hazard insurance premiums or other items constituting Escrow Payments for the related Mortgage, (b) to reimburse the Company for any Servicing Advance made by Company pursuant to Section 4.08 hereof with respect to a related Mortgage Loan, but only from amounts received on the related Mortgage Loan which represent late payments or collections of Escrow Payments thereunder, (c) to refund to any Mortgagor any funds found to be in excess of the amounts required under the terms of the related Mortgage Loan, (d) upon default of a Mortgagor or in accordance with the terms of the related Mortgage Loan and if permitted by applicable law, for transfer to the Custodial Account of such amounts as are to be applied to the indebtedness of a Mortgage Loan in accordance with the terms thereof, (e) for application to restoration or repair of the Mortgaged Property, (f) to deposit into the Custodial Account the funds required to be deposited therein pursuant to Section 4.14, (g) to pay to itself amounts to which it is entitled pursuant to Section 4.14, (h) to withdraw any Escrow Payments related to a Mortgage Loan repurchased by the Company pursuant to Section 3.03, (i) for transfer to the Custodial Account of fire and hazard insurance proceeds and Escrow Payments with respect to any Mortgage Loan as to which FHA or VA, as applicable, has directed that such funds be applied as a credit against the proceeds of the applicable FHA Insurance or VA Guaranty; or (j) to clear and terminate the Escrow Account upon the termination of this Agreement.

#### Section 4.08 Payment of Taxes, Insurance and Other Charges.

With respect to each Mortgage Loan, the Company shall maintain accurate records reflecting the status of taxes, assessments, and other charges for which an escrow is maintained and the status of Policy premiums and fire and hazard insurance coverage and shall obtain, from time to

time, all bills for the payment of such charges (including renewal premiums) and shall effect payment thereof employing for such purpose deposits of the Mortgagor in the Escrow Account which shall have been estimated and accumulated by the Company in amounts sufficient for such purposes, as allowed under the terms of the Mortgage or applicable law. To the extent that a Mortgage does not provide for Escrow Payments, or the Company has waived the escrow of Escrow Payments or the Company is prohibited by applicable state law from requiring the escrow of Escrow Payments, the Company shall determine that any such payments are made by the Mortgagor. The Company assumes full responsibility for the timely payment of all such bills and shall effect timely payments of all such bills irrespective of each Mortgagor's faithful performance in the payment of same or the making of the Escrow Payments and shall make advances from its own funds to effect such payments.

#### Section 4.09 Transfer of Accounts.

The Company may from time to time transfer the Custodial Account and the Escrow Account to any other Eligible Depository Institution. The Company shall notify the Owner within 14 days of any such transfer under this Section 4.09.

#### Section 4.10 Maintenance of Hazard Insurance.

The Company shall cause to be maintained (with an insurance company acceptable to Fannie Mae or Freddie Mac and FHA or VA, as applicable) for each Mortgage Loan, fire and hazard insurance with extended coverage customary in the area where the Mortgaged Property is located, in an amount which is, subject to applicable law, at least equal to the lesser of (i) the maximum insurable value of the improvements securing the related Mortgage Loan and (ii) the greater of (a) the outstanding principal balance of the Mortgage Loan and (b) the minimum amount necessary to prevent the Mortgagor and/or the mortgagee from becoming a co-insurer. If the Mortgaged Property is in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards (and such flood insurance has been made available) the Company will cause to be maintained a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (i) the outstanding principal balance of the Mortgage Loan, (ii) the full insurable value of the Mortgaged Property, or (iii) the maximum amount of insurance available under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, each as amended. The Company shall also maintain on any REO Property, fire and hazard insurance with extended coverage in an amount which is at least equal to the maximum insurable value of the improvements which are a part of such property, liability insurance and, to the extent required and available under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, each as amended, flood insurance in an amount required above. Any amounts collected by the Company under any such policies (other than amounts to be deposited in the Escrow Account and applied to the restoration or repair of the related Mortgaged Property, REO Property, or released to the Mortgagor in accordance with Customary Servicing Procedures or in accordance with the terms of the Mortgage Loan or applicable law) shall be deposited in the Custodial Account, subject to withdrawal pursuant to Section 4.05. It is understood and agreed that no earthquake or other additional insurance need be required by the Company of any Mortgagor or maintained on property acquired in respect of a Mortgage Loan, other than pursuant to such applicable laws and regulations as shall at any time be

in force and as shall require such additional insurance. All policies required hereunder shall be endorsed with standard mortgagee clauses with loss payable to the Company, its successors and its assigns, or, upon request of the Owner, to the Owner, and shall provide for at least 30 days prior written notice to the Company of any cancellation thereof. The Company shall not accept or obtain any such insurance policy from an insurance company that does not at that time maintain a General Policy Rating of B-III or better in Best's Key Rating Guide, or that is not licensed to do business in the State wherein the related Mortgaged Property is located or that is not otherwise acceptable to FHA or VA, as applicable.

Section 4.11 Maintenance of Blanket Insurance Policy.

If the Company shall obtain and maintain a blanket insurance policy that is issued by an insurer generally acceptable to Fannie Mae and Freddie Mac and that insures against hazard losses on all of the Mortgage Loans, then, to the extent such policy provides coverage in an amount equal to the coverage required pursuant to Section 4.10 and otherwise complies with all other requirements of Section 4.10, the Company shall be deemed to have satisfied its obligations as set forth in Section 4.10. Such policy may contain a clause providing for a reasonable deductible, in which case the Company shall, if there shall not have been maintained on the related Mortgaged Property a policy complying with Section 4.10, and if there shall have been a loss that would have been covered by such policy, deposit in the Custodial Account the amount not otherwise payable under the blanket policy because of such deductible clause.

Section 4.12 Maintenance of Mortgage Impairment Insurance Policy.

The Company may satisfy its obligations under Section 4.10 and 4.11 pertaining to physical storage of insurance policies and general policy rating requirements by maintaining a mortgage impairment or other form of blanket policy that will protect the Company and/or investor in the event of uninsured loss, insolvency of an insurance carrier or any other loss normally to be covered by a mortgage impairment policy. It is agreed that any expense incurred by the Company in maintaining any such insurance shall be borne by the Company. This shall be deemed to include any loss or any expense as a result of a deductible clause in such a policy.

Section 4.13 Fidelity Bond; Errors and Omissions Insurance.

The Company at its own expense shall maintain with responsible companies throughout the term of this Agreement a blanket fidelity bond and an errors and omissions insurance policy, with broad coverage on all officers, employees and other individuals acting on behalf of the Company in connection with its activities under this Agreement. The amount of coverage shall be at least equal to the coverage that would be required of the Company by Fannie Mae or Freddie Mac, if the Company were servicing the Mortgage Loans for Fannie Mae or Freddie Mac, and such policy shall be issued by a company that is acceptable to Fannie Mae or Freddie Mac. The Fidelity Bond and errors and omissions insurance shall be in the form of the Mortgage Banker's Blanket Bond and shall protect and insure the Company against losses caused by such individuals, including losses from forgery, theft, embezzlement, fraud, errors and omissions and negligent acts of such individuals. Such Fidelity Bond shall also protect and insure the Company against losses in connection with the failure to maintain any insurance policies required pursuant to this Agreement and the release or satisfaction of a Mortgage Loan without having obtained payment in full of the

indebtedness secured thereby. No provision of this Section 4.13 requiring such fidelity bond and errors and omissions insurance shall diminish or relieve the Company from its duties and obligations as set forth in this Agreement.

Section 4.14 Title, Management and Disposition of REO Property.

Subject to the requirements of FHA and VA, as applicable, in the event that title to any Mortgaged Property is acquired in foreclosure or by deed in lieu of foreclosure, the deed or certificate of sale shall be taken in the name of the Company, as directed by the Owner, or in the event the Company is not authorized or permitted to hold title to real property in the state where the REO Property is located, or would be adversely affected under the "doing business" or tax laws of such state by so holding title, the deed or certificate of sale shall be taken in the name of such Person or Persons as shall be consistent with an Opinion of Counsel obtained by the Company from an attorney duly licensed to practice law in the state where the REO Property is located, and shall be consistent with the applicable requirements of FHA or VA, as the case may be. The Company shall hold such title as nominee for the Owner, and any Person or Persons holding such title other than the Owner or the Company shall acknowledge in writing that such title is being held as nominee for the Owner.

The Company shall manage, conserve, protect and operate each REO Property for the Owner solely for the purpose of its prompt disposition in accordance with Customary Servicing Procedures. The Company shall dispose of any REO Property as soon as possible in accordance with Customary Servicing Procedures.

With respect to any defaulted VA Mortgage Loan as to which the VA has provided a VA No-Bid Notice, the Company shall have the right, at its option exercised in accordance with Customary Servicing Procedures and for the purpose of maximizing the sum of the expected Liquidation Proceeds and FHA/VA Claim Proceeds related to the Mortgage Loan, to either (i) accept the VA No-Bid and dispose of the related REO Property as set forth herein or (ii) effect a VA Buydown; provided, that if the Company desires to accept the VA No-Bid it shall provide the Owner with not less than two (2) Business Days' notice of such election and if the Owner objects to such election within such two day period, the Company shall not elect the VA No-Bid but shall proceed as set forth in clause (ii) above.

If the Company accepts a VA No-Bid, the Company shall dispose of the related REO Property as soon as possible at such price, and upon such terms and conditions, as the Company reasonably believes to be in the best interest of the Owner. The proceeds of sale of the REO Property shall be promptly deposited in the Custodial Account. As soon as practicable after receipt of the proceeds of sale and receipt of the proceeds of FHA/VA Claim Proceeds with respect to such Mortgage Loan, the expenses of such sale shall be paid and the Company shall reimburse itself, to the extent permitted under Section 5.03, for any related unreimbursed Servicing Advances, unpaid Servicing Fees and unreimbursed Monthly Advances, and on the Remittance Date immediately following the Prepayment Period in which the sale proceeds are received the net cash proceeds of such sale remaining in the Custodial Account shall be distributed to the Owner.

The Company shall also maintain on each REO Property fire and hazard insurance with extended coverage in an amount that is in accordance with Customary Servicing Procedures and, to

the extent required and available under the Flood Disaster Protection Act of 1973, as amended, flood insurance in an amount that is in accordance with Customary Servicing Procedures .

Subject to the approval of the Owner as described in this paragraph, the disposition of REO Property shall be carried out by the Company at such price, and upon such terms and conditions, as the Company deems to be in the best interests of the Owner and otherwise in accordance with Customary Servicing Procedures. Prior to acceptance by the Company of an offer to sell any REO Property, the Company shall notify the Owner of such offer in writing which notification shall set forth all material terms of said offer (each a "Notice of Sale"). The Owner shall be deemed to have approved the sale of any REO Property unless the Owner notifies the Company in writing, within three (3) Business Days after its receipt of the related Notice of Sale, that it disapproves of the related sale. The REO Disposition Proceeds shall be promptly deposited in the Custodial Account.

Subject to the requirements of FHA and VA, as applicable, the disposition of REO Property shall be carried out by the Company at such price, and upon such terms and conditions, as the Company reasonably believes to be in the best interests of the Owner. The proceeds of sale of the REO Property shall be promptly deposited in the Custodial Account. As soon as practical thereafter the expenses of such sale shall be paid and the Company shall reimburse itself, to the extent permitted under Section 5.03, for any related unreimbursed Servicing Advances, unpaid Servicing Fees and unreimbursed Monthly Advances, and on the Remittance Date immediately following the Prepayment Period in which such sale proceeds are received the net cash proceeds of such sale remaining in the Custodial Account shall be distributed to the Owner.

The Company shall notify the Owner in accordance with Customary Servicing Procedures of each acquisition of REO Property upon such acquisition, and thereafter assume the responsibility for marketing such REO Property in accordance with Customary Servicing Procedures. Thereafter, the Company shall continue to provide certain administrative services to the Owner relating to such REO Property as set forth in this Section 4.14. The REO Property must be sold within three years following the end of the calendar year of the date of acquisition, unless a REMIC election has been made with respect to the arrangement under which the Mortgage Loans and REO Property are held and (i) the Owner shall have been supplied with an Opinion of Counsel to the effect that the holding by the related trust of such Mortgaged Property subsequent to such three-year period (and specifying the period beyond such three-year period for which the Mortgaged Property may be held) will not result in the imposition of taxes on "prohibited transactions" of the related trust as defined in Section 860F of the Code, or cause the related REMIC to fail to qualify as a REMIC, in which case the related trust may continue to hold such Mortgaged Property (subject to any conditions contained in such Opinion of Counsel), or (ii) the Owner or the Company shall have applied for, prior to the expiration of such three-year period, an extension of such three-year period in the manner contemplated by Section 856(e)(3) of the Code, in which case the three-year period shall be extended by the applicable period. If a period longer than three years is permitted under the foregoing sentence and is necessary to sell any REO Property, (i) the Company shall report monthly to the Owner as to progress being made in selling such REO Property and (ii) if, with the written consent of the Owner, a purchase money mortgage is taken in connection with such sale, such purchase money mortgage shall name the Company as mortgagee, and such purchase money mortgage shall not be held pursuant to this Agreement, but instead a separate participation agreement between the Company and Owner shall be entered into with respect to such purchase money mortgage.

Notwithstanding any other provision of this Agreement, if a REMIC election has been made, no Mortgaged Property held by a REMIC shall be rented (or allowed to continue to be rented) or otherwise used for the production of income by or on behalf of the related trust or sold in such a manner or pursuant to any terms that would (i) cause such Mortgaged Property to fail to qualify at any time as "foreclosure property" within a meaning of Section 860G(a)(8) of the Code, (ii) subject the related trust to the imposition of any federal or state income taxes on "net income from foreclosure property" with respect to such Mortgaged Property within the meaning of Section 860G(c) of the Code, or (iii) cause the sale of such Mortgaged Property to result in the receipt by the related trust or any income from non-permitted assets as described in Section 860F(a) (2)(B) of the Code, unless the Company has agreed to indemnify and hold harmless the related trust with respect to the imposition of any such taxes.

Section 4.15 Purchase of Debentures.

In the event that FHA exercises its option to pay all or a portion of any amount owed by it in respect of an FHA Mortgage Loan in the form of a debenture, the Company shall promptly purchase such debenture for a price equal to the principal amount thereof, and shall deposit such funds in the Custodial Account no later than the Determination Date relating to the Due Period in which FHA issues such debentures for distribution to the Owner on the next succeeding Remittance Date.

Section 4.16. Liquidation Reports.

Upon the receipt of all FHA/VA Claim Proceeds with respect to any Mortgage Loan, the Company shall submit to the Owner a liquidation report with respect to the related Mortgaged Property in a format reasonably required by the Owner, Fannie Mae or Freddie Mac.

Section 4.17. Reports of Foreclosures and Abandonments of Mortgaged Property.

Following the foreclosure sale or abandonment of any Mortgaged Property, the Company shall report such foreclosure or abandonment to the extent and in the manner required pursuant to Section 6050J of the Code.

Section 4.18 Force Placed Insurance.

Each Mortgage obligates the Mortgagor thereunder to maintain the required hazard insurance policy at the Mortgagor's cost and expense, and on the Mortgagor's failure to do so, authorizes the Company to obtain and maintain such insurance at such Mortgagor's cost and expense, and to seek reimbursement therefor from the Mortgagor. Upon any failure of the Mortgagor to maintain the required hazard insurance; the Company shall obtain and maintain such force placed hazard insurance at the Mortgagor's cost and expense.

Section 4.19 Inspections.

The Company shall inspect the Mortgaged Property as often as deemed necessary by the Company and in accordance with Customary Servicing Procedures to assure itself that the value

of the Mortgaged Property is being preserved. In addition, if any Mortgage Loan is more than 90 days delinquent, the Company immediately shall inspect the Mortgaged Property and shall conduct subsequent inspections in accordance with Customary Servicing Procedures. The Company shall keep an electronic report of each such inspection.

#### Section 4.20 Restoration of Mortgaged Property.

Except as otherwise required by the Regulations or Customary Servicing Procedures, the Company need not obtain the approval of the Owner prior to releasing any Insurance Proceeds or Condemnation Proceeds to the Mortgagor to be applied to the restoration or repair of the Mortgaged Property if such release is in accordance with Customary Servicing Procedures. At a minimum, with respect to claims greater than \$10,000, the Company shall comply with the following conditions in connection with any such release of Insurance Proceeds or Condemnation Proceeds:

- (i) the Company shall receive satisfactory independent verification of completion of repairs and issuance of any required approvals with respect thereto;
- (ii) the Company shall take all steps necessary to preserve the priority of the lien of the Mortgage, including, but not limited to requiring waivers with respect to mechanics' and materialmen's liens;
- (iii) the Company shall verify that the Mortgage Loan is not 60 or more days delinquent; and
- (iv) pending repairs or restoration, the Company shall place the Insurance Proceeds or Condemnation Proceeds in the Escrow Account.

With respect to claims of \$10,000 or less, the Company shall comply with the following conditions in connection with any such release of Insurance Proceeds or Condemnation Proceeds:

- (i) the related Mortgagor shall provide an affidavit verifying the completion of repairs and issuance of any required approvals with respect thereto;
- (ii) the Company shall verify the total amount of the claim with the applicable insurance company; and
- (iii) pending repairs or restoration, the Company shall place the Insurance Proceeds or Condemnation proceeds in the Escrow Account.

If the Owner is named as an additional loss payee, the Company is hereby empowered to endorse any loss draft issued in respect of such a claim in the name of the Owner.

#### 4.21 Maintenance of FHA Insurance and VA Guaranty.

With respect to FHA Mortgage Loans and VA Mortgage Loans, the Company shall maintain and keep the FHA Insurance and the VA Guaranty, respectively, in full force and effect throughout the term of this Agreement and discharge its obligations arising out of FHA Insurance and the VA Guaranty. The Company hereby agrees that it shall be liable to the Owner for any reasonable and actual loss, liability or expense incurred by the Owner by reason of any FHA Insurance or VA Guaranty, or the amount of coverage, reimbursement or claim thereunder, being voided, reduced, released or adversely affected by reason of the negligence or willful misconduct of the Company. The Company will service and administer the Mortgage Loans in accordance with the obligations of mortgagees under the Act and the applicable FHA Regulations and under the Readjustment Act and applicable VA Regulations and will discharge all obligations of the mortgagee under each Mortgage Loan, including paying all FHA and VA insurance premiums, fees or charges, as required, and, subject to the right to assign the Mortgage Loan to the FHA or VA, as the case may be, will take all action reasonably necessary to preserve the lien of such Mortgage, including the defense of actions to challenge or foreclose such lien.

In connection with its activities as servicer, the Company agrees to prepare and present, on behalf of itself and the Owner, claims to the FHA under FHA Insurance and the VA under VA Guaranties in a timely fashion in accordance with the terms of the Mortgage Loan Requirements so as to maximize the related FHA/VA Claim Proceeds without curtailment thereof and, in this regard, to take such action as shall be necessary to permit recovery under any FHA Insurance or VA Guaranty respecting a defaulted Mortgage Loan. Pursuant to Section 4.04, any FHA/VA Claim Proceeds collected by the Company shall be deposited in the Custodial Account, subject to withdrawal pursuant to Section 4.05.

## ARTICLE V

### PAYMENTS TO THE OWNER

#### Section 5.01 Distributions.

On each Remittance Date the Company shall remit by wire transfer of immediately available funds to the Owner or its designee the sum of (a) all amounts deposited in the Custodial Account as of the close of business on the Determination Date (net of charges against or withdrawals from the Custodial Account pursuant to Section 4.05), plus (b) all amounts, if any, which the Company is obligated to deposit into the Custodial Account pursuant to Section 5.03, plus (c) the aggregate amount of any Prepayment Interest Shortfall existing as of such Remittance Date, minus (i) any amounts attributable to Principal Prepayments received after the immediately preceding Prepayment Period and (ii) any Insurance Proceeds, Liquidation Proceeds or FHA/VA Claim Proceeds received after the immediately preceding Prepayment Period, and (iii) any Monthly Payment received by the Company during any Due Period in addition to the Monthly Payment due on such Due Date, intended by the related Mortgagor to be applied on a subsequent Due Date (the sum of (i), (ii) and (iii), the "Amount Held for Future Distribution"), all of which amounts shall be remitted on the next succeeding applicable Remittance Date.

Each remittance pursuant to this Section 5.01 shall be made by wire transfer of immediately available funds to, or by other means of transmission or transfer that causes funds to be immediately available in, the account which shall have been designated by the Owner.

With respect to any remittance received by the Owner after the Business Day on which such payment was due, the Company shall pay to the Owner interest on any such late payment at an annual rate equal to the Prime Rate, adjusted as of the date of each change, plus three percentage points, but in no event greater than the maximum amount permitted by applicable law. Such interest shall be deposited in the Custodial Account by the Company on the date such late payment is made and shall cover the period commencing with the day following such Business Day and ending with the Business Day on which such payment is made, both inclusive. Such interest shall be remitted along with the distribution payable on the next succeeding related Remittance Date.

The Company shall ten days prior to the Remittance Date on which the final distribution of funds to Owner is to be made hereunder, notify each Owner of the pendency of such distribution and such distribution shall be made to each Owner.

#### Section 5.02 Statements to the Owner.

Not later than the 10th day of each month (or if such day is not a Business Day, the preceding Business Day), the Company shall furnish to the Owner (and up to two designees of the Owner) a Monthly Remittance Advice, with a trial balance report attached thereto, and an electronic tape, computer diskette or other electronic data transmission in a format agreed to by the Company and the Owner, containing the information set forth in Exhibit F hereto, as to the related remittance and the period ending on the last day of the preceding Due Period. Upon reconstitution of some or all of the Mortgage Loans as contemplated by Article XII, the Company shall prepare the reports required by any related Reconstitution Agreement and shall also submit appropriate reports to the Owner's designee in a form and format mutually satisfactory to the Company and such designee.

In addition, not more than 60 days after the end of each calendar year, upon receipt of written request by the Owner, the Company will furnish at any time during such calendar year, a listing of the principal balances of the Mortgage Loans outstanding at the end of such calendar year.

The Company shall prepare and file any and all tax returns, information statements or other filings required to be delivered to any governmental taxing authority (other than those required to be filed by the Owner) or to the Owner pursuant to any applicable law with respect to the Mortgage Loans and the transactions contemplated hereby.

#### Section 5.03. Monthly Advances and Liquidation Advances, by the Company; Limitation on Reimbursement.

(a) On each Determination Date, the Company shall deposit in the Custodial Account from its own funds an amount equal to all Monthly Advances which were due on the Mortgage Loans with respect to the related Due Period. Subject to the limitation contained in Section 5.04, the Company's obligation to make such Monthly Advances as to any Mortgage Loan

will continue through the earlier of (i) the last Monthly Payment due prior to the payment in full of such Mortgage Loan, or (ii) the last Remittance Date prior to the Remittance Date on which a Mortgage Loan has become a Foreclosed Mortgage Loan and on which will be distributed a Liquidation Advance to be made by the Company in accordance with Section 5.03(b), or (iii) the last Remittance Date prior to the Remittance Date on which will be distributed the last of all Liquidation Proceeds, FHA/VA Claim Proceeds and all other recoveries in respect of such Mortgage Loan, including Insurance Proceeds and Condemnation Proceeds.

The Company may withdraw Amounts Held For Future Distribution from the Custodial Account to fund Monthly Advances on any Remittance Date; provided, that the Company shall be obligated to reimburse the Custodial Account for such amounts out of its own funds on each Remittance Date on which such amounts are required to be remitted to the Owner.

(b) Subject to the limitation contained in Section 5.04, on each Determination Date, the Company shall deposit in the Custodial Account (or in such other account as may be designated by the Owner) from its own funds an amount equal to any Realized Loss incurred with respect to each Mortgage Loan that has become a Foreclosed Mortgage Loan or a Liquidated Mortgage Loan during the applicable Due Period, less the amount of any Monthly Advances and Liquidation Advances previously made with respect to such Mortgage Loan and not reimbursed. The Realized Loss with respect to any Foreclosed Mortgage Loan shall be deemed to have been incurred on the date that the related Mortgage Loan becomes a Foreclosed Mortgage Loan.

(c) The Company shall be reimbursed (i) for Monthly Advances and unpaid Servicing Fees only from amounts in respect of late payments of amounts previously advanced by the Company made by the related Mortgagor and (ii) for Servicing Advances only from recovery from the related Mortgagor of amounts that directly relate to the amounts advanced. With respect to each Foreclosed Mortgage Loan and each Liquidated Mortgage Loan, the Company shall be reimbursed for Monthly Advances, Servicing Advances (to the extent not previously reimbursed) and Liquidation Advances out of Liquidation Proceeds, Condemnation Proceeds, Insurance Proceeds or FHA/VA Claim Proceeds relating to the Mortgage Loan as to which such advance was made, but only to the extent that an amount equal to the outstanding principal balance of such Mortgage Loan plus interest accrued at the related Remittance Rate and unpaid thereon, as reduced by unreimbursed Monthly Advances, has first been remitted to the Owner.

#### Section 5.04. Limited Recourse Servicing.

Notwithstanding anything to the contrary contained in this Agreement, with respect to any applicable Due Period, the Company shall not be obligated to make any Liquidation Advance or Nonrecoverable Advance with respect to any Mortgage Loan to the extent that (and only to the extent that), after giving effect to such advance, the Aggregate Loss Amount with respect to all Mortgage Loans included in the related Mortgage Loan Package would exceed the Maximum Loss Amount for such Mortgage Loan Package; it being the intention and understanding of the Owner and the Company that the Company will be responsible for the first losses associated with the Mortgage Loans included in any Mortgage Loan Package due to delinquency or actions taken in order to avoid delinquency, including Realized Losses and Nonrecoverable Advances, up to an aggregate amount equal to the Maximum Loss Amount (excluding any such losses resulting from (i) any Monthly Advances to the extent made pursuant to Section 4.01 or resulting from an interest

rate reduction under the Soldiers and Sailors' Relief Act of 1940, as amended, and (ii) any Realized Losses or Nonrecoverable Advances incurred as a result of any breach of this Agreement by the Company or any error or omission by the Company in connection with the servicing or administration of the Mortgage Loans or otherwise relating to any other events that would give rise to the Company's obligation to repurchase a Mortgage Loan or indemnify the Owner under this Agreement).

Upon each reconstitution of the Mortgage Loans as contemplated by Article XII, the Owner shall have the right, in its sole discretion, to retain for itself or assign and apportion all, none or any part of, the right to receive (and the Company's liability for) the Maximum Loss Amount; provided, that at no time shall the Company be obligated to make any Liquidation Advance or Nonrecoverable Advance under this Agreement or any Reconstitution Agreement to the extent that (and only to the extent that), after giving effect to such advance and all similar advances made under this Agreement and all other Reconstitution Agreements then in effect, the Aggregate Loss Amount would exceed the Maximum Loss Amount, unless the Company shall be indemnified therefor by the Owner or such other Person as shall be reasonably acceptable to the Company. The terms of any Reconstitution Agreement shall not operate to relieve the Company of its liability for the Maximum Loss Amount, regardless of whether or not such Reconstitution Agreement contains recourse provisions. The Owner may retain for its own account or separately assign the right to receive payments of amounts in respect of Realized Losses payable by the Company in accordance with Section 5.03(b). It is the intention of the parties hereto that, notwithstanding any reconstitution of the Mortgage Loans on one or more occasions, the Owner shall be entitled to the economic benefit of, and the Company shall be obligated for, the Maximum Loss Amount in respect of the Mortgage Loans.

Section 5.05. Prepayment Interest Shortfalls.

Not later than the close of business on the Business Day preceding each Remittance Date, the Company shall from its own funds deposit in the Custodial Account an amount equal to the aggregate Prepayment Interest Shortfall, if any, existing in respect of the related Principal Prepayment Period.

ARTICLE VI

GENERAL SERVICING PROCEDURE

Section 6.01 Assumption Agreements.

The Company shall use its best efforts to enforce any "due-on-sale" provision contained in each Mortgage or Mortgage Note to the extent permitted by law and provided that such enforcement would not impair any recovery under any related Policy. The Company shall be entitled to retain as additional servicing compensation any assumption fee collected by the Company for entering into an assumption agreement.

If the Company reasonably believes it is unable under applicable law to enforce such "due-on-sale" clause, the Company shall enter into (i) an assumption and modification agreement with

the person to whom such property has been conveyed, pursuant to which such person becomes liable under the Mortgage Note and the original Mortgagor remains liable thereon or (ii) in the event the Company is unable under applicable law to require that the original Mortgagor remain liable under the Mortgage Note and the Company has the prior consent of the FHA or VA, as applicable, a substitution of liability agreement with the purchaser of the Mortgaged Property pursuant to which the original Mortgagor is released from liability and the purchaser of the Mortgaged Property is substituted as Mortgagor and becomes liable under the Mortgage Note. In connection with any such assumption, neither the Mortgage Interest Rate borne by the related Mortgage Note, the term of the Mortgage Loan nor the outstanding principal amount of the Mortgage Loan shall be changed.

Section 6.02 Release of Mortgage Files: Wrongful Satisfaction of Mortgages.

Upon the payment in full of any Mortgage Loan, the Company will obtain the portion of the Mortgage File that is in the possession of the Custodian, prepare and process any required satisfaction or release of the Mortgage and notify the Owner as provided in Section 5.02.

If the Company satisfies or releases the lien of a Mortgage without having obtained payment in full of the indebtedness secured by the Mortgage, the Company, upon written demand, shall remit to the Owner the then Assumed Principal Balance of the related Mortgage Loan by deposit thereof in the Custodial Account. The Company shall maintain the Fidelity Bond as provided for in Section 4.13 insuring the Company against any loss it may sustain with respect to any Mortgage Loan not satisfied in accordance with the procedures set forth herein.

Section 6.03 Servicing Compensation.

As compensation for its services hereunder, the Company shall be entitled to withdraw from the Custodial Account or to retain from interest payments on the Mortgage Loans the amounts provided for as the Company's Servicing Fee. The Servicing Fee shall be payable monthly and shall be computed on the basis of the same unpaid principal balance and for the period as to which any related interest payment on a Mortgage Loan is computed. The Servicing Fee shall be payable only at the time of and with respect to those Mortgage Loans for which payment is in fact made of the entire amount of the Monthly Payment. The obligation of the Owner to pay the Servicing Fee is limited to, and payable solely from, the interest portion (including recoveries with respect to interest from Liquidation Proceeds and FHA/VA Claim Proceeds) of such Monthly Payments collected by the Company. Additional servicing compensation in the form of assumption fees, as provided in Section 6.01, and late payment charges or otherwise shall be retained by the Company.

Section 6.04 Annual Statement as to Compliance.

The Company shall deliver to the Owner, on or before May 31 of each year, beginning May 31, 2003, an Officers' Certificate stating that (i) a review of the activities of the Company during the preceding calendar year and of the Company's performance under this Agreement has been made under such officer's supervision, and (ii) to the best of such officer's knowledge, based on such review, the Company has fulfilled all of its obligations under this Agreement throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default

known to such Servicing Officer and the nature and status thereof and the action being taken by the Company to cure such default.

Section 6.05 Annual Independent Public Accountants' Servicing Report

On or before May 31 of each year, beginning May 31, 2003, the Company, at its expense, shall cause a firm of independent public accountants that is a member of the American Institute of Certified Public Accountants to furnish a statement to the Owner to the effect that such firm has examined certain documents and records relating to the servicing of mortgage loans in the Company's portfolio. On the basis of this examination, the CPA firm will disclose any exceptions or errors relating to the servicing of mortgage loans, as required by paragraph four (4) of "The Uniform Single Attestation Program for Mortgage Bankers."

Section 6.06 Owner's Right to Examine Company Records.

The Owner shall have the right, upon reasonable notice to the Company, to examine and audit any and all of the books, records or other information of the Company whether held by the Company or by another on behalf of the Company, which may be relevant to the performance or observance by the Company of the terms, covenants or conditions of this Agreement, and to discuss such books, records or other information with an officer or employee of the Company who is knowledgeable about the matters contained therein.

ARTICLE VII

REPORTS TO BE PREPARED BY COMPANY

Section 7.01 Company Shall Provide Access and Information as Reasonably Required.

The Company shall furnish to the Owner upon written request, during the term of this Agreement, such periodic, special or other reports or information, whether or not provided for herein, as shall be necessary, reasonable or appropriate with respect to the purposes of this Agreement. The Company may negotiate with the Owner for a reasonable fee for providing such report or information, unless (i) the Company is required to supply such report or information pursuant to any other section of this Agreement, or (ii) the report or information has been requested in connection with Internal Revenue Service requirements. The Company agrees to execute and deliver all such instruments as the Owner, from time to time, may reasonably request in order to effectuate the purposes and to carry out the terms of this Agreement.

Section 7.02 Financial Statements.

The Company understands that, in connection with marketing the Mortgage Loans, the Owner may make available to a prospective Owner a consolidated statement of operations of Company for the most recently completed five fiscal years for which such a statement is available as well as a consolidated statement of condition at the end of the last two fiscal years covered by such consolidated statement of operations. The Company, if it has not already done so, agrees to promptly furnish to Owner copies of the statements specified above.

The Company also agrees to make available upon reasonable notice and during normal business hours to any prospective Owner a knowledgeable financial or accounting officer for the purposes of answering questions respecting recent developments affecting the Company or the financial statements of the Company and to permit upon reasonable notice and during normal business hours any prospective Owner to inspect the Company's servicing facilities for the purpose of satisfying such prospective Owner that the Company has the ability to service the Mortgage Loans in accordance with this Agreement.

## ARTICLE VIII

### THE COMPANY

#### Section 8.01 Indemnification; Third Party Claims.

The Company agrees to indemnify the Owner and hold them harmless against any and all claims, losses, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments, and any other costs, fees and expenses that the Owner incurs directly resulting from the failure of the Company to perform its duties and service the Mortgage Loans in material compliance with the terms of this Agreement. The Company shall immediately notify the Owner if a claim is made by a third party with respect to this Agreement or any Mortgage Loans. The Company shall follow any written instructions received from the Owner in connection with such claim.

#### Section 8.02 Merger or Consolidation of the Company.

The Company shall keep in full effect its existence, rights and franchises as a corporation, and shall preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, or the ability of the Company to perform its duties under this Agreement.

Any Person into which the Company may be merged or consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Company shall be a party, or any Person succeeding to the business of the Company hereunder, shall be the successor of the Company hereunder without the execution or filing of any paper or any further act on the part of either of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that the successor or surviving Person shall be an institution (i) that is qualified to service mortgage loans on behalf of Fannie Mae or Freddie Mac, (ii) that has a net worth of not less than \$25,000,000 and (iii) that is an FHA Approved Mortgagee and a VA Approved Lender.

#### Section 8.03 Company Not to Resign.

The Owner has entered into this Agreement with the Company in reliance upon the independent status of the Company, and the representations as to the adequacy of its servicing facilities, plant, personnel, records and procedures, its integrity, reputation and financial standing, and the continuance thereof. Therefore, the Company shall neither assign its rights under this Agreement nor delegate its duties hereunder or any portion thereof or sell or otherwise dispose of

all or substantially all of its property or assets without, in each case, the prior written consent of the Owner, which consent shall be granted or withheld in the sole discretion of the Owner. In addition, the ability of the Company to assign its rights and delegate its duties under this Agreement to a successor servicer shall be subject to the following conditions:

(i) Such successor servicer must be qualified to service loans for Fannie Mae, Freddie Mac and Ginnie Mae and must be an FHA Approved Mortgagee and a VA Approved Lender, in each case in good standing with the applicable agency;

(ii) Such successor servicer must have a net worth of not less than \$25,000,000;

(iii) Such successor servicer must execute and deliver to the Owner an agreement, in form and substance reasonably satisfactory to the Owner, that contains an assumption by such successor servicer of the due and punctual performance and observance of each covenant and condition to be performed and observed by the Company under this Agreement;

(iv) At the request of the Owner, such successor shall provide the Owner with financial assurances satisfactory to the Owner (such as a letter of credit, cash reserve fund or similar credit enhancement) adequate to secure such successor servicer's obligation to make Nonrecoverable Advances up to an amount not to exceed 125% of the difference (but not less than zero) between the Maximum Loss Amount relating to all Mortgage Loan Packages and the Aggregate Loss Amount relating to all Mortgage Loan Packages as of the date of the proposed assignment; and

(v) The Company shall, at its cost and expense, take such steps that may be necessary or appropriate to effectuate and evidence the transfer of the servicing of the Mortgage Loans to such successor servicer, including, but not limited to, the following: (A) on or prior to the date of such transfer or within the period following such transfer that is prescribed by applicable Regulations, the Company shall complete all forms, take all actions required by FHA and VA, as applicable, in connection with such transfer of servicing, shall provide such notices to FHA and VA in connection therewith as are required under applicable Regulations, shall obtain all necessary approvals of FHA and VA for such transfer of servicing, and shall provide evidence thereof (in form reasonably satisfactory to the Owner) to the Owner and to the successor servicer; (B) to the extent required by the terms of the Mortgage Loans and by applicable federal and state laws and regulations, the Company shall timely mail to each obligor under a Mortgage Loan any required notices or disclosures describing the transfer of servicing of the Mortgage Loans to the successor servicer; (C) prior to the effective date of such transfer of servicing, the Company shall transmit to any related insurer notification of such transfer; (D) on or prior to the effective date of such transfer of servicing, the Company shall deliver to the successor servicer all Mortgage Loan Documents and any related records or materials in the custody of the Company; (E) on or prior to the effective date of such transfer, the Company shall transfer to the successor servicer all funds held by the Company in respect of the Mortgage Loans, other than amounts payable to the Company pursuant to this Agreement; (F) the Company shall, after the effective date of the transfer of servicing to the successor servicer, continue to forward to such successor,

within one Business Day of receipt, the amount of any payments or other recoveries received by the Company, and the Company shall notify the successor servicer of the source and proper application of each such payment or recovery; (G) the Company shall, after the effective date of transfer of servicing to the successor servicer, continue to cooperate with such successor to facilitate such transfer in such manner and to such extent as such successor may reasonably request; and (H) the Company shall continue to be entitled, as and to the extent provided in this Agreement, to reimbursement for any Monthly Advances, Servicing Advances or Liquidation Advances made by it and not reimbursed.

