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STATE OF WASHINGTON
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NO. 77742-4

COURT OF APPEALS, DIVISION ONE,
OF THE STATE OF WASHINGTON

KEVIN ERICKSON, as Personal representative for
the Estate of Ryan Erickson,
Petitioner,

v.

AMERICA'S WHOLESALE LENDER, a New York corporation,
Defendant;

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., an
inactive Washington corporation,
Defendant;

and

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR GSAA
HOME EQUITY TRUST 2006-1, QUALITY LOAN SERVICE CORP.
OF WASHINGTON,
Respondents.

PETITION FOR REVIEW
TO THE SUPREME COURT

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A. Identity of Petitioner

Kevin Erickson (“Kevin”) asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. Citation to Court of Appeals Decisions

A copy of the decision filed April 16, 2018, is in the Appendix.

A copy of the June 26, 2018, Order Denying Motion to Publish is in the Appendix.

C. Issues Presented for Review

- (1) Is the Court of Appeals’ decision that the Notice of Intent to Accelerate in this case was merely a pre-acceleration notice consistent or in conflict with existing case law and a plain language reading of the acceleration language in such notice?**
- (2) Does the Court of Appeals decision conflict with its own decision in *Walcker v. Benson and McLaughlin*, P.S., 79 Wn. App. 739, 745-6, 904 P.2d 1176 (Div. 3 1995), *review denied*, 129 Wn.2d 1008 (1996)**
- (2) Does the Opinion upset the Legislature’s balance of interests regarding tolling, suspension, and extension of the statute of limitations in endorsing extension of the period of limitations for the full time any uncompleted, abandoned, or discontinued nonjudicial deed of trust foreclosures were pending? *Bingham v. Lechner*, 111 Wn. App. 118, 45 P.3d 562 (Div. 1, 2002); Chapter 61.24 RCW**

E. STATEMENT OF THE CASE

Petitioner Kevin Erickson (“Kevin”) is the Personal Representative of the Estate of his deceased brother Ryan Erickson.

Kevin was appointed Personal Representative of Ryan's estate on May 29, 2015, in Pierce County Superior Court Cause No. 14-4-01520-1.

Ryan obtained a mortgage loan from America's Wholesale Lender on October 26, 2005. He signed a Fixed/Adjustable Rate Note, an installment note, in the principal sum of \$232,000.00. The note was for a thirty-year installment payment plan with the debt maturing on November 1, 2035.

As security for the loan, Ryan signed a Deed of Trust on his homestead real property at 9410 150th Street Ct E, Puyallup, WA 98375-8442.

The loan was originated by Countrywide Home Loans, Inc. ("Countrywide") and was later sold on the secondary mortgage market into a securitized trust. US Bank is the current trustee of the trust. (CP 71, lines 10 – 12). Countrywide Home Loans Servicing LP ("Countrywide") was the servicer for Ryan's loan on behalf of the holder of the promissory note. (CP 107, 110, 113)

In the fall of 2007, Ryan began falling behind on his mortgage payments. Countrywide served three "Notices of Default and Acceleration". The first is dated October 17, 2007, the second is dated December 17, 2007, and the third is dated September 17, 2008.

On March 17, 2008, Countrywide recorded a Notice of Trustee's

Sale with a scheduled sale date of June 20, 2008. (Janati Decl CP 86-88 at Exh G CP 131-137) Ryan entered into a repayment plan on March 28, 2008, to cure his delinquent payments based on a five-month repayment schedule. (Janati Decl CP 86-88 at Exh E CP 117-126) Ryan again defaulted on his payments, making the installment that was due July 1, 2008, the last payment he made on the loan. . (Janati Decl CP 86-88 at Exh F, CP 128).

Following Ryan's failure to pay the August 1, 2008 installment, Countrywide served a "Notice of Intent to Accelerate" dated September 17, 2008 (Janati Decl CP 86-88 at Exh D, CP 113-114). This notice contains the same clear and unequivocal language of acceleration as the October 17, 2007 and the December 17, 2007 notices (CP 107-108):

Dear Ryan S Erickson:

Countrywide Home Loans Servicing LP (hereinafter "Countrywide") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. * * *

* * *

You have the right to cure the default. To cure the default, on or before October 17, 2008, Countrywide must receive the amount of \$4,505.82 plus any additional regular monthly payment or payments, late charges, fees and charges, which become due on or before October 17, 2008.

The default will not be considered cured unless Countrywide receives "good funds~ in the amount \$4,505.82 on or before October 17, 2008. * * *

If the default is not cured on or before October 17, 2008, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

* * *

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law.

* * *

*** * * Failure to bring your loan current or to enter into a written agreement by October 17, 2008 as outlined above will result in the acceleration of your debt.**

Time is of the essence. * * *

(emphasis in bold added, except that the phrase “**will be accelerated**” is in bold on the original notice.)

Ryan did not cure the default by October 17, 2008. (Janati Decl CP 86-88 at Exh F, CP 129) Subsequently, three more notices of trustee’s sale were recorded against the property:

- Notice of Trustee's Sale recorded on January 5, 2009, with an original sale date of April 3, 2009, and related postponement notices. (Janati Decl CP 86-88 at Exhibit H, CP 140-151)

- Notice of Trustee's Sale recorded on July 14, 2010, with an original sale date of October 15, 2010, and related postponement notices. (Janati Decl CP 86-88 at Exhibit I, CP 153-159)
- Notice of Trustee's Sale recorded on June 25, 2015, and the Notice of Continuance of Trustee's Sale, continuing the sale date to December 4, 2015. (Janati Decl CP 86-88 at Exhibit J, CP 161-166)

The trustee's sale originally set for June 25, 2015, which was continued to December 4, 2015, was postponed pursuant to the injunction staying the foreclosure on the property that is the subject of Estate's Quiet Title action. (CP 15-16; CP 168-169)

Because more than six years had passed from acceleration of the loan on October 17, 2008, to recording of the Notice of Trustee's Sale on June 25, 2015, Kevin filed the Estate's complaint to Quiet Title on October 6, 2015. Defendants answered. Kevin filed the Estate's motion for summary judgment of Quiet Title March 31, 2016 (CP 20-21) together with supporting papers. (CP 60 – 68; CP 22-56; CP 57-59).