The Company shall not resign from the obligations and duties hereby imposed on it except by mutual consent of the Company and the Owner or upon the determination that its duties hereunder are no longer permissible under applicable law and such incapacity cannot be cured by the Company. Any such determination permitting the resignation of the Company shall be evidenced by an Opinion of Counsel to such effect delivered to the Owner which Opinion of Counsel shall be in form and substance reasonably acceptable to the Owner. No such resignation shall become effective until a successor shall have assumed the Company's responsibilities and obligations hereunder in the manner provided in Section 11.01.

Without in any way limiting the generality of this Section 8.03, in the event that the Company either shall assign this Agreement or the servicing responsibilities hereunder or delegate its duties hereunder or any portion thereof or sell or otherwise dispose of all or substantially all of its property or assets, without the prior written consent of the Owner, then the Owner shall have the right to terminate this Agreement upon notice given as set forth in Section 9.01, without any payment of any penalty or damages and without any liability whatsoever to the Company or any third party.

## ARTICLE IX

### DEFAULT

#### Section 9.01 Events of Default.

Event of Default, whenever used herein, means any one or more of the following events:

(i) any failure by the Company to remit to the Owner any payment required to be made under the terms of this Agreement that continues unremedied for a period of three Business Days after the date upon which written notice of such failure, requiring the same to be remedied, shall have been received by the Company from the Owner; or

(ii) any failure on the part of the Company duly to observe or perform in any material respect any other of the covenants or agreements on the part of the Company set forth in this Agreement or in the Custodial Agreement that continues unremedied for a period of 45 days (30 days in instances where the Company has failed to pay insurance premiums) after the date on which written notice of such failure, requiring the same to be remedied, shall have been received by the Company from the Owner; or

(iii) a decree or order of a court or agency or supervisory authority having jurisdiction for the appointment of a trustee in bankruptcy, conservator, receiver or liquidator in any bankruptcy, reorganization, insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against the Company and such decree or order shall have remained in force undischarged or unstayed for a period of 45 days; or

(iv) the Company ceases to be qualified to transact business in any jurisdiction where it is currently so qualified, but only to the extent such non-qualification materially and adversely affects the Company's ability to perform its obligations hereunder; or

(v) the Company shall consent to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Company or of or relating to all or substantially all of its property; or

(vi) the Company shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of any applicable insolvency, bankruptcy or reorganization statute, make an assignment for the benefit of its creditors or voluntarily suspend payment of its obligations; or

(vii) any failure by the Company, to meet the qualifications of a Fannie Mae seller/servicer, which failure continues for a period of time longer than for more than 30 (thirty) days, or the Company at any time ceases to be an FHA Approved Mortgagee or a VA Approved Lender; or

(viii) the Company attempts to assign its right to servicing compensation hereunder without satisfying the requirements of Section 8.03 or the Company attempts, without the consent of the Owner, to sell or otherwise dispose of all or substantially all of its property or assets (other than in compliance with Section 8.03) or to assign this Agreement or the servicing responsibilities hereunder or to delegate its duties hereunder or any portion thereof to other than the Company in violation of Section 8.03; or

(ix) the Company fails to maintain a minimum net worth of \$25,000,000 at any time.

If an Event of Default shall occur, then so long as such Event of Default shall not have been remedied, the Owner may, by notice in writing to the Company, in addition to whatever rights the Owner may have at law or equity to damages, including injunctive relief and specific performance, terminate all the rights and obligations of the Company under this Agreement and in and to the Mortgage Loans and the proceeds thereof. On or after the receipt by the Company of such written notice, all authority and power of the Company under this Agreement, whether with respect to the Mortgage Loans or otherwise, shall pass to and be vested in the successor appointed pursuant to Section 11.01. Upon written request from the Owner, the Company shall prepare, execute and deliver, any and all documents and other instruments, place in such successor's possession all Mortgage Files, and do or accomplish all other acts or things necessary or appropriate to effect the purposes of such notice of termination, whether to complete the transfer and endorsement or

assignment of the Mortgage Loans and related documents, or otherwise, at the Company's sole expense. The Company shall cooperate with the Owner and such successor in effecting the termination of the Company's responsibilities and rights hereunder, including, without limitation, the transfer to such successor for administration by it of all cash amounts (less any amounts due the Company pursuant to the terms of this Agreement) which shall at the time be credited by the Company to the Custodial Account or Escrow Account or thereafter received with respect to the Mortgage Loans.

Section 9.02 Waiver of Defaults.

The Owner may in writing waive any past default by the Company in the performance of its obligations hereunder and the consequences thereof and any default in remitting to Owner any required distribution in accordance with this Agreement, including the Company's obligation to make Monthly Advances. Subject to the preceding sentence, upon any waiver of a past default, such default shall be deemed not to exist and any Event of Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement, except as otherwise stated in such waiver; provided, however, that no such waiver shall extend to any subsequent or other default or impair any right consequent thereto, except as otherwise stated in such waiver.

ARTICLE X

TERMINATION

Section 10.01 Termination.

(a) This Agreement shall terminate upon either: (i) the later of the distribution to the Owner of final payment or liquidation with respect to the last Mortgage Loan (or advances of same by the Company), or the disposition of all property acquired upon foreclosure or deed in lieu of foreclosure with respect to the last Mortgage Loan and the remittance of all funds due hereunder or (ii) mutual consent of the Company and the Owner in writing.

(b) The Company, at its option but only upon thirty (30) days' prior written notice to the Owner, may terminate this Agreement at any time when the aggregate Assumed Principal Balance of the Mortgage Loans which remain subject to this Agreement (the "Remaining Mortgage Loans") has been reduced by application of Monthly Payments or otherwise to an amount no greater than five (5) percent of the aggregate Assumed Principal Balance of the Remaining Mortgage Loans as of the Cut-off Date. Such termination shall be effected by the deposit by the Company of an amount equal to the sum of (i) 100% of the aggregate Assumed Principal Balance of the Remaining Mortgage Loans as of the first calendar day of the month in which such repurchase occurs (the "Repurchase Cut-off Date") after application of principal due on such date whether or not received, and the appraised value of REO Properties, which appraisals shall be performed by an appraiser acceptable to Fannie Mae and Freddie Mac, and (ii) interest on the aggregate Assumed Principal Balance at the Mortgage Loan Remittance Rate from the Repurchase Cut-off Date to, but not including, the date of repurchase. Upon any such purchase of Mortgage Loans and REO Properties under this Section 10.01(b), the Owner shall, to the extent necessary, transfer or cause to be transferred to the Company title to the repurchased Mortgage Loans and REO Properties by

instruments of transfer or assignment, without recourse. The Company may not purchase fewer than all of such Mortgage Loans and REO Properties. The Company shall deposit the repurchase price for the remaining Mortgage Loans as described in (i) and (ii) above in the Custodial Account no later than one (1) Business Day prior to the first Remittance Date to occur after the expiration of thirty days following the notice described in the first sentence of this Section 10.01(b). Upon presentation and surrender of the outstanding Mortgage Loans, the Company shall cause to be distributed to the Owner on such Remittance Date the repurchase price together with the amounts (including Monthly Advances) that would be otherwise distributable to the Owner in respect of Mortgage Loans and REO Properties on such Remittance Date. Upon receipt of such final payment, the Owner shall deliver, or cause the Custodian to deliver to the Company, the Mortgage Files in connection therewith and shall otherwise use its best efforts to effect or cause to be effected the orderly transfer of assets to the Company.

#### Section 10.02 Termination Without Cause.

The Owner may, at its sole option, terminate any rights the Company may have hereunder, without cause, upon 30 days prior written notice. In the event of such a termination, the Owner agrees to pay a sum, as liquidated damages, in an amount equal to (i) two percent (2%) of the aggregate Assumed Principal Balance of the Mortgage Loans if such written notice is received by the Company on or before the Business Day five years from the Closing Date, or (ii) one percent (1%) of the aggregate Assumed Principal Balance of the Mortgage Loans if such written notice is received by the Company after the Business Day five years from the Closing Date (either amount shall be referred to as "Liquidated Damages".) Any such notice of termination shall be in writing and delivered to the Company by registered mail as provided in Section 11.07 of this Agreement. In the event of a termination of the Company without cause as provided in this Section 10.02, from and after the effective date of such termination, the Company shall be relieved of its liability for the Maximum Loss Amount and advances to be made pursuant to Section 5.03.

Termination pursuant to this Section 10.02 shall be effective on the date (the "Transfer Date") on which the Company transfers all responsibilities, rights, duties and obligations under this Agreement to the successor appointed pursuant to Section 11.01. Such successor shall be appointed by the Owner and such Transfer Date shall be no more than 90 days following the date on which such written notice of termination is received by the Company. On the Transfer Date, the Owner shall pay to the Company 90% of the Liquidated Damages by wire transfer (or other vehicle which permits immediate delivery) to the Company. The remaining amount of Liquidated Damages owing to the Company shall be paid by the Owner on the date on which all requirements for the transfer of servicing have been fulfilled by the Company to the reasonable satisfaction of the Owner. Such date shall be no later than 20 Business Days after the Transfer Date.

### ARTICLE XI

#### MISCELLANEOUS PROVISIONS

##### Section 11.01 Closing.

Each closing for the purchase and sale of Mortgage Loans hereunder shall take place on the related Closing Date. Upon agreement by the Company and the Owner, the closing shall be either: by telephone, confirmed by letter or wire as the parties shall agree, or conducted in person, at such place as the parties shall agree.

Each closing for a Mortgage Loan Package shall be subject to each of the following conditions:

(a) at least one (1) Business Day prior to the Closing Date, the Company shall deliver to the Owner a Mortgage Loan Schedule with respect to the Mortgage Loans to be purchased and sold on such date;

(b) all of the representations and warranties of the Company under this Agreement shall be true and correct as of such Closing Date and no event shall have occurred which, with notice or the passage of time, would constitute a default under this Agreement;

(c) the Owner shall have received, or the Owner's attorneys shall have received in escrow, all closing documents as specified in 11.02 of this Agreement, in such forms as are agreed upon and reasonably acceptable to the Owner, duly executed by all signatories other than the Owner as required pursuant to the terms hereof;

(d) the Company shall have delivered and released to the Custodian on or prior to the Closing Date all documents required pursuant to Section 2.03 hereof; and

(e) all other terms and conditions of this Agreement and the related Purchase Price and Terms Letter (if any), Trade Confirmation (if any) and Acknowledgment and Conveyance Agreement shall have been complied with.

Subject to the foregoing conditions, the Owner shall pay to the Company on each Closing Date the Purchase Price for the Mortgage Loan Package purchased on such date by wire transfer of immediately available funds to the account designated by the Company.

Section 11.02 Closing Documents.

(a) The closing documents for the Mortgage Loans to be purchased on the initial Closing Date under this Agreement shall consist of fully executed originals of the following documents as well as the documents referred to in Section 12.04(b):

- (i) the Purchase Price and Terms Letter;
- (ii) this Agreement;
- (iii) the Custodial Agreement between the Owner and the Custodian;
- (iv) a Custodial Account Letter Agreement, in the form of Exhibit D

hereto;

(v) an Escrow Account Letter Agreement, in the form of Exhibit E hereto;

(vi) an Officer's Certificate of the Company, in the form of Exhibit H hereto, including all attachments thereto; and

(vii) an Opinion of Counsel of the Company (who may be an employee of the Company), in the form of Exhibit I hereto.

(b) The closing documents for the Mortgage Loans to be purchased on each Closing Date under this Agreement (including the initial Closing Date) shall consist of fully executed originals of the following documents:

(i) the related Trade Confirmation (if applicable);

(ii) the related Acknowledgment and Conveyance Agreement;

(iii) the Mortgage Loan Schedule;

(iv) a side letter agreement between the Owner and the Company (if applicable);

(v) an Assignment and Assumption of the Owner's interest as servicer of the Mortgage Loans arising under the Custodial Agreement;

(vi) upon reasonable request by the Owner, an Officer's Certificate of the Company, in the form of Exhibit H hereto, including all attachments thereto; and

(vii) upon reasonable request by the Owner, an Opinion of Counsel of the Company (who may be an employee of the Company), in the form of Exhibit I hereto.

#### Section 11.03 Successor to the Company.

Prior to termination of the Company's responsibilities and duties under this Agreement pursuant to Section 8.03, 9.01 or 10.01(a)(ii), the Owner shall (i) succeed to and assume all of the Company's responsibilities, rights, duties and obligations under this Agreement, or (ii) appoint a successor which shall succeed to all rights and assume all of the responsibilities, duties and liabilities of the Company under this Agreement prior to the termination of Company's responsibilities, duties and liabilities under this Agreement. In connection with such appointment and assumption, the Owner may make such arrangements for the compensation of such successor out of payments on Mortgage Loans as it and such successor shall agree. The Company shall discharge its duties and responsibilities during the period from the date it acquires knowledge of such termination until the effective date thereof with the same degree of diligence and prudence that it is obligated to exercise under this Agreement. The resignation or removal of the Company pursuant to the aforementioned Sections shall not become effective until a successor shall be appointed pursuant to this Section and shall not relieve the Company named herein of its

obligations under Section 3.03 or Section 8.01 (in the event a third party claim is filed during the period of time in which the Company is servicing the Mortgage Loans).

Any successor appointed as provided herein shall execute, acknowledge and deliver to the Company and to the Owner an instrument accepting such appointment, whereupon such successor shall become fully vested with all the rights, powers, duties, responsibilities, obligations and liabilities of the Company, with like effect as if originally named as a party to this Agreement. No termination of the Company or this Agreement shall affect any claims that the Owner may have against the Company arising prior to any such termination or resignation.

The Company shall timely deliver to its successor the funds in the Custodial Account and the Escrow Account (less any amounts to which the Company is entitled pursuant to the terms of this Agreement) and all Mortgage Files and related documents and statements held by it hereunder and the Company shall account for all funds. The Company shall execute and deliver such instruments and do such other things all as may reasonably be required to more fully and definitely vest and confirm in the successor all such rights, powers, duties, responsibilities, obligations and liabilities of the Company.

Upon a successor's acceptance of appointment as such, the Company shall notify by mail the Owner of such appointment.

#### Section 11.04 Repurchases and Related Assurances.

In the event the Company repurchases a Mortgage Loan pursuant to Section 3.03, the Owner shall upon any request of the Company subsequent to the Remittance Date on which the Repurchase Price has been remitted to the Owner take actions reasonably necessary to effect the reconveyance of the Mortgage Loan.

#### Section 11.05 Amendment.

This Agreement may be amended only by written agreement signed by the Company and Owner hereunder.

#### Section 11.06 Recordation of Assignment of Mortgages.

As provided in the Custodial Agreement, each Assignment of Mortgage shall be in a form acceptable for recording in all appropriate public offices for real property records in the jurisdiction in which the Mortgaged Property recited in each such Assignment of Mortgage is situated. At the Owner's request (and upon written notice to the Company), the Assignments of Mortgage shall be recorded in the name of the Owner or in the name of a Person designated by the Owner in all appropriate public offices for real property records. All recording fees related to such initial recordation shall be paid by the Company.

#### Section 11.07 Duration of Agreement.

This Agreement shall continue in existence and effect until terminated as herein provided.

Section 11.08 Governing Law.

This Agreement shall be construed in accordance with the laws of the State of New York, except to the extent preempted by federal law but without regard to principles of conflicts of laws, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

Section 11.09 Notices.

Any communications provided for or permitted hereunder shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given if (a) personally delivered, (b) mailed by registered mail, postage prepaid, return receipt requested, and received by the addressee, (c) sent by express courier delivery service and received by the addressee, or (d) transmitted by telex, telecopy or telegraph and confirmed by a writing delivered by means of (a), (b) or (c), to: (i) in the case of the Company, 100 Witmer Road, Horsham, PA 19044, Attention: Bill Maguire, Senior Vice President, or such other address as may hereafter be furnished to the Owner in writing by the Company, with a copy to the Company at the same address and (ii) in the case of the Owner, Lehman Brothers Bank, FSB, 745 Seventh Avenue, New York, New York, 10019, Attention Manager, Contract Finance.

Section 11.10 Severability of Provisions.

If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be held invalid for any reason whatsoever, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

Section 11.11 No Partnership.

Nothing herein contained shall be deemed or construed to create a co-partnership or joint venture between the parties hereto and the services of the Company shall be rendered as an independent contractor and not as agent for the Owner.

Section 11.12 Counterparts.

This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which shall be deemed to be an original. Such counterparts shall constitute one and the same agreement.

Section 11.13 Successors and Assigns.

Notwithstanding anything to the contrary in this agreement, it is understood and agreed that the Owner may transfer its interest in this Agreement and the Mortgage Loans in whole or in part, in accordance with Article XII of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Company and the Owner and their respective successors and assigns permitted hereunder.

Section 11.14 General Interpretive Principles.

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender;

(b) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;

(c) references herein to "Articles", "Sections", "Subsections", "Paragraphs", and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, Paragraphs, Clauses and other subdivisions of this Agreement;

(d) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall also apply to Paragraphs, Clauses, and other subdivisions;

(e) the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; and

(f) the term "include" or "including" shall mean without limitation by reason of enumeration.

ARTICLE XII

Whole Loan Transfer; Pass-Through Transfer; Agency Transfer

Section 12.01 Removal of Mortgage Loans from Inclusion under this Agreement upon a Whole Loan Transfer, a Pass-Through Transfer or Agency Transfer on One or more Reconstitution Dates

The Company acknowledges and the Initial Owner agrees that with respect to some or all of the Mortgage Loans, the Initial Owner may effect either:

- (1) one or more Whole Loan Transfers;
- (2) one or more Pass Through Transfers; or
- (3) one or more Agency Transfers;

provided, however, that the aggregate number of "investors" in the Mortgage Loans shall not exceed four (4) at any time; provided, that for purposes hereof, the "investor" shall be Fannie Mae, Freddie Mac or Ginnie Mae, as applicable, in the case of an Agency Transfer, the third party purchaser in the case of a Whole Loan Transfer, or the trustee or master servicer in the case of a Pass-Through Transfer. In addition, if the Owner enters into more than two (2) reconstitution transactions with respect to the Mortgage Loans, for each reconstitution transaction after the second such transaction, the Company shall have the right to reimbursement from the Owner for the reasonable expenses incurred by the Company in connection with effecting such Agency Transfer, Whole Loan Transfer or Pass-Through Transfer, including reimbursement for the amount which reasonably reflects time and expenses directly incurred by the Company in connection with such reconstitution transactions.

The Company shall cooperate with the Initial Owner in connection with any Whole Loan Transfer, Pass-Through Transfer or Agency Transfer contemplated by the Initial Owner pursuant to this Section. In connection therewith, the Initial Owner shall deliver any Reconstitution Agreement or other document related to the Whole Loan Transfer, Pass Through Transfer or Agency Transfer to the Company at least 10 days prior to such transfer and the Company shall execute any Reconstitution Agreement which contains servicing provisions substantially similar to those herein or otherwise reasonably acceptable to the Initial Owner and the Company and which restates the representations and warranties contained in Section 3.01 as of the Reconstitution Date (except to the extent any such representation or warranty is not accurate on such date) and Section 3.02 herein as of the Closing Date. The Initial Owner hereby agrees to reimburse the Company for reasonable "out-of-pocket" expenses incurred by the Company that relate to such Whole Loan Transfer, Pass-Through Transfer or Agency Transfer, including reimbursement for the amount which reasonably reflects time and effort expended by the Company in connection therewith. It is understood and agreed by Initial Owner and Company that the right to effectuate such Whole Loan Transfer, Pass-Through Transfer or Agency Transfer as contemplated by this Section 12.01 is limited to the Initial Owner or its affiliates (including Lehman Brothers Holdings Inc. and Structured Asset Securities Corporation).

With respect to FHA Mortgage Loans, prior to the related Reconstitution Date, the Company shall notify FHA of the change in ownership with respect to all FHA Mortgage Loans and the giving of notice to the VA of a transfer of insurance credits, if applicable, with respect to VA Mortgage Loans on the form prescribed by the VA, in each case as are required under the Applicable Regulations.

All Mortgage Loans not sold or transferred pursuant to a Whole Loan Transfer, Pass-Through Transfer or Agency Transfer shall be subject to this Agreement and shall continue to be serviced in accordance with the terms of this Agreement and with respect thereto this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Company and the Initial Owner have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

GMAC MORTGAGE CORPORATION,  
Company

By: Patricia C. Taylor  
Name: Patricia C. Taylor  
Title: Vice President

LEHMAN BROTHERS BANK, FSB  
Initial Owner

By: \_\_\_\_\_  
Name: Jack E. Desens  
Title: Vice President

IN WITNESS WHEREOF, the Company and the Initial Owner have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

GMAC MORTGAGE CORPORATION,  
Company

By: \_\_\_\_\_  
Name: Patricia C. Taylor  
Title: Vice President

LEHMAN BROTHERS BANK, FSB  
Initial Owner

By: Jack E. Desens  
Name: Jack E. Desens  
Title: Vice President

# Exhibit F

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UBS WARBURG REAL ESTATE SECURITIES INC.  
Owner

GMAC MORTGAGE CORPORATION  
Servicer

SERVICING AGREEMENT

Dated as of November 1, 2001

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THIS IS A SERVICING AGREEMENT, dated as of November 1, 2001, and is executed between UBS Warburg Real Estate Securities Inc. (the "Owner") and GMAC Mortgage Corporation (the "Servicer").

WITNESSETH:

WHEREAS, the Owner will purchase, from time to time, certain first lien, adjustable-rate and fixed-rate mortgage loans (the "Mortgage Loans") to be delivered as whole loans on a servicing released basis;

WHEREAS, the Owner desires to have the Servicer service each Mortgage Loan set forth on the Mortgage Loan Schedule attached to the related Terms Letter (as defined herein), the Servicer desires to service and administer such Mortgage Loans on behalf of the Owner, and the parties desire to provide the terms and conditions of such servicing by the Servicer;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Owner and the Servicer agree as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1.01 Defined Terms.

Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meaning specified in this Article:

Accepted Servicing Practices: With respect to any Mortgage Loan, those mortgage servicing practices (including collection procedures) of mortgage banking institutions which service mortgage loans of the same type as the Mortgage Loans and that are in accordance with servicing guidelines as set forth in the Fannie Mae Guide and consistent with the manner in which the Servicer services and administers similar mortgage loans for the Servicer's own portfolio.

Adjustment Date: As to each ARM Loan, the date on which the Mortgage Interest Rate is adjusted in accordance with the terms of the related Mortgage Note.

Agreement: This Servicing Agreement including all exhibits hereto, amendments hereof and supplements hereto.

ARM Loans: First lien, conventional, 1-4 family residential Mortgage Loans with interest rates which adjust from time to time in accordance with the related Index and are subject to Periodic Rate Caps and Lifetime Rate Caps.

BIF: The Bank Insurance Fund, or any successor thereto.

Business Day: Any day other than (i) a Saturday or Sunday, or (ii) a legal holiday in the States of New York, Iowa or the Commonwealth of Pennsylvania, or (iii) a day on which banks in the States of New York, Iowa or Pennsylvania are authorized or obligated by law or executive order to be closed.

Code: The Internal Revenue Code of 1986, as it may be amended from time to time, or any successor statute thereto, and applicable U.S. Department of the Treasury regulations issued pursuant thereto.

Condemnation Proceeds: All awards or settlements in respect of a Mortgaged Property, whether permanent or temporary, partial or entire, by exercise of the power of eminent domain or condemnation, to the extent not required to be released to a Mortgagor in accordance with the terms of the related Mortgage Loan Documents.

Confirmation: The letter agreement(s) between the Owner and Servicer (including any exhibits, schedules and attachments thereto) setting forth the terms and conditions of, amongst other items, the engagement by Owner of Servicer as servicer of the applicable Mortgage Loans to be serviced pursuant to this Agreement.

Custodial Account: The separate demand account or accounts created and maintained pursuant to Section 4.04 which shall be entitled "GMAC Mortgage Corporation Custodial Account in trust for [Owner], Owner of Whole Loan Mortgages and shall be established at a Qualified Depository, each of which accounts shall in no event contain funds in excess of the FDIC insurance limits.

Custodian: Wells Fargo Bank Minnesota, N.A., its successor in interest or assigns, or such other custodian as Owner shall designate.

Cut-off Date: As identified on the related Terms Letter.

Determination Date: The 15th day (or if such 15th day is not a Business Day, the Business Day immediately preceding such 15th day) of the month of the Remittance Date.

Due Date: Each day on which payments of principal and interest are required to be paid in accordance with the terms of the related Mortgage Note, exclusive of any days of grace.

Due Period: With respect to any Remittance Date, the period commencing on the second day of the month preceding the month of such Remittance Date and ending on the first day of the month of the Remittance Date.

Effective Date: The date on which the Servicer becomes the owner of the Servicing Rights related to any of the Mortgage Loans, which date shall be identified on the Mortgage Loan Schedule attached to the related Terms Letter.

Escrow Account: The separate trust account or accounts created and maintained pursuant to Section 4.06 which shall be entitled "GMAC Mortgage Corporation Escrow Account, in trust for [Owner], Owner of Whole Loan Mortgages and various Mortgagors" and shall be established at a Qualified Depository, each of which accounts shall in no event contain funds in excess of the FDIC insurance limits.

Escrow Payments: With respect to any Mortgage Loan, the amounts constituting ground rents, taxes, assessments, water rates, sewer rents, municipal charges, mortgage insurance premiums, fire and hazard insurance premiums, condominium charges, and any other payments required to be escrowed by the Mortgagor with the mortgagee pursuant to the Mortgage or any other document.

Event of Default: Any one of the conditions or circumstances enumerated in Section 9.01.

Excess Servicing Fee: With respect to some or all of the Mortgage Loans, if applicable, the amount of the annual fee the Owner shall pay to the Servicer (which annual fee is in addition to, and not in lieu of, any Servicing Fee payable on a Mortgage Loan), which shall, for a period of one full month, be equal to one-twelfth of the product of (a) the applicable Excess Servicing Fee Rate and (b) the outstanding principal balance of such Mortgage Loan. Such fee shall be payable monthly, computed on the basis of the same principal amount and period respecting which any related interest payment on a Mortgage Loan is computed. The obligation of the Owner to pay the Excess Servicing Fee is limited to, and the Excess Servicing Fee is payable solely from, the interest portion (not including recoveries of interest from Liquidation Proceeds or otherwise) of such Monthly Payment collected by the Servicer, or as otherwise provided under Section 4.05.

Excess Servicing Fee Rate: The Excess Servicing Fee Rate, if applicable, shall be a rate per annum as set forth in the Terms Letter and reflected on the related Mortgage Loan Schedule.

Fannie Mae: Fannie Mae, or any successor thereto.

Fannie Mae Guide: The Fannie Mae Selling Guide and the Fannie Mae Servicing Guide and all amendments or additions thereto.

FDIC: The Federal Deposit Insurance Corporation, or any successor thereto.

Fidelity Bond: A fidelity bond to be maintained by the Servicer pursuant to Section 4.12.

FIRREA: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended from time to time.

Freddie Mac: Freddie Mac, or any successor thereto.

Freddie Mac Guide: The Freddie Mac Selling Guide and the Freddie Mac Servicing Guide and all amendments or additions thereto.

GAAP: Generally accepted accounting procedures, consistently applied.

HUD: The United States Department of Housing and Urban Development or any successor.

Index: With respect to each ARM Loan, on the related Adjustment Date, the index used to determine the Mortgage Interest Rate on each such ARM Loan.

Insurance Proceeds: With respect to each Mortgage Loan, proceeds of insurance policies insuring the Mortgage Loan or the related Mortgaged Property, to the extent not required to be released to a Mortgagor in accordance with the terms of the related Mortgage Loan Documents.

Lender-Paid Mortgage Insurance Rate: With respect to any Mortgage Loan, the Lender-Paid Mortgage Insurance Rate for any "lender-paid" Primary Mortgage Insurance Policy shall be a per annum rate equal to the percentage set forth on the related Mortgage Loan Schedule.

Lifetime Rate Cap: With respect to each ARM Loan, the maximum Mortgage Interest Rate over the term of such Mortgage Loan, as specified in the related Mortgage Note.

Liquidation Proceeds: Cash received in connection with the liquidation of a defaulted Mortgage Loan, whether through the sale or assignment of such Mortgage Loan, trustee's sale, foreclosure sale or otherwise, other than amounts received following the acquisition of an REO Property pursuant to Section 4.13.

Margin: With respect to each ARM Loan, the fixed percentage amount set forth in each related Mortgage Note which is added to the Index in order to determine the related Mortgage Interest Rate.

Monthly Advance: The aggregate of the advances made by the Servicer on any Remittance Date pursuant to Section 5.03.

Monthly Payment: With respect to each Mortgage Loan, the scheduled monthly payment of principal and interest thereon which is payable by the related Mortgagor under the related Mortgage Note.

Mortgage: The mortgage, deed of trust or other instrument securing a Mortgage Note which creates a first lien on an unsubordinated estate in fee simple in real property securing the Mortgage Note.

Mortgage Interest Rate: The annual rate at which interest accrues on any Mortgage Loan in accordance with the provisions of the related Mortgage Note, and in the case of an ARM

Loan, as adjusted from time to time on each Adjustment Date for such Mortgage Loan to equal the Index for such Mortgage Loan plus the Margin for such Mortgage Loan, and subject to the limitations on such interest rate imposed by the Periodic Rate Cap and the Lifetime Rate Cap.

Mortgage Loan: An individual Mortgage Loan described herein, and as further identified on the related Mortgage Loan Schedule, which Mortgage Loan includes without limitation the Mortgage Loan Documents, the Monthly Payments, Principal Prepayments, Liquidation Proceeds, Condemnation Proceeds, Insurance Proceeds, REO Disposition Proceeds, and all other rights, benefits, proceeds and obligations arising from or in connection with such Mortgage Loan.

Mortgage Loan Documents: The original mortgage loan legal documents held by the Custodian.

Mortgage Loan Remittance Rate: With respect to each Mortgage Loan, the annual rate of interest remitted to the Owner, which shall be equal to the related Mortgage Interest Rate minus (i) the Servicing Fee Rate, (ii) the Lender-Paid Mortgage Insurance Rate, if applicable, and (iii) the Excess Servicing Fee Rate, if applicable.

Mortgage Loan Schedule: With respect to each pool of Mortgage Loans to be serviced under this Agreement, the schedule of Mortgage Loans attached to each Terms Letter delivered hereunder.

Mortgage Note: The note or other evidence of the indebtedness of a Mortgagor secured by a Mortgage.

Mortgaged Property: The underlying real property securing repayment of a Mortgage Note, consisting of a single parcel of real estate considered to be real estate under the laws of the State in which such real property is located, which may include condominium units and planned unit developments, improved by a residential dwelling.

Mortgagor: The obligor on a Mortgage Note.

Nonrecoverable Advance: Any advance previously made by the Servicer pursuant to Section 5.03 or any expenses incurred pursuant to Section 4.08 which, in the good faith judgment of the Servicer, may not be ultimately recoverable by the Servicer from late payments, Insurance Proceeds, Liquidation Proceeds, REO Disposition Proceeds or otherwise from the related Mortgage Loan. The determination by the Servicer that it has made a Nonrecoverable Advance, shall be evidenced by an Officer's Certificate of the Servicer delivered to the Owner and detailing the reasons for such determination.

OCC: Office of the Comptroller of the Currency, its successors and assigns.

Officers' Certificate: A certificate signed by the Chairman of the Board, the Vice Chairman of the Board, the President, a Senior Vice President or a Vice President or by the Treasurer or the Secretary or one of the Assistant Treasurers or Assistant Secretaries of the Servicer, and delivered to the Owner as required by this Agreement.

Opinion of Counsel: A written opinion of counsel, who may be an employee of the party on behalf of whom the opinion is being given, reasonably acceptable to the Owner.

OTS: Office of Thrift Supervision, its successors and assigns.

Owner: UBS Warburg Real Estate Securities Inc., its successors in interest and assigns.

Pass-Through Transfer: The sale or transfer of same or all of the Mortgage Loans to a trust as part of a publicly issued or privately placed, rated or unrated mortgage pass-through transaction.

Periodic Rate Cap: With respect to each ARM Loan, the maximum increase or decrease in the Mortgage Interest Rate on any Adjustment Date.

Permitted Investments: Any one or more of the following obligations or securities:

(i) direct obligations of, and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America; provided that obligations of Freddie Mac or Fannie Mae shall be Permitted Investments only if, at the time of investment, they are rated in one of the two highest rating categories by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc. and Fitch, Inc.;

(ii) (a) demand or time deposits, federal funds or bankers' acceptances issued by any depository institution or trust company incorporated under the laws of the United States of America or any State thereof and subject to supervision and examination by Federal and/or State banking authorities, provided that the commercial paper and/or the short-term deposit rating and/or the long-term unsecured debt obligations or deposits of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment are rated in one of the two highest rating categories by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc. and Fitch, Inc. and (b) any other demand or time deposit or certificate of deposit that is fully insured by the FDIC;

(iii) repurchase obligations with respect to (a) any security described in clause (i) above or (b) any other security issued or guaranteed by an agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America, in either case entered into with a depository institution or trust company (acting as principal) described in clause (ii)(a) above;

(iv) securities bearing interest or sold at a discount issued by any corporation incorporated under the laws of the United States of America or any State thereof that are rated in one of the two highest rating categories by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc. and Fitch, Inc. at the time of such investment or contractual commitment providing for such

investment; provided, however, that securities issued by any particular corporation will not be Permitted Investments to the extent that investments therein will cause the then outstanding principal amount of securities issued by such corporation and held as Permitted Investments to exceed 10% of the aggregate outstanding principal balances and amounts of all the Permitted Investments;

(v) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which are rated in one of the two highest rating categories by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc. and Fitch, Inc. at the time of such investment;

(vi) any other demand, money market or time deposit, obligation, security or investment as may be acceptable to each of Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc. and Fitch, Inc.; and

(vii) any money market funds the collateral of which consists of obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America (which may include repurchase obligations secured by collateral described in clause (i)) and other securities and which money market funds are rated in one of the two highest rating categories by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc. and Fitch, Inc.;

provided, however, that no instrument or security shall be a Permitted Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

Person: Any individual, corporation, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization or government or any agency or political subdivision thereof.

Primary Mortgage Insurance Policy: Each primary policy of mortgage insurance, or any replacement policy therefor obtained by the Servicer pursuant to Section 4.08.

Prime Rate: The prime rate of U.S. money center banks as published from time to time in *The Wall Street Journal*.

Principal Prepayment: Any payment or other recovery of principal on a Mortgage Loan, full or partial, which is received in advance of its scheduled Due Date, including any prepayment penalty or premium thereon and which is not accompanied by an amount of interest representing scheduled interest due on any date or dates in any month or months subsequent to the month of prepayment.

Qualified Appraiser: An appraiser, duly appointed by the Servicer, who had no interest, direct or indirect in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan, which appraiser and the appraisal made by such appraiser both satisfy the requirements of Title XI of FIRREA and the regulations promulgated thereunder, all as in effect on the date the Mortgage Loan was originated.

Qualified Depository: (a) The Custodian or (b) a depository, the accounts of which are insured by the FDIC through the BIF or the SAIF and the short term debt ratings and the long term deposit ratings of which are rated in one of the two highest rating categories by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc., Fitch, Inc.

Qualified Insurer: An insurance company duly qualified as such under the laws of the states in which the Mortgaged Properties are located, duly authorized and licensed in such states to transact the applicable insurance business and to write the insurance provided, approved as an insurer by Fannie Mae and Freddie Mac.

REMIC: A "real estate mortgage investment conduit" within the meaning of Section 860D of the Code.

REMIC Provisions: The provisions of the Federal income tax law relating to a REMIC, which appear at Section 860A through 860G of Subchapter M of Chapter 1, Subtitle A of the Code, and related provisions, and regulations, rulings or pronouncements promulgated thereunder, as the foregoing may be in effect from time to time.

Remittance Date: The 18th day of any month, or if such 18th day is not a Business Day, the first Business Day immediately preceding such 18th day.

REO Disposition: The final sale by the Servicer of any REO Property.

REO Disposition Proceeds: Amounts received by the Servicer in connection with a related REO Disposition.

REO Property: A Mortgaged Property acquired by the Servicer on behalf of the Owner as described in Section 4.13.

SAIF: The Savings Association Insurance Fund, or any successor thereto.

Servicer: GMAC Mortgage Corporation, or any of its successors in interest or any successor under this Agreement appointed as herein provided.

Servicing Advances: All customary, reasonable and necessary "out of pocket" costs and expenses (including reasonable attorneys' fees and disbursements) incurred prior to, on and subsequent to the Effective Date in the performance by the Servicer of its servicing obligations relating to each Mortgage Loan, including, but not limited to, the cost of (a) the preservation, restoration and protection of the Mortgaged Property, (b) any enforcement, administrative or judicial proceedings, or any legal work or advice specifically related to

servicing the Mortgage Loans, including but not limited to, foreclosures, bankruptcies, condemnations, drug seizures, elections, foreclosures by subordinate or superior lienholders, and other legal actions incidental to the servicing of the Mortgage Loans (provided that such expenses are reasonable and that the Servicer specifies the Mortgage Loan(s) to which such expenses relate), (c) the management and liquidation of the Mortgaged Property if the Mortgaged Property is acquired in full or partial satisfaction of the Mortgage, (d) taxes, assessments, water rates, sewer rates and other charges which are or may become a lien upon the Mortgaged Property, and Primary Mortgage Insurance Policy premiums and fire and hazard insurance coverage and (e) compliance with the obligations under Section 4.08.

Servicing Fee: With respect to each Mortgage Loan, the amount of the annual fee the Owner shall pay to the Servicer, which shall, for a period of one full month, be equal to one-twelfth of the product of (a) the applicable Servicing Fee Rate and (b) the outstanding principal balance of such Mortgage Loan. Such fee shall be payable monthly, computed on the basis of the same principal amount and period respecting which any related interest payment on a Mortgage Loan is computed. The obligation of the Owner to pay the Servicing Fee is limited to, and the Servicing Fee is payable solely from, the interest portion (not including recoveries of interest from Liquidation Proceeds or otherwise) of such Monthly Payment collected by the Servicer, or as otherwise provided under Section 4.05.

Servicing Fee Rate: The Servicing Fee Rate shall be a rate per annum as set forth in the Terms Letter and reflected on the related Mortgage Loan Schedule.

Servicing File: The documents, records and other items pertaining to a particular Mortgage Loan, and any additional documents relating to such Mortgage Loan as are in, or as may from time to time come into, the Servicer's possession.

Servicing Officer: Any officer of the Servicer involved in, or responsible for, the administration and servicing of the Mortgage Loans whose name appears on a list of servicing officers furnished by the Servicer to the Owner upon request, as such list may from time to time be amended.

Servicing Rights: With respect to each Mortgage Loan, any and all of the following: (a) all rights to service the Mortgage Loan; (b) all rights to receive servicing fees, additional servicing compensation (including without limitation any late fees, assumption fees, penalties or similar payments with respect to the Mortgage Loan, and income on escrow accounts or other receipts on or with respect to the Mortgage Loan), reimbursements or indemnification for servicing the Mortgage Loan, and any payments received in respect of the foregoing and proceeds thereof; (c) the right to collect, hold and disburse escrow payments or other similar payments with respect to the Mortgage Loans and any amounts actually collected with respect thereto and to receive interest income on such amounts to the extent permitted by applicable law; (d) all accounts and other rights to payment related to any of the property described in this paragraph; (e) possession and use of any and all Servicing Files pertaining to the Mortgage Loans or pertaining to the past, present or prospective servicing of the Mortgage Loans; (f) all rights and benefits relating to the direct solicitation of the related Mortgagors for refinance or modification of the Mortgage Loans and attendant right, title and interest in and to the list of such Mortgagors and data relating to their respective Mortgage Loans; (g) all rights,

powers and privileges incident to any of the foregoing; and (h) all agreements or documents creating, defining or evidencing any of the foregoing rights to the extent they relate to such rights.

Stated Principal Balance: As to each Mortgage Loan as of any date of determination, (i) the principal balance of such Mortgage Loan after giving effect to payments of principal due, whether or not received, minus (ii) all amounts previously distributed to the Owner with respect to the Mortgage Loan representing payments or recoveries of principal or advances in lieu thereof.

Terms Letter: The letter agreement between the Owner and the Servicer, in the form attached hereto as Exhibit A, dated as of the Effective Date, that identifies the final pool of Mortgage Loans, relating to a Confirmation, to be serviced pursuant this Agreement

Whole Loan Transfer: The sale or transfer of some or all of the ownership interest in the Mortgage Loans by the Owner to one or more third parties in whole loan or participation format, which third party may be Fannie Mae or Freddie Mac.

## ARTICLE II

### **SERVICING OF MORTGAGE LOANS; POSSESSION OF SERVICING FILES; BOOKS AND RECORDS; DELIVERY OF MORTGAGE LOAN DOCUMENTS**

#### Section 2.01 Servicing of Mortgage Loans.

From and after the Effective Date, the Servicer does hereby agree to service the Mortgage Loans, but subject to the terms of this Agreement. The rights of the Owner to receive payments with respect to the Mortgage Loans shall be as set forth in this Agreement.

#### Section 2.02 Maintenance of Servicing Files.

The Servicer shall maintain a Servicing File consisting of all documents necessary to service the Mortgage Loans. The possession of each Servicing File by the Servicer is for the sole purpose of servicing the Mortgage Loan, and such retention and possession by the Servicer is in a custodial capacity only. The Servicer acknowledges that the ownership of each Mortgage Loan, including the Note, the Mortgage, all other Mortgage Loan Documents and all rights, benefits, proceeds and obligations arising therefrom or in connection therewith, has been vested in the Owner. All rights arising out of the Mortgage Loans including, but not limited to, all funds received on or in connection with the Mortgage Loans and all records or documents with respect to the Mortgage Loans prepared by or which come into the possession of the Servicer shall be received and held by the Servicer in trust for the exclusive benefit of the Owner as the owner of the related Mortgage Loans. Any portion of the related Servicing Files retained by the Servicer shall be appropriately identified in the Servicer's computer system to clearly reflect the ownership of the related Mortgage Loans by the Owner. The Servicer shall release its custody of the contents of the related Servicing Files only in accordance with written instructions of the

Owner, except when such release is required as incidental to the Servicer's servicing of the Mortgage Loans, such written instructions shall not be required.

#### Section 2.03 Books and Records.

The Servicer shall be responsible for maintaining, and shall maintain, a complete set of books and records for the Mortgage Loans which shall be appropriately identified in the Servicer's computer system to clearly reflect the ownership of the Mortgage Loan by the Owner. In particular, the Servicer shall maintain in its possession, available for inspection by the Owner, or its designee and shall deliver to the Owner upon demand, evidence of compliance with all Federal, State and local laws, rules and regulations, and requirements of Fannie Mae or Freddie Mac, as applicable, including but not limited to documentation as to the method used in determining the applicability of the provisions of the Flood Disaster Protection Act of 1973, as amended, to the Mortgaged Property, documentation evidencing insurance coverage and eligibility of any condominium project for approval by Fannie Mae and periodic inspection reports as required by Section 4.13. To the extent that original documents are not required for purposes of realization of Liquidation Proceeds or Insurance Proceeds, documents maintained by the Servicer may be in the form of microfilm or microfiche or such other reliable means of recreating original documents, including but not limited to, optical imagery techniques so long as the Servicer complies with the requirements of the Fannie Mae Guide.

The Servicer shall maintain with respect to each Mortgage Loan and shall make available for inspection by any Owner or its designee the related Servicing File (or copies thereof) upon reasonable prior request by the Owner.

#### Section 2.04 Transfer of Mortgage Loans.

The Servicer shall keep at its servicing office books and records in which, subject to such reasonable regulations as it may prescribe from time to time, the Servicer shall note transfers of Mortgage Loans. No transfer of a Mortgage Loan may be made unless such transfer is in compliance with the terms hereof. For the purposes of this Agreement, the Servicer shall be under no obligation to deal with any person with respect to this Agreement or any Mortgage Loan unless a notice of the transfer of such Mortgage Loan has been delivered to the Servicer in accordance with this Section 2.04. The Owner may, subject to the terms of this Agreement, sell and transfer one or more of the Mortgage Loans in accordance with Sections 10.02 and 11.12, provided, however, that the transferee will not be deemed to be an Owner hereunder binding upon the Servicer unless such transferee shall agree in writing to be bound by the terms of this Agreement via an assignment and assumption of this Agreement reasonably acceptable to the Servicer. The Owner also shall advise the Servicer in writing of the transfer. Upon receipt of notice of the permitted transfer, the Servicer shall mark its books and records to reflect the ownership of the Mortgage Loans of such assignee, and shall release the previous Owner from its obligations hereunder with respect to the Mortgage Loans sold or transferred.

#### Section 2.05 Delivery of Mortgage Loan Documents.

The Servicer shall forward to the Custodian on behalf of the Owner original documents evidencing an assumption, modification, consolidation or extension of any Mortgage

Loan entered into in accordance with Section 4.01 or 6.01 promptly after their execution; provided, however, that the Servicer shall provide the Custodian on behalf of the Owner with a certified true copy of any such document submitted for recordation promptly after its execution, and shall provide the original of any document submitted for recordation or a copy of such document certified by the appropriate public recording office to be a true and complete copy of the original within 180 days of its execution. If delivery is not completed within 180 days solely due to delays in making such delivery by reason of the fact that such documents shall not have been returned by the appropriate recording office, the Servicer shall continue to use its best efforts to effect delivery as soon as possible thereafter.

From time to time the Servicer may have a need for Mortgage Loan Documents to be released by the Custodian. If the Servicer shall require any of the Mortgage Loan Documents, the Servicer shall notify the Custodian in writing of such request in the form of the request for release attached hereto as Exhibit D. The Custodian shall deliver to the Servicer promptly, and in no event later than within five (5) Business Days, any requested Mortgage Loan Document previously delivered to the Custodian, provided that such documentation is promptly returned to the Custodian when the Servicer no longer requires possession of the document, and provided that during the time that any such documentation is held by the Servicer, such possession is in trust for the benefit of the Owner.

#### Section 2.06 Quality Control Procedures.

The Servicer must have an internal quality control program that verifies, on a regular basis, the existence and accuracy of the legal documents, credit documents, property appraisals, and underwriting decisions. The program must be capable of evaluating and monitoring the overall quality of its servicing activities. The purpose of the program is to ensure that the Mortgage Loans are serviced in accordance with prudent mortgage banking practices and accounting principles; guard against dishonest, fraudulent, or negligent acts; and guard against errors and omissions by officers, employees, or other authorized persons.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE SERVICER

#### Section 3.01 Representations and Warranties.

The Servicer represents, warrants and covenants to the Owner that as of the Effective Date or as of such date specifically provided herein:

(a) The Servicer is a validly existing corporation in good standing under the laws of the State of its organization and is qualified to transact business in, is in good standing under the laws of, and possesses all licenses necessary for the conduct of its business in, each State in which any Mortgaged Property is located or is otherwise exempt or not required under applicable law to effect such qualification or license and no demand for such qualification or license has been made upon the Servicer by any such State, and in any event the Servicer is in compliance with the laws of each such State to the extent necessary to ensure the enforceability

of each Mortgage Loan and the servicing of the Mortgage Loans in accordance with the terms of this Agreement;

(b) The Servicer has full power and authority to execute, deliver and perform, and to enter into and consummate all transactions contemplated by this Agreement and to conduct its business as presently conducted, has duly authorized the execution, delivery and performance of this Agreement, has duly executed and delivered this Agreement, and this Agreement constitutes a legal, valid and binding obligation of the Servicer, enforceable against it in accordance with its terms subject to bankruptcy laws and other similar laws of general application affecting rights of creditors and subject to the application of the rules of equity, including those respecting the availability of specific performance;

(c) None of the execution and delivery of this Agreement, the consummation of the transactions contemplated thereby and hereby, or the fulfillment of or compliance with the terms and conditions of this Agreement will conflict with any of the terms, conditions or provisions of the Servicer's articles of incorporation or by-laws or materially conflict with or result in a material breach of any of the terms, conditions or provisions of any legal restriction or any agreement or instrument to which the Servicer is now a party or by which it is bound, or constitute a default or result in an acceleration under any of the foregoing, or result in the material violation of any law, rule, regulation, order, judgment or decree to which the Servicer or its property is subject;

(d) There is no litigation pending or, to the Servicer's knowledge, threatened with respect to the Servicer which is reasonably likely to have a material adverse effect on the execution, delivery or enforceability of this Agreement, or which is reasonably likely to have a material adverse effect on the financial condition of the Servicer;

(e) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Servicer of or compliance by the Servicer with this Agreement or the consummation of the transactions contemplated by this Agreement except for consents, approvals, authorizations and orders which have been obtained;

(f) The collection and servicing practices used by the Servicer, with respect to each Mortgage Note and Mortgage have been in all material respects legal and in accordance with the Mortgage Loan Documents and Accepted Servicing Practices. With respect to escrow deposits and payments that the Servicer collects, all such payments are in the possession of, or under the control of, the Servicer, and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. No escrow deposits or other charges or payments due under the Mortgage Note have been capitalized under any Mortgage or the related Mortgage Note;

(g) The Servicer is in good standing to service mortgage loans for Fannie Mae and Freddie Mac and no event has occurred which would make the Servicer unable to comply with eligibility requirements or which would require notification to either Fannie Mae or Freddie Mac;

(h) No written statement, report or other document furnished or to be furnished pursuant to the Agreement contains or will contain any statement that is or will be inaccurate or misleading in any material respect or omits to state a material fact required to be stated therein or necessary to make the information and statements therein not misleading;

(i) No fraud or misrepresentation of a material fact with respect to the servicing of a Mortgage Loan has taken place on the part of the Servicer;

(j) At the time Servicer commenced servicing the Mortgage Loans, either (i) each Mortgagor was properly notified with respect to Servicer's servicing of the related Mortgage Loan in accordance with the Cranston Gonzalez National Affordable Housing Act of 1990, as the same may be amended from time to time, and the regulations provided in accordance with the Real Estate Settlement Procedures Act or (ii) such notification was not required; and

(k) At the time Servicer commenced servicing the Mortgage Loans, all applicable taxing authorities and insurance companies (including primary mortgage insurance policy insurers, if applicable) and/or agents were notified of the transfer of the servicing of the Mortgage Loans to Servicer, or its designee, and Servicer currently receives all related notices, tax bills and insurance statements. Additionally, any and all costs, fees and expenses associated with the Servicer's commencement of the servicing of the Mortgage Loans, including the costs of any insurer notifications, the transfer or implementation of tax service contracts, flood certification contracts, and any and all other servicing transfer-related costs and expenses have been paid for by the Servicer and will, in no event, be the responsibility of the Owner.

#### ARTICLE IV

#### ADMINISTRATION AND SERVICING OF MORTGAGE LOANS

##### Section 4.01 Servicer to Act as Servicer.

The Servicer, as independent contract servicer, shall service and administer the Mortgage Loans in accordance with this Agreement and with Accepted Servicing Practices (giving due consideration to the Owner's reliance on the Servicer), and shall have full power and authority, acting alone, to do or cause to be done any and all things in connection with such servicing and administration which the Servicer may deem necessary or desirable and consistent with the terms of this Agreement and with Accepted Servicing Practices and shall exercise the same care that it customarily employs for its own account. Except as set forth in this Agreement, the Servicer shall service the Mortgage Loans in accordance with Accepted Servicing Practices in compliance with the servicing provisions for MBS pool mortgages, as set forth in the Fannie Mae Guide, which include, but are not limited to, provisions regarding the liquidation of Mortgage Loans, the collection of Mortgage Loan payments, the payment of taxes, insurance and other charges, the maintenance of hazard insurance with a Qualified Insurer, the maintenance of fidelity bond and errors and omissions insurance, inspections, the restoration of Mortgaged Property, the maintenance of Primary Mortgage Insurance Policies, insurance claims, and title insurance, management of REO Property, permitted withdrawals with respect to REO Property, liquidation reports, and reports of foreclosures and abandonments of Mortgaged Property, the

transfer of Mortgaged Property, the release of Mortgage Loan Documents, annual statements, and examination of records and facilities. In the event of any conflict, inconsistency or discrepancy between any of the servicing provisions of this Agreement and any of the servicing provisions of the Fannie Mae Guide, the provisions of this Agreement shall control and be binding upon the Owner and the Servicer. The Servicer will accurately and fully report to all three (3) major credit reporting agencies its credit experience with each Mortgage Loan in a timely manner. The Owner shall, upon reasonable request, deliver powers-of-attorney to the Servicer sufficient to allow the Servicer as servicer to execute all documentation requiring execution on behalf of Owner with respect to the servicing of the Mortgage Loans, including satisfactions, partial releases, modifications and foreclosure documentation or, in the alternative, shall as promptly as reasonably possible, execute and return such documentation to the Servicer.

Consistent with the terms of this Agreement, the Servicer may waive, modify or vary any term of any Mortgage Loan or consent to the postponement of any such term or in any manner grant indulgence to any Mortgagor if in the Servicer's reasonable and prudent determination such waiver, modification, postponement or indulgence is not materially adverse to the Owner, provided, however, that unless the Servicer has obtained the prior written consent of the Owner, the Servicer shall not permit any modification with respect to any Mortgage Loan that would change the Mortgage Interest Rate, forgive the payment of principal or interest, reduce or increase the outstanding principal balance (except for actual payments of principal) or change the final maturity date on such Mortgage Loan. In the event of any such modification which has been agreed to in writing by the Owner and which permits the deferral of interest or principal payments on any Mortgage Loan, the Servicer shall, on the Business Day immediately preceding the related Remittance Date in any month in which any such principal or interest payment has been deferred, deposit in the Custodial Account from its own funds, in accordance with Section 4.04 and Section 5.03, the difference between (a) such month's principal and one month's interest at the related Mortgage Loan Remittance Rate on the unpaid principal balance of such Mortgage Loan and (b) the amount paid by the Mortgagor. The Servicer shall be entitled to reimbursement for such advances to the same extent as for all other advances pursuant to Section 4.05. Without limiting the generality of the foregoing, the Servicer shall continue, and is hereby authorized and empowered, to prepare, execute and deliver, all instruments of satisfaction or cancellation, or of partial or full release, discharge and all other comparable instruments, with respect to the Mortgage Loans and with respect to the Mortgaged Properties.

The Servicer shall perform all of its servicing responsibilities hereunder or may, with the Owner's prior written approval, cause a subservicer to perform any such servicing responsibilities on its behalf, but the use by the Servicer of a subservicer shall not release the Servicer from any of its obligations hereunder and the Servicer shall remain responsible hereunder for all acts and omissions of each subservicer as fully as if such acts and omissions were those of the Servicer. Any such subservicer that the Owner shall be requested to consent to must be a Fannie Mae approved seller/servicer or a Freddie Mac seller/servicer in good standing and no event shall have occurred, including but not limited to, a change in insurance coverage, which would make it unable to comply with the eligibility requirements for lenders imposed by Fannie Mae or for seller/servicers by Freddie Mac, or which would require notification to Fannie Mae or Freddie Mac. The Servicer shall pay all fees and expenses of each subservicer from its own funds, and a subservicer's fee shall not exceed the Servicing Fee.

At the cost and expense of the Servicer, without any right of reimbursement from the Custodial Account, the Servicer shall be entitled to terminate the rights and responsibilities of a subservicer and arrange, with the Owner's prior written approval, for any servicing responsibilities to be performed by a successor subservicer meeting the requirements in the preceding paragraph, provided, however, that nothing contained herein shall be deemed to prevent or prohibit the Servicer, at the Servicer's option, from electing to service the related Mortgage Loans itself. In the event that the Servicer's responsibilities and duties under this Agreement are terminated pursuant to Section 8.04, 9.01 or 10.01, and if requested to do so by the Owner, the Servicer shall at its own cost and expense terminate the rights and responsibilities of each subservicer effective as of the date of termination of the Servicer. The Servicer shall pay all fees, expenses or penalties necessary in order to terminate the rights and responsibilities of each subservicer from the Servicer's own funds without reimbursement from the Owner.

Notwithstanding any of the provisions of this Agreement relating to agreements or arrangements between the Servicer and a subservicer or any reference herein to actions taken through a subservicer or otherwise, the Servicer shall not be relieved of its obligations to the Owner and shall be obligated to the same extent and under the same terms and conditions as if it alone were servicing and administering the Mortgage Loans. The Servicer shall be entitled to enter into an agreement with a subservicer for indemnification of the Servicer by the subservicer and nothing contained in this Agreement shall be deemed to limit or modify such indemnification.

Any subservicing agreement and any other transactions or services relating to the Mortgage Loans involving a subservicer shall be deemed to be between such subservicer and Servicer alone, and the Owner shall have no obligations, duties or liabilities with respect to such Subservicer including no obligation, duty or liability of Owner to pay such subservicer's fees and expenses. For purposes of distributions and advances by the Servicer pursuant to this Agreement, the Servicer shall be deemed to have received a payment on a Mortgage Loan when a subservicer has received such payment.

#### Section 4.02 Collection of Mortgage Loan Payments.

Continuously from the Effective Date until the date each Mortgage Loan ceases to be subject to this Agreement, the Servicer will proceed with reasonable diligence to collect all payments due under each Mortgage Loan when the same shall become due and payable and shall, to the extent such procedures shall be consistent with this Agreement and the terms and provisions of any related Primary Mortgage Insurance Policy, follow such collection procedures as it follows with respect to mortgage loans comparable to the Mortgage Loans and held for its own account. Further, the Servicer will take reasonable care in ascertaining and estimating annual ground rents, taxes, assessments, water rates, fire and hazard insurance premiums, mortgage insurance premiums, and all other charges that, as provided in the Mortgage, will become due and payable to the end that the instalments payable by the Mortgagors will be sufficient to pay such charges as and when they become due and payable.

#### Section 4.03 Realization Upon Defaulted Mortgage Loans.

The Servicer shall use its reasonable efforts, consistent with the procedures that the Servicer would use in servicing loans for its own account and the requirements of the Fannie Mae Guide, to foreclose upon or otherwise comparably convert the ownership of properties securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments pursuant to Section 4.01. The Servicer shall use its reasonable efforts to realize upon defaulted Mortgage Loans in such manner as will maximize the receipt of principal and interest by the Owner, taking into account, among other things, the timing of foreclosure proceedings. The foregoing is subject to the provisions that, in any case in which Mortgaged Property shall have suffered damage, the Servicer shall not be required to expend its own funds toward the restoration of such property unless it shall determine in its discretion (i) that such restoration will increase the proceeds of liquidation of the related Mortgage Loan to the Owner after reimbursement to itself for such expenses, and (ii) that such expenses will be recoverable by the Servicer through Insurance Proceeds or Liquidation Proceeds from the related Mortgaged Property, as contemplated in Section 4.05. The Servicer shall notify the Owner in writing of the commencement of foreclosure proceedings. The Servicer shall be responsible for all costs and expenses incurred by it in any such proceedings or functions as Servicing Advances; provided, however, that it shall be entitled to reimbursement therefor from the related Mortgaged Property or otherwise, as contemplated in Section 4.05. Notwithstanding anything to the contrary contained herein, in connection with a foreclosure or acceptance of a deed in lieu of foreclosure, in the event the Servicer has reasonable cause to believe that a Mortgaged Property is contaminated by hazardous or toxic substances or wastes, or if the Owner otherwise requests an environmental inspection or review of such Mortgaged Property, such an inspection or review is to be conducted by a qualified inspector. Upon completion of the inspection, the Servicer shall promptly provide the Owner with a written report of the environmental inspection. After reviewing the environmental inspection report, Servicer shall consult with Owner in determining how to proceed with respect to the Mortgaged Property.

#### Section 4.04 Establishment of Custodial Accounts; Deposits in Custodial Accounts.

The Servicer shall segregate and hold all funds collected and received pursuant to each Mortgage Loan separate and apart from any of its own funds and general assets and shall establish and maintain one or more Custodial Accounts. Each Custodial Account shall be established with a Qualified Depository. To the extent such funds are not deposited in a Custodial Account, such funds may be invested in Permitted Investments for the benefit of the Owner (with any income earned thereon for the benefit of the Servicer). Funds deposited in the Custodial Account may be drawn on by the Servicer in accordance with Section 4.05. The creation of any Custodial Account shall be evidenced by a letter agreement in the form shown in Exhibit B hereto. The original of such letter agreement shall be furnished to the Owner upon request. The Servicer acknowledges and agrees that the Servicer shall bear any losses incurred with respect to Permitted Investments. The amount of any such losses shall be immediately deposited by the Servicer in the Custodial Account, as appropriate, out of the Servicer's own funds, with no right to reimbursement therefor.

The Servicer shall deposit in a mortgage clearing account on a daily basis, and in the Custodial Account or Accounts no later than the second Business Day after receipt of funds and retain therein the following payments and collections:

- (i) all payments on account of principal, including Principal Prepayments, on the Mortgage Loans received after the Cut-off Date;
- (ii) all payments on account of interest on the Mortgage Loans adjusted to the related Mortgage Loan Remittance Rate received after the Cut-off Date;
- (iii) all Liquidation Proceeds and REO Disposition Proceeds received after the Cut-off Date;
- (iv) any net amounts received by the Servicer after the Cut-off Date in connection with any REO Property pursuant to Section 4.13;
- (v) all Insurance Proceeds received after the Cut-off Date including amounts required to be deposited pursuant to Sections 4.08 and 4.10, other than proceeds to be held in the Escrow Account and applied to the restoration or repair of the Mortgaged Property or released to the Mortgagor in accordance with Accepted Servicing Practices, the Mortgage Loan Documents or applicable law;
- (vi) all Condemnation Proceeds affecting any Mortgaged Property received after the Cut-off Date other than proceeds to be held in the Escrow Account and applied to the restoration or repair of the Mortgaged Property or released to the Mortgagor in accordance with Accepted Servicing Practices, the Mortgage Loan Documents or applicable law;
- (vii) any Monthly Advances as provided in Section 5.03;
- (viii) any amounts received after the Cut-off Date and required to be deposited in the Custodial Account pursuant to 6.02; and
- (ix) with respect to each Principal Prepayment received after the Cut-off Date, an amount (to be paid by the Servicer out of its own funds without reimbursement therefor) which, when added to all amounts allocable to interest received in connection with such Principal Prepayment, equals one month's interest on the amount of principal so prepaid, at the Mortgage Loan Remittance Rate; provided, however, that in no event shall the aggregate of deposits made by the Servicer pursuant to this clause (ix) exceed the aggregate amount of the Servicing Fee in the calendar month in which such deposits are required.

The foregoing requirements for deposit in the Custodial Account shall be exclusive, it being understood and agreed that, without limiting the generality of the foregoing, payments in the nature of late payment charges and assumption fees, to the extent permitted by Section 6.01, need not be deposited by the Servicer in the Custodial Account. Any interest paid on funds deposited in the Custodial Account by the Qualified Depository shall accrue to the

benefit of the Servicer and the Servicer shall be entitled to retain and withdraw such interest from the Custodial Account pursuant to Section 4.05(iv).

Section 4.05 Permitted Withdrawals From the Custodial Account.

The Servicer may, from time to time, make withdrawals from the Custodial Account for the following purposes:

(i) to make payments to the Owner in the amounts and in the manner provided for in Section 5.01;

(ii) to reimburse itself for Monthly Advances, the Servicer's right to reimburse itself pursuant to this subclause (ii) being limited to amounts received on the related Mortgage Loan which represent late collections (net of the related Servicing Fees and Excess Servicing Fee if applicable) of principal and/or interest respecting which any such advance was made;

(iii) to reimburse itself for unreimbursed Servicing Advances and unreimbursed Monthly Advances, the Servicer's right to reimburse itself pursuant to this subclause (iii) with respect to any Mortgage Loan being limited to Liquidation Proceeds, Condemnation Proceeds and Insurance Proceeds received after the Cut-off Date related to such Mortgage Loan;

(iv) to pay to itself as servicing compensation (a) any interest earned on funds in the Custodial Account (all such interest to be withdrawn monthly not later than each Remittance Date) and (b) any payable Servicing Fee and Excess Servicing Fee if applicable;

(v) to reimburse itself for any Nonrecoverable Advances;

(vi) to transfer funds to another Qualified Depository in accordance with Section 4.09 hereof;

(vii) to remove funds inadvertently placed in the Custodial Account in error by the Servicer; and

(viii) to clear and terminate the Custodial Account upon the termination of this Agreement.

Section 4.06 Establishment of Escrow Accounts; Deposits in Escrow Accounts.

The Servicer shall segregate and hold all funds collected and received pursuant to each Mortgage Loan which constitute Escrow Payments separate and apart from any of its own funds and general assets and shall establish and maintain one or more Escrow Accounts. Each Escrow Account shall be established with a Qualified Depository. To the extent such funds are not deposited in an Escrow Account, such funds may be invested in Permitted Investments. Funds deposited in an Escrow Account may be drawn on by the Servicer in accordance with Section 4.07. The creation of any Escrow Account shall be evidenced by a letter agreement in

the form shown in Exhibit C. The original of such letter agreement shall be furnished to the Owner upon request. The Servicer acknowledges and agrees that the Servicer shall bear any losses incurred with respect to Permitted Investments. The amount of any such losses shall be immediately deposited by the Servicer in the Escrow Account, as appropriate, out of the Servicer's own funds, with no right to reimbursement therefor.

The Servicer shall deposit in a mortgage clearing account on a daily basis, and in the Escrow Account or Accounts no later than the second Business Day after receipt of funds and retain therein:

- (i) all Escrow Payments collected on account of the Mortgage Loans, for the purpose of effecting timely payment of any items as are required under the terms of this Agreement;
- (ii) all Insurance Proceeds and Condemnation Proceeds which are to be applied to the restoration or repair of any Mortgaged Property; and
- (iii) all Servicing Advances for Mortgagors whose Escrow Payments are insufficient to cover escrow disbursements.

The Servicer shall make withdrawals from an Escrow Account only to effect such payments as are required under this Agreement, and for such other purposes as shall be as set forth in and in accordance with Section 4.07. The Servicer shall be entitled to retain any interest paid on funds deposited in an Escrow Account by the Qualified Depository other than interest on escrowed funds required by law to be paid to the Mortgagor and, to the extent required by law, the Servicer shall pay interest on escrowed funds to the Mortgagor notwithstanding that the Escrow Account is non-interest bearing or that interest paid thereon is insufficient for such purposes.

#### Section 4.07 Permitted Withdrawals From Escrow Account.

Withdrawals from the Escrow Account may be made by the Servicer only:

- (i) to effect timely payments of ground rents, taxes, assessments, water rates, fire and hazard insurance premiums, Primary Mortgage Insurance Policy premiums, if applicable, and comparable items;
- (ii) to reimburse Servicer for any Servicing Advance made by Servicer with respect to a related Mortgage Loan but only from amounts received on the related Mortgage Loan which represent late payments or collections of Escrow Payments thereunder;
- (iii) to refund to the Mortgagor any funds as may be determined to be overages;
- (iv) for transfer to the Custodial Account in connection with an acquisition of REO Property;

- (v) for application to restoration or repair of the Mortgaged Property;
- (vi) to pay to the Servicer, or to the Mortgagor to the extent required by law, any interest paid on the funds deposited in the Escrow Account;
- (vii) to pay to the Mortgagors or other parties (to the extent required by applicable law and Accepted Servicing Practices) Insurance Proceeds or Condemnation Proceeds deposited in accordance with Section 4.06;
- (viii) to remove funds inadvertently placed in an Escrow Account in error by the Servicer; and
- (ix) to clear and terminate the Escrow Account on the termination of this Agreement.

As part of its servicing duties, the Servicer shall pay to the Mortgagors interest on funds in an Escrow Account, to the extent required by law, and to the extent that interest earned on funds in the Escrow Account is insufficient, shall pay such interest from its own funds, without any reimbursement therefor.

Section 4.08 Payment of Taxes, Insurance and Other Charges; Maintenance of Primary Mortgage Insurance Policies; Collections Thereunder.

With respect to each Mortgage Loan, the Servicer shall maintain accurate records reflecting the status of ground rents, taxes, assessments, water rates and other charges which are or may become a lien upon the Mortgaged Property and the status of Primary Mortgage Insurance Policy premiums and fire and hazard insurance coverage and shall obtain, from time to time, all bills for the payment of such charges, including renewal premiums and shall effect payment thereof prior to the applicable penalty or termination date and at a time appropriate for securing maximum discounts allowable, employing for such purpose deposits of the Mortgagor in the Escrow Account which shall have been estimated and accumulated by the Servicer in amounts sufficient for such purposes, as allowed under the terms of the Mortgage or applicable law. To the extent that the Mortgage does not provide for Escrow Payments, the Servicer shall determine that any such payments are made by the Mortgagor at the time they first become due. The Servicer assumes full responsibility for the timely payment of all such bills and shall effect timely payments of all such bills irrespective of the Mortgagor's faithful performance in the payment of same or the making of the Escrow Payments and shall make advances from its own funds to effect such payments.

The Servicer will maintain in full force and effect Primary Mortgage Insurance Policies issued by a Qualified Insurer with respect to each Mortgage Loan for which such coverage is herein required. Such coverage will be maintained until the ratio of the current outstanding principal balance of the related Mortgage Loan to the appraised value of the related Mortgaged Property, based on the most recent appraisal of the Mortgaged Property performed by a Qualified Appraiser, such appraisal to be included in the Servicing File, is reduced to an amount as permitted in the Fannie Mae Guide. The Servicer will not cancel or refuse to renew any Primary Mortgage Insurance Policy that is required to be kept in force under this Agreement unless a replacement Primary Mortgage Insurance Policy for such canceled or nonrenewed

policy is obtained from and maintained with a Qualified Insurer. The Servicer shall not take any action which would result in noncoverage under any applicable Primary Mortgage Insurance Policy of any loss which, but for the actions of the Servicer would have been covered thereunder. In connection with any assumption or substitution agreement entered into or to be entered into pursuant to Section 6.01, the Servicer shall promptly notify the insurer under the related Primary Mortgage Insurance Policy, if any, of such assumption or substitution of liability in accordance with the terms of such policy and shall take all actions which may be required by such insurer as a condition to the continuation of coverage under the Primary Mortgage Insurance Policy. If such Primary Mortgage Insurance Policy is terminated as a result of such assumption or substitution of liability, the Servicer shall obtain a replacement Primary Mortgage Insurance Policy as provided above.

In connection with its activities as servicer, the Servicer agrees to prepare and present, on behalf of itself and the Owner, claims to the insurer under any Private Mortgage Insurance Policy in a timely fashion in accordance with the terms of such Primary Mortgage Insurance Policy and, in this regard, to take such action as shall be necessary to permit recovery under any Primary Mortgage Insurance Policy respecting a defaulted Mortgage Loan. Pursuant to Section 4.04, any amounts collected by the Servicer under any Primary Mortgage Insurance Policy shall be deposited in the Custodial Account, subject to withdrawal pursuant to Section 4.05.

#### Section 4.09 Transfer of Accounts.

The Servicer may transfer the Custodial Account or the Escrow Account to a different Qualified Depository from time to time. The Servicer shall notify the Owner in writing of any such transfer within fifteen (15) Business Days of transfer.

#### Section 4.10 Maintenance of Hazard Insurance.

The Servicer shall cause to be maintained for each Mortgage Loan fire and hazard insurance with extended coverage as is customary in the area where the Mortgaged Property is located in an amount which is equal to the lesser of (i) the maximum insurable value of the improvements securing such Mortgage Loan or (ii) the greater of (a) the outstanding principal balance of the Mortgage Loan, and (b) the percentage such that the proceeds thereof shall be sufficient to prevent the Mortgagor and/or the Mortgagee from becoming a co-insurer. If the Mortgaged Property is in an area identified in the Federal Register by the Federal Emergency Management Agency as being a special flood hazard area that has federally-mandated flood insurance requirements, the Servicer will cause to be maintained a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (i) the outstanding principal balance of the Mortgage Loan, (ii) the maximum insurable value of the improvements securing such Mortgage Loan or (iii) the maximum amount of insurance which is available under the Flood Disaster Protection Act of 1973, as amended. The Servicer shall also maintain on the REO Property, fire and hazard insurance with extended coverage in an amount which is at least equal to the maximum insurable value of the improvements which are a part of such property, liability insurance and, to the extent required and available under the Flood Disaster Protection Act of 1973, as amended, flood insurance in an

amount as provided above. Any amounts collected by the Servicer under any such policies other than amounts to be deposited in the Escrow Account and applied to the restoration or repair of the Mortgaged Property or REO Property, or released to the Mortgagor in accordance with Accepted Servicing Practices, shall be deposited in the Custodial Account, subject to withdrawal pursuant to Section 4.05. It is understood and agreed that no other additional insurance need be required by the Servicer or the Mortgagor or maintained on property acquired in respect of the Mortgage Loans, other than pursuant to the Fannie Mae Guide or such applicable State or Federal laws and regulations as shall at any time be in force and as shall require such additional insurance. All such policies shall be endorsed with standard mortgagee clauses with loss payable to the Servicer and its successors and/or assigns and shall provide for at least thirty days prior written notice of any cancellation, reduction in the amount or material change in coverage to the Servicer. The Servicer shall not interfere with the Mortgagor's freedom of choice in selecting either his insurance carrier or agent, provided, however, that the Servicer shall not accept any such insurance policies from insurance companies unless such companies currently reflect a General Policy Rating in Best's Key Rating Guide currently acceptable to Fannie Mae and are licensed to do business in the State wherein the property subject to the policy is located.

#### Section 4.11 Adjustments to Mortgage Interest Rate and Monthly Payment.

For any ARM Loan, on each applicable Adjustment Date, the Mortgage Interest Rate shall be adjusted, in compliance with the requirements of the related Mortgage and Mortgage Note, to equal the sum of the Index plus the Margin (rounded in accordance with the related Mortgage Note) subject to the applicable Periodic Rate Cap and Lifetime Rate Cap, as set forth in the Mortgage Note. The Servicer shall execute and deliver the notices required by each Mortgage and Mortgage Note, applicable laws and regulations and Accepted Servicing Practices regarding interest rate adjustments. The Servicer shall also provide timely notification to the Owner of all applicable data and information regarding such interest rate adjustments.

#### Section 4.12 Fidelity Bond, Errors and Omissions Insurance.

The Servicer shall maintain, at its own expense, a blanket fidelity bond and an errors and omissions insurance policy, with broad coverage with responsible companies on all officers, employees or other persons acting in any capacity with regard to the Mortgage Loans and who handle funds, money, documents and papers relating to the Mortgage Loans. The Fidelity Bond and errors and omissions insurance shall be in the form of the Mortgage Banker's Blanket Bond and shall protect and insure the Servicer against losses, including forgery, theft, embezzlement, fraud, errors and omissions and negligent acts of such persons. Such Fidelity Bond and errors and omissions insurance shall also protect and insure the Servicer against losses in connection with the failure to maintain any insurance policies required pursuant to this Agreement and the release or satisfaction of a Mortgage Loan without having obtained payment in full of the indebtedness secured thereby. No provision of this Section 4.12 requiring the Fidelity Bond and errors and omissions insurance shall diminish or relieve the Servicer from its duties and obligations as set forth in this Agreement. The minimum coverage under any such Fidelity Bond and insurance policy shall be at least equal to the corresponding amounts required by Fannie Mae in the Fannie Mae Guide or by Freddie Mac in the Freddie Mac Guide. The Servicer shall, upon request of Owner, deliver to the Owner a certificate from the surety and the insurer as to the existence of the Fidelity Bond and errors and omissions insurance policy and

shall obtain a statement from the surety and the insurer that such Fidelity Bond or insurance policy shall in no event be terminated or materially modified without thirty days prior written notice to the Owner. The Servicer shall notify the Owner within five Business Days of receipt of notice that such Fidelity Bond or insurance policy will be, or has been, materially modified or terminated. The Owner and its successors or assigns as their interests may appear must be named as loss payees on the Fidelity Bond and as additional insured on the errors and omissions policy.

Section 4.13 Title, Management and Disposition of REO Property.

In the event that title to any Mortgaged Property is acquired in foreclosure or by deed in lieu of foreclosure, the deed or certificate of sale shall be taken in the name of the Owner or the Person designated by the Owner or in the event such person is not authorized or permitted to hold title to real property in the state where the REO Property is located, or would be adversely affected under the "doing business" or tax laws of such State by so holding title, the deed or certificate of sale shall be taken in the name of such Person or Persons as shall be consistent with an opinion of counsel obtained by the Servicer from an attorney duly licensed to practice law in the state where the REO Property is located. Any such Person or Persons holding such title other than the Owner shall acknowledge in writing that such title is being held as nominee for the benefit of the Owner.