USBank responded and filed a cross-motion for summary judgment on April 21, 2016 with supporting papers. (CP 69 – 85; CP 86 – 169).

Kevin filed the Estate's reply and response on May 23, 2016,

together with supporting papers (CP 170 – 177; CP 178 – 190).

USBank filed its Response in Support of Summary Judgment on May 31, 2016. (CP 191 – 199)

The parties' cross-motions for summary judgment were heard August 19, 2016, by the Honorable Edmund Murphy, Judge, Pierce County Superior Court. (CP 200 – 201; CP 202 – 203; RP August 19, 2016).

The court took the matter under advisement and issued its decision and entered its Order on Cross Motions for Summary Judgment on August 23, 2016, GRANTING USBank's cross-motion for summary judgment and DENYING the Estate's motion for summary judgment and dismissing its claims against defendants. (CP 204 – 205; CP 206 – 208)

The following are the relevant dates for the statute of limitations analysis:

DATE	EVENT	CITATION
July 1, 2008	Last full mortgage payment. No further payments made.	CP 128
September 17, 2008	Notice of Intent to Accelerate accelerating note in full effective October 17, 2008	CP 113-114

January 5, 2009	Notice of Trustee's Sale with a sale date of April 3, 2009; Abandoned or discontinued.	CP 140-151
July 14, 2010	Notice of Trustee's Sale with a sale date of October 15, 2010; No sale. Abandoned or discontinued.	CP 153-159
October 17, 2014	Six years from acceleration date of October 17, 2008	
June 25, 2015	Notice of Nonjudicial Trustee's Foreclosure Sale recorded in Pierce County, more than eight months after the statute of limitations has run on the accelerated loan.	CP 161-166

The facts are not in dispute.

The analysis of RCW 4.16.230 in this case centers on the phrases “commencement of an action” and “statutory prohibition”:

When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Neither RCW 4.16.230 nor any other statute or court rule provides for tolling, suspension, or extension of the limitation period for a

nonjudicial deed of trust foreclosure. RCW 4.16.040, RCW 4.16.230, Chapter 61.24 RCW, RCW 7.28.300.

Where a "statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). Such meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question," and if the statute remains susceptible to more than one reasonable meaning, this court resorts to aids of construction, including legislative history. *Campbell & Gwinn*, 146 Wn.2d at 11, 12.

No "statutory prohibition" arises by virtue of a deed of trust beneficiary's commencement of a nonjudicial foreclosure under the Deeds of Trust Act. RCW 4.16.230.

The Legislature did not provide for tolling, suspension, or extension of any statute of limitations in the Deeds of Trust Act. Chapter 61.24 RCW. Lienholders' like U.S. Bank have recently cited to Division One's *Bingham v. Lechner* decision for the proposition that tolling applies to an incomplete nonjudicial foreclosure (even where the parties do not agree to any tolling). 111 Wn. App. 118, 45 P.3d 562 (Div. 1, 2002), *review denied*, 149 Wn.2d 1018, 72 P.3d 761 (2003) (court denied tolling

to a lienholder; public policy does not support indefinite tolling; parties agreed tolling applied to prior nonjudicial foreclosure attempt.)

Because the parties agreed that tolling applies, neither the *Bingham* trial court nor the *Bingham* appellants panel conducted the required statutory analysis of RCW 4.16.170, RCW 4.16.230, CR 2, and CR 3, and wholly failed to explain and address the issue of *why* under any statute, court rule, or provision of law, a lienholder should receive tolling for an incomplete nonjudicial foreclosure. The tolling discussion (there was no analysis) in *Bingham* should not be cited in cases where the parties do *not* agree that tolling applied, since *Bingham's* application of tolling was wholly dependent on the parties agreement and completely void of any principled analysis of applicable law. *See Heintz v. U.S. Bank*, No. 76297-4-I, slip op. at 5-6 (Div. 1, Jan. 16, 2018), unpublished.

V. Argument Why Review Should Be Accepted

This Court should declare that USBank or its servicer was and is barred from bringing any nonjudicial or judicial action on the October 2006 Note and Deed of Trust after October 17, 2014, as a matter of law. RCW 4.16.040(1); RCW 62A.3-118(a).

Where an acceleration provision is exercisable at the option of the creditor, to accelerate the maturity date of a promissory note,

“[s]ome affirmative action is required, some action by which the holder of the note makes known to the payors that he **intends** to declare the whole debt due.” *Glassmaker v. Ricard*, 23 Wn.App. 35, 37, 593 P.2d 179 (1979) (emphasis in bold added), (quoting *Weinberg v. Naher*, 51 Wash. 591, 594, 99 P. 736 (1909)). It is long-standing black letter law that an assignee takes on the burdens of the assignor. *Dahlhjelm Garages v. Mercantile Ins. Co. of Am.*, 149 Wash. 184, 189, 270 P. 434 (1928); *McGill v. Baker*, 147 Wash. 394, 400, 266 P. 138 (1928).

In Washington, courts strictly construe statutes of limitations. *