The Servicer shall notify the Owner in accordance with prudent servicing practices of each acquisition of REO Property upon such acquisition, and thereafter assume the responsibility for marketing such REO Property in accordance with Accepted Servicing Practices. Thereafter, the Servicer shall continue to provide certain administrative services to the Owner relating to such REO Property as set forth in this Section 4.13. The REO Property must be sold within three years following the end of the calendar year of the date of acquisition, unless a REMIC election has been made with respect to the arrangement under which the Mortgage Loans and REO Property are held and (i) the Owner shall have been supplied with an Opinion of Counsel to the effect that the holding by the related trust of such Mortgaged Property subsequent to such three-year period (and specifying the period beyond such three-year period for which the Mortgaged Property may be held) will not result in the imposition of taxes on "prohibited transactions" of the related trust as defined in Section 860F of the Code, or cause the related REMIC to fail to qualify as a REMIC, in which case the related trust may continue to hold such Mortgaged Property (subject to any conditions contained in such Opinion of Counsel), or (ii) the Owner (at the Servicer's expense) or the Servicer shall have applied for, prior to the expiration of such three-year period, an extension of such three-year period in the manner contemplated by Section 856(e)(3) of the Code, in which case the three-year period shall be extended by the applicable period. If a period longer than three years is permitted under the foregoing sentence and is necessary to sell any REO Property, the Servicer shall report monthly to the Owner as to progress being made in selling such REO Property.

Notwithstanding any other provision of this Agreement, if a REMIC election has been made, no Mortgaged Property held by a REMIC shall be rented (or allowed to continue to be rented) or otherwise used for the production of income by or on behalf of the related trust or sold in such a manner or pursuant to any terms that would (i) cause such Mortgaged Property to fail to qualify at any time as "foreclosure property" within a meaning of Section 860G(a)(8) of

the Code, (ii) subject the related trust to the imposition of any Federal or State income taxes on "net income from foreclosure property" with respect to such Mortgaged Property within the meaning of Section 860G(c) of the Code, or (iii) cause the sale of such Mortgaged Property to result in the receipt by the related trust or any income from non-permitted assets as described in Section 860F(a) (2)(B) of the Code, unless the Servicer has agreed to indemnify and hold harmless the related trust with respect to the imposition of any such taxes.

The Servicer shall, either itself or through an agent selected by the Servicer, and in accordance with the Fannie Mae Guide, manage, conserve, protect and operate each REO Property in the same manner that it manages, conserves, protects and operates other foreclosed property for its own account, and in the same manner that similar property in the same locality as the REO Property is managed. Each REO Disposition shall be carried out by the Servicer at such price and upon such terms and conditions as the Servicer deems to be in the best interest of the Owner. The REO Disposition Proceeds from the sale of the REO Property shall be promptly deposited in the Custodial Account. As soon as practical thereafter, the expenses of such sale shall be paid and the Servicer shall reimburse itself for any related Servicing Advances, or Monthly Advances made pursuant to Section 5.03.

The Servicer shall cause each REO Property to be inspected promptly upon the acquisition of title thereto and shall cause each REO Property to be inspected at least monthly thereafter or more frequently as may be required by the circumstances. The Servicer shall make or cause the inspector to make a written report of each such inspection. Such reports shall be retained in the Servicing File and copies thereof shall be forwarded by the Servicer to the Owner.

Notwithstanding anything to the contrary set forth in this Section 4.13, the parties hereto hereby agree that the Owner, at its option, shall be entitled to manage, conserve, protect and operate each REO Property for its own benefit (such option, an "REO Option"). In connection with the exercise of an REO Option, the prior two paragraphs and the related provisions of Section 4.03 and Section 4.04(iii) (such provisions, the "REO Marketing Provisions") shall be revised as follows. Following the acquisition of any Mortgaged Property, the Servicer shall submit a detailed invoice to the Owner for all related Servicing Advances and, upon exercising the REO Option, the Owner shall promptly reimburse the Servicer for such amounts. In the event the REO Option is exercised with respect to an REO Property, Section 4.04 (iii) shall not be applicable thereto. References made in Section 4.03 with respect to the reimbursement of Servicing Advances shall, for purposes of such REO Property, be deemed to be covered by this paragraph. The Owner acknowledges that, in the event it exercises an REO Option, with respect to the related REO Property, there shall be no breach by the Servicer based upon or arising out of the Servicer's failure to comply with the REO Marketing Provisions.

## ARTICLE V

### PAYMENTS TO THE OWNER

#### Section 5.01 Remittances.

On each Remittance Date, the Servicer shall remit to the Owner (i) all amounts credited to the Custodial Account as of the close of business on the related preceding Determination Date (net of charges against or withdrawals from the Custodial Account pursuant to Section 4.05), plus, to the extent not already deposited in the Custodial Account, (ii) all Monthly Advances, if any, which the Servicer is obligated to distribute pursuant to Section 5.03 minus (iii) any amounts attributable to Principal Prepayments collected after the Cut-off Date but received after the last day of the calendar month immediately preceding the month in which the related Determination Date occurs, minus (iv) any amounts attributable to Monthly Payments collected after the Cut-off Date but due on a Due Date or Dates subsequent to the last day of the related Due Period, which amounts shall be remitted on the related Remittance Date next succeeding the Due Period for such amounts.

With respect to any remittance received by the Owner after the Business Day on which such payment was due, the Servicer shall pay to the Owner interest on any such late payment at an annual rate equal to the Prime Rate, adjusted as of the date of each change, plus two percentage points, but in no event greater than the maximum amount permitted by applicable law. Such interest shall be paid on the date such late payment is made and shall cover the period commencing with the day following such Business Day and ending with the Business Day on which such payment is made, both inclusive. The payment by the Servicer of any such interest shall not be deemed an extension of time for payment or a waiver of any Event of Default by the Servicer.

#### Section 5.02 Statements to the Owner.

The Servicer shall furnish to the Owner an individual Mortgage Loan accounting report (a "Report"), as of the last Business Day of each month, in the Servicer's assigned loan number order to document Mortgage Loan payment activity on an individual Mortgage Loan basis. With respect to each month, such Report shall be received by the Owner no later than the tenth day of the following month (or if such tenth day is not a Business Day, the immediately preceding Business Day) of the related Due Period on a disk or tape or other computer-readable format, in such format as may be mutually agreed upon by both the Owner and the Servicer, which Report shall contain but not necessarily be limited to, the following:

- (i) with respect to each Monthly Payment, the amount of such remittance allocable to interest;
- (ii) the amount of servicing compensation received by the Servicer during the prior distribution period;
- (iii) the aggregate Stated Principal Balance of the Mortgage Loans;

(iv) the number and aggregate outstanding principal balances of Mortgage Loans (a) delinquent (1) 30 to 59 days, (2) 60 to 89 days, (3) 90 days or more; (b) as to which foreclosure has commenced; and (c) as to which REO Property has been acquired; and

(v) such other reports as may reasonably be required by the Owner.

The Servicer shall also provide a trial balance, sorted in the Owner's assigned loan number order, and such other loan level scheduled-scheduled remittance information as described on Exhibit E, in electronic tape form, with each such Report.

The Servicer shall prepare and file any and all information statements or other filings required to be delivered to any governmental taxing authority or to Owner pursuant to any applicable law with respect to the Mortgage Loans and the transactions contemplated hereby. In addition, the Servicer shall provide the Owner with such information concerning the Mortgage Loans as is necessary for the Owner to prepare its Federal income tax return as the Owner may reasonably request from time to time.

In addition, not more than sixty (60) days after the end of each calendar year, the Servicer shall furnish to each Person who was an Owner at any time during such calendar year an annual statement in accordance with the requirements of applicable Federal income tax law as to the aggregate of remittances of principal and interest for the applicable portion of such year.

#### Section 5.03 Monthly Advances by the Servicer.

Not later than the close of business on the Business Day preceding each Remittance Date, the Servicer shall deposit in the Custodial Account an amount equal to all payments not previously advanced by the Servicer, whether or not deferred pursuant to Section 4.01, of Monthly Payments, adjusted to the related Mortgage Loan Remittance Rate, which are delinquent at the close of business on the related Determination Date; provided, however, that the amount of any such deposit may be reduced by (i) the Amount Held for Future Distribution (as defined below) then on deposit in the Custodial Account, plus (ii) with respect to the initial Remittance Date, the Non-held Early Pay Amount (as defined below). Any portion of the Amount Held for Future Distribution used to pay Monthly Advances shall be replaced by the Servicer by deposit into the Custodial Account on any future Remittance Date to the extent that the funds that are available in the Custodial Account for remittance to the Owner on such Remittance Date are less than the amount of payments required to be made to the Owner on such Remittance Date.

The "Amount Held for Future Distribution" as to any Remittance Date shall be the total of the amounts held in the Custodial Account at the close of business on the preceding Determination Date which were received after the Cut-off Date on account of (i) Liquidation Proceeds, Insurance Proceeds, Condemnation Proceeds and Principal Prepayments received or made in the month of such Remittance Date and (ii) payments which represent early receipt of Monthly Payments due on a date or dates subsequent to the related Due Date. The "Non-held Early Pay Amount" shall be the total of the amounts then on deposit in the Custodial Account on

account of payments which represent early receipt of Monthly Payments received on or prior to the Cut-off Date.

The Servicer's obligation to make such Monthly Advances as to any Mortgage Loan will continue through the final disposition or liquidation of the Mortgaged Property, unless the Servicer deems such advance to be nonrecoverable from Liquidation Proceeds, REO Disposition Proceeds, Condemnation Proceeds or Insurance Proceeds with respect to the applicable Mortgage Loan. In such latter event, the Servicer shall deliver to the Owner an Officer's Certificate of the Servicer to the effect that an officer of the Servicer has reviewed the related Servicing File and has obtained a recent appraisal and has made the reasonable determination that any additional advances are nonrecoverable from Liquidation Proceeds or Insurance Proceeds with respect to the applicable Mortgage Loan.

#### Section 5.04 Liquidation Reports.

Upon the foreclosure sale of any Mortgaged Property or the acquisition thereof by the Owner pursuant to a deed-in-lieu of foreclosure, the Servicer shall submit to the Owner a liquidation report with respect to such Mortgaged Property in such form as the Servicer and the Owner shall agree. The Servicer shall also provide reports on the status of REO Property containing such information as Owner may reasonably require.

### ARTICLE VI

#### GENERAL SERVICING PROCEDURES

##### Section 6.01 Assumption Agreements.

The Servicer will, to the extent it has knowledge of any conveyance or prospective conveyance by any Mortgagor of a Mortgaged Property (whether by absolute conveyance or by contract of, sale, and whether or not the Mortgagor remains or is to remain liable under the Mortgage Note and/or the Mortgage), exercise its rights to accelerate the maturity of such Mortgage Loan under any "due-on-sale" clause to the extent permitted by law; provided, however, that the Servicer shall not exercise any such rights if prohibited by law or the terms of the Mortgage Note from doing so or if the exercise of such rights would impair or threaten to impair any recovery under the related Primary Mortgage Insurance Policy, if any. If the Servicer reasonably believes it is unable under applicable law to enforce such "due-on-sale" clause, the Servicer, with the approval of the Owner (such approval not to be unreasonably withheld), will enter into an assumption agreement with the person to whom the Mortgaged Property has been conveyed or is proposed to be conveyed, pursuant to which such person becomes liable under the Mortgage Note and, to the extent permitted by applicable State law, the Mortgagor remains liable thereon. Where an assumption is allowed pursuant to this Section 6.01, the Servicer, with the prior consent of the primary mortgage insurer, if any, is authorized to enter into a substitution of liability agreement with the person to whom the Mortgaged Property has been conveyed or is proposed to be conveyed pursuant to which the original mortgagor is released from liability and such Person is substituted as mortgagor and becomes liable under the related Mortgage Note. Any such substitution of liability agreement shall be in lieu of an assumption agreement.

In connection with any such assumption or substitution of liability, the Servicer shall follow the underwriting practices and procedures of the Fannie Mae Guide related to "A"-quality mortgage loans. With respect to an assumption or substitution of liability, the Mortgage Interest Rate borne by the related Mortgage Note, the amount of the Monthly Payment, and the final maturity date may not be changed. In addition, for ARM Loans, in no event shall the Index, Margin, Periodic Rate Cap, Adjustment Date, Lifetime Rate Cap or minimum rate be changed. The Servicer shall notify the Owner that any such substitution of liability or assumption agreement has been completed by forwarding to the Owner the original of any such substitution of liability or assumption agreement, which document shall be added to the related Mortgage Loan Documents and shall, for all purposes, be considered a part of such related mortgage file to the same extent as all other documents and instruments constituting a part thereof. All fees collected by the Servicer for entering into an assumption or substitution of liability agreement shall belong to the Servicer.

Notwithstanding the foregoing paragraphs of this section or any other provision of this Agreement, the Servicer shall not be deemed to be in default, breach or any other violation of its obligations hereunder by reason of any assumption of a Mortgage Loan by operation of law or any assumption which the Servicer may be restricted by law from preventing, for any reason whatsoever. For purposes of this Section 6.01, the term "assumption" is deemed to also include a sale of the Mortgaged Property subject to the Mortgage that is not accompanied by an assumption or substitution of liability agreement.

Section 6.02 Satisfaction of Mortgages and Release of Mortgage Loan Documents.

Upon the payment in full of any Mortgage Loan, the Servicer will immediately notify the Custodian with a certification and request for release by a Servicing Officer, which certification shall include a statement to the effect that all amounts received in connection with such payment which are required to be deposited in the Custodial Account pursuant to Section 4.04 have been so deposited, and a request for delivery to the Servicer of the portion of the Mortgage Loan Documents held by the Custodian. Upon receipt of such certification and request, the Owner shall promptly release or cause the Custodian to promptly release the related Mortgage Loan Documents to the Servicer and the Servicer shall prepare and deliver for execution by the Owner or at the Owner's option execute under the authority of a power of attorney delivered to the Servicer by the Owner any satisfaction or release. No expense incurred in connection with any instrument of satisfaction or deed of reconveyance shall be chargeable to the Custodial Account.

In the event the Servicer satisfies or releases a Mortgage without having obtained payment in full of the indebtedness secured by the Mortgage or should it otherwise prejudice any right the Owner may have under the mortgage instruments, the Servicer shall remit to the Owner the then outstanding principal balance of the related Mortgage Loan by deposit thereof in the Custodial Account. The Servicer shall maintain the Fidelity Bond insuring the Servicer against any loss it may sustain with respect to any Mortgage Loan not satisfied in accordance with the procedures set forth herein.

From time to time and as appropriate for the servicing or foreclosure of the Mortgage Loans, including for the purpose of collection under any Primary Mortgage Insurance Policy, upon request of the Servicer and delivery to the Custodian of a servicing receipt signed by a Servicing Officer, the Custodian shall release that portion of the Mortgage Loan Documents held by the Custodian to the Servicer. Such servicing receipt shall obligate the Servicer to promptly return the related Mortgage Loan Documents to the Custodian, when the need therefor by the Servicer no longer exists, unless the Mortgage Loan has been liquidated and the Liquidation Proceeds relating to the Mortgage Loan have been deposited in the Custodial Account or such documents have been delivered to an attorney, or to a public trustee or other public official as required by law, for purposes of initiating or pursuing legal action or other proceedings for the foreclosure of the Mortgaged Property either judicially or non-judicially, and the Servicer has promptly delivered to the Owner or the Custodian a certificate of a Servicing Officer certifying as to the name and address of the Person to which such documents were delivered and the purpose or purposes of such delivery. Upon receipt of a certificate of a Servicing Officer stating that such Mortgage Loan was liquidated, the servicing receipt shall be released by the Owner or the Custodian, as applicable, to the Servicer.

#### Section 6.03 Servicing Compensation.

As compensation for its services hereunder, the Servicer shall be entitled to withdraw from the Custodial Account or to retain from interest payments on the Mortgage Loans the amounts provided for as the Servicer's Servicing Fee and Excess Servicing Fee, if applicable. Additional servicing compensation in the form of assumption fees, as provided in Section 6.01, late payment charges and other ancillary fees shall be retained by the Servicer to the extent not required to be deposited in the Custodial Account. The Servicer shall be required to pay all expenses incurred by it in connection with its servicing activities hereunder and shall not be entitled to reimbursement therefor except as specifically provided for herein.

#### Section 6.04 Annual Statement as to Compliance.

The Servicer will deliver to the Owner not later than ninety (90) days following the end of each fiscal year of the Servicer, an Officers' Certificate stating, as to each signatory thereof, that (i) a review of the activities of the Servicer during the preceding calendar year and of performance under this Agreement has been made under such officers' supervision, and (ii) to the best of such officers' knowledge, based on such review, the Servicer has fulfilled all of its obligations under this Agreement throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to such officers and the nature and status thereof except for such defaults as such Officers in their good faith judgment believe to be immaterial.

#### Section 6.05 Annual Independent Certified Public Accountants' Servicing Report.

Not later than ninety (90) days following the end of each fiscal year of the Servicer, the Servicer at its expense shall cause a firm of independent public accountants which is a member of the American Institute of Certified Public Accountants to furnish a statement to the Owner to the effect that such firm has examined certain documents and records relating to the

Servicer's servicing of mortgage loans of the same type as the Mortgage Loans pursuant to servicing agreements substantially similar to this Agreement, which agreements may include this Agreement, and that, on the basis of such an examination, conducted substantially in accordance with the Uniform Single Attestation Program for Mortgage Bankers, such firm is of the opinion that the Servicer's servicing has been conducted in compliance with the agreements examined pursuant to this Section 6.05, except for (i) such exceptions as such firm shall believe to be immaterial, and (ii) such other exceptions as shall be set forth in such statement.

Section 6.06 Owner's Right to Examine Servicer Records.

The Owner shall have the right to examine and audit, at its expense, upon reasonable notice to the Servicer, during business hours or at such other times as might be reasonable under applicable circumstances, any and all of the books, records, documentation or other information of the Servicer, or held by another for the Servicer or on its behalf or otherwise, which relate to the performance or observance by the Servicer of the terms, covenants or conditions of this Agreement.

The Servicer shall provide to the Owner and any supervisory agents or examiners representing a State or Federal governmental agency having jurisdiction over the Owner, including but not limited to the OTS, FDIC and other similar entities, access to any documentation regarding the Mortgage Loans in the possession of the Servicer which may be required by any applicable regulations. Such access shall be afforded without charge, upon reasonable request, during normal business hours and at the offices of the Servicer, and in accordance with the applicable Federal government agency, FDIC, OTS, or any other similar regulations.

Section 6.07 Compliance with REMIC Provisions.

If a REMIC election has been made with respect to the arrangement under which the Mortgage Loans and REO Property, or any portion thereof, are held, the Servicer shall not take any action, cause the REMIC to take any action or fail to take (or fail to cause to be taken) any action that, under the REMIC Provisions, if taken or not taken, as the case may be could (i) endanger the status of the REMIC as a REMIC or (ii) result in the imposition of a tax upon the REMIC (including but not limited to the tax on "prohibited transactions" as defined in Section 860F(a)(2) of the Code and the tax on "contribution" to a REMIC set forth in Section 860G(d) of the Code) unless the Servicer has received an Opinion of Counsel (at the expense of the party seeking to take such actions) to the effect that the contemplated action will not endanger such REMIC status or result in the imposition of any such tax.

Section 6.08 Non-solicitation.

From and after the date of the related Confirmation, the Servicer agrees that it will not take any action or facilitate or cause any action to be taken by any of its agents or affiliates, or by any independent contractors on the Servicer's behalf, to personally, by telephone or mail, solicit the Mortgagor under any Mortgage Loan to refinance such Mortgage Loan, in whole or in part, without the prior written consent of the Owner. Notwithstanding the foregoing, it is understood and agreed that promotions (including for the refinancing of mortgage loans)

undertaken by the Servicer or any affiliates of the Servicer which are directed to the general public at large, or segments thereof, provided that no segment shall consist primarily of the Mortgage Loans, including, without limitation, mass mailing advertisements based on commercially acquired mailing lists or the Servicer's entire servicing portfolio, and newspaper, radio and television advertisements shall not constitute solicitation under this Section 6.08. This Section 6.08 shall not be deemed to preclude the Servicer or any of its affiliates from soliciting any Mortgagor for any other financial products or services.

## ARTICLE VII

### REPORTS TO BE PREPARED BY SERVICER

#### Section 7.01 Servicer Shall Provide Information as Reasonably Required.

The Servicer shall furnish to the Owner upon request, during the term of this Agreement, such periodic, special or other reports or information, whether or not provided for herein, as shall be necessary, reasonable or appropriate with respect to the purposes of this Agreement. The Servicer may negotiate with the Owner for a reasonable fee for providing such report or information, unless (i) the Servicer is required to supply such report or information pursuant to any other section of this Agreement, or (ii) the report or information has been requested in connection with Internal Revenue Service, OTS, FDIC or other regulatory agency requirements. All such reports or information shall be provided by and in accordance with all reasonable instructions and directions given by the Owner. The Servicer agrees to execute and deliver all such instruments and take all such action as the Owner, from time to time, may reasonably request in order to effectuate the purpose and to carry out the terms of this Agreement.

## ARTICLE VIII

### THE SERVICER

#### Section 8.01 Indemnification: Third Party Claims.

The Servicer agrees to indemnify the Owner and hold it harmless from and against any and all claims, losses, damages, penalties, fines, forfeitures, legal fees and related costs, judgments, and any other costs, fees and expenses that the Owner may sustain in any way related to the failure of the Servicer to perform in any way its duties and service the Mortgage Loans in strict compliance with the terms of this Agreement and for breach of any representation or warranty of the Servicer contained herein. The Servicer shall immediately notify the Owner if a claim is made by a third party with respect to this Agreement or the Mortgage Loans, assume (with the consent of the Owner and with counsel reasonably satisfactory to the Owner) the defense of any such claim and pay all expenses in connection therewith, including counsel fees, and promptly pay, discharge and satisfy any judgment or decree which may be entered against it or the Owner in respect of such claim but failure to so notify the Owner shall not limit its obligations hereunder. The Servicer agrees that it will not enter into any settlement of any such claim without the consent of the Owner unless such settlement includes an unconditional release

of the Owner from all liability that is the subject matter of such claim. The provisions of this Section 8.01 shall survive termination of this Agreement. In no event will either Purchaser or Seller be liable to the other party to this Agreement for incidental or consequential damages, including, without limitation, loss of profit or loss of business or business opportunity, regardless of the form of action whether in contract, tort or otherwise.

Section 8.02 Merger or Consolidation of the Servicer.

The Servicer will keep in full effect its existence, rights and franchises as a corporation under the laws of the State of its incorporation except as permitted herein, and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement or any of the Mortgage Loans and to perform its duties under this Agreement.

Any Person into which the Servicer may be merged or consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any Person succeeding to the business of the Servicer whether or not related to loan servicing, shall be the successor of the Servicer hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that the successor or surviving Person shall be an institution (i) having a GAAP net worth of not less than \$25,000,000, (ii) the deposits of which are insured by the FDIC, SAIF and/or BIF, or which is a HUD-approved mortgagee whose primary business is in origination and servicing of first lien mortgage loans, and (iii) which is a Fannie Mae or Freddie Mac approved seller/servicer in good standing.

Section 8.03 Limitation on Liability of the Servicer and Others.

Neither the Servicer nor any of the officers, employees or agents of the Servicer shall be under any liability to the Owner for any action taken or for refraining from the taking of any action in good faith pursuant to this Agreement, or for errors in judgment made in good faith; provided, however, that this provision shall not protect the Servicer or any such person against any breach of warranties or representations made herein, or failure to perform in any way its obligations in compliance with any standard of care set forth in this Agreement, or any liability which would otherwise be imposed by reason of negligence or any breach of the terms and conditions of this Agreement. The Servicer and any officer, employee or agent of the Servicer may rely in good faith on any document of any kind prima facie properly executed and submitted by the Owner respecting any matters arising hereunder. The Servicer shall not be under any obligation to appear in, prosecute or defend any legal action which is not incidental to its duties to service the Mortgage Loans in accordance with this Agreement and which in its opinion may involve it in any expenses or liability; provided, however, that the Servicer may, with the consent of the Owner, which consent shall not be unreasonably withheld, undertake any such action which it may deem necessary or desirable with respect to this Agreement and the rights and duties of the parties hereto. In such event, the reasonable legal expenses and costs of such action and any liability resulting therefrom shall be expenses, costs and liabilities for which the Owner will be liable, and the Servicer shall be entitled to be reimbursed therefor from the Owner upon written demand.

Section 8.04 Servicer Not to Resign.

The Servicer shall not resign from the obligations and duties hereby imposed on it except by mutual consent of the Servicer and the Owner or upon the determination that its duties hereunder are no longer permissible under applicable law and such incapacity cannot be cured by the Servicer. Any such determination permitting the resignation of the Servicer shall be evidenced by an Opinion of Counsel to such effect delivered to the Owner which Opinion of Counsel shall be in form and substance acceptable to the Owner. No such resignation shall become effective until a successor shall have assumed the Servicer's responsibilities and obligations hereunder in the manner provided in Section 11.01.

Section 8.05 No Transfer of Servicing.

With respect to the retention of the Servicer to service the Mortgage Loans hereunder, the Servicer acknowledges that the Owner has acted in reliance upon the Servicer's independent status, the adequacy of its servicing facilities, plan, personnel, records and procedures, its integrity, reputation and financial standing and the continuance thereof. Without in any way limiting the generality of this section, the Servicer shall not either assign this Agreement or the servicing hereunder or delegate its rights or duties hereunder or any portion thereof, or sell or otherwise dispose of all or substantially all of its property or assets, without the prior written approval of the Owner, which approval shall not be unreasonably withheld; provided that the Servicer may assign the Agreement and the servicing hereunder without the consent of Owner to an affiliate of the Servicer to which all servicing of the Servicer is assigned so long as (i) such affiliate is a Fannie Mae and Freddie Mac approved servicer and (ii) if it is intended that such affiliate be spun off to the shareholders of the Servicer, such affiliate have a GAAP net worth of at least \$10,000,000 and (iii) such affiliate shall deliver to the Owner a certification pursuant to which such affiliate shall agree to be bound by the terms and conditions of this Agreement and shall certify that such affiliate is a Fannie Mae and Freddie Mac approved servicer in good standing.

ARTICLE IX

DEFAULT

Section 9.01 Events of Default.

In case one or more of the following Events of Default by the Servicer shall occur and be continuing, that is to say:

- (i) any failure by the Servicer to remit to the Owner any payment required to be made under the terms of this Agreement which continues unremedied for a period of three (3) Business Days after written notice thereof (it being understood that this subparagraph shall not affect Servicer's obligation pursuant to Section 5.01 to pay default interest on any remittance received by the Owner after the Business Day on which such payment was due); or

(ii) any failure on the part of the Servicer duly to observe or perform in any material respect any other of the covenants or agreements on the part of the Servicer set forth in this Agreement, the breach of which has a material adverse effect and which continues unremedied for a period of forty-five (45) days (except that such number of days shall be fifteen in the case of a failure to pay any premium for any insurance policy required to be maintained under this Agreement and such failure shall be deemed to have a material adverse effect) after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer by the Owner; or

(iii) a decree or order of a court or agency or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, bankruptcy, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against the Servicer and such decree or order shall have remained in force undischarged or unstayed for a period of sixty days; or

(iv) the Servicer shall consent to the appointment of a conservator or receiver or liquidator in any insolvency, bankruptcy, readjustment of debt, marshaling of assets and liabilities or similar proceedings of or relating to the Servicer or of or relating to all or substantially all of its property; or

(v) the Servicer shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of any applicable insolvency or reorganization statute, make an assignment for the benefit of its creditors, or voluntarily suspend payment of its obligations; or

(vi) the Servicer ceases to be approved by either Fannie Mae or Freddie Mac (to the extent such entities are then operating in a capacity similar to that in which they operate on the date of this Agreement) as a mortgage loan servicer for more than thirty days; or

(vii) the Servicer attempts to assign its right to servicing compensation hereunder or the Servicer attempts, without the consent of the Owner, to sell or otherwise dispose of all or substantially all of its property or assets or to assign this Agreement or the servicing responsibilities hereunder or to delegate its duties hereunder or any portion thereof except as otherwise permitted herein.

then, and in each and every such case, so long as an Event of Default shall not have been remedied, the Owner, by notice in writing to the Servicer may, in addition to whatever rights the Owner may have under Section 8.01 and at law or equity to damages, including injunctive relief and specific performance, terminate all the rights and obligations of the Servicer under this Agreement and in and to the Mortgage Loans and the proceeds thereof without compensating the Servicer for the same. On or after the receipt by the Servicer of such written notice, all authority and power of the Servicer under this Agreement, whether with respect to the Mortgage Loans or otherwise, shall pass to and be vested in the successor appointed pursuant to Section 11.01. Upon written request from the Owner, the Servicer shall prepare, execute and deliver, any and all documents and other instruments, place in such successor's possession all Servicing Files, and

do or accomplish all other acts or things necessary or appropriate to effect the purposes of such notice of termination, whether to complete the transfer and endorsement or assignment of the Mortgage Loans and related documents, or otherwise, at the Servicer's sole expense. The Servicer agrees to cooperate with the Owner and such successor in effecting the termination of the Servicer's responsibilities and rights hereunder, including, without limitation, the transfer to such successor for administration by it of all cash amounts which shall at the time be credited by the Servicer to the Custodial Account or Escrow Account or thereafter received with respect to the Mortgage Loans or any REO Property.

#### Section 9.02 Waiver of Defaults.

The Owner may waive only by written notice any default by the Servicer in the performance of its obligations hereunder and its consequences. Upon any such waiver of a past default, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon except to the extent expressly so waived in writing.

### ARTICLE X

#### TERMINATION

##### Section 10.01 Termination.

The respective obligations and responsibilities of the Servicer shall terminate upon: (i) the later of the final payment or other liquidation (or any advance with respect thereto) of the last Mortgage Loan or the disposition of all REO Property and the remittance of all funds due hereunder; or (ii) by mutual consent of the Servicer and the Owner in writing; or (iii) termination by the Owner pursuant to Section 9.01. Simultaneously with any such termination and the transfer of servicing hereunder, the Servicer shall be entitled to be reimbursed for any outstanding Servicing Advances and Monthly Advances.

##### Section 10.02 Removal of Mortgage Loans from Inclusion under this Agreement upon a Whole Loan Transfer or a Pass-Through Transfer.

The Servicer acknowledges and the Owner agrees that with respect to some or all of the Mortgage Loans, the Owner may effect either (1) one or more Whole Loan Transfers, or (2) one or more Pass-Through Transfers.

The Servicer shall cooperate with the Owner in connection with any Whole Loan Transfer or Pass-Through Transfer contemplated by the Owner pursuant to this Section. In connection therewith, and without limitation, unless otherwise agreed by Servicer and Owner, the Owner shall deliver any reconstitution agreement or other document related to the Whole Loan Transfer or Pass-Through Transfer to the Servicer at least fifteen (15) days prior to such Whole Loan Transfer or Pass-Through Transfer (or thirty (30) days if such transfer is to take place in March, June, September or December) and the Servicer shall execute any such reconstitution agreement which contains provisions substantially similar to those herein or

otherwise reasonably acceptable to the Owner and the Servicer and which restates the representations and warranties contained in Article III as of the date of transfer (except to the extent any such representation or warranty is not accurate on such date).

With respect to each Whole Loan Transfer or Pass-Through Transfer, as the case may be, effected by the Owner, Owner (i) shall reimburse Servicer for all reasonable out-of-pocket third party costs and expenses related thereto and (ii) shall pay Servicer a reasonable amount representing time and effort expended by Servicer related thereto (which amount shall be reasonably agreed upon by Servicer and Owner prior to the expenditure of such time and effort); provided, however, that for each Whole Loan Transfer and/or Pass-Through Transfer, the sum of such amounts described in subsections (i) and (ii) above shall in no event exceed \$5,000. For purposes of this paragraph, all Whole Loan Transfers and/or Pass-Through Transfers made to the same entity within the same accounting cycle shall be considered one Whole Loan Transfer or Pass-Through Transfer.

All Mortgage Loans not sold or transferred pursuant to a Whole Loan Transfer or Pass-Through Transfer shall be subject to this Agreement and shall continue to be serviced in accordance with the terms of this Agreement and with respect thereto this Agreement shall remain in full force and effect.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

#### Section 11.01 Successor to the Servicer.

Prior to termination of the Servicer's responsibilities and duties under this Agreement pursuant to Sections 8.04, 9.01 or 10.01(ii), the Owner shall (i) succeed to and assume all of the Servicer's responsibilities, rights, duties and obligations under this Agreement, or (ii) appoint a successor having the characteristics set forth in Section 8.02 hereof and which shall succeed to all rights and assume all of the responsibilities, duties and liabilities of the Servicer under this Agreement prior to the termination of the Servicer's responsibilities, duties and liabilities under this Agreement. In connection with such appointment and assumption, the Owner may make such arrangements for the compensation of such successor out of payments on Mortgage Loans as the Owner and such successor shall agree. In the event that the Servicer's duties, responsibilities and liabilities under this Agreement should be terminated pursuant to the aforementioned sections, the Servicer shall discharge such duties and responsibilities during the period from the date it acquires knowledge of such termination until the effective date thereof with the same degree of diligence and prudence which it is obligated to exercise under this Agreement, and shall take no action whatsoever that might impair or prejudice the rights or financial condition of its successor. The resignation or removal of the Servicer pursuant to the aforementioned sections shall not become effective until a successor shall be appointed pursuant to this section and shall in no event relieve the Servicer of the representations and warranties made pursuant to Article III and the remedies available to the Owner under Section 8.01, it being understood and agreed that the provisions of such Article III and Section 8.01 shall be applicable to the Servicer notwithstanding any such resignation or termination of the Servicer, or the termination of this Agreement.

Any successor appointed as provided herein shall execute, acknowledge and deliver to the Servicer and to the Owner an instrument accepting such appointment, whereupon such successor shall become fully vested with all the rights, powers, duties, responsibilities, obligations and liabilities of the Servicer, with like effect as if originally named as a party to this Agreement. Any termination or resignation of the Servicer or this Agreement pursuant to Section 8.04, 9.01 or 10.01 shall not affect any claims that the Owner may have against the Servicer arising prior to any such termination or resignation.

The Servicer shall promptly deliver to the successor the funds in the Custodial Account and the Escrow Account and the Servicing Files and related documents and statements held by it hereunder and the Servicer shall account for all funds. The Servicer shall execute and deliver such instruments and do such other things all as may reasonably be required to more fully and definitely vest and confirm in the successor all such rights, powers, duties, responsibilities, obligations and liabilities of the Servicer. The successor shall make such arrangements as it may deem appropriate to reimburse the Servicer for unrecovered Servicing Advances which the successor retains hereunder and which would otherwise have been recovered by the Servicer pursuant to this Agreement but for the appointment of the successor servicer.

Upon a successor's acceptance of appointment as such, the Servicer shall notify the Owner of such appointment.

#### Section 11.02 Amendment.

This Agreement may be amended from time to time by the Servicer and the Owner by written agreement signed by the Servicer and the Owner.

#### Section 11.03 Recordation of Agreement.

To the extent permitted by applicable law, this Agreement is subject to recordation in all appropriate public offices for real property records in all the counties or other comparable jurisdictions in which any or all the properties subject to the Mortgages are situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected by the Owner at the Owner's expense on direction of the Owner accompanied by an Opinion of Counsel to the effect that such recordation materially and beneficially affects the interest of the Owner or is necessary for the administration or servicing the Mortgage Loans.

#### Section 11.04 Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS. THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

#### Section 11.05 Notices.

Any demands, notices or other communications permitted or required hereunder shall be in writing and shall be deemed conclusively to have been given if personally delivered at

or mailed by registered mail, postage prepaid, and return receipt requested or transmitted by telecopier and confirmed by a similar mailed writing, as follows:

(i) if to the Servicer:

500 Enterprise Road  
Horsham, Pennsylvania 19044  
Attention: Mr. Frank Ruhl  
Telecopier No.: (215) 682-3396

(ii) if to the Owner:

1285 Avenue of the Americas  
New York, New York 10019  
Attention: Mr. Craig Eckes  
Telecopier No.: (212) 713-2080

or such other address as may hereafter be furnished to the other party by like notice. Any such demand, notice, or communication hereunder shall be deemed to have been received on the date delivered to or received at the premises of the address (as evidenced, in the case of registered or certified mail, by the date noted on the return receipt).

#### Section 11.06 Severability of Provisions.

Any part, provision, representation or warranty of this Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any part, provision, representation or warranty of this Agreement which is prohibited or unenforceable or is held to be void or unenforceable in any jurisdiction shall be ineffective, as to such jurisdiction, to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction as to any Mortgage Loan shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders void or unenforceable any provision hereof. If the invalidity of any part, provision, representation or warranty of this Agreement shall deprive any party of the economic benefit intended to be conferred by this Agreement, the parties shall negotiate, in good faith, to develop a structure the economic effect of which is nearly as possible the same as the economic effect of this Agreement without regard to such invalidity.

#### Section 11.07 Exhibits.

The exhibits to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement.

#### Section 11.08 General Interpretive Principles.

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) the terms defined in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender;

(ii) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;

(iii) references herein to "Articles," "Sections," "Subsections," "Paragraphs," and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, Paragraphs and other subdivisions of this Agreement;

(iv) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall also apply to Paragraphs and other subdivisions;

(v) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; and

(vi) the term "include" or "including" shall mean without limitation by reason of enumeration.

#### Section 11.09 Reproduction of Documents.

This Agreement and all documents relating hereto, including, without limitation, (i) consents, waivers and modifications which may hereafter be executed, (ii) documents received by any party at the closing, and (iii) financial statements, certificates and other information previously or hereafter furnished, may be reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. The parties agree that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by a party in the regular course of business, and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

#### Section 11.10 Confidentiality of Information.

Each party recognizes that, in connection with this Agreement, it may become privy to non-public information regarding the financial condition, operations and prospects of the other party. Except as required to be disclosed by law, each party agrees to keep all non-public information regarding the other party strictly confidential, and to use all such information solely in order to effectuate the purpose of this Agreement.

#### Section 11.11 Assignment by the Owner.

The Owner shall have the right, without the consent of the Servicer hereof, to assign, in whole or in part, its interest under this Agreement with respect to some or all of the Mortgage Loans, and designate any person to exercise any rights of the Owner hereunder, by executing an assignment and assumption agreement reasonably acceptable to the Servicer and

the assignee or designee shall accede to the rights and obligations hereunder of the Owner with respect to such Mortgage Loans. In no event shall Owner sell a partial interest in any Mortgage Loan. All references to the Owner in this Agreement shall be deemed to include its assignees or designees.

Section 11.12 No Partnership.

Nothing herein contained shall be deemed or construed to create a co-partnership or joint venture between the parties hereto and the services of the Servicer shall be rendered as an independent contractor and not as agent for Owner.

Section 11.13 Execution; Successors and Assigns.

This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed to be an original; such counterparts, together, shall constitute one and the same agreement. Subject to Section 8.04, this Agreement shall inure to the benefit of and be binding upon the Servicer and the Owner and their respective successors and assigns.

Section 11.14 Entire Agreement.

Each of the Servicer and the Owner acknowledge that no representations, agreements or promises were made to it by the other party or any of its employees other than those representations, agreements or promises specifically contained herein. This Agreement sets forth the entire understanding between the parties hereto and shall be binding upon all successors of both parties.

IN WITNESS WHEREOF, the Servicer and the Owner have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the date and year first above written.

GMAC MORTGAGE CORPORATION  
Servicer

By: \_\_\_\_\_  
Name:  
Title:

UBS WARBURG REAL ESTATE  
SECURITIES INC.  
Owner

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A

TERMS LETTER

Reference is hereby made to (i) the Servicing Agreement, dated as of November 1, 2001 (the "Servicing Agreement"), between UBS Warburg Real Estate Securities Inc. (the "Owner") and GMAC Mortgage Corporation (the "Servicer") and (ii) the Confirmation dated [ ] between the Owner and the Servicer.

The Servicer agrees to service the mortgage loans (the "Mortgage Loans") listed on the Mortgage Loan Schedule attached hereto as Schedule I pursuant to the Servicing Agreement as of the "Effective Date" of \_\_\_\_\_.

The following is a summary of certain of the characteristics of the Mortgage Loans as of \_\_\_\_\_ (the "Cut-off Date").

Number of Mortgage Loans:

Aggregate Original Principal  
Balance of the Mortgage Loans:

Aggregate Unpaid Principal  
Balance of the Mortgage Loans:

Weighted Average Mortgage  
Interest Rate:

Weighted Average Servicing Fee Rate:

Weighted Average Excess Servicing  
Fee Rate (if any):

Weighted Average Lender-Paid  
Mortgage Insurance Rate (if any):

Weighted Average Mortgage Loan  
Remittance Rate:

For ARM Loans Only:

Type of ARM Loan (e.g., 3/1, 5/1, etc.):

Index:

Weighted Average Margin:

Weighted Average Months  
to Next Adjustment Date:

SCHEDULE I TO TERMS LETTER  
MORTGAGE LOAN SCHEDULE

EXHIBIT B

CUSTODIAL ACCOUNT LETTER AGREEMENT  
(date)

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(the "Depository")

As "Servicer" under the Servicing Agreement, dated as of \_\_\_\_\_, (the "Agreement"), we hereby authorize and request you to establish an account, as a Custodial Account pursuant to Section 4.04 of the Agreement, to be designated as "[Servicer] Custodial Account, in trust for [Owner], Owner of Whole Loan Mortgages, and various Mortgages." All deposits in the account shall be subject to withdrawal therefrom by order signed by the Servicer. You may refuse any deposit which would result in violation of the requirement that the account be fully insured as described below. This letter is submitted to you in duplicate. Please execute and return one original to us.

By: \_\_\_\_\_  
Name:  
Title:

The undersigned, as "Depository", hereby certifies that the above described account has been established under Account Number \_\_\_\_\_, at the office of the depository indicated above, and agrees to honor withdrawals on such account as provided above. The full amount deposited at any time in the account will be insured up to applicable limits by the Federal Deposit Insurance Corporation through the Bank Insurance Fund or the Savings Association Insurance Fund or will be invested in Permitted Investments as defined in the Agreement.

[ \_\_\_\_\_ ]  
(name of Depository)

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT C

ESCROW ACCOUNT LETTER AGREEMENT

(date)

To: \_\_\_\_\_

\_\_\_\_\_

(the "Depository")

As "Servicer" under the Servicing Agreement, dated as of \_\_\_\_\_ (the "Agreement"), we hereby authorize and request you to establish an account, as an Escrow Account pursuant to Section 4.06 of the Agreement, to be designated as "[Servicer] Escrow Account, in trust for [Owner], Owner of Whole Loan Mortgages, and various Mortgagors." All deposits in the account shall be subject to withdrawal therefrom by order signed by the Servicer. You may refuse any deposit which would result in violation of the requirement that the account be fully insured as described below. This letter is submitted to you in duplicate. Please execute and return one original to us.

By: \_\_\_\_\_

Name:

Title:

The undersigned, as "Depository", hereby certifies that the above described account has been established under Account Number \_\_\_\_\_, at the office of the depository indicated above, and agrees to honor withdrawals on such account as provided above. The full amount deposited at any time in the account will be insured up to applicable limits by the Federal Deposit Insurance Corporation through the Bank Insurance Fund or the Savings Association Insurance Fund or will be invested in Permitted Investments as defined in the Agreement.

[ \_\_\_\_\_ ]

(name of Depository)

By: \_\_\_\_\_

Name:

Title:

EXHIBIT D

REQUEST FOR RELEASE

EXHIBIT E

LOAN LEVEL SCHEDULED-SCHEDULED  
REMITTANCE TAPE LAYOUT

# Exhibit G

## UNIFORM CONSUMER SALES PRACTICES ACT

### Section

1. Purposes, Rules of Construction.
2. Definitions.
3. Deceptive Consumer Sales Practices.
4. Unconscionable Consumer Sales Practices.
- 4A. Jurisdiction and Service of Process.
5. Duties of the Enforcing Authority.
6. General Powers of the Enforcing Authority.
7. Rule-making Requirements.
- 7A. Rule-making Procedure.
- 7B. Filing and Taking Effect of Rules.
- 7C. Publication of Rules.
- 7D. Petition for Adoption of Rules.
- 7E. Declaratory Judgment on Validity or Applicability of Rules.
- 7F. Validity of Rules.
8. Investigatory Powers of the Enforcing Authority.
9. Remedies of the Enforcing Authority.
10. Coordination with Other Supervision.
11. Private Remedies.
12. Class Actions.
13. Special Provisions Relating to Class Actions.
14. Application.
15. Effect on Other Remedies.
16. Short Title.
17. Severability.
18. Specific Repealer and Amendments.
19. Time of Taking Effect.

## § 2. [Definitions]

As used in this Act:

(1) "consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of goods, a service, or an intangible [except securities] to an individual for purposes that are primarily personal, family, or household, or that relate to a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged, or a solicitation by a supplier with respect to any of these dispositions;

(2) "Enforcing Authority" means [appropriate official or officials];

(3) "final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired;

(4) "person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity;

(5) "supplier" means a seller, lessor, assignor, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

### COMMENT

[Subsec. (1) ]. A consumer transaction typically involves a natural person who obtains or is solicited to obtain an item of goods, a service, or an intangible primarily for personal, family, or household purposes. Also included are certain analogous transactions in which a natural person obtains or is solicited to obtain a business opportunity in which he has not been previously engaged. In view of the extensive state regulation of securities transactions, their inclusion is left optional. On the assumption that land transactions frequently are, and should be, regulated by specialized legislation, they are excluded altogether.

[Subsec. (2) ]. In order to obtain effective administration, the National Conference recommends centralizing all powers granted by the Uniform Consumer Sales Practices Act in a single official. In some states a single official, typically the Attorney General, already has been granted substantial power with respect to consumer sales practices. In these states, the Attorney General is the logical choice for designation as Enforcing Authority. Because the Enforcing Authority may frequently find it necessary to engage in litigation, the Attorney General also is a likely choice for Enforcing Authority in states which have not previously subjected consumer sales practices to extensive regulation. Moreover, if an enacting state creates a new agency to administer the Act, that state should carefully review each provision of the Act and provide a statutory framework which will ensure an effective working relationship between the new agency and the Attorney General.

[Subsec. (3) ]. This definition pertains to one of the preconditions of class action damage liability in §§ 9(b)(1) and 11(d)(1). The Enforcing Authority is required to maintain a public file of these judgments and to make them available for public dissemination, § 5(a)(3), (5).

[Subsec. (4) ]. This definition is derived from the Uniform Statutory Construction Act § 26(4) (1965).

[Subsec. (5) ]. In addition to manufacturers, wholesalers, and dealers, debt collection agencies and advertising agencies fall within this definition. Section 14 should be consulted in order to ascertain the conduct by suppliers which is exempt from the Act.

# Exhibit H

Title/Chapter/Section:  [Search Code by Key Word](#)[<< Previous Section \(13-11-2\)](#)[Next Section \(13-11-4\)>>](#)[Utah  
Code](#)[Title 13 Commerce and Trade](#)[Chapter 11 Utah Consumer Sales Practices Act](#)[11](#)[Section 3 Definitions.](#)**13-11-3. Definitions.**

As used in this chapter:

(1) "Charitable solicitation" means any request directly or indirectly for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. A charitable solicitation may be made in any manner, including:

(a) any oral or written request, including a telephone request;

(b) the distribution, circulation, or posting of any handbill, written advertisement, or publication; or

(c) the sale of, offer or attempt to sell, or request of donations for any book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which any appeal is made for any charitable purpose, or where the name of any charitable organization or movement is used or referred to as an inducement or reason for making any purchase donation, or where, in connection with any sale or donation, any statement is made that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose. A charitable solicitation is considered complete when made, whether or not the organization or person making the solicitation receives any contribution or makes any sale.

(2) (a) "Consumer transaction" means a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance) to, or apparently to, a person for:

(i) primarily personal, family, or household purposes; or

(ii) purposes that relate to a business opportunity that requires:

(A) expenditure of money or property by the person described in Subsection (2)(a); and

(B) the person described in Subsection (2)(a) to perform personal services on a continuing basis and in which the person described in Subsection (2)(a) has not been previously engaged.

(b) "Consumer transaction" includes:

(i) any of the following with respect to a transfer or disposition described in Subsection (2)(a):

(A) an offer;

(B) a solicitation;

(C) an agreement; or

(D) performance of an agreement; or

(ii) a charitable solicitation.

(3) "Enforcing authority" means the Division of Consumer Protection.

(4) "Final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(5) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(6) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

Amended by Chapter 55, 2004 General Session

Download Code Section [Zipped WordPerfect 13\\_11\\_000300.ZIP](#) 3,800 Bytes[<< Previous Section \(13-11-2\)](#)[Next Section \(13-11-4\)>>](#)

# Exhibit I

# Kansas Statutes



Browsable and searchable archive of 2009 Kansas Statutes Annotated (K.S.A.)

## **Chapter 50: Unfair Trade And Consumer Protection**

### **Article 6: Consumer Protection**

**Statute 50-624: Definitions.** As used in this act:

(a) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a consumer who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(b) "Consumer" means an individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes.

(c) "Consumer transaction" means a sale, lease, assignment or other disposition for value of property or services within this state (except insurance contracts regulated under state law) to a consumer; or a solicitation by a supplier with respect to any of these dispositions.

(d) "Family partnership" means a partnership in which all of the partners are natural persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related.

(e) "Final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(f) "Lender" means a bank, savings and loan association, savings bank, credit union, finance company, mortgage bank, mortgage broker and any affiliate.

(g) "Merchantable" means, in addition to the qualities prescribed in K.S.A. 84-2-314, and amendments thereto, in conformity in all material respects with applicable state and federal statutes and regulations establishing standards of quality and safety.

(h) "Mortgage trigger lead" means a consumer report obtained pursuant to section 604(c)(1)(B) of the federal fair credit reporting act, 15 U.S.C. 1681b, where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for credit. Any consumer report on an applicant obtained by a lender with whom the applicant has initially applied for credit or who holds or services an existing extension of credit of the applicant who is the subject of the report is not considered a mortgage trigger lead.

(i) "Person" means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative or other legal entity.

(j) "Property" includes real estate, goods and intangible personal property.

(k) "Services" includes:

(1) Work, labor and other personal services;

(2) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals and cemetery accommodations; and

(3) any other act performed for a consumer by a supplier.

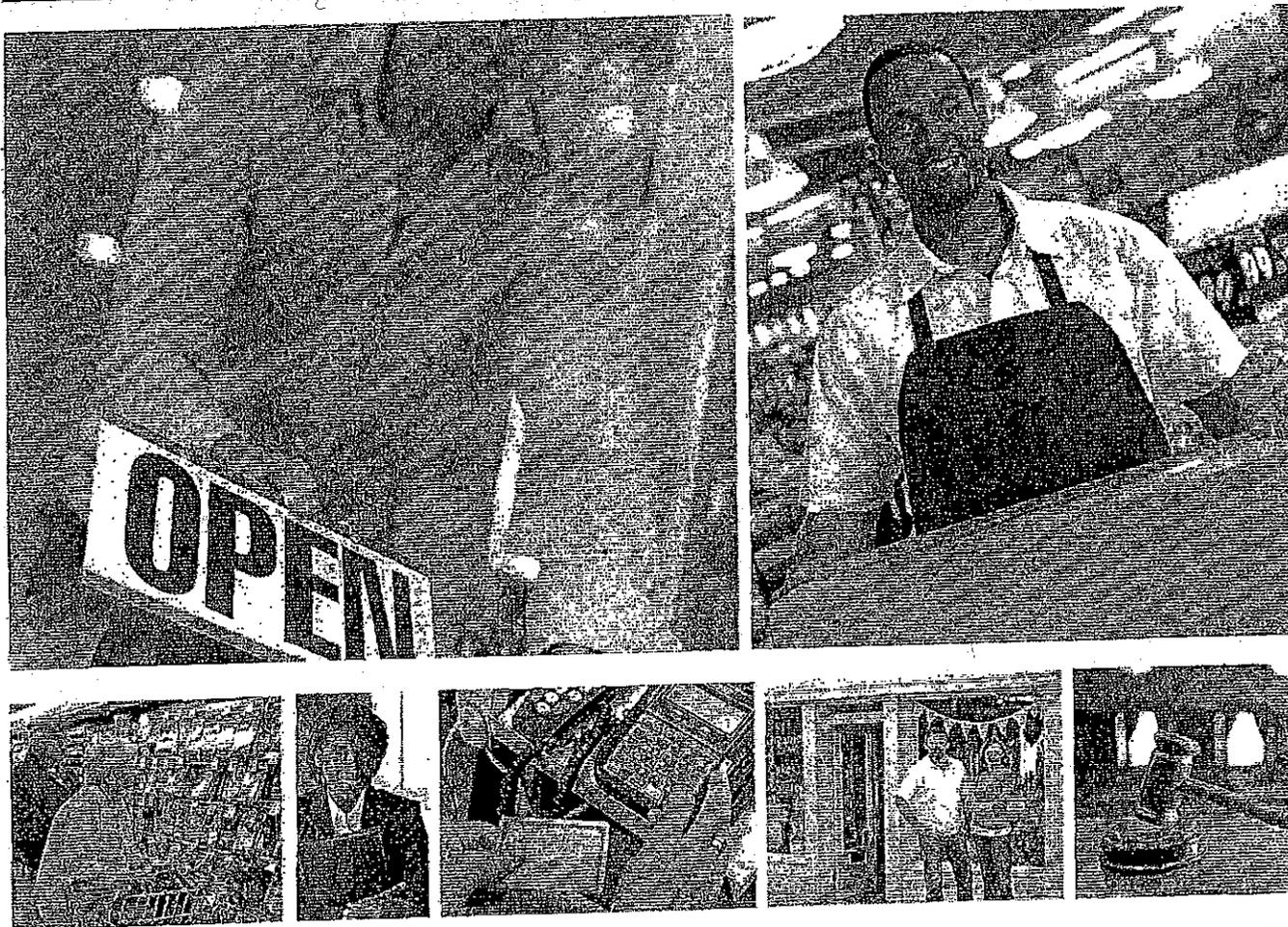
(l) "Supplier" means a manufacturer, distributor, dealer, seller, lessor, assignor, or other person who, in the ordinary course of business, solicits, engages in or enforces consumer transactions, whether or not dealing directly with the consumer. Supplier does not include any bank, trust company or lending institution which is subject to state or federal regulation with regard to disposition of repossessed collateral by such bank, trust company or lending institution.

**History:** L. 1973, ch. 217, § 2; L. 1974, ch. 230, § 2; L. 1976, ch. 236, § 2; L. 1983, ch. 179, § 1; L. 1991, ch. 159, § 1; L. 2001, ch. 49, § 1; L. 2005, ch. 22, § 1; L. 2009, ch. 67, § 1; July 1.

# Exhibit J

# Complying with Ohio Consumer Law:

## A GUIDE FOR BUSINESSES



**MIKE DEWINE**  
\* OHIO ATTORNEY GENERAL \*

**Ohio Attorney General's Office, Consumer Protection Section, 2011**

This guide is intended to be used for educational purposes only. The Ohio Attorney General's Office may not provide legal advice to individual consumers or businesses. For legal advice, please consult an attorney.

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## OHIO CONSUMER LAW OVERVIEW

The cornerstone of Ohio consumer law is the Consumer Sales Practices Act (CSPA), which protects individual consumers from unfair, deceptive, and unconscionable sales practices in connection with consumer transactions. The CSPA and its substantive rules can be found in the Ohio Revised Code (R.C.) starting at 1345.01 and in the Ohio Administrative Code (O.A.C.) starting at 109:4-3-01. Both codes are available at <http://codes.ohio.gov>.

### What is a consumer transaction?

A consumer transaction is the purchase, solicitation for purchase, or award by chance, of a product or service that is intended for home, family, or personal use. Examples of consumer transactions include:

- A motor vehicle dealer selling a used or new vehicle to a consumer.
- A wallpaper company selling its goods online to consumers.
- A department store advertising a sale.
- A home improvement contractor soliciting consumers at their homes.
- Third party debt collectors calling consumers to collect debts.
- Salespeople making telemarketing calls to consumers.
- Credit repair companies contracting with consumers to improve their credit.

### The CSPA requires sellers (or "suppliers") to:

- Accurately represent the characteristics of a product or service.
- Honor guarantees and warranties.
- Make no misrepresentations about the nature of their business, their products or services, the prices of their goods, or the terms of a transaction.
- Not take advantage of a consumer's illiteracy, mental disability, physical disability, or inability to understand the terms of a sale.
- Not sell a product or service knowing the consumer cannot afford or substantially benefit from it.
- Disclose important exclusions and limitations in advertisements.
- Not sell used items as new.
- Not use bait-and-switch tactics to trick consumers into paying higher prices.

### Under the CSPA, the Attorney General can:

- Investigate businesses that may be conducting unfair, deceptive, or unconscionable practices.
- Order businesses to stop unfair, deceptive, or unconscionable practices.
- Make rules describing unfair, deceptive, or unconscionable acts or practices.
- Go to court to have actions declared unfair, deceptive, or unconscionable.
- Inform the public about actions that are unfair, deceptive, or unconscionable.
- Obtain relief for consumers (such as refunds or changes in contracts).
- Request that courts impose appropriate civil penalties for violations by suppliers.

### The CSPA allows consumers to:

- Pursue private litigation (file a lawsuit against the supplier).
- Rescind (cancel) transactions or recover damages, if successful in litigation.

In addition to the CSPA, the Ohio Attorney General enforces more than 25 consumer protection laws, many of which are addressed in this guide. For a list of these laws, see the Ohio Consumer Protection Laws section at the end of this guide.

# ADVERTISING

Sellers advertise online, in newspapers, on the radio, on TV, in magazines, on billboards, and through other means of communication. The CSPA sets forth specific rules about how sellers can advertise and what constitutes deceptive advertising. In general, deceptive advertising occurs when sellers make misleading price comparisons or misrepresentations about the quality or quantity of their goods. The following outlines specific provisions related to advertising.

## Exclusions and Limitations

It is illegal to advertise a sale without listing any specific limitations, if they exist (O.A.C. 109:4-3-02). For example, a supplier may not advertise "20 percent off all shoes" if only children's shoes are reduced. If an ad includes a picture of items that are not included in the advertised price, this exclusion must be stated. All disclosures must be clear and conspicuous.

Advertisements also must list:

- Important terms and conditions;
- Extra costs, such as delivery charges, restocking fees and handling fees; and
- Limited times of the sale, such as "July 2, 9 a.m. to 1 p.m."

## Bait advertising

Bait-and-switch tactics are illegal (O.A.C. 109:4-3-03). Bait advertising occurs when a supplier offers goods or services for sale, but the offer is not a *bona fide* or "good faith" offer to sell the product or service. An offer is considered not in good faith if the supplier:

- Misrepresents an important aspect or function of the product or service;
- Secures the first contact with the consumer through deception; or
- Discourages the sale of the advertised product or service in favor of a costlier item.

## Rain checks

If a seller advertises goods or services at a certain price and sells out of those goods or services, consumers who respond to the ad after the product is no longer available are entitled to a rain check, allowing them to purchase the advertised product or service at a later date for the sale price (O.A.C. 109:4-3-03).

This requirement does not apply if, in advertisements, the seller clearly and conspicuously discloses the number of goods available, such as "at least ten in stock," or if the seller clearly and conspicuously discloses that the merchandise is seasonal or clearance and no rain checks will be given.

The rain check requirement also does not apply if the seller, at the consumer's option, allows the consumer to purchase a similar item of equal or greater value at the same savings, or if the seller proves that it had a sufficient supply of the advertised goods, based on reasonably expected consumer demand.

A rain check must be honored within 60 days after it is issued. Once the seller notifies the consumer that the item is in stock, the consumer has 14 days to redeem the rain check. If the item is not restocked within 60 days, or at any time instead of a rain check, the supplier may sell similar merchandise at the same savings as the advertised goods.

### Use of the word "free"

A seller may not advertise goods or services as "free" when the cost of the "free" offer is passed on to the consumer by raising the regular price of the goods or services (O.A.C. 109:4-3-04). For example, if the regular price of a box of cereal is \$3, a store may not raise the price to \$6 per box during a "buy-one, get-one-free" sale in order to offset the cost of the "free" box.

### Prizes

A seller may not advertise that a consumer has won a prize when the consumer must pay certain charges to receive the prize (O.A.C. 109:4-3-06). Plus, all material (important) terms and conditions of a prize offer must be disclosed in advertisements. A seller may not advertise that a consumer has won a beach vacation when, in fact, the consumer must listen to a sales presentation in order to receive the vacation.

### Use of the word "new"

Under Ohio law, used items may not be sold as new (O.A.C. 109:4-3-08). Refurbished or reconditioned products must be properly labeled. For example, a supplier may not advertise or sell a computer as new when, in fact, it has been used and refurbished.

### Price comparisons

Price comparisons must be based on truth (O.A.C. 109:4-3-12). In advertisements, sellers must not make misleading price comparisons that create false expectations in the minds of consumers. If ads include terms such as "discount," "bargain," "outlet," "wholesale," or "factory prices," those terms must accurately describe the products offered for sale. For example, a seller may not advertise that its TVs are "Regularly \$5,000, Now \$3,000," unless \$5,000 actually is the regular price of that particular kind of TV.

#### Overview of advertising rules:

- Exclusions and limitations of an offer must be listed in ads.
- Bait-and-switch tactics are illegal.
- Sellers must issue rain checks in certain situations.
- "Free" must really mean free when used in advertisements.
- Sellers cannot offer something as a "prize" if the consumer must pay to receive it.
- If an item is used or refurbished, sellers cannot describe the item as new.
- Price comparisons must be truthful.

## AUTO

The following provides a general overview of Ohio's Lemon Law and Title Defect Rescission Act. For guidelines on complying with Ohio's advertising laws for motor vehicles, please see the Attorney General's Guidelines for Motor Vehicle Advertising. For information on auto repairs and services, please see the Repairs and Services section in this guide.

### What is a lemon?

A "lemon" is a new motor vehicle that has one or more problems covered by the warranty that substantially impair the use, value, or safety of the vehicle. Ohio's Lemon Law (starting at R.C. 1345.71) requires manufacturers to repair defects that affect the use, value or safety of a new motor vehicle within the first 12 months or first 18,000 miles of use, whichever comes first.

### What vehicles are covered under the Lemon Law?

The Lemon Law covers new passenger cars, motorcycles, certain recreational vehicles, noncommercial motor vehicles, or those parts of any motor home that are not part of the permanently installed facilities for cold storage, for cooking and consuming of food, or for sleeping. It does not cover mobile homes, recreational vehicles, or any manufactured home.

### Does the Lemon Law cover used cars?

The Lemon Law generally does not cover used cars, unless they fall within the protection period (that is, unless the problems occur within the vehicle's first year or first 18,000 miles, whichever comes first). The Lemon Law does protect consumers even if the problem was discovered late within the protection period and the repair attempts extend beyond one year or 18,000 miles.

The law does not cover lemons that have been resold to consumers. However, when these used cars are offered for sale, they must include a notice describing the defect, and they must include a 12-month, 12,000-mile warranty or the remainder of the original warranty, whichever is greater. The manufacturer must also "brand" (place a notation upon) the resale title indicating the vehicle was returned because of nonconformance to the warranty. Vehicles returned for problems that could cause death or serious injury may not be resold in Ohio.

### Consumers' rights under the Lemon Law

Under the Lemon Law, the auto manufacturer must be given a reasonable opportunity to fix the problem, and if the problem is not corrected, the consumer might be eligible for a refund or a replacement.

A manufacturer has had a reasonable opportunity to fix the problem if, during the protected period, any of the following apply:

- Substantially the same nonconformity has been subject to repair three or more times and either continues to exist or recurs;
- The vehicle is out of service by reason of repair for a cumulative total of 30 or more calendar days (certain exceptions apply);
- There have been eight or more attempts to repair any nonconformity; or
- At least one attempt has been made to repair a nonconformity that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven, and the nonconformity either continues to exist or recurs.

### **Refund of the full purchase price**

The refund includes the full purchase price and incidental damages including, but not limited to, any fees charged by the lender or lessor for making or canceling the loan or lease and expenses incurred by the consumer as a result of the nonconformity, such as charges for towing, vehicle rental, meals, and lodging.

### **Lemon Law notification**

Manufacturers must provide every new vehicle buyer with a notice describing their legal rights under Ohio's Lemon Law.

### **Resolving Lemon Law disputes**

Arbitration allows a neutral party to make a decision about a lemon if the consumer and manufacturer cannot reach a resolution. Consumers must use arbitration if the manufacturer participates in an arbitration program approved by the Ohio Attorney General. Contact the Attorney General for a list of approved arbitration programs.

Automotive Consumer Action Program (AUTOCAP) is a third party dispute resolution program for new motor vehicle dealers, sponsored by the Ohio Automobile Dealers Association. The Attorney General refers complaints involving AUTOCAP members to AUTOCAP for mediation. If the issue is not resolved, then it goes to arbitration and the resulting decision is final.

### **Warranties and service contracts**

The federal Magnuson-Moss Warranty Act establishes requirements for entities that provide warranties. Under the law, if a manufacturer offers a warranty, the warranty must be available for the consumer to read before the purchase is made. A product sold "as is" has no warranty. A service contract is not a warranty as defined by federal law and should not be advertised as such.

### **Title Defect Rescission Fund**

Licensed Ohio used motor vehicle dealers participate in a program called the Title Defect Rescission (TDR) Fund. Participating in the TDR Fund allows dealers to sell vehicles before obtaining the titles for those vehicles.

### **What is the purpose of the TDR Fund?**

The TDR Fund was created to maintain and administer refunds to retail purchasers of motor vehicles who suffer damages from motor vehicle dealers who fail to provide a valid certificate of title in the purchaser's name within the statutorily required period of time. For more information, see R.C. 4505.181 and R.C. 1345.52. If the Ohio Attorney General pays a consumer on behalf of a dealer as a result of a TDR payout, then the dealer must obtain a surety bond.

Under the law, the retail purchaser has an unconditional right to rescind the transaction and the dealer has an obligation to refund to the retail purchaser all monies paid, if one of the following applies:

- The dealer fails to obtain a certificate of title in the consumer's name after 40 days from the date of the purchase;
- The certificate of title for the vehicle indicates that it is a rebuilt salvage vehicle, and that fact was not disclosed to the consumer in writing before the execution of the purchase agreement; or
- The certificate of title for the vehicle indicates that the dealer has made an inaccurate odometer disclosure to the consumer.

**When can a consumer apply for relief under TDR?**

The consumer may apply to the Attorney General for payment from the TDR Fund of any monies paid for the purchase of the vehicle if:

- The consumer notifies the dealer of one or more of the circumstances listed above; and
- The dealer fails to refund the consumer all monies paid for the purchase of the vehicle or fails to reach a satisfactory compromise within three business days.

**Additional motor vehicle laws**

The Motor Vehicle Collision Repair Operators Act (starting at R.C. 4775.02) requires registration and insurance for people who repair vehicles that have been damaged in collisions.

The Odometer Rollback and Disclosure Act (starting at R.C. 4549.41) makes it illegal to alter or conceal the mileage reading of a vehicle. It provides for a civil penalty of \$1,000 to \$2,000 for each tampered odometer, and requires written notice of odometer repair when an odometer is serviced.

**Overview of auto laws:**

- A "lemon" is a new motor vehicle that has one or more problems covered by the warranty that substantially impair the use, value, or safety of the vehicle.
- Ohio's Lemon Law covers vehicles within the first year or first 18,000 miles of use, whichever comes first.
- Licensed Ohio used motor vehicle dealers participate in the TDR Fund.
- It is illegal to alter or conceal a vehicle's mileage reading.

## BUSINESS OPPORTUNITY PLANS

Generally, a business opportunity plan is an agreement in which a buyer pays a seller for the right to offer, sell, or distribute goods or services.

### What is a business opportunity plan?

Ohio's Business Opportunity Purchasers Protection Act (starting at [R.C. 1334.01](#)) defines a business opportunity. For a plan to be a business opportunity, the buyer must be required to make an initial payment greater than \$500 but less than \$50,000. Additionally the goods or services must be supplied by the seller, by a third person authorized by the seller or by an affiliated person.

Also, to qualify as a business plan, the seller must make any one of the following representations:

- The purchaser will be provided with retail outlets, accounts, or help establishing them.
- The purchaser will be provided with locations (or help finding locations) for vending machines, rack displays, or similar equipment used for the distribution or sale of the goods or services.
- The purchase can earn a profit greater than the initial payment.
- There is a market for the goods or services.
- There is a buy-back arrangement.

### What are the exemptions?

The Business Opportunity Purchasers Protection Act has 14 complete exemptions. For example, the law does not apply to the relationship between an employer and employee, the sale of an ongoing business, or previous purchasers of similar business plans. For the list of complete exemptions, see [R.C. 1334.12](#).

### What disclosures are required in a business opportunity agreement?

Sellers of business opportunity plans must provide a written disclosure document 10 business days before the buyer purchases the plan. Required disclosures include: history of the company; identity, and background of company officials; bankruptcy history; initial fees required for the purchase; and a description of the purchaser's requirements. For additional required disclosures including specific language that may be required, see [R.C. 1334.02](#).

### What actions are prohibited?

Sellers may not make false statements or misrepresentations about earnings, profits, or sales. They also may not accept a down payment of more than 20% of the total price before the goods or services are delivered. For more prohibited actions, see [R.C. 1334.03](#).

### How much time do purchasers have to cancel?

The Business Opportunity Purchasers Protection Act gives purchasers five business days to cancel the agreement. Cancellations must be delivered in writing and postmarked by midnight of the fifth business day after the agreement is signed.

### Do federal laws apply?

If a seller complies with the federal FTC Rule or the Uniform Franchise Offering Circular Guidelines adopted by the North American Securities Administrators Association, then the seller is considered to be in compliance with the Ohio Business Opportunity Purchasers Protection Act. Essentially, sellers who fully comply with the federal rules do not need to also comply with Ohio's law.

## CANCELLATION RIGHTS OF CONSUMERS

Certain consumer laws require sellers to provide cancellation rights to consumers who enter into contracts for specific goods or services. Such "cooling-off" periods apply to the following types of contracts:

- **Door-to-door sales: 3 days.** Ohio's Home Solicitation Sales Act (starting at R.C. 1345.21) gives consumers three days to cancel sales made in their homes or outside the seller's regular place of business.
- **Credit and debt counseling services: 3 days.** Ohio's Credit Services Organization Act (starting at R.C. 4712.01) gives consumers three days to cancel credit and debt counseling services.
- **Prepaid entertainment contracts: 3 days.** Ohio's Prepaid Entertainment Contracts Act (starting at R.C. 1345.41) covers the sale of services for dance lessons, dating agencies, martial arts schools, and health spas, and gives consumers three days to cancel.
- **Home equity loans or mortgage refinancing: 3 days.** The federal Truth In Lending Act gives consumers three days to cancel a home equity loan or a mortgage refinancing.
- **Business opportunity plans: 5 days.** Ohio's Business Opportunity Purchasers Protection Act (starting at R.C. 1334.01) gives consumers five days to cancel a business opportunity agreement.
- **Hearing aids: 30 days.** Ohio's Hearing Aid Returns Act (R.C. 1345.30) gives consumers the right to return a hearing aid for any reason within 30 days after its original delivery.
- **Telemarketing sales: 7 days or until buyer signs a written agreement.** Ohio's Telephone Solicitation Sales Act (starting at R.C. 4719.01) requires the telemarketer to either obtain a signed written confirmation or provide a seven-day notice of cancellation.

**NOTE:** Except as provided under statutes described above, consumers do not have a general three-day right to cancel a contract or purchase. For example, consumers do not have the right to cancel the purchase of a motor vehicle.

### How are cancellation periods measured?

Ohio law generally measures cancellation periods in business days, though sellers should check individual statutes to determine what rules apply. Business days are Mondays through Saturdays. Sundays and federal holidays are not considered business days. Federal holidays are New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

### What is the seller's responsibility?

When a seller enters into a contract and cancellation rights are applicable, the seller generally must provide consumers a cancellation form at the time of the sale. Sellers should check the applicable law to determine what information the cancellation notice must contain. Generally, cancellation periods do not take effect until the consumer receives written notification of the right to cancel.

For example, if a health club sells a membership but fails to provide the consumer with written notice of the right to cancel, then the consumer's right to cancel extends until the club provides written notice. The cancellation notice or form must comply with all requirements.

### What is the consumer's responsibility?

In general, to take advantage of a three-day cooling-off period, a consumer must cancel in writing by midnight of the third business day after the transaction. For example, if a martial arts school signs a contract with a consumer on Saturday, then the consumer has until midnight on Wednesday to cancel the contract, because Sunday is not a business day. If no contract is used, or if the contract does not comply with the law, the consumer's right to cancel extends until the supplier complies with the contract requirements.

To cancel the contract, the consumer may sign and date the form and mail it to the address provided for cancellation. If the seller does not provide a cancellation form for the consumer to use, consumers may write a letter to notify the seller of the cancellation. The cancellation is effective upon the postmarked date of the letter. Essentially, this means that a cancellation is valid as long as the consumer's letter is postmarked by the final date of the cancellation period, even if the seller does not receive or process the letter until after that date.

Consumers also may cancel a contract by personally delivering the cancellation to the appropriate address of the seller. Again, the cancellation must be in writing. Under Ohio law, it is not acceptable to cancel a contract via e-mail, fax or telephone.

#### When to offer cancellation rights:

- Door-to-door sales: 3 days
- Credit and debt counseling services: 3 days
- Prepaid entertainment contracts (such as dance lessons): 3 days
- Home equity loans or mortgage refinancing: 3 days
- Business opportunity plans: 5 days
- Hearing aids: 30 days
- Telemarketing sales: 7 days or until the buyer signs a written agreement, depending on the transaction

Consumers do not have a general three-day right to cancel a contract for *all* consumer transactions.

# CREDIT SERVICES ORGANIZATION ACT

Ohio's Credit Services Organization Act (starting at R.C. 4712.01) mandates registration and bonding for organizations that offer credit repair, debt counseling and related services.

## What is a credit services organization?

A credit services organization means any person that advertises, sells, provides or performs one or more of the following services:

- Improving a buyer's credit record, history, or rating;
- Obtaining an extension of credit by others for a buyer;
- Providing advice or assistance to a buyer about improving or obtaining credit;
- Removing negative but accurate information from the buyer's credit record;
- Altering the buyer's identification to prevent the display of the buyer's credit record, history, or rating.

## What organizations are exempt from the law?

Certain organizations or individuals are not considered credit services organizations. These include: a person who makes or collects loans who are properly licensed/registered if applicable; licensed mortgage brokers; banks; credit unions; 501(c)(3) nonprofits offering budget and debt counseling services; and government agencies. For additional exemptions, see R.C. 4712.01.

## How long do consumers have to cancel a contract with a credit services organization?

The law gives consumers a three-day right to cancel contracts with credit services organizations. Credit services organizations must provide consumers with written contracts and written notification of their right to cancel.

## DEBT ADJUSTERS ACT

Ohio's Debt Adjusters Act (starting at R.C. 4710.01) sets rules and regulations for individuals, partnerships, associations, corporations, trusts, and other legal entities that offer debt adjusting, budget counseling, debt management, debt pooling or other services that effect the adjustment of a debt or disburse money from a debtor to the debtor's creditor.

Among other provisions, the law:

- Requires debt adjusters to file the results of an annual audit, conducted by an independent CPA, with the Attorney General's Office.
- Requires debt adjusters to maintain separate trust accounts for funds and maintain \$100,000 insurance coverage to protect against loss of debtors' money.
- Prohibits debt adjusters from accepting more than \$75 for initial consultation, accepting more than \$100 annually for consultation fees or contributions, and charging a periodic fee or contribution more than 8.5 percent of amount paid by debtor each month or \$30, whichever is greater.

## DEPOSITS

Generally, a seller may not accept a deposit for a consumer transaction unless the seller will be able to provide the goods or services to the consumer. A deposit is money a consumer pays in advance toward the purchase of a good or service.

### Deposit Rule

The Deposit Rule (O.A.C. 109:4-3-07) says if a seller accepts a deposit for unique (one-of-a-kind) goods or services, then the seller may not offer those goods or services to anyone else within a specific amount of time. If the goods or services are not unique, sellers may accept deposits only if they have enough goods or services for all consumers who make deposits.

### Receipt for a deposit

The Deposit Rule requires the seller to provide the consumer with a dated receipt that includes:

- Description of the goods and/or services;
- Cash selling price (for motor vehicles, this includes all discounts, rebates and incentives);
- Amount of the deposit and amount for any trade-ins or discounts;
- Timeframe to exercise any options;
- Whether the deposit is refundable and the refund terms; and
- Any additional costs, including storage, assembly, or delivery charges.

Each time the consumer makes an additional deposit the seller must provide a receipt showing the date, the amount paid and the remaining balance to be paid.

## DOOR-TO-DOOR SALES

Ohio's Home Solicitation Sales Act (starting at R.C. 1345.21) protects consumers from high pressure door-to-door sales by giving them a three-day "cooling-off" period during which the contract can be cancelled. After signing the agreement, the consumer has until midnight of the third business day to cancel.

### What is a home solicitation sale?

For the purposes of this law, a home solicitation sale is a sale of \$25 or more in which the seller makes an in-person solicitation at the consumer's home and the agreement is made at the consumer's home. It also applies to sales made outside a seller's normal place of business, such as a fair booth or hotel meeting room. Additionally, the law applies when the seller invites an in-person solicitation (such as a flyer encouraging consumers to schedule a home visit from a roof repair company) and then makes the agreement at the consumer's home.

### What does Ohio law require of door-to-door sales?

Under the Home Solicitation Sales Act, a seller must:

- Give the consumer a copy of the signed written agreement, including the date, the seller's name, the seller's address, and essentially the same language used in the verbal sales presentation.
- Provide a notice of cancellation form notifying consumers of their right to cancel. For more information, see R.C. 1345.23.
- Accept the consumer's right to cancel the sale, for any reason, within three business days of the sale.
- Not begin any service or sell any loan agreement the consumer signed until the three-day cooling-off period has ended.

### What happens if a consumer cancels a door-to-door sale?

If a consumer cancels a home solicitation sale, the seller must provide a refund to the consumer within 10 days of receiving the consumer's cancellation notice. If any goods were left at the consumer's home, the consumer must make those goods available to the seller, who must arrange to pick them up.

Some cities and municipalities may require door-to-door solicitors to be registered. Sellers should check with the appropriate city or municipality in which they intend to solicit.

#### Door-to-door sales overview:

- In door-to-door sales of \$25 or more, sellers must give consumers three days to cancel.
- The seller must provide a written agreement and written cancellation notice.
- The seller may not begin services until after the three-day cancellation period ends.
- If the consumer cancels, the seller must provide a refund within 10 days.

## FAILURE TO DELIVER / SUBSTITUTIONS

Under the CSPA, a seller may not advertise prompt delivery of goods or services unless the seller actually takes reasonable steps to ensure prompt delivery (O.A.C. 109:4-3-09).

### Failure to deliver

It is deceptive for a seller to accept money from a consumer and allow eight weeks to pass without:

- Delivering the goods or services;
- Providing a full refund;
- Telling the consumer about the delay and offering to send a refund within two weeks, if the consumer requests it; or
- Substituting similar goods or services of equal or greater value, if the consumer agrees.

### Substitutions of "equal or greater value"

To be considered "equal or greater value," the substituted goods or services must be substantially similar to the original goods or services. They also must be made for the same purposes and cannot have a lower normal price than the original goods or services.

Sellers may not provide similar goods of equal or greater value when they had no intention to ship, deliver, or install the original goods ordered.

## GIFT CARDS

Consumers have certain gift card rights under Ohio law and additional rights under federal law. Both sets of rights combine to provide the maximum protection for consumers. In general, most gift cards must last at least five years and sellers generally cannot impose inactivity fees for at least two years after the card's issue date.

### How can sellers comply with both Ohio and federal gift card regulations?

For single-merchant gift cards or affiliated-merchant gift cards, sellers cannot impose fees for two years (excluding prepaid phone cards and gift cards exempted by Ohio's Gift Card Act, R.C. 1349.61).

After the two-year period, sellers may charge fees only after a 12-month period of inactivity and only one fee within a given month. The fee type, amount, and frequency must be clearly and conspicuously disclosed on the card and made known to the buyer before the purchase.

For prepaid network-branded gift cards, which are redeemable at any merchant who accepts the brand, fees can be administered once a month after a 12-month period of inactivity. In other words, sellers do not have to wait two years as they do with single-brand gift cards. This is because Ohio law, which prohibits fees for the first two years, does not apply to mall cards, bank-branded gift cards, or credit-branded gift cards.

### What are the requirements for expiration dates?

A general-use prepaid card, gift certificate, or store gift card cannot have an expiration date within five years of the date the card was issued or within five years of the date funds were last loaded on the card, unless the end use is for business purposes. The expiration terms also must be clearly and conspicuously stated.

Reloadable cards marketed as gift cards must alert consumers to any difference between a card's expiration date and the funds' expiration date. It also must explain that the consumer may obtain a replacement card (or a refund, at the discretion of the issuer) without any fee as long as the underlying funds still are valid.

Type of gift	Min. expiration date	Fees allowed
Gift card for single store or restaurant	5 years	First 2 years, no fees allowed, then only one fee per month after 12-month period of inactivity
Reloadable gift card for any purchase at a shop	5 years	First 2 years, no fees allowed, then only one fee per month after 12-month period of inactivity
Rewards card for free coffee after 10 <sup>th</sup> purchase	No restrictions	No restrictions
Certificate for free manicure at local spa	No restrictions	No restrictions
Mall gift card valid at all stores in the mall	5 years	After 12-month period of inactivity, one fee per month
Coupon labeled as gift certificate for entrance to a craft show	No restrictions	No restrictions

Card given by employer to employee for business purposes	No restrictions	No restrictions
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### Ohio's gift card law

Under Ohio's Gift Card Act, most single-store gift cards must not expire or be assessed fees within two years of the date the card was issued. Specifically, merchants cannot sell gift cards or gift certificates with an expiration date of less than two years from the date the gift card was issued (federal law extends this to five years, in many cases). If the gift card has no expiration date, it is valid until redeemed or replaced with a new gift card. Merchants may not charge service fees, dormancy fees, latency fees, administrative fees, or any fees that reduce the total amount of the gift card, within two years of the card being issued.

### What cards are not covered by Ohio's gift card law?

Ohio's Gift Card Act does not apply to gift cards or gift certificates that are:

- Distributed pursuant to an awards, loyalty, or promotional program where the consumer gives no money or anything of value in exchange for the card;
- Sold below face value at a volume discount to employers or sold to nonprofits and charities for fundraising purposes, if the card expires within thirty days after the sale date;
- Sold by a nonprofit or charitable organization for fundraising purposes;
- Issued to an employee from an employer for use exclusively at the employer's business establishment, which includes a group of merchants that are affiliated with that business establishment;
- Used to purchase hunting or fishing licenses or other wildlife permits, as defined under R.C. 1533.131;
- Issued by an employer to an employee in recognition of the employee's service; or
- Useable with multiple retailers who have no affiliated goods or services, including mall cards, bank-branded gift cards, and credit-branded gift cards.

### Liability for violating Ohio's gift card laws

Whoever violates Ohio's gift card laws is liable to the holder for any amount that the redemption value of the gift card was reduced, any court costs incurred, and reasonable attorney's fees.

### Federal law

Provisions of the federal Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit CARD Act) require most gift cards to last at least five years.

Sellers cannot impose inactivity, dormancy, or service fees on gift certificates, store gift cards, or general-use prepaid cards unless the card has been inactive for one year (or for at least two years, if Ohio law applies). After a 12-month period of inactivity, one fee may be imposed per calendar month.

Additionally, the seller must clearly and conspicuously disclose any inactivity, dormancy, or service fees on the card or certificate itself.

### What cards are not covered by the federal law?

The federal gift card rules do not apply to cards where the end use is for business purposes, such as a gift card issued from an employer to an employee for travel expenses. Additional exclusions include cards that are issued because of a loyalty or promotional program, reloadable prepaid cards not labeled as gift cards, and cards not marketed to the general public. To qualify for the loyalty or

promotional exemption, the front of the card must state the expiration date and that the card is intended for loyalty, promotional, or award purposes.

Cards that are issued in paper form only, without any necessary information in electronic form, also are excluded, as are cards that provide a certain percentage off a purchase, such as a card that offers "20 percent off any purchase."

Additionally, the federal restrictions do not apply to certificates that are for a certain service or experience, such as a spa treatment, or solely for admission to an event or venue, such as an amusement park ticket, when such certificates are not issued in a specified amount. On the other hand, if a card for a service states a specified amount or specifies a monetary value, it is subject to the rules, unless other exemptions apply.

**Overview of gift card rules:**

- Many gift cards must last at least five years from their issue date.
- For single-store gift cards, fees generally cannot be assessed for at least the first two years and then only after a 12-month period of inactivity (one fee per month).
- For multiple-store gift cards (useable at unaffiliated merchants), a fee generally can be assessed after a 12-month period of inactivity, but only one fee may be assessed per calendar month.
- State and federal gift card laws differ, but many sellers must comply with both to provide the maximum protection for consumers.

## GOING OUT OF BUSINESS / DISTRESS SALES

If a seller advertises a sale using claims such as "going-out-of-business," "final liquidation," or "everything-must-go," those claims must be accurate.

### What is a distress sale?

Under the Distress Sale Rule (O.A.C. 109:4-3-17), a "distress sale" is any sale that would lead a consumer to believe the seller has or is:

- Going out of business;
- Discontinuing all or any portion of its business;
- Lost or is terminating its lease;
- Liquidating its assets ("final liquidation," "everything-must-go");
- Suffered a disaster (fire, smoke or water);
- In bankruptcy or receivership; or
- Holding the sale based on its financial condition.

If none of those conditions apply, a seller may not advertise a sale as a distress sale.

Distress sales do not include the sale of special purchase items, clearance items, or seasonal items. Additionally, the Distress Sale Rule does not apply to licensed auctioneers, sheriffs, or other public officials selling goods in the course of their official duties. However, sellers in receivership, bankruptcy, or any liquidator acting on their behalf are subject to and must comply with Ohio's Distress Sale Rule unless enforcement would conflict and be preempted by federal law.

### Time limits for holding a distress sale

Under the Distress Sale Rule, sellers may not advertise or conduct a distress sale for more than 45 days, but they may extend the sale for an additional 45-day period by clearly and conspicuously disclosing the extension in any advertisement or other representation regarding the sale.

### Additional restrictions

The Distress Sale Rule also sets forth the following restrictions:

- **No substituting goods:** A seller may not substitute or supplement its goods with goods from another outlet unless: (1) those goods were ordered before announcing or advertising the distress sale; (2) the goods were ordered in compliance with Ohio's Bait Advertising Rule (O.A.C. 109:4-3-03); or (3) the goods were owned prior to the bankruptcy or receivership and the goods were transferred pursuant to court order and all advertisements clearly and conspicuously note the goods were added to the distress sale.
- **No misrepresentation:** A seller may not misrepresent the former price, savings, quality, or ownership of any goods to be sold. The seller may not indicate a sale is a liquidation or similar type of sale unless the seller is liquidating all assets for final distribution. It also may not misrepresent who is holding the distress sale.
- **No reopening:** A seller may not advertise or hold a going-out-of-business sale and then reopen, or resume the same business under the same or any new name if the ownership and/or control of the business remain the same, within 12 months after the distress sale.

Sellers that hold distress sales also must physically separate or otherwise identify distress sale items from regular stock items in the store.

### Advertising requirements

When advertising a distress sale, a seller must:

- Include the start and end dates of the sale.
- Disclose the intention to close and relocate after the distress sale, if that is the case.
- Distinguish distress sale items from regular stock items, if not all items are part of the distress sale.

Some cities and municipalities may have additional requirements for advertising and conducting distress sales. Sellers should check with the appropriate entities.

## LAYAWAY ARRANGEMENTS

In a layaway arrangement (covered by R.C. 1317.21 to R.C. 1317.24) the seller agrees to hold certain goods for the buyer and delivers the goods based on payment arrangements.

### Layaway arrangements of \$500 or less

Layaway agreements for goods costing \$500 or less do not need to be in writing. Buyers may cancel such agreements at any time, but they must do so in writing. If the buyer fails to make a payment when due, the seller must notify the buyer of the default in writing. The buyer has 10 days to correct the default. After 10 days, if the buyer does not fix the default, the seller is entitled to \$25 or 10 percent of the value of the goods, whichever is less.

### Layaway arrangements of \$500 or more

If the layaway arrangement costs more than \$500, the buyer must receive a copy of the written contract upon the buyer's first payment. Buyers may cancel at any time, but they must do so in writing. The buyer may not be penalized for cancelling within the first five days, and the buyer's down payment, deposit, or partial payment must be returned. Thereafter (or if the buyer defaults), the buyer may be penalized by up to 50 percent of the total amount the buyer has already paid.

## PERSONAL INFORMATION OF CONSUMERS

Certain Ohio laws specify how sellers should handle consumers' personal information, such as their Social Security numbers and credit card numbers, and how they should address a security breach that puts consumers' personal information at risk.

### Printing credit card numbers on receipts

Ohio's Credit Card Truncation Act (R.C. 1349.18) prohibits sellers from printing the expiration date or more than the last five digits of a consumer's credit or debit card number on a receipt. This law applies to sellers such as restaurants, stores, online retailers, and other entities that electronically print these numbers on receipts.

### Recording a consumer's Social Security number

The Credit Card Recording Act (R.C. 1349.17) says that sellers may not record a consumer's credit card or Social Security number when a check, bill of exchange, or other draft is presented for payment, unless all the following conditions apply:

- The number is recorded for a legitimate business purpose, including collection purposes;
- The number is not disclosed to any third party, except for collection purposes; and
- The consumer consents to having the number recorded.

### What is a security breach?

A security breach is the unauthorized access to and acquisition of personal information which causes, reasonably is believed to have caused, or reasonably is believed will cause a risk of identity theft or other fraud to the person or property of a resident of this state.

### What is "personal information"?

Personal information is an individual's name connected with any of the following data, if the data are not encrypted, redacted, or altered to make them unreadable:

- Social Security number;
- Driver's license number or state identification card number; or
- Account number, credit, or debit card number linked to a security code or password.

### Do consumers need to be notified of a breach?

Under the Security Breach Notification Act (R.C. 1349.19), consumers must be notified of any security breach to stored personal information that may reasonably cause a material risk of identity theft or other fraud.

### How quickly must a business notify consumers of a breach?

Consumers must be notified in the quickest way possible, but generally not later than 45 days after the breach is discovered (subject to certain restrictions in the law).

### What is an acceptable notice of a breach?

The type of notice required depends on the number of consumers affected and the size of the business. Depending on these factors, it may be acceptable to notify consumers: in writing; via e-mail or electronic notice; over the phone; through the local newspaper; on the business's website; or through notification to major media outlets in the area where the entity is located. For more information, see R.C. 1349.19(E).

## PREPAID ENTERTAINMENT CONTRACTS

Ohio's Prepaid Entertainment Contracts Act (R.C. 1345.41 to R.C. 1345.50) gives consumers three business days to cancel a prepaid entertainment contract, such as a gym membership.

### What is a prepaid entertainment contract?

Under Ohio law, a prepaid entertainment contract is a contract where the buyer pays for or is obligated to pay for services prior to the buyer's receipt of or enjoyment of the services. These services include dance studio lessons, social referral services (such as dating services), martial arts training, and health spa services (such as gym memberships).

### How long do consumers have to cancel a prepaid entertainment contract?

Under the Prepaid Entertainment Contracts Act, suppliers must give consumers a three-day right to cancel. Specifically, consumers have until midnight of the third business day after which the first service is available to cancel the contract. Health clubs and other prepaid entertainment sellers are required to give consumers notice of their right to cancel. If a consumer chooses to cancel the contract, the cancellation must be in writing and the cancellation letter must be postmarked by midnight of the third day. In the event of a cancellation, the company must refund any money the consumer has paid, minus an expense fee up to \$10.

### What if the facility is not yet open?

If the facility has not yet opened for business when the consumer signs the contract, the consumer's right to cancel extends to seven days after the first service under the contract is available. The facility or services must be available to the consumer no later than 180 days (6 months) after the contract is signed. The business cannot require the consumer to pay more than \$50 or 10 percent of the total contract price (whichever amount is less) before the facility opens.

### What happens if the facility relocates or the consumer moves?

If the facility relocates 25 miles or more from a consumer's home, or if the consumer moves 25 miles or more away from the facility, the consumer has the right to a refund that is proportionate to the time remaining in the contract. The only exception is if a similar facility within 25 miles of the consumer's home takes over the contract.

### How long can a prepaid entertainment contract last?

The terms of a prepaid entertainment contract cannot exceed three years in length.

### What contracts are not covered under the Prepaid Entertainment Contracts Act?

The Prepaid Entertainment Contracts Act does not apply to all contracts for "prepaid entertainment". For example, contracts not covered by the law include: prepaid tanning salon sessions; prepayment for a band; prepaid plans at laser tag or paint ball facilities; and prepaid plans for ring tones or other cell phone services. They also do not include contracts for services provided by any public or private nonprofit school, college or university; by the state; or by any nonprofit religious, ethnic, or community organization. Nevertheless, sellers who provide these services must clearly and conspicuously notify consumers of their return policies and other important terms and conditions.

## REFUND POLICIES AND RESTOCKING FEES

Sellers are not required to have any specific type of return policy under Ohio law. However, if a store has a refund policy, it must be clearly and conspicuously posted (R.C. 1345.03(B)(7)).

A refund policy may not be printed only on the receipt, because the consumer sees the receipt after the purchase has been made. If a seller does not have a refund policy posted, the consumer is entitled to a refund, if the consumer requests it.

Ohio law does not prohibit restocking fees, or fees for returning an item to the shelves. Nevertheless, sellers should clearly and conspicuously disclose any restocking fees before the consumer makes a purchase.

## REPAIRS AND SERVICES

Repairs and services are covered by O.A.C. 109:4-3-05 (all repairs and services) and by O.A.C. 109:4-3-13 (motor vehicle repairs and services).

### Estimates

In general, the rules give consumers the right to a verbal or written estimate for repairs or services that will cost more than \$25. The rules also require suppliers to obtain the consumer's authorization for additional repairs or services that will cost more than 10 percent of the estimate.

Upon an initial face-to-face contact with the consumer, the supplier must provide a form listing:

- The date;
- Supplier's identity;
- Consumer's name and phone number;
- Anticipated cost of the repair or service, if requested by the consumer;
- Reasonably anticipated completion date; and
- Disclosure of the consumer's right to an estimate.

### Required disclosures

The disclosure of the consumer's right to an estimate may be a separate form or incorporated into another form, as long as the required disclosures are easily legible and clearly and conspicuously appear on the form.

The disclosure form must use substantially the following language:

<b>ESTIMATE</b> <b>YOU HAVE THE RIGHT TO AN ESTIMATE IF THE EXPECTED COST OF REPAIRS OR SERVICES WILL BE MORE THAN TWENTY-FIVE DOLLARS. INITIAL YOUR CHOICE:</b>
<input type="checkbox"/> Written estimate
<input type="checkbox"/> Oral estimate
<input type="checkbox"/> No estimate

If no face-to-face contact with the consumer has occurred, upon first contact the supplier must verbally inform the consumer of the right to an estimate. If the consumer requests a verbal estimate, the supplier must provide the estimate before starting the repair or service. If the consumer requests a written estimate, the supplier must prepare the estimate, tell the consumer it has been prepared, and, if the consumer requests, give it to the consumer prior to starting the repair or service.

For repairs or services that occur at the consumer's residence and the anticipated cost exceeds twenty-five dollars, the supplier or its representative must verbally inform the consumer of the right to an estimate during the initial face-to-face contact before starting the repairs or services. For additional disclosure requirements, including disclosures that must appear on signs at a supplier's place of business, see O.A.C. 109:4-3-05.

#### **Alternative to providing an estimate**

In lieu of these requirements, the supplier may provide the consumer with a written quotation of the price at which the repair or service will be performed, indicating that the quotation shall be binding on the supplier for five days. If the supplier chooses this option, the repair or service must be available to consumer for that period.

#### **Authorization for extra work**

If the consumer requested an estimate and the anticipated cost of the repair or service is \$50 or less, then the supplier must obtain written or verbal authorization for extra costs of more than \$5 (excluding tax). For example, if the original estimate for a repair was \$40 but an unforeseen repair will cost \$7, then the supplier must obtain the consumer's written or verbal authorization before beginning the \$7 repair.

If the consumer requested an estimate and the anticipated cost is more than \$50, then the supplier must obtain the consumer's written or verbal authorization if the total cost will be 10 percent or more (excluding tax) of the original estimate. For example, if the original estimate was \$200 but the supplier later determines that the repairs would cost \$300, the supplier must obtain the consumer's written or verbal authorization before beginning the additional repairs, since the \$100 in additional costs is more than 10 percent of \$200.

#### **Additional requirements for repairs and services**

In any repair or service transaction, the supplier must disclose:

- Charges for disassembly or reassembly;
- Charges for work that only gets partially completed;
- Storage charges;
- Service charges, travel charges, charges for diagnosis; and
- Work that will be performed by a third party, if the supplier disclaims the warranty of that work.

Suppliers also must provide to consumers:

- A written itemized list of repairs or services performed;
- Replaced parts, unless the parts are rebuilt or returned to the manufacturer per warranty;
- Copies of documents signed by the consumer; and
- Upon the consumer's request, a written receipt of goods left for repair, including: the supplier's identity; the signature of the supplier or its representative; and a description of the goods left (including the make and model).

Under the Repairs and Services Rule, suppliers may not:

- Represent that certain repairs or services are needed, if they are not;
- Misrepresent repairs or services performed;
- Materially underestimate or misstate estimated cost; or
- Represent that repairs must be made outside a consumer's home, when such is not the case.

#### Auto repairs and services

The Motor Vehicle Repairs or Services Rule (R.C. 109:4-3-13) conforms closely to the Repairs and Services Rule; however, some additional requirements apply to auto repairs and services.

One of the additional rules is that if a supplier permits "night-drops", in which consumers can drop off their vehicles for repair after business hours, the supplier must provide two forms stating the consumer's right to an estimate. The consumer should be instructed to leave one form at the facility and to keep the other copy for him/herself. The form must identify the supplier and disclose the consumer's right to an estimate.

#### Overview of repairs and services rules:

- Consumers have the right to an estimate for repairs and services of \$25 or more.
- Sellers must provide consumers notice of their right to an estimate.
- If the cost will be 10% or more of the estimate, sellers must get the consumer's permission before beginning the additional work.
- Suppliers may not misrepresent repairs or services performed or needed.

## RETAIL INSTALLMENT SALES

Ohio's Retail Installment Sales Act (RISA) (starting at R.C. 1317.01) covers certain types of sales in which the cash price may be paid in installments over a period of time.

### Contracts covered under RISA

Sales of the following goods and services are covered under RISA: health spa services; home improvement services; automobiles; mobile homes; furniture; cemetery burial plots and swimming pools. Additional installment sales also may apply.

### Requirements for a RISA contract

A RISA contract must be in writing, and the seller must provide a copy of the signed contract to the buyer. Each contract must contain the following:

- Cash price of the specific goods;
- Buyer's down-payment, if any, of money and/or goods;
- Unpaid balance of the cash price;
- Cost of any insurance the buyer has agreed to purchase;
- Principal balance owed on the contract;
- Amount of the finance charge; and
- Total amount owed, number of installment payments required and amount and due date of each payment.

### Prohibited charges

Certain charges are prohibited in a RISA contract, such as attorney fees and excessive finance charges for document services or late payments.

Under RISA, if the original seller transfers the contract to another person, that person inherits the legal rights the consumer had under the original seller. The transfer of the contract to another seller or owner does not change the consumer's legal rights.

## TELEMARKETING AND DO NOT CALL REGISTRY

Sellers who make telemarketing calls to consumers must ensure that they comply with state and federal telemarketing laws, notably Ohio's Telephone Solicitation Sales Act, the Federal Trade Commission's Telemarketing Sales Rule, and the Telephone Consumer Protection Act of 1991, including their do not call provisions.

### What is a telephone solicitation?

In general, a telephone solicitation is communication initiated by or on behalf of a telephone solicitor (telemarketer) or a salesperson and meant to induce the consumer to purchase goods or services.

### What are Ohio's telemarketing laws?

The Telephone Solicitation Sales Act (starting at R.C. 4719.01) requires certain telemarketing businesses operating inside and outside Ohio to register with the Ohio Attorney General and to post a bond before soliciting Ohio consumers. To determine whether registration is required, sellers should carefully review the definitions and exemptions of the law in R.C. 4719.01.

### What is required under Ohio's Telephone Solicitation Sales Act?

Under the Telephone Solicitation Sales Act:

- Telephone solicitors may not block the disclosure of their telephone number on caller id.
- A solicitor must state, within the first 60 seconds of a call, his or her real name, the company name, the purpose of the call, and the goods or services being sold.
- If a sale or agreement is made during the call, the telephone solicitor must (verbally) provide the consumer with the following information *before* requesting payment:
  - Solicitor's street address and telephone number;
  - Total cost of the goods or services;
  - Restrictions, limitations, or conditions;
  - Refund/cancellation policy terms and conditions;
  - For prize promotions, a description of the prize, terms, and conditions, and
  - The consumer's rights under the law which require the telemarketer to either obtain a signed written confirmation or provide a 7-day notice of cancellation.
- Telephone solicitors who intend to offer prizes must provide notice to the Attorney General at least 14 days before making their calls.

### When can a telemarketer collect payment?

The Telephone Solicitation Sales Act says that a sale is not valid until the sale is documented by either a signed written agreement or by providing a notice of cancellation. Specifically, telephone solicitors have the following two options for evidence agreements with consumers:

- Solicitors may accept a consumer's payment for goods and services *only after* obtaining a signed written contract from the consumer which contains specific material terms which can be found at R.C. 4719.07(F); or
- Solicitors may accept a consumer's payment during the telephone solicitation, if they comply with the Federal Trade Commission's Telemarketing Sales Rule method of confirming sales (16 C.F. R. part 310.3 to 310.05, available at [www.ftc.gov](http://www.ftc.gov)) and they give an unconditional full refund for cancellations within 7 days after the consumer's receipt of the goods and a NOTICE OF CANCELLATION which includes specific material terms and notice language which can be found at R.C. 4719.07(H)(3).

### **Does the Ohio Attorney General enforce federal telemarketing laws?**

Yes. The Attorney General has the authority to enforce the federal telemarketing laws, the Telemarketing and Consumer Fraud and Abuse Prevention Act which incorporates the Federal Trade Commission's Telemarketing Sales Rule, and the Telephone Consumer Protection Act of 1991.

### **DO NOT CALL REGISTRY**

Businesses that wish to solicit customers by telephone must comply with the Do Not Calls restrictions of two very similar federal laws, the FTC's Telemarketing Sales Rule and the Telephone Consumer Protection Act of 1991. Both federal statutes require businesses to access the National Do Not Call Registry, which is maintained by the FTC and to "scrub" or remove, registered numbers from their calling lists. The laws also require businesses to maintain internal do not call lists to track requests made by the consumers upon receipt of a call.

The laws are enforced by the FTC, the Federal Communications Commission (FCC) and state officials. Ohio does not have a separate Do Not Call law, although the federal laws may be enforced in federal or state court by the Attorney General. Businesses that violate the do not call provisions may be ordered to pay damages of \$500 per call \$10,000 or more.

#### **What calls are covered?**

The do not call provisions cover interstate and intrastate phone calls. They cover any plan, program, or campaign to sell goods or services, including calls by telemarketers who solicit consumers on behalf of third-party sellers. The provisions also apply to sellers who are paid to provide, offer to provide or arrange to provide goods or services to consumers. Even if sellers make telemarketing calls infrequently and dial by hand, they generally must comply with the do not call provisions.

#### **What calls are not covered?**

The do not call provisions do not cover calls from political organizations, telephone surveyors, companies with which a consumer has an existing business relationship, or where a consumer has given express written permission to the organization or caller. Charitable organizations are not covered by the Telephone Consumer Protection Act but they are covered by the Telemarketing Sales Rule.

#### **If a call includes a telephone survey and a sales pitch, is it covered?**

Yes. Callers purporting to take a survey, but also offering to sell goods or services, must comply with the do not call provisions. But if the call is for the sole purpose of conducting a survey, it is exempt.

#### **How does the "established business relationship" provision work?**

A company with which a consumer has an established business relationship may call for up to 18 months after the consumer's last purchase, last delivery, or last payment, unless the consumer asks the company not to call again. In that case, the company must honor the request not to call.

If a consumer makes an inquiry or submits an application to a company, the company can call for three months. Once again, if the consumer makes a specific request to that company not to call, the company may not call, even if it has an established business relationship with the consumer. A consumer whose number is not on the national registry still can prohibit individual telemarketers from calling by asking to be put on the company's internal do not call list.

How can I download the registry or get more information?

To download the registry, visit the FTC's website, [www.ftc.gov](http://www.ftc.gov). To learn more, visit [www.ftc.gov](http://www.ftc.gov) and [www.ftc.gov](http://www.ftc.gov).

**Telemarketing and Do Not Call overview:**

- Covered telephone solicitors must register with the Ohio Attorney General's Office.
- To have a valid sale, telephone solicitors must obtain a signed, written confirmation from consumers prior to accepting money or they may use a notice of cancellation form containing specific language which provides an unconditional refund for 7 days after the consumer's receipt of the Notice and the goods or services.
- Only certain types of calls are exempt from the Do Not Call Registry.
- Do not call laws are enforceable by the Ohio Attorney General in federal or state courts.

## PROTECTING SMALL BUSINESSES

The Ohio Attorney General's Consumer Protection Section provides a free complaint dispute resolution process for small businesses and nonprofits.

Businesses often act as consumers in the marketplace - purchasing goods and services from other businesses. And, just like other consumers, businesses can be taken advantage of by others who act unscrupulously.

Businesses should file complaints if they have not received a product in the condition promised, been charged for services that they did not request or had other problems transacting with another business.

Learn more at [www.OhioAttorneyGeneral.gov/BusinessServices](http://www.OhioAttorneyGeneral.gov/BusinessServices) or call 800-282-0515.

Complaints and other information sent to the Attorney General's Office are public records, except for protected personal financial information, such as credit card numbers and Social Security numbers. Sensitive personal information should be removed from any documents or information submitted with a complaint. The complaint will be shared with the business that is the subject of the complaint in order to help resolve the issue.

## OHIO CONSUMER PROTECTION LAWS

The Ohio Attorney General has enforcement authority over more than 25 consumer protection laws, which are listed below. Please note that additional laws may apply. The Ohio Revised Code (R.C.) and the Ohio Administrative Code (O.A.C.) are available at <http://codes.ohio.gov>. You also can find these laws at [www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov) (laws protecting consumers).

- Anti-Pyramid Sales Act (starting at R.C. 1333.91)
- Business Opportunity Purchaser's Protection Act (starting at R.C. 1334.01)
- Certificate of Motor Vehicle Title Act (starting at R.C. 4505.181)
- Condominium Sales Act (starting at R.C. 5311.25)
- Consumer Sales Practices Act (starting at R.C. 1345.01) and Substantive Rules (starting at O.A.C. 109:4-3-01)
- Credit Card Recording Act (starting at R.C. 1349.17)
- Credit Card Truncation Act (R.C. 1349.18)
- Credit Freeze Act (starting at R.C. 1349.52)
- Credit Services Organization Act (starting at R.C. 4712.01)
- Debt Adjusters Act (starting at R.C. 4710.01)
- Defective Assistive Devices Act (starting at R.C. 1345.94) (definitions, R.C. 1345.90)
- Gift Card Act (R.C. 1349.61)
- Hearing Aid Returns Act (R.C. 1345.31) (definitions, R.C. 1345.30)
- Homebuyer's Protection Act, also known as the Predatory Lending Law and the Mortgage Brokers Act (starting at R.C. 1322.01)
- Home Solicitation Sales Act (starting at R.C. 1345.21)
- Lemon Law (Nonconforming New Motor Vehicle Law) (starting at R.C. 1345.71)
- Motor Vehicle Collision Repair Operators Act (starting at R.C. 4775.02)
- Odometer Rollback and Disclosure Act (starting at R.C. 4549.41)
- Prepaid Entertainment Contracts Act (starting at R.C. 1345.41)
- Public Utilities Commission Act (R.C. 4905.72)
- Retail Installment Sales / Layaway Arrangements Act (starting at R.C. 1317.01)
- Security Breach Notification Act (R.C. 1349.19)
- Short-Term Lender Law, also known as the Payday Lending Law (R.C. 1321.35)
- Telemarketing Act (R.C. 109.87)
- Telephone Solicitation Sales Act (starting at R.C. 4719.01)
- Title Defect Rescission Act (R.C. 4505.181)
- Title Insurance Act (starting at R.C. 3953.35)

Ohio Attorney General's Office, Consumer Protection Section, 2011

The Ohio Attorney General's Consumer Protection Section protects Ohio's marketplace by enforcing consumer laws, offering complaint dispute resolution, and educating consumers and businesses.

This guide is intended to be used for educational purposes only. The Ohio Attorney General's Office may not provide legal advice to individual consumers or businesses. For legal advice, please consult an attorney.

# Complying with Ohio Consumer Law:

**A GUIDE FOR BUSINESSES**



**MIKE DeWINE**  
OHIO ATTORNEY GENERAL

**CONSUMER PROTECTION SECTION**  
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**[www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov)**

The mission of the Ohio Attorney General's Consumer Protection Section is to protect Ohio's marketplace by enforcing consumer laws, offering complaint dispute resolution, and educating consumers and businesses.

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# Exhibit K

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
2011 APR 25 AM 11:57  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY  
CIVIL DIVISION

GMAC MORTGAGE, LLC, :  
Plaintiff, :  
v. : Case No. 10CVE02-1672  
ROBERT E. LEE, et al., : Judge Schneider  
Defendants. :

DECISION (1) DENYING DEFENDANT'S SECOND MOTION FOR  
RELIEF FROM JUDGMENT, FILED FEBRUARY 14, 2011, AND  
(2) DENYING DEFENDANT'S MOTION FOR EMERGENCY STAY,  
FILED FEBRUARY 14, 2011

Rendered this 22 day of April, 2011.

Schneider, J.

I. Relief from Judgment under Civ. R. 60(B)

A party may obtain relief from a final judgment on the following grounds:

(1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

Civ. R. 60(B). As such, a party seeking Rule 60(B) relief must show (1) a meritorious claim or defense; (2) an entitlement to relief on the grounds enumerated in subsections (1)-(5); and the filing of the motion within a "reasonable" time (a maximum of one

year for subsections (1)-(3)). GTE Automatic Elec., Inc. v. ARC Industries, Inc. (1976), 47 Ohio St. 2d 146 (syllabus, para. 2); Rose Chevrolet, Inc. v. Adams (1988), 36 Ohio St. 3d 17, 20 (citing GTE); Strack v. Pelton (1994), 70 Ohio St. 3d 172, 174 (citing GTE); Perry v. General Motors Corp. (Franklin 1996), 113 Ohio App. 3d 318, 320 (citing GTE). The motion will be denied if any of these three requirements are lacking. Rose Chevrolet, 36 Ohio St. 3d at 20; Strack, 70 Ohio St. 3d at 174 (citing GTE, 47 Ohio St. 2d at 151).

A decision on a motion for relief from judgment is at the trial court's discretion. Griffey v. Rajan (1987), 33 Ohio St. 3d 75, 77; Doddridge v. Fitzpatrick (1978), 53 Ohio St. 2d 9, 12; McGee v. C&S Lounge (Franklin 1996), 108 Ohio App. 3d 656, 659-60 (citing Doddridge, 53 Ohio St. 2d 9; quoting Huffman v. Hair Surgeon, Inc. (1985), 19 Ohio St. 3d 83, 87).

## II. Discussion

On May 21, 2010, plaintiff obtained default judgment on its foreclosure complaint. On June 22, defendant Robert E. Lee, Jr. filed his motions for relief from judgment, for leave to file an answer, and to refer to mediation; these motions were denied in a decision filed July 29, 2010. On February 14, 2011, defendant filed his second motion for relief from judgment and his motion for an emergency stay of eviction.

A Rule 60(B) "motion will be denied if any of these three

requirements are lacking." In this regard, defendant has failed to demonstrate compliance with all three elements of Civ. R. 60(B).

First, defendant has failed to show that his motion was filed within a "reasonable time."

One court has discussed the "reasonable time" requirement as follows:

A movant under Civ.R. 60(B) must demonstrate that his or her motion has been made within a reasonable time, which cannot exceed one year following the judgment if the grounds are Civ.R. 60(B)(1), (2), or (3). *GTE, supra*. This is not to say that a period of less than one year is automatically reasonable. As this Court has explained, a motion based upon the first three grounds of Civ.R. 60(B) may, under the circumstances of a case, be considered untimely even prior to the expiration of the one-year period. *Falk v. Wachs* (1996), 116 Ohio App. 3d 716, 721, 689 N.E.2d 71; see, also, *Adomeit v. Baltimore* (1974), 39 Ohio App. 2d 97, 106, 316 N.E.2d 469 ("While a party may have a possible right to file a motion to vacate a judgment up to one year after the entry of judgment, the motion is also subject to the 'reasonable time' provisions. See Staff Notes, Civil Rule 60(B). In other words, a motion may be filed within one year under Civil Rule 60(B) but still may not be considered within a 'reasonable time.'"); *Fouts v. Weiss-Carson* (1991), 77 Ohio App. 3d 563, 566-567, 602 N.E.2d 1231 (holding that "since appellant failed to present any explanation within her motion for the twelve-week delay in filing her motion to vacate \*\*\*, she failed to demonstrate the timeliness of the motion."). Any argument that the rule requires a court to grant a Civ.R. 60(B)(1) or (3) motion if it is made within one year of the judgment "misconstrues [the rule], as the one year provision serves as an additional time limit for motions under Civ.R. 60(B)(1), (2) and (3)." (Emphasis added.) *Scott v. Wolny*, 1994 Ohio App. LEXIS 1607 (Apr. 13, 1994), Medina App. No. 2227-M, unreported.

Cooper v. Cooper (Medina App., Nov. 4, 1998), No. 2741-M, 1998

Ohio App. LEXIS 5264, at \*8-9 (brackets in original); see State ex rel. Minnis v. Lewis (Franklin App., Dec. 30, 1993), No. 93AP-812, 1993 Ohio App. LEXIS 6458, at \*14-15 ("an unexplained or unjustified delay in making the motion after discovering a ground for relief may put the motion beyond the pale of a reasonable time"); Grange Mut. Cas. Co. v. Guerard (Franklin App., Dec. 29, 1977), No. 77AP-379, 1977 Ohio App. LEXIS 7520, at \*3-4 ("A motion for relief from judgment, pursuant to Civ. R. 60(B)(1), must be made within one year, which is the maximum period allowed for the motion to be considered, and also be made 'within a reasonable time,' which may conceivably be less than one year after the judgment from which relief was rendered.").

The judgment entry was filed May 21, 2010. However, defendant did not file his second motion to vacate judgment until February 14, 2011—more than eight and one-half months after default judgment was rendered and about six and one-half months after the decision denying his first motion to vacate—and defendant has failed to give any reason for not seeking relief from judgment sooner. Merely filing a Civ. R. 60(B) motion within one year does not demonstrate that the motion was filed within a "reasonable time." As such, defendant has failed to show that his motion for relief from judgment was filed within a "reasonable time."

Second, defendant has failed to show "a meritorious claim or

defense."

One court has discussed "meritorious defense" as follows:

The party requesting relief from judgment bears the burden of asserting operative facts that demonstrate that he or she has a meritorious defense that justifies relief from judgment. *Hagaman v. Hagaman* (Mar. 29, 1995), 9th Dist. No. 16861, 1995 Ohio App. LEXIS 1286, citing *Adomeit v. Baltimore* (1974), 39 Ohio App.2d 97, 102, 316 N.E.2d 469. All operative facts must be presented with the motion; the movant cannot wait to present operative facts at a hearing. See *Salem v. Salem* (1988), 61 Ohio App.3d 243, 245, 572 N.E.2d 726.

We have previously defined "operative facts" as facts, that if proven, would give rise to a meritorious defense. *Society Natl. Bank v. Val Halla Athletic Club & Recreation Ctr., Inc.* (1989), 63 Ohio App.3d 413, 418, 579 N.E.2d 234. "If a party who seeks relief from judgment does not present operative facts or presents facts of limited or meager quality, then a trial court is justified in denying relief because that party has failed to meet its burden of asserting facts entitling the party to relief." *Hagaman, supra*, citing *Youssefi v. Youssefi* (1991), 81 Ohio App.3d 49, 53, 610 N.E.2d 455. Furthermore, a party seeking relief from judgment cannot present "'mere general allegations[.]'" *Hagaman, supra*, citing *Society Natl. Bank*, 63 Ohio App.3d at 418.

Miller v. Miller (Summit App., April 21, 2004), No. 21770, 2004 Ohio App. LEXIS 1729, at \*5-7 (brackets in original); see Hagaman v. Hagaman (Summit App., March 29, 1995), No. 16861, 1995 Ohio App. LEXIS 1286, at \*5 ("if a party who seeks relief from judgment does not present operative facts or presents facts of limited or meager quality, then a trial court is justified in denying relief because that party has failed to meet its burden of asserting facts entitling the party to relief," and so "a party seeking relief cannot present 'mere general allegations' to

justify relief").

Defendant argues that GMAC had filed "false affidavits" in other cases and that Jeffrey Stephan, plaintiff's affiant, was sanctioned in Maine. Defendant also argues that his "meritorious defense" is that "Plaintiff is not the real party in interest" because "the Assignment [of mortgage] is potentially invalid."

However, these arguments are not an assertion that defendant has a "meritorious defense" but only that there is a possibility that he has such a defense. Arguing that there is a possibility that deficient paperwork was filed in this case or that plaintiff might not be the real party in interest does not assert operative facts which show that defendant actually has a "meritorious defense." See Home S&L Co. v. Captiva H.K., Ltd. (Mahoning App., Nov. 24, 2004), No. 03 MA 167, 2004 Ohio App. LEXIS 5857, at \*14 ("Appellants misunderstand the burden imposed upon them by Civ.R. 60(B). They believed they only needed to show that there was a possibility that they had a meritorious defense to the judgment entered against them. But they had the burden of alleging operative facts which, if believed, would constitute a meritorious defense.").

Defendant has not argued that he is not in default, that the amount which plaintiff seeks is incorrect, or that the judgment entry is otherwise erroneous. Defendant also does not explain the manner in which the alleged "robo-signing" would provide a

"meritorious defense" in his particular case.

Likewise, defendant Lee's affidavit does not allege any facts which would show that a "meritorious defense" exists, and defendant's description of Stephan's alleged actions in Florida and Maine are unsupported by evidence and do not set forth operative facts showing that defendant in this case has a "meritorious defense." See Downey v. 610 Morrison Rd., LLC (Franklin App., July 15, 2008), No. 07AP-903, 2008 Ohio App. LEXIS 2971, at \*13 ("unsworn allegations of operative facts in a Civ.R. 60[B] motion or in a supporting brief attached to such a motion is insufficient evidence upon which to grant a Civ.R. 60[B] motion") (brackets in original) (citing East Ohio Gas Co. v. Walker (Cuyahoga 1978), 59 Ohio App. 2d 216); State ex rel. Flagner v. Arko (1998), 83 Ohio St. 3d 176, 177 ("[a] newspaper article alone is not evidence of operative facts which might support a Civ.R. 60(B) motion [for relief from judgment]") (brackets in original) (quoting Salem v. Salem (Summit 1988), 61 Ohio App. 3d 243, 246).

Thus, defendant has failed to show that he is entitled to relief from judgment. In light of the entry of final judgment and defendant's failure to demonstrate grounds for relief from that judgment, defendant's motion for an emergency stay is also unwarranted.

Therefore, defendant's second motion for relief from judgment and motion for emergency stay are DENIED. Counsel for plaintiff

shall prepare an appropriate entry and submit the proposed entry to counsel for the adverse party pursuant to Loc. R. 25.01. A copy of this decision shall accompany the proposed entry when presented to the Court for signature.



CHARLES A. SCHNEIDER, JUDGE

Copies to:

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John H. Sumner, Esq.  
Assistant City Attorney  
City Hall  
90 W. Broad Street  
Columbus, Ohio 43215  
Attorney for Defendant City of Columbus, Division of Income Tax

# Exhibit L

IN THE COMMON PLEAS COURT OF FAIRFIELD COUNTY, OHIO

FILED

2011 FEB -7 AM 8:48

WELLS FARGO BANK, NA,

:

Plaintiff,

:

Case No. 07 CV 952

DEBORAH SMALL  
CLERK OF COURTS  
FAIRFIELD CO. OHIO

v.

:

Judge Berens

NICOLE PIWINSKI, ET AL.,

:

ENTRY: Overruling Motion for  
Relief from Judgment, Motion for  
Sanctions, and Motion for  
Deposition

Defendants.

:

This matter is before the Court upon Defendant Nicole Piwinski's ("Defendant") Motion for Relief from Judgment, Motion for Sanctions and to Hold Plaintiff Wells Fargo Bank N.A. in Contempt of Court, and Motion for Entry Compelling Plaintiff to Make China Brown Available for Deposition, all filed November 12, 2010. For the following reasons, Defendant's motions are all **OVERRULED**.

This is an action upon a Complaint in Foreclosure, filed in August 2007. Defendant failed to plead or move and the Court entered default judgment in favor of Plaintiff on November 20, 2007. The sale of the subject property was confirmed by this Court on March 18, 2008. That was the end of the matter until Defendant appeared, for the first time, and filed the motions under consideration.

The basis for each motion is essentially the same. Defendant contends that Plaintiff prosecuted an improper and fraudulent action against her. She accuses Plaintiff and Plaintiff's counsel of maliciously pursuing her and knowingly offering false and manufactured evidence in support of its complaint in foreclosure. At the heart of Defendant's allegations is the belief that Plaintiff supplied an affidavit with its motion for default judgment that was prepared and signed

by a "robosigner," who could not attest to the truth of the statements in her affidavit. Defendant also suggests that Plaintiff was not the real party in interest at the time of filing.

### LAW AND ANALYSIS

1. Defendant's Motion for Default Judgment is Untimely and Defendant Has Asserted No Meritorious Defense.

To prevail on a motion under Civ. R. 60(B) a party must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken.<sup>1</sup> Additionally, "[t]he movant must submit factual material with his motion which demonstrates grounds which, if true, would constitute a defense to the action."<sup>2</sup> Though evidentiary support is unnecessary, the movant must do more than make bare assertions that he is entitled to relief.<sup>3</sup> Instead, the movant must allege specific facts that support a defense on the merits.<sup>4</sup> Finally, although "Civ.R. 60(B)(5) is intended as a catch-all provision reflecting the inherent power of a court to relieve a person from the unjust operation of a judgment, \* \* \* it is not to be used as a substitute for any of the other more specific provisions of Civ.R. 60(B)."<sup>5</sup>

Defendant has asserted that she is entitled to relief under Civ.R. 60(B)(1), (2), (3), and (5). But it is clear from the record of this action that Defendant's motion was filed well after the

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<sup>1</sup> *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St. 2d 146, 150-51, 351 N.E.2d 113; Civ.R. 60(B).

<sup>2</sup> *Bergmeyer v. Delong*, 5th Dist. No. 2005CA00079, 2005-Ohio-5400, at ¶ 29.

<sup>3</sup> *Kay v. Marc Glassman, Inc.* (1996), 76 Ohio St.3d 18, 20, 665 N.E.2d 1102.

<sup>4</sup> *E.g., Kadish, Hinkel & Weibel Co., LPA v. Rendina* (1998), 128 Ohio App.3d 349, 352, 714 N.E.2d 984.

<sup>5</sup> *Caruso-Ciresi, Inc. v. Lohman* (1983), 5 Ohio St.3d 64, 448 N.E.2d 1365, at paragraph one of the syllabus.

one-year period during which she might have sought relief under Civ.R. 60(B)(1), (2), or (3). Default judgment was entered against Defendant on November 20, 2007 and Defendant filed her motion for relief nearly three years later, on November 12, 2010. Under those circumstances, Defendant's recourse, if any, must lie in Civ.R. 60(B)(5).

Defendant maintains that Plaintiff supplied a false affidavit in support of default judgment and that such action constituted a "fraud upon the court" so as to bring Defendant's motion within the scope of Civ.R. 60(B)(5).<sup>6</sup> The Ohio Supreme Court has stated, "[w]here an officer of the court, e.g., an attorney \* \* \* actively participates in defrauding the court, then the court may entertain a Civ.R. 60(B)(5) motion for relief from judgment."<sup>7</sup> (Emphasis added.) Otherwise, "a party must resort to a motion under Civ.R. 60(B)(3)."<sup>8</sup>

Defendant has offered nothing to show that an officer of the court actively participated in the creation of the affidavit at issue or knowingly submitted a fraudulent affidavit to the court. At best, Defendant has offered only the suggestion that Plaintiff's foreclosure attorney should have known that the affidavit was fraudulent based on past dealings with Plaintiff. The Court finds Defendant's assumption concerning the knowledge of Plaintiff's counsel unpersuasive. As a result, the Court finds that Defendant's motion does not properly seek relief for circumstances constituting a fraud upon the court and therefore is not governed by Civ.R. 60(B)(5). Further, the Court concludes that Defendant's motion for relief from judgment is untimely.

Even if Defendant's motion were timely filed, Defendant has not met the first *GTE*

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<sup>6</sup> *Coulson v. Coulson* (1983), 5 Ohio St.3d 12, 15, 448 N.E.2d 809.

<sup>7</sup> *Id.*; See, also, *Scholler v. Scholler* (1984), 10 Ohio St.3d 98, 106, 462 N.E.2d 158 ("In the case at bar, [the movant] makes no allegations of fraud committed by any officer of the court. The allegations in the complaint are solely directed to a claim of fraud committed by [the non-movant]. That being the case, *Coulson*, *supra*, has no application to the instant cause and reliance thereon offers no support to [the movant's] argument.").

<sup>8</sup> *Id.*

requirement of asserting a meritorious defense. Defendant asserts that her meritorious defense is that Plaintiff was not the holder of the note and mortgage at the time the Complaint was filed. But precedent binding upon this Court holds that a plaintiff in foreclosure need not be the real party in interest at the time of filing.<sup>9</sup> Therefore, even if Defendant's motion were timely, Defendant would not be entitled to the relief she seeks.

For the foregoing reasons, Defendant's motion for relief from judgment is **OVERRULED.**

**2. Defendant Has Not Established Grounds for Sanctions or to Hold Plaintiff in Contempt of Court.**

Defendant moves for sanctions based on both Civ.R. 11 and R.C. 2323.51. Those provisions provide slightly different standards regulating litigation conduct. Civ.R. 11 requires a signature on litigation documents certifying "that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay." Although any violation of the rule can result in the action proceeding as if the document was never filed, an attorney or party is subject to more severe sanctions, including the award of attorney's fees, for a willful violation.<sup>10</sup>

R.C. 2323.51, on the other hand, authorizes the award of attorney's fees to "any party to [a civil action] who was adversely affected by frivolous conduct[.]"<sup>11</sup> Courts have held that the frivolous conduct standard in R.C. 2323.51(A) is an objective standard, as the statute makes no reference to what the litigant knew or believed at the time of the conduct.<sup>12</sup>

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<sup>9</sup> *U.S. Bank N.A. v. Bayless*, 5th Dist. No. 09 CAE 01 004, 2009-Ohio-6115, at ¶22; *Wachovia Bank, N.A. v. Cipriano*, 5th Dist. No. 09CA007A, 2009-Ohio-5470, at ¶38.

<sup>10</sup> Civ.R. 11.

<sup>11</sup> R.C. 2323.51(B)(1).

<sup>12</sup> *Ceol v. Zion Indus. Inc.* (1992), 81 Ohio App.3d 286, 291, 610 N.E.2d 1076.

In addition, Defendant moves to have Plaintiff held in contempt of court. Although contempt of court generally requires disobedience to a court order,<sup>13</sup> Defendant asserted that the circumstances in this instance justified the Court's use of its "inherent powers to sanction."<sup>14</sup> Specifically, Defendant asserted that bad faith justifying sanctions could be inferred from the fact that "Plaintiff's counsel has represented Wells Fargo for years and knew or should have known of the practices of Geoffrey Nixon and other robo-signers."<sup>15</sup>

The Court finds that Defendant has not met her burden to prove that Plaintiff's conduct, or the conduct of Plaintiff's counsel, was sanctionable. Defendant bases her accusations on a newspaper article and a letter from Ohio's Attorney General concerning the conduct of Xee Moua, a complete stranger to this action. Beyond that, Defendant has nothing more than suppositions and bare accusations of misconduct.

Defendant's memorandum in support of her motion shows that Defendant herself is confused about the misconduct she alleges. The only affidavit filed in support of the default judgment was that of China Brown. Despite that fact of record, Defendant asserts that Plaintiff and Plaintiff's counsel should be sanctioned because they were aware or should have been aware of the practices of "Geoffrey Nixon" and "Jeffrey Stephan."<sup>16</sup> Those names appear nowhere in the record of this action other than in Defendant's memorandum, not even within the newspaper article or Attorney General letter upon which Defendant relies for her accusations. Such unsupported and apparently random accusations further persuade the Court that Defendant has

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<sup>13</sup> *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, 271 N.E.2d 815, at syllabus paragraph one; *Arthur Young & Co. v. Kelly* (1990), 68 Ohio App.3d 287, 295, 58 N.E.2d 233.

<sup>14</sup> Defendant quotes *Gahanna v. Eastgate Properties, Inc.* (1988), 36 Ohio St.3d 65, 66, 521 N.E.2d 814, but the Court notes that the quoted language appears nowhere within that decision.

<sup>15</sup> Defendant Nicole Piwinski's Motion for Sanctions and to Hold Plaintiff Wells Fargo Bank N.A. in Contempt of Court, filed November 12, 2010.

<sup>16</sup> *Id.*

not met her burden to establish sanctionable conduct.

For the foregoing reasons, Defendant's motion for sanctions is **OVERRULED**.

3. Defendant is Not Entitled to An Order Requiring That China Brown be Made Available for Deposition.

Defendant's final motion requests the Court order that China Brown be made available for deposition prior to any hearing on Defendant's motion under Civ.R. 60(B). The purpose is apparently so that Defendant can inquire of China Brown concerning the factual basis of Defendant's claims for relief from judgment. Defendant states that Plaintiff is not required to make China Brown available for deposition without an order from the Court.

The Court sees no authority upon which it could issue the order Defendant requests. The Court agrees with the reasoning of the Ninth District Court of Appeals in *In re Guardianship of Mataszek*,<sup>17</sup> holding that discovery is not available upon a motion under Civ.R. 60(B) because the final judgment is not disturbed by the filing of the Civ.R. 60(B) motion and because the 60(B) motion does not commence an action.<sup>18</sup> The time for discovery is before the entry of final judgment and the time to investigate the factual basis of a motion for relief from judgment, as for any motion, is before the motion is filed.

For the foregoing reasons, Defendant's motion for an order requiring the availability of China Brown is **OVERRULED**.

All open questions having been resolved by this Entry, the Court finds that this constitutes a final order and that there is no just cause for delay.

  
Judge Richard E. Berens

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<sup>17</sup> 9th Dist. No. 20943.

<sup>18</sup> Id. at ¶17-18.

Copies to:

John Sherrod, 5950 Venture Dr., Ste. B1, Dublin, OH 43017

Scott A. King, John B. Kopf III, 41 S. High St., Ste 1700, Columbus, OH 43215

# Exhibit M

IN THE COURT OF COMMON PLEAS, LICKING COUNTY, OHIO

CLERK OF COURT  
LICKING CO. OHIO

Deutsche Bank Trust Company Americas,

MAY 20 AM 10:00

Plaintiff,

MARY R. WALTERS  
CLERK

vs.

Case No. 09 CV 205

Michael A. Fox,

Defendant.

JUDGMENT ENTRY

.....

This matter came before the Court for oral hearing the 17<sup>th</sup> day of May 2011 pursuant to defendant Michael A. Fox' Motion for Relief pursuant to Civil Rule 60(B) which was initially filed December 16, 2010, set for hearing and then continued at various times while defendant filed a Motion to Compel Plaintiff to Provide Court and Counsel with Proof of Integrity of all Documents filed December 21, 2010, a Motion for Sanctions and various continuances.

Counsel for plaintiff appeared and defendant appeared with counsel. The Court heard argument of the parties.

The Court finds the motion to be both untimely and failed to meet the requirements set out under Civil Rule 60(B), particularly that of alleging setting forth a meritorious defense. The Court relies upon the authority set forth in GMAC Mortgage, LLC v. Robert E. Lee, et al., Franklin County Court of Common Pleas, 10 CVE 02-1672, decided April 25, 2011, as well as Wells Fargo Bank, N.A. v. Piwinski, Common Pleas Court of Fairfield County, Ohio, 07-CV-952, filed February 7, 2011.

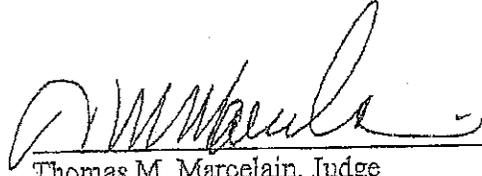
Accordingly, the Court finds defendant's motion to be not well taken and is DENIED. There is no just cause for delay. This is a final and appealable order.

Judge  
Thomas M. Marcolain  
740-670-5777

Judge  
W. David Branstool  
740-670-5770

Courthouse  
Newark, OH 43056

The Clerk of Courts shall serve a copy of this Judgment Entry upon all parties or counsel of record.



Thomas M. Marcelain, Judge

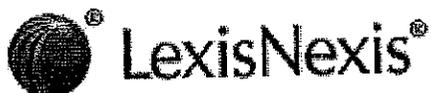
Copies to:

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Carpenter Lipps & Leland LLP, 280 Plazas, Ste. 1300, Columbus, OH 43215

John Sherrod, Esq., Attorney for Defendant Michael A. Fox  
Jump Legal Group, LLC, 2130 Arlington Ave., Columbus, OH 43221

Kyle E. Timken, Esq., Co-Counsel for Plaintiff  
Manley, Deas, Kochalski LLC, P.O. Box 165028, Columbus, OH 43221-65028

# Exhibit N



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\*\*\* Current through PL 112-54, approved 11/12/11 \*\*\*

TITLE 12. BANKS AND BANKING  
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2605

§ 2605. Servicing of mortgage loans and administration of escrow accounts [Caution: See prospective amendment note below.]

(a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing. Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

(b) Notice by transferor of loan servicing at time of transfer.

(1) Notice requirement. Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) Time of notice.

(A) In general. Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings. The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing. The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice. The notice required under paragraph (1) shall include the following information:

(A) The effective date of transfer of the servicing described in such paragraph.

(B) The name, address, and toll-free or collect call telephone number of the transferee servicer.

(C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

## 12 USCS § 2605

(D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments.

(F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or an other type of optional insurance and what action, if any, the borrower must take to maintain coverage.

(G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) Notice by transferee or loan servicing at time of transfer.

(1) Notice requirement. Each transferee servicer to whom the servicing of an federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) Time of notice.

(A) In general. Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings. The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing. The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice. Any notice required under paragraph (1) shall include the information described in subsection (b)(3).

(d) Treatment of loan payments during transfer period. During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment.

(e) Duty of loan servicer to respond to borrower inquiries.

(1) Notice of receipt of inquiry.

(A) In general. If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) Qualified written request. For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that--

(i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and

(ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry. Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall--

## 12 USCS § 2605

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);

(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--

(i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(3) Protection of credit rating. During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 603 of the Fair Reporting Act [15 USCS § 1681a]).

(f) Damages and costs. Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) Individuals. In the case of any action by an individual, an amount equal to the sum of--

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$ 1,000.

(2) Class actions. In the case of a class action, an amount equal to the sum of--

(A) any actual damages to each of the borrowers in the class as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than \$ 1,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of--

(i) \$ 500,000; or

(ii) 1 percent of the net worth of the servicer.

(3) Costs. In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

(4) Nonliability. A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) Administration of escrow accounts. If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due.

(h) Preemption of conflicting State laws. Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower.

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(i) Definitions. For purposes of this section:

(1) Effective date of transfer. The term "effective date of transfer" means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan.

(2) Servicer. The term "servicer" means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include--

(A) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act [12 USCS § 1823(c)] or as receiver or conservator of an insured depository institution; and

(B) the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) Servicing. The term "servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 10 [12 USCS § 2609], and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(j) Transition.

(1) Originator liability. A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

(2) Servicer liability. A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) that arises before the regulations referred to in paragraph (3) take effect.

(3) Regulations and effective date. The Bureau shall establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).

(k) Servicer prohibitions [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.].

(1) In general. A servicer of a federally related mortgage loan shall not--

(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance;

(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section;

(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan; or

(E) fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

(2) Force-placed insurance defined. For purposes of this subsection and subsections (1) and (m), the term "force-placed insurance" means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

(l) Requirements for force-placed insurance [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.]. A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

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(1) Written notices to borrower. A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless--

(A) the servicer has sent, by first-class mail, a written notice to the borrower containing--

(i) a reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;

(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

(iv) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner;

(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

(2) Sufficiency of demonstration. A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.

(3) Termination of force-placed insurance. Within 15 days of the receipt by a servicer of confirmation of a borrower's existing insurance coverage, the servicer shall--

(A) terminate the force-placed insurance; and

(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.

(4) Clarification with respect to Flood Disaster Protection Act. No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973 [42 USCS § 4012a(e)].

(m) Limitations on force-placed insurance charges [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.]. All charges, apart from charges subject to State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer shall be bona fide and reasonable.

**HISTORY:**

(Act Dec. 22, 1974, P.L. 93-533, § 6, as added Nov. 28, 1990, P.L. 101-625, Title IX, Subtitle C, § 941, 104 Stat. 4405; April 10, 1991, P.L. 102-27, Title III, § 312, 105 Stat. 154; Sept. 23, 1994, P.L. 103-325, Title III, § 345, 108 Stat. 2239; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(a), 110 Stat. 3009-399.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(4), Title XIV, Subtitle E, § 1463, 124 Stat. 2104, 2182.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES****Explanatory notes:**

A prior § 2605 (Act Dec. 22, 1974, P.L. 93-533, § 6, 88 Stat. 1726) was repealed by Act Jan. 2, 1976, P.L. 94-205, § 5, 89 Stat. 1158, effective on enactment, as provided by § 12 of such Act, which appears as 12 USCS § 2602 note. Such section provided for advance disclosure of real estate settlement costs.

**Prospective amendment:**

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**Amendment of subsecs. (e)-(g), effective as provided by § 1400(c) of Act July 21, 2010.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle E, § 1463(b)-(d), 124 Stat. 2184 (effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.), provides:

"(b) Increase in Penalty Amounts. Section 6(f) of the Real Estate Settlement Procedures Act of 1974 (*12 U.S.C. 2605(f)*) is amended--

"(1) in paragraphs (1)(B) and (2)(B), by striking '\$ 1,000' each place such term appears and inserting '\$ 2,000'; and

"(2) in paragraph (2)(B)(i), by striking '\$ 500,000' and inserting '\$ 1,000,000'.

"(c) Decrease in Response Times. Section 6(e) of the Real Estate Settlement Procedures Act of 1974 (*12 U.S.C. 2605(e)*) is amended--

"(1) in paragraph (1)(A), by striking '20 days' and inserting '5 days';

"(2) in paragraph (2), by striking '60 days' and inserting '30 days'; and

"(3) by adding at the end the following new paragraph:

"(4) Limited extension of response time. The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding."

"(d) Prompt Refund of Escrow Accounts Upon Payoff. Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (*12 U.S.C. 2605(g)*) is amended by adding at the end the following new sentence: 'Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.'"

## Amendments:

1991. Act April 10, 1991 added subsec. (j).

1994. Act Sept. 23, 1994, in subsec. (a)(1)(B), substituted "at the choice of the person making a federally related mortgage loan--

"(i) for each of the most recent"

for "for each of the most recent", redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, in subcl. (II) as redesignated, substituted "or" for "and" following the concluding semicolon, and added new cl. (ii).

1996. Act Sept. 30, 1996 substituted subsec. (a) for one which read:

"(a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing,

(1) In general. Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan--

"(A) whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding;

"(B) at the choice of the person making a federally related mortgage loan--

"(i) for each of the most recent 3 calendar years completed (at the time of such application), the percentage (rounded to the nearest quartile) of loans made by such person for which the servicing has been assigned, sold, or transferred as of the end of the most recent calendar year completed, except that--

"(I) for any loan application during the 12-month period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the information disclosed under this subparagraph may be for only the most recent calendar year completed, and for any loan application during the 12-month period beginning 1 year after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the information disclosed under this subparagraph may be for the most recent 2 calendar years completed; and

"(II) this subparagraph may not be construed to require the inclusion, in the percentage disclosed, of any loans the servicing of which has been assigned, sold, or transferred by the person making the loan to a transferee servicer that is an affiliate or subsidiary of such person; or

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"(ii) a statement that the person making the loan has previously assigned, sold, or transferred the servicing of federally related mortgage loans; and

"(C) if the person who makes the loan does not engage in the servicing of any federally related mortgage loans, that there is a present intent on the part of person (at the time of such application) to assign, sell, or transfer the servicing of such loan to another person.

"(2) Model disclosure statements. Not later than 90 days after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the Secretary shall develop a model disclosure statement for notification to applicants under paragraph (1) with respect to servicing procedures, transfer practices and requirements, and complaint resolution. The model statement shall provide for the person originating the loan to disclose their capacity to service loans and the best available estimate of the percentage of all loans made by such person for which the servicing will be assigned, sold, or transferred during the 12-month period upon the origination. The estimate shall be as one of the following range of possibilities--between 0 and 25 percent, between 26 and 50 percent, between 51 and 75 percent, or between 76 and 100 percent. This paragraph may not be construed to require the inclusion, in the estimate disclosed, of any loans the servicing of which will be assigned, sold, or transferred by the person originating the loan to a transferee servicer that is an affiliate or subsidiary of such person.

"(3) Signature of applicant. Any disclosure of the information required under paragraph (1) shall not be effective for purposes of this section unless the disclosure is accompanied by a written statement, in such form as the Secretary shall develop before the expiration of the 90-day period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, that the applicant has read and understood the disclosure and that is evidenced by the signature of the applicant at the place where such statement appears in the application."

2010. Act July 21, 2010 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), added subsecs. (k)-(m).

Such Act further (effective on 7/21/2011, pursuant to § 1100H of such Act, which appears as *5 USCS § 552a* note), in subsec. (j)(3), substituted "Bureau" for "Secretary", and deleted ", by regulations that shall take effect not later than April 20, 1991," before "establish".

**NOTES:**

## Related Statutes &amp; Rules:

This section is referred to in *12 USCS §§ 2609, 2610, 2614, 3500.2, 3500.5, 3500.12, 4901, 5220; 15 USCS § 1641*.

## Research Guide:

## Commercial Law:

- 1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.
- 1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.
- 1A Debtor-Creditor Law (Matthew Bender), ch 8, Fair Debt Collection § 8.03.
- 1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense §§ 13.03, 13.18.
- 1A Debtor-Creditor Law (Matthew Bender), ch 16, Fair Credit Reporting § 16.05.

## Annotations:

- Application of Equitable Estoppel Against Nonsignatory to Compel Arbitration Under Federal Law. *43 ALR Fed 2d 275*.
- Enforcement of Arbitration Agreement Contained in Real Estate Contract by or Against Nonsignatory Under State Law. *10 ALR5th 669*.

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## Texts:

- 7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.02-156.05, 156.08, 156.09.
- 9 Banking Law (Matthew Bender), ch 171, Application Process § 171.05.
- 10 Banking Law (Matthew Bender), ch 174, Consummation § 174.06.
- 10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.04.
- 10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.04.

## Law Review Articles:

- Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.
- Abbond. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.

## Emerging Issues Analysis

*Robert M. Jaworski on Back to the Future with the Mortgage Reform and Anti-Predatory Lending Act (Part of Dodd-Frank)*

Robert M. Jaworski analyzes the Mortgage Reform and Anti-Predatory Lending Act (in Dodd-Frank Act), including the significant changes that it makes to the Truth in Lending Act (e.g., incentives for qualified mortgages, anti-steering prohibitions, defenses to foreclosure, disclosure & servicing requirements, & appraisal-related rules) and RESPA (e.g., changes to rules re: qualified written requests); and what this reform suggests about the future.

## Interpretive Notes and Decisions:

1. Generally
2. Applicability
3. Limitation of actions
4. Collateral estoppel; res judicata
5. Arbitration
6. Private right of action
7. Class actions
8. Relationship with bankruptcy
9. Damages
10. Required notices and responses; timeliness

## 1. Generally

While borrowers argued on appeal that fact issue existed with respect to whether fee charged by lender for payoff statement requested pursuant to Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2605, was reasonable, that argument was not raised prior to when judgment that was entered against them and was not part of appeal; because, pursuant to *Fed. R. Civ. P. 59(e)*, this issue was never properly raised in district court and that court did not address it, appellate court declined to address it for first time on appeal. *Watt v GMAC Mortg. Corp. (2006, CAS Ark) 457 F3d 781*.

Because there was potential factual overlap between consumer's claim that mortgage corporation improperly charged him fees in violation of Truth in Lending Act and consumer's claims under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., at minimum with respect to whether corporation refunded admitted \$ 5.00 overcharge in compliance with RESPA, 12 USCS § 2605(e)(2)(A), and possibly also with respect to "Attorney Outsourcing Fees" and "Unpaid Other Fees" that corporation charged consumer, corporation's motion for summary judgment on consumer's RESPA claim was granted without prejudice, subject to being renewed upon completion of discovery. *Mazzei v Money Store (2004, SD NY) 349 F Supp 2d 651*.

Where borrowers failed to state claim regarding alleged violations of loan servicing provisions of Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2605, by mortgage companies, and borrowers had already amended their complaint twice, no further amendment under *Fed. R. Civ. P. 15(a)* was permitted on ground that it would be both futile and inequitable. *Jones v ABN AMRO Mortg. Group, Inc. (2008, ED Pa) 551 F Supp 2d 400*.

In action in which borrowers alleged that lender improperly conducted initial escrow analysis and failed to provide tax estimate that realistically estimated annual property taxes for home, borrowers failed to state claim for violation of 12 USCS § 2605(g) because borrowers did not assert facts supporting allegation that lender failed to make timely escrow payments. *Sarsfield v Citimortgage, Inc. (2009, MD Pa) 667 F Supp 2d 461*.

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As loan servicer was not named party and lender was not loan servicer subject to suit under Real Estate Settlement Practices Act (RESPA), summary judgment in favor of lender was appropriate on *RESPA count. Madera v Ameriquest Mortg. Co. (In re Madera) (2007, BC ED Pa) 363 BR 718.*

**Unpublished Opinions**

Unpublished: Complaint asserting allegations of violations of Real Estate Settlement Procedures Act (RESPA), under 12 USCS §§ 2603, 2604, 2605, and 2609, was properly dismissed for failure to state claim because facts alleged in complaint did not implicate provisions cited, or were too conclusory to meet even liberal *Fed. R. Civ. P. 12(b)(6)* standard. *Johnson v Wash. Mut. Bank, F.A. (2007, CA2) 216 Fed Appx 64.*

**2. Applicability**

Borrowers failed to state claim for relief under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601-2617, because while 12 USCS § 2605 imposed duty on lenders to provide certain statements in response to borrower requests, such statements were not enumerated among those for which statute prohibited fee charges. *Watt v GMAC Mortg. Corp. (2006, CA8 Ark) 457 F3d 781.*

Borrowers' complaint alleging violations of 12 USCS § 2605 failed to state claim because entity that collected its mortgage payments, which turned out to be operating illegal Ponzi scheme, did not fit loan servicer definition under 12 USCS § 2605(i)(2)-(3). *Jones v ABN AMRO Mortg. Group, Inc. (2010, CA3 Pa) 606 F3d 119.*

Borrower's counterclaim alleging violation of 12 USCS § 2605(e)(1)(A) must fail, even though his counsel's request for information relating to loan was not responded to, where letter just sought information about validity of loan and mortgage documents, making no inquiry as to account balance or credit for payments, because request did not relate to "servicing" of loan within meaning of statute. *MorEquity, Inc. v Naeem (2000, ND Ill) 118 F Supp 2d 885.*

In action brought by plaintiff, whose ex-husband forged note and mortgage on plaintiff's home, against various defendants who were involved with securing note and mortgage, claim under 12 USCS § 2605, Real Estate Settlement Procedures Act, was dismissed where complaint showed that plaintiff had been provided with required servicing disclosures at time loan applications were made. *Welch v Centex Home Equity Co., L.L.C. (2004, DC Kan) 323 F Supp 2d 1087.*

Although 12 USCS § 2605 provided for private right of action, § 2605 was limited to lender's obligation to notify borrower if there was any possibility that loan could have been assigned, sold, or transferred, and lender's obligation to pay any taxes or insurance if funds had been placed in escrow with lender for that purpose; 12 USCS § 2605 did not, however, impose upon creditor or lessor duty to disclose upon homeowner HUD Settlement Statement; because there was no allegation by homeowner, nor evidence to support such claim, that mortgage broker or loan officer either transferred, or intended to transfer, assign, or sell homeowner's loan to another lender without notice in violation of 12 USCS § 2605, mortgage broker and loan officer were entitled to judgment as matter of law as to homeowner's 12 USCS § 2605 claim. *Sanborn v Am. Lending Network (2007, DC Utah) 506 F Supp 2d 917.*

Company's motion to dismiss property owners' claims for violation of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., was granted because property owners did not identify provisions of RESPA that company allegedly violated, property owners did not alleged that company was loan servicer under 12 USCS § 2605, and court was not required to guess as to manner in which company's conduct allegedly violated RESPA. *Izenberg v ETS Servs., LLC (2008, CD Cal) 589 F Supp 2d 1193.*

An email exchange between plaintiff's attorney and third party was not qualified written request under plain meaning of Real Estate Settlement Procedures Act; statute's requirements that qualified request be made in writing, include full name and account number of borrower or otherwise enable servicer to identify borrower, and be received by creditor, were noticeably lacking in plaintiff's email to third party. *Gorham-Dinaggio v Countrywide Home Loans, Inc. (2008, ND NY) 592 F Supp 2d 283.*

Borrower failed to sufficiently plead claims under Real Estate Settlement Procedures Act against lender and servicer because there was no private civil remedy under 12 USCS § 2604(c) for failure to provide good faith estimate and he failed to provide specific facts to meet requirements for alleging violations of 12 USCS § 2605. *Delino v Platinum Cmty. Bank (2009, SD Cal) 628 F Supp 2d 1226.*

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Borrower's 12 USCS § 2605 claim against lender was dismissed where borrower had not alleged that lender was either lender or loan servicer to whom requirements of § 2605 applied, but had merely alleged that he was not certain exactly which of defendants was actually servicer of his loan at any given time. *Lingad v IndyMac Fed. Bank* (2010, ED Cal) 682 F Supp 2d 1142.

Originating lender was entitled to dismissal of claim of alleged denial of qualified written request (QWR) under 12 USCS § 2605; refinancing borrowers failed to allege that QWR was sent to lender and that lender was actually loan servicer under 12 USCS § 2605(i). *Santos v U.S. Bank N.A.* (2010, ED Cal) 716 F Supp 2d 970, dismd (2010, ED Cal) 2010 US Dist LEXIS 88903, request den, costs/fees proceeding (2010, ED Cal) 2010 US Dist LEXIS 88901.

Debtors had stated actionable claim under RESPA because loan servicing company had failed to explain why it could not produce certain documents that had been requested by debtors. *Price v America's Servicing Co. (In re Price)* (2009, BC ED Ark) 403 BR 775.

Where bankruptcy debtor alleged that mortgage loan servicer charged unauthorized late fees, misapplied payments, and failed to credit payments of interest, principal, and escrow charges, debtor failed to allege any violation of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq.; debtor failed to identify any requirement of 12 USCS § 2605 which servicer violated, such as nondisclosure or inaction, and allegations that servicer mismanaged mortgage account did not allege violation of RESPA. *Jacques v U.S. Bank N.A. (In re Jacques)* (2009, BC ED NY) 416 BR 63.

### Unpublished Opinions

Unpublished: Summary judgment under *Fed. R. Civ. P. 56(c)* was properly granted because borrower failed to make allegations against loan servicer concerning alleged violations of 12 USCS § 2605, part of Real Estate Settlement Procedures Act, and Act did not provide for liability for related companies of servicer. *McCarley v KPMG Int'l* (2008, CA11 Ala) 2008 US App LEXIS 19733.

### 3. Limitation of actions

In case in which pro se homeowner alleged that three mortgage lenders did not provide timely notice of transfer of servicing of his mortgage loan as required by 12 USCS § 2605(b), lenders' motion for summary judgment was granted since homeowner's claim was barred by three-year limitations period in 12 USCS § 2614; violation of 15-day rule occurred in 1995 and homeowner did not sue until 2005. *Williams v Countrywide Home Loans, Inc.* (2007, SD Tex) 504 F Supp 2d 176, affd (2008, CA5 Tex) 269 Fed Appx 523 and (criticized in *Wentz v Saxon Mortg. (In re Wentz)* (2008, BC SD Ohio) 393 BR 545).

Where mortgagors sued mortgagee, asserting claims under Real Estate Settlement Practices Act (RESPA), 12 USCS §§ 2601 et seq., Fair Debt Collection Practices Act, 15 USCS §§ 1692e, 1692(f), and Utah Mortgage Lending and Servicing Act, *Utah Code Ann. §§ 70D-1-1 through 70D-1-21*, summary judgment was granted to mortgagee as July 2002 \$ 3,098.76 payment was in accord and satisfaction of pre-July 2002 dispute, and there was no dispute that mortgagors failed to properly make many payments thereafter; though they claimed that their \$ 500 monthly payments were more than sufficient to cover fixed monthly payment of \$ 419.92, mortgagors had fundamental misunderstanding of their obligations under mortgage, particularly as to escrow funds. Moreover, their claims, at least with respect to RESPA, were barred pursuant to 12 USCS § 2614 by three-year statute of limitations. *Cook v Chase Manhattan Mortg. Corp.* (2007, DC Utah) 509 F Supp 2d 986, affd (2007, CA10) 256 Fed Appx 223.

Although borrowers' RESPA claim governing disclosure requirements under 12 USCS § 2605 was not barred by three-year limitations period of 12 USCS § 2614, borrowers had to explain why their claims under 12 USCS §§ 2607 and 2608 were not barred by one-year limitations period of § 2614. *Kelley v Mortgage Elec. Registration Sys.* (2009, ND Cal) 642 F Supp 2d 1048.

Plaintiffs' cause of action for alleged violation of 12 USCS § 2605 was barred by three year statute of limitations set forth in 12 USCS § 2614 because plaintiffs received notice of assignment by November 2001 and did not file their lawsuit until April 2006. *Poskin v TD Banknorth, N.A.* (2009, WD Pa) 687 F Supp 2d 530.

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded; complaint lacked sufficient allegations of transfer of borrower's loan for purposes of 12 USCS § 2605(b) and that such transfer fell within three-year limitations period under 12 USCS § 2614. *Saldate v Wilshire Credit Corp.* (2010, ED Cal)

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2010 US Dist LEXIS 21034, complaint dismd, in part, judgment entered (2010, ED Cal) 2010 US Dist LEXIS 28220, complaint dismd, in part, judgment entered (2010, ED Cal) 686 F Supp 2d 1051.

Mortgagors' claims, which was apparently brought under 12 USCS § 2605 against law firm and others, was time-barred where claims were filed more than three years after alleged violations occurred. *Weingartner v Chase Home Fin., LLC* (2010, DC Nev) 702 F Supp 2d 1276.

Borrower's claim that lender failed to respond to borrower's qualified written request by acknowledging it within twenty days and responding within sixty days as required by 12 USCS § 2605(e) was subject to three-year statute of limitations under 12 USCS § 2614. *Gehman v Argent Mortg. Co. LLC* (2010, ED Pa) 726 F Supp 2d 533.

Chapter 13 debtors' claims against mortgagee arising out of refinancing transaction that were predicated on alleged violations of Truth in Lending Act, 15 USCS §§ 1601 et seq.; Massachusetts Consumer Credit Cost Disclosure Act, *Mass. Gen. Laws ch. 140D, § 1* et seq.; Real Estate Settlement Procedures Act, *Mass. Gen. Laws ch. 183, § 63*; 12 USCS § 2605; Massachusetts consumer protection statute, *Mass. Gen. Laws ch. 93A*; and common law arose at time of refinancing; to extent that debtors relied on "continuing violation" theory with respect to refinancing claims, that argument was inconsistent with binding First Circuit case law. *Robert v Household Fin. Corp. II (In re Robert)* (2010, BC DC Mass) 432 BR 464.

#### 4. Collateral estoppel; res judicata

Debtor was not barred by Rooker-Feldman doctrine, res judicata, or collateral estoppel from bringing claims against loan servicer, alleging violations of Real Estate Settlement Procedures Act, 12 USCS § 2605; claims raised did not compromise integrity of state court foreclosure judgment obtained by mortgage lender, claims were personal against servicer and could not have been raised in response to mortgage foreclosure action brought by mortgage lender in state court, and claims did not involve issues that were part of mortgage foreclosure proceeding brought by mortgage lender in state court, nor were issues actually litigated in proceeding or essential to foreclosure judgment. *Faust v Deutsche Bank Nat'l Trust Co. (In re Faust)* (2006, BC ED Pa) 353 BR 94.

Debtors' claim under RESPA was not barred by res judicata doctrine where it was not until after debtors filed bankruptcy that they requested information that by 12 USCS § 2605(e) they were entitled to receive; thus, debtors could not have raised their RESPA cause of action during state court foreclosure action because it did not exist at that time. *Sanchez Rodriguez v R&G Mortg. Corp. (In re Sanchez Rodriguez)* (2007, BC DC Puerto Rico) 377 BR 1.

#### Unpublished Opinions

Unpublished: In case brought under 12 USCS § 2605(e) in which home owner appealed district court's entry of summary judgment in favor of loan servicer, owner had not shown that there was genuine issue of material fact as to whether his loan was in default when foreclosure complaint was filed in early 2007; in his response to servicer's motion for summary judgment and his motion for reconsideration, he merely asserted that he paid amount sufficient to resolve escrow deficiency reflected in March escrow statement, but as district court and even owner himself noted, his September escrow statement showed that deficiency increased again in late 2006. *Sellers v GMAC Mortg. Group, Inc.* (2008, CA11 Fla) 2008 US App LEXIS 22700.

#### 5. Arbitration

Where mortgagors, husband and wife, asserted claims against businesses under Real Estate Settlement Procedures Act, at 12 USCS § 2605, based on businesses' role as servicers of promissory note executed by husband, claims of both mortgagors related to note and/or relationships that resulted from note and thus were subject to broad, mandatory, binding arbitration clause in note; doctrine of equitable estoppel barred wife, who had not signed note, from asserting claims related to note and, at same time, avoiding burdens imposed by note. *Blinco v Green Tree Servicing LLC* (2005, CA11 Fla) 400 F3d 1308, 18 FLW Fed C 248.

Where mortgagors, husband and wife, asserted claims against businesses under Real Estate Settlement Procedures Act, at 12 USCS § 2605, based on businesses' role as servicers of promissory note executed by husband, even though businesses were not signatories to note, they could invoke mandatory, binding arbitration clause in note; because mortgagors' claims derived from "relationship" that "result[ed] from" note (i.e., loan servicing), arbitration clause easily encompasses both businesses as alleged servicers of note. *Blinco v Green Tree Servicing LLC* (2005, CA11 Fla) 400 F3d 1308, 18 FLW Fed C 248.

## 6. Private right of action

In Real Estate Settlement Procedures Act (RESPA) case, district court entry of judgment against two homeowners was affirmed because their cause of action arose under § 10 of RESPA, 12 USCS § 2609, which did not provide for private right of action, not § 6 of RESPA, 12 USCS § 2605, as argued by homeowners. *Hardy v Regions Mortg., Inc.* (2006, CA11 Ala) 449 F3d 1357, 19 FLW Fed C 575.

Claims brought by homeowner against mortgage company under Real Estate Settlement Procedure Act (RESPA), 12 USCS §§ 2601 et seq., were barred because RESPA did not provide private right of action under 12 USCS § 2609 and homeowner failed to show any actual damage as required by 12 USCS § 2605. *Byrd v Homecomings Fin. Network* (2005, ND Ill) 407 F Supp 2d 937 (criticized in *Barany-Snyder v Weiner* (2007, ND Ohio) 2007 US Dist LEXIS 5137).

In action in which borrowers alleged that lender failed to properly conduct escrow account analysis to determine amount that they were required to deposit into their escrow account in violation of 24 CFR § 3500.17(c)(2) and that lender violated 24 CFR § 3500.17(g)(1)(i) by failing to provide initial escrow account statement providing reasonable estimate of taxes, insurance premiums, and other charges that lender should have reasonably anticipated, borrowers failed to state claim under Real Estate Settlement Procedures Act because § 3500.17(c)(2) and (g)(1)(i) related to 12 USCS § 2609, which did not confer private right of action, and borrowers did not explain how alleged violations of regulations related to their private right of action under 12 USCS § 2605. *Sarsfield v Citimortgage, Inc.* (2009, MD Pa) 667 F Supp 2d 461.

Borrowers' claim under Real Estate Settlement Procedures Act, 12 USCS § 2605, failed on motion to dismiss because there was no private right of action under that section; however, claim brought under 12 USCS § 2607 remained because borrowers alleged that defendants received kickbacks in course of refinancing and that provision specifically addressed private remedies. *Urbina v Homeview Lending, Inc.* (2009, DC Nev) 681 F Supp 2d 1254.

Mortgagor's 12 USCS § 2605 claim against mortgagee's assignee was dismissed where complaint failed to allege that assignee was loan servicer, that any written correspondence concerned servicing of mortgagor's loan, or that he had suffered actual damages. *Jensen v Quality Loan Serv. Corp* (2010, ED Cal) 702 F Supp 2d 1183, motion gr, dismd (2010, ED Cal) 2010 US Dist LEXIS 72393.

Borrower's claim under 12 USCS § 2605 against mortgage assignees was dismissed where complaint did not allege any basis for claim under that section. *Bittinger v Wells Fargo Bank NA* (2010, SD Tex) 744 F Supp 2d 619.

Chapter 13 debtor and trustee stated sufficient claims for private civil right of action under 12 USCS § 2605, part of Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2601 et seq., against creditor, in its capacity as servicer of federally related mortgage loan; trustee was agent of debtor. *Miller v Ameriquest Mortg. Co. (In re Laskowski)* (2008, BC ND Ind) 384 BR 518.

## Unpublished Opinions

Unpublished: While plaintiff daughter argued she assumed her mother's mortgage, she was never added to loan, depriving her of standing to bring claims under Fair Debt Collection Practices Act, 15 USCS §§ 1692c-g, 1692j, Real Estate and Settlement Procedure Act, 12 USCS § 2605(f), Truth in Lending Act, 15 USCS § 1640(a), and 815 ILCS 505/1(e) of Illinois Consumer Fraud and Deceptive Business Practices Act against defendant mortgagee; thus, her claims were subject to dismissal for lack of standing, for failure to state claim under 28 USCS § 1915(e)(2)(B)(ii). *Johnson v Ocwen Loan Servicing* (2010, CA11 Fla) 2010 US App LEXIS 5339.

Unpublished: There was no private right of action for violation of 12 USCS § 2604(c) and borrower did not alleged enough facts to suggest, raise reasonable expectation of, or render plausible claims brought under either 12 USCS §§ 2607 or 2605(e). *Frazile v EMC Mortg. Corp.* (2010, CA11 Fla) 2010 US App LEXIS 11931.

## 7. Class actions

In action alleging that bank had violated 12 USCS § 2605(g), part of Real Estate Settlement Procedures Act, putative class, at least arguendo, met typicality requirements of *Fed. R. Civ. P. 23(a)*; those requirements were related to commonality requirement, and bank's arguments with respect to each revealed no meaningful differences. *Hyderi v Wash. Mut. Bank, FA* (2006, ND Ill) 235 FRD 390.

In action alleging that bank had violated 12 USCS § 2605(g) class certification under *Fed. R. Civ. P. 23(b)(3)* was inappropriate because class proceedings would at most settle limited slice of litigation, and litigation would likely re-

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quire substantial individualized proceedings to resolve class members' claims; thus, proposed class issues were not shown to predominate over those individualized issues that likely would need to be resolved. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390.*

In action alleging that bank had violated 12 USCS § 2605(g) class certification under *Fed. R. Civ. P. 23(b)(3)* was inappropriate because availability of effective alternative to class action device and problems inherent in conducting hundreds of follow-on procedures means that class action was not superior; availability of statutory damages, plus all actual damages, plus all reasonable attorneys fees and costs, provided substantial incentive for individual suits. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390.*

In borrowers' action alleging that bank had violated 12 USCS § 2605(g) class certification under *Fed. R. Civ. P. 23(b)(3)* was inappropriate because likely administrability problems involved in proposed class action were extensive and real, and putative efficiency gains were limited; there was substantial chance that court would be enmeshed in lengthy individualized proceedings litigating mental anguish of temporarily having lender-placed home insurance, in which expenditure of judicial resources would be geometrically greater than resources needed to litigate threshold legal question underlying borrowers' class proposal. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390.*

In action against bank alleging violations of 12 USCS § 2605(g), part of Real Estate Settlement Procedures Act (RESPA), putative class satisfied commonality requirements of *Fed. R. Civ. P. 23(a)*; at minimum, claims shared common allegation that bank's alleged policy, consisting of not paying insurance bills out of borrower's escrow account unless it received bill from insurer, violated RESPA. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390.*

In action alleging violations of 12 USCS § 2605(g), putative class satisfied numerosity requirements of *Fed. R. Civ. P. 23(a)*; it was comprised of nearly one thousand persons who had properties in Illinois, but were not necessarily residents of Illinois, making joinder impracticable. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390.*

In borrowers' putative class action alleging violations of 12 USCS § 2605(G), named plaintiffs and their counsel were adequate class representatives under *Fed. R. Civ. P. 23(a)(4)*; there was no challenge to counsel, and borrowers passed this undemanding hurdle because they had at least some knowledge concerning their claims and they traveled to be deposed. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390.*

In action alleging that bank had violated 12 USCS § 2605(g) class certification under *Fed. R. Civ. P. 23(b)(2)* was inappropriate because damages rather than injunctive relief formed crux of action; borrowers sought statutory damages and also requested individualized follow-on procedures to prove up consequential and other damages, including putative claims for emotional distress, highly plaintiff-specific issue. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390.*

### 8. Relationship with bankruptcy

Creditor mortgage lender's argument that it had no rights against Chapter 13 debtors until escrow expenses were paid, as they became due as provided in 12 USCS § 2605(g), ignored terms of loan documents; there was right to pre-petition escrow payments each time debtors failed to make payment and it was "claim" against debtors. *Campbell v Countrywide Home Loans, Inc. (2008, CA5 Tex) 545 F3d 348.*

District court reversed bankruptcy court's judgment finding that mortgage company violated debtor's rights under 12 USCS § 2605 when it placed payments debtor made on promissory note into special escrow account after debtor sought protection under Chapter 13 of Bankruptcy Code. Court found that 11 USCS § 502 governed process which bankruptcy court had to use to determine propriety of claims and resolve disputes, and that process trumped alternative remedial procedure found in RESPA. *Ameriquet Mortg. Co. v Nosek (In re Nosek) (2006, DC Mass) 354 BR 331* (criticized in *Holland v EMC Mortg. Corp. (In re Holland) (2007, BC DC Mass) 374 BR 409*) and (criticized in *Payne v Mortg. Elec. Registration Sys., Inc. (In re Payne) (2008, BC DC Kan) 387 BR 614*).

Even though bankruptcy debtors made only minimal payments on their mortgage debt, debtors were entitled to reduction in mortgage creditor's claim by way of recoupment based on creditor's violation of Real Estate Settlement Procedures Act by failing to correct debtors' account and failing to respond to debtors' repeated requests for explanation of why their account was deemed to be in default; thus, creditor was not entitled to claim amount of payment which was not credited, escrow charges for insurance which debtors actually maintained, and all late charges, attorney fees, and costs, and creditor was liable for debtors' attorney fees and costs. *In re Thompson (2006, BC ED Wis) 350 BR 842.*

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Allegations of violations of Real Estate Settlement and Procedures Act (RESPA), 12 USCS §§ 2601 et seq., brought by Chapter 13 debtors, could not be dismissed on pleadings because, from review of complaint itself, it was not possible to determine whether loan servicer fully responded to debtors' qualified written request for loan information in compliance with 12 USCS § 2605, part of RESPA. *Hopkins v First NLC Fin. Servs. (In re Hopkins)* (2007, BC ED Pa) 372 BR 734.

Bankruptcy court found that debtor's claim alleging that mortgage company violated 12 USCS § 2605 when it failed to respond to written request she sent company, seeking information about amount she owed on debt, was not preempted by Bankruptcy Code; although court denied mortgage company's motion to dismiss debtor's claim, it required debtor to amend her complaint to explain how company's failure to respond to her request caused her injury. *Holland v EMC Mortg. Corp. (In re Holland)* (2007, BC DC Mass) 374 BR 409.

Where Chapter 13 debtors alleged that mortgagee violated 12 USCS § 2605(e)(2) by failing to timely respond to qualified written request, claim was not preempted by 11 USCS § 502 because two statutes were not in irreconcilable conflict and informational gathering provisions of 12 USCS § 2605 complemented *Bankruptcy Code and Bankruptcy Rules*. *Figard v PHH Mortg. Corp. (In re Figard)* (2008, BC WD Pa) 382 BR 695.

Chapter 13 trustee acted as agent of debtor in role of disbursing agent (collecting plan payments from debtor and distributing funds to creditors in accordance with chapter 13 plan) and in role of final reporter to court; trustee was thus authorized to send "qualified written request" to debtor's loan servicer under 12 USCS § 2605(e)(1)(B). *Miller v Ameriquest Mortg. Co. (In re Laskowski)* (2008, BC ND Ind) 384 BR 518.

Where Chapter 13 debtors' mortgage lender misapplied payments, failed to correct its mistakes, and then repeatedly tried to collect payments from debtors that were not owed, preliminary injunction was issued against lender pursuant to *Fed. R. Civ. P. 65* because debtors were likely to prevail on merits of their case; lender's response to debtors' qualified written request was inadequate under Real Estate Settlement and Procedures Act, 12 USCS § 2605. *Moffitt v America's Servicing Co. (In re Moffitt)* (2008, BC ED Ark) 390 BR 368.

LLC that serviced mortgage on home that was owned by former Chapter 13 debtors was awarded summary judgment on debtors' claim that LLC violated 12 USCS § 2605(g) when it paid assessments on debtors' home which it received from tax authorities; although there was waiver in place between debtors and LLC from time mortgage loan was originated, pursuant to which parties agreed there would be no procedure in place for escrow of taxes in connection with loan, parties had agreed that waiver could become null and void at LLC's option if debtors were in default on their loan. *Thrash v Ocwen Loan Servicing, LLC (In re Thrash)* (2010, BC ND Tex) 433 BR 585.

### Unpublished Opinions

Unpublished: Cross-motions for summary judgment in Chapter 13 debtor's claim that creditor breached its implied duty of good faith and fair dealing and breached its duty under 12 USCS § 2605(e) were core matters under 28 USCS § 157(b); debtor's claims were integrally related to proof of claim that creditor filed regarding mortgage debt, and debtor's objection to claim was awaiting outcome of adversary proceeding. *Coleman v Countrywide Home Loans, Inc. (In re Coleman)* (2009, BC DC Dist Col) 2009 Bankr LEXIS 4401.

### 9. Damages

Mortgagor is not entitled to recover damages for personal injury or economic loss for mortgagee's failure to comply with provisions of 12 USCS § 2605, because (1) § 2605 is not broad consumer protection statute but is intended only to streamline real estate settlement procedures, authorizing pecuniary damages flowing from failure to follow them, and (2) mortgagor has not provided any evidence that he intended to refinance or sell his home or that he was denied such opportunities as result of mortgagee's violations. *Katz v Dime Sav. Bank, F.S.B. (1997, WD NY) 992 F Supp 250* (criticized in *Johnstone v Bank of Am., N.A. (2001, ND Ill) 173 F Supp 2d 809*) and (criticized in *Wanger v EMC Mortgage Corp. (2002, 5th Dist) 103 Cal App 4th 1125, 127 Cal Rptr 2d 685, 2002 CDOS 11451, 2002 Daily Journal DAR 13287*) and (criticized in *Wright v Litton Loan Servicing LP (2006, ED Pa) 2006 US Dist LEXIS 15691*) and (criticized in *McLean v GMAC Mortg. Corp. (2008, SD Fla) 2008 US Dist LEXIS 36143*).

Borrower could recover actual damages for emotional distress resulting from lender's violations of 12 USCS § 2605(e)(3). *Johnstone v Bank of Am., N.A. (2001, ND Ill) 173 F Supp 2d 809*.

Debtors sufficiently stated claim against loan servicing company for violating 12 USCS § 2605(e) by alleging that servicing company did not respond to written requests that it cease sending mortgage statements to debtors following

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their Chapter 7 bankruptcy discharge and by also alleging that servicing company continued to send statements and reported delinquent payments to credit bureaus; debtors sufficiently pled actual damages where they claimed that they were unable to obtain financing as result of negative credit ratings. *Hutchinson v Del. Sav. Bank FSB* (2006, DC NJ) 410 F Supp 2d 374.

Borrower's claim for failure to give sufficient notice of loan transfer under contract and under provisions of 12 USCS § 2605, failed because borrower failed to provide any evidence that he suffered any injury of any nature with respect to failure of notification for which defendant mortgage company would have been responsible. *Spencer v Hutchens* (2006, MD NC) 471 F Supp 2d 548, costs/fees proceeding, judgment entered (2006, MD NC) 2006 US Dist LEXIS 83784.

Because taxes and property insurance were timely paid, there were no damages and claim under 12 USCS § 2605(f) failed. *Reese v JPMorgan Chase & Co.* (2009, SD Fla) 22 FLW Fed D 81.

Homeowner failed to state claim under Real Estate Settlement Procedures Act because he failed to allege any pecuniary loss attributable to violation under 12 USCS § 2605. *Allen v United Fin. Mortg. Corp.* (2009, ND Cal) 660 F Supp 2d 1089.

Punitive damages are not authorized by Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq.; only 12 USCS §§ 2605, 2607 and 2608 contain private rights of action, and none of these authorize punitive damages. *Sarsfield v Citimortgage, Inc.* (2009, MD Pa) 667 F Supp 2d 461.

Borrower's claim under Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2607, was barred by one year limitation period of 12 USCS § 2614; however, although RESPA claim under 12 USCS § 2605 was timely, borrower failed to allege damages. *Garcia v Wachovia Mortg. Corp.* (2009, CD Cal) 676 F Supp 2d 895 (criticized in *Valdez v America's Wholesale Lender* (2009, ND Cal) 2009 US Dist LEXIS 118241).

Pursuant to 12 USCS § 2605(f) and *La. Rev. Stat. Ann. § 51:1409*, because plaintiff mortgagor had not demonstrated any cognizable injury arising from 2008 Broker Price Opinion (BPO) fee, she had not carried her burden on defendant mortgagee's motion for summary judgment. *Fitch v Wells Fargo Bank, N.A.* (2010, ED La) 423 BR 630.

Lender was not entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's claim for violation of 12 USCS § 2605; although borrower did not allege details of how any RESPA violation caused pecuniary loss, borrower sufficiently alleged actual damages and asserted need for discovery before stating amount of loss caused by violations. *Agustin v PNC Fin. Servs. Group* (2010, DC Hawaii) 707 F Supp 2d 1080.

Borrowers' 12 USCS § 2605 claim against lender was dismissed where borrowers failed to sufficiently allege actual damages. *Sullivan v JP Morgan Chase Bank, NA* (2010, ED Cal) 725 F Supp 2d 1087, dismd, in part, remanded (2010, ED Cal) 2010 US Dist LEXIS 97571.

Although borrower had sufficiently alleged violation of Real Estate Settlement Procedures Act, 12 USCS §§ 2605 et seq., by alleging that he had sent qualified written request to successor bank and that bank and others involved in loan transaction had failed to respond, claim was dismissed where borrower had not alleged any specific damages. *Rosenfeld v JPMorgan Chase Bank, N.A.* (2010, ND Cal) 732 F Supp 2d 952 (criticized in *Rundgren v Wash. Mut. Bank, F.A.* (2010, DC Hawaii) 2010 US Dist LEXIS 126803).

Loan servicer was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of claim for violation of 12 USCS § 2605(e); complaint failed to plead or identify viable or legitimate qualified written request, and it failed to allege any identifiable damages attributable to RESPA violation. *Hamilton v Bank of Blue Valley* (2010, ED Cal) 746 F Supp 2d 1160.

Debtors' mortgagee, which improperly assessed additional late fees and charges and failed to credit debtors for payments made during their plan in violation of automatic stay under 11 USCS § 362, and failed to respond to qualified written request in violation of 12 USCS § 2605, was assessed actual and punitive damages. *Payne v Mortg. Elec. Registration Sys., Inc. (In re Payne)* (2008, BC DC Kan) 387 BR 614.

Debtors' recovery of damages and attorney's fees for persistent, but minor errors in calculation by creditor mortgagee under 12 USCS § 2605(f) was limited to \$ 3,500 in attorney's fees. *In re Fitch* (2008, BC ED La) 390 BR 834.

## Unpublished Opinions

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Unpublished: Loan servicer was properly granted summary judgment on borrowers' RESPA claims under 12 USCS § 2605 because borrowers offered no competent evidence demonstrating that any of their alleged injuries, including emotional distress, were caused by any RESPA violations by servicer. *McLean v GMAC Mortg. Corp.* (2010, CA11 Fla) 2010 US App LEXIS 20234.

**10. Required notices and responses; timeliness**

District court erred in refusing to allow borrower to amend his complaint to invoke 12 USCS § 2605(a), part of Real Estate Settlement Procedures Act, against lender because borrower was entitled to litigate his claim that lender failed to comply with § 2605(a) as he alleged that he did not receive notice from lender that note was negotiable. *Catencamp v Cendant Timeshare Resort Group -- Consumer Finance, Inc.* (2006, CA7 Wis) 471 F3d 780.

Lender was not eligible for safe harbor under 12 USCS § 2605(f)(4) because two letters sent by borrower constituted qualified written requests under RESPA since these letters set forth specific information requests, and thus, determination was required as to whether lender had investigated and responded to letters and refrained from reporting borrowers as delinquent to credit reporting bureaus. *Catalan v GMAC Mortg. Corp.* (2011, CA7 Ill) 629 F3d 676.

Loan servicer committed 2 violations of 12 USCS § 2605(e)(2) as matter of law, where mortgagors sent "qualified written requests" to servicer seeking to rectify alleged account error on June 25, 1997 and August 26, 1997, and servicer admits it was unable to resolve matter until November 26, 1997, because servicer concedes that it failed to take action within requisite 60-day time period on either request. *Rawlings v Dovenmuehle Mortg., Inc.* (1999, MD Ala) 64 F Supp 2d 1156.

Where bank remedied interest rate and mortgage account information within days of discovering mistake and before taxpayers brought suit, safe harbor provision in 12 USCS § 2605(f)(4) applied and bank was entitled to summary judgment on taxpayers' Real Estate Settlement Procedures Act claim. *United States v Vong* (2007, DC Minn) 2007-1 USTC P 50521, 99 AFTR 2d 2477.

Borrower could not pursue claim against mortgage refinancing lender under 12 USCS § 2605, part of Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq.; borrower never made written request to lender as was required under 12 USCS § 2605(e)(1)(A) to trigger lender's duty to provide information. *Jefferies v Ameriquest Mortg. Co.* (2008, ED Pa) 543 F Supp 2d 368.

Borrowers failed to state claim regarding alleged violations of loan servicing requirements under Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2605, by mortgage companies because, while complaint alleged that mortgage companies transferred servicing to certain other entities, loan documents unequivocally named mortgage companies as loan servicers and there was no evidence of any transfer. *Jones v ABN AMRO Mortg. Group, Inc.* (2008, ED Pa) 551 F Supp 2d 400.

Borrowers failed to state claim regarding alleged violations of qualified written request (QWR) provisions under Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2605(e), by mortgage companies because borrowers failed to allege that they sent any written correspondence to any of mortgage companies or that any correspondence met requirements of RESPA QWR. *Jones v ABN AMRO Mortg. Group, Inc.* (2008, ED Pa) 551 F Supp 2d 400.

Defendants, mortgagor and corporation, complied with Real Estate Settlement Procedures Act (RESPA) based on two letters because (1) defendants' first letter, which was dated seventeen days after date of borrower's inquiry letter, clearly fulfilled defendants' obligation under 12 USCS § 2605(e)(1)(A) to acknowledge receipt of borrower's letter within twenty days; and (2) defendants' second letter, which was sent twenty-five days later, clearly fulfilled defendants' obligation under § 2605(e)(2) because letter clearly provided reasons for which defendants believed account of borrower was correct as determined by defendants, information requested by borrower, and telephone number of customer service department which could have provided further assistance within sixty days. *Mazzei v Money Store* (2008, SD NY) 552 F Supp 2d 408.

Homeowners failed to state claim against loan servicing company under 12 USCS § 2605(g) for failing to use escrowed funds to timely pay their home insurance renewal premium and causing policy to lapse because company assigned its duties to another loan servicer prior to expiration of payment deadline; under 24 CFR § 3500.17(k), prior to expiration of deadline, company was not in default of its statutory obligations. *Marks v Quicken Loans, Inc.* (2008, SD Ala) 561 F Supp 2d 1259.

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Mortgage loan servicing company prevailed as to mortgagor's Fair Debt Collection Practices Act (FDCPA), 15 USCS §§ 1692 et seq., claims because although it was "debt collector" for purposes of FDCPA, it had not attempted to collect mortgage debt, it had timely notified mortgagor that his account had been transferred to it for servicing as required by 12 USCS § 2605(b), complaint filed in state law foreclosure proceeding brought against mortgagor constituted initial "communication" as defined in 15 USCS § 1692a(2), that complaint satisfied requirements of validation notice under former 15 USCS § 1692g because it contained all of required notifications in conspicuous and straightforward manner that would have been understood by least sophisticated consumer, and FDCPA did not require company to send additional validation notice just because servicing of mortgage was transferred to it. *Oppong v First Union Mortg. Corp.* (2008, ED Pa) 566 F Supp 2d 395.

Under 12 USCS § 2605(e)(2), lender did not have duty to respond to borrower who executed mortgage or occupants who resided at mortgaged property because borrower never submitted written request to lender and occupants were not borrowers. *Morilus v Countrywide Home Loans, Inc.* (2008, ED Pa) 651 F Supp 2d 292.

Because Bankruptcy Code and Rules could not preempt another federal statute, and Code and Rules did not implicitly repeal Real Estate Settlement Procedures Act (RESPA) since two did not conflict, bankruptcy court could not choose to enforce bankruptcy discovery rules by quashing debtors' Qualified Written Request as defined by 12 USCS § 2605(e)(2)(B); although appellant debtors could have obtained same information through provisions in *Fed. R. Bankr. P. 9014(c)* as through RESPA, bankruptcy court could not arbitrarily enforce one over other. *In re Conley v Cent. Mortg. Co.* (2009, ED Mich) 414 BR 157.

Borrower's claim that alleged loan servicer violated Real Estate Settlement Procedure Act by failing to respond to qualified written request was dismissed where borrower failed to allege that he requested information related to servicing of his loan. *Champlaine v BAC Home Loans Servicing, LP* (2009, ED Cal) 706 F Supp 2d 1029.

Borrower's 12 USCS § 1605(e)(2) claim against bank was dismissed where his letter to bank demanding rescission of loan did not concern servicing of loan, and thus, it was not qualified written request. *Sipe v Countrywide Bank* (2010, ED Cal) 690 F Supp 2d 1141.

Borrower's 12 USCS § 1605(e)(2) claim against lender was dismissed where he failed to allege any facts explaining what information, if any, lender failed to provide at closing, and conclusory allegation that lender and others had engaged in pattern and practice of noncompliance with requirements of 12 USCS § 2605 was not supported by any other factual allegations. *Sipe v Countrywide Bank* (2010, ED Cal) 690 F Supp 2d 1141.

Mortgage company was entitled to dismissal of claim by borrowers that company violated Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., by failing to respond to qualified written request (QWR) as required by 12 USCS § 2605(e)(2), borrowers failed to allege sufficient facts to support conclusion that they sent QWR to company. *Falcocchia v Saxon Mortg., Inc.* (2010, ED Cal) 709 F Supp 2d 873 (criticized in *Briosos v Wells Fargo Bank* (2010, ND Cal) 2010 US Dist LEXIS 87735).

Because there was no evidence indicating that borrower actually sent qualified written request to lender, lender was entitled to summary judgment on borrower's claim that lender failed to respond to borrower's qualified written request within 60 days as required by 12 USCS § 2605(e). *Gelman v Argent Mortg. Co. LLC* (2010, ED Pa) 726 F Supp 2d 533.

Mortgage servicer was entitled to dismissal of mortgagor's action under Real Estate Settlement Procedures Act where, contrary to mortgagor's assertions, its responses to mortgagor's qualified written requests regarding her belief that loan modification agreement she signed had resolved any shortage in her mortgage escrow account satisfied 12 USCS § 2605(e)(1)(B) by providing reasonable explanation of mortgage servicer's interpretation of loan modification agreement with regard to escrow account. *Vassalotti v Wells Fargo Bank, N.A.* (2010, ED Pa) 732 F Supp 2d 503.

Borrower properly alleged claim under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2605 et seq., where he had sent qualified written request to successor bank and that bank and others involved in loan transaction had failed to respond. *Rosenfeld v JPMorgan Chase Bank, N.A.* (2010, ND Cal) 732 F Supp 2d 952 (criticized in *Rundgren v Wash. Mut. Bank, F.A.* (2010, DC Hawaii) 2010 US Dist LEXIS 126803).

To extent borrower's negligence claim asserted violation of 12 USCS § 2605(e)(1)(A), claim was dismissed where borrower admitted that lender had responded to qualified written request and failed to provide any details to support claim that response was untimely. *Clark v Countrywide Home Loans, Inc.* (2010, ED Cal) 732 F Supp 2d 1038.

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Mortgage foreclosure prevention counselor requested itemized pay-off figure for loan, including arrearages; debtor requested documents, including HUD (U.S. Department of Housing and Urban Development) Settlement Sheet, disclosure statement pursuant to Truth in Lending Act (TILA), 15 USCS §§ 1601 et seq., note and notice of right of rescission; and, mortgage servicer admitted that it did not respond to two letters and thus violated provisions of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq. *Maxwell v Fairbanks Capital Corp. (In re Maxwell) (2002, BC DC Mass) 281 BR 101.*

Letter from Chapter 11 debtors to representative of lender did not constitute qualified written request, within meaning of 12 USCS § 2605(e)(1)(A), because letter only summarized debtors' view of loan payment history and did not contain request for information or statement that account was in error. *Thorian v Baro Enters., LLC (In re Thorian) (2008, BC DC Idaho) 387 BR 50, 49 BCD 208.*

Failure on part of plaintiff to produce copy of letter that they claimed was "qualified written request" within meaning of § 2605(e)(1)(B) of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., resulted in judgment against plaintiff because there was no showing by any party that such letter had ever been received by mortgage company against which RESPA claim was being asserted. *Beal Bank, SSB v Prince (In re Prince) (2009, BC MD Tenn) 414 BR 285.*

### Unpublished Opinions

Unpublished: Where mortgagors sued mortgagee pursuant to Real Estate Settlement Procedures Act of 1974, summary judgment was properly granted to mortgagee as, applying 12 USCS § 2605(e), mortgagors did not make any qualifying written inquires requiring response in pertinent timeframe; moreover, they presented no evidence that mortgagee failed to credit their account properly, as was required by Utah's Mortgage Lending and Servicing Act, pursuant to Utah Code Ann. § 70D-1-7(4); alternatively, at least two exceptions applied to mortgagee's crediting obligation, including (1) where payment was insufficient to pay principal, interest, late charges, and reserves then due, or (2) where matter had been referred to attorney. *Cook v Chase Manhattan Mortg. Corp. (2007, CA10) 256 Fed Appx 223.*

Unpublished: Court did not need to decide whether June 28 letter was qualified written request because even if it was, corporation responded to it as Real Estate Settlement Procedures Act (RESPA) required by sending writing within 60 days explaining why it believed account was correct, and otherwise complying with RESPA and borrowers made no showing that corporation's response did not comply with RESPA; as for other two letters, borrowers filed suit before applicable time limits expired, and thus, those claims were not ripe. *Harris v Am. Gen. Fin., Inc. (2007, CA10 Kan) 259 Fed Appx 107.*

Unpublished: District court properly granted summary judgment to home mortgage servicer on mortgagors' claim brought under Real Estate Settlement Procedures Act because servicer complied with its statutory obligations under 12 USCS §§ 2605(e)(1), (2), as it acknowledged receipt of mortgagors' qualified written requests within applicable 20-day response period and provided mortgagors with written explanation of why it believed that their loan was correctly serviced and transmitted name and telephone number of employee who could provide them with further assistance. *Chipka v Bank of Am. (2009, CA11 Ga) 2009 US App LEXIS 26705.*

Unpublished: Homeowner's 12 USCS § 2605 claim survived motion to dismiss where complaint sufficiently identified letters' senders, recipients, and dates of dispatch to raise plausible claim. *Silvas v GMAC Mortg., LLC (2009, DC Ariz) 2009 US Dist LEXIS 118854.*

Unpublished: Chapter 13 debtor's claim that creditor breached his mortgage contract under 12 USCS § 2605(e) by failing to timely and adequately respond to his request for account reconciliation under Real Estate Settlement Procedures Act (RESPA) failed because debtor delivered his request for detailed accounting to creditor's foreclosure counsel rather than to creditor; counsel could not reasonably be considered to have had notice that debtor was invoking RESPA. *Coleman v Countrywide Home Loans, Inc. (In re Coleman) (2009, BC DC Dist Col) 2009 Bankr LEXIS 4401.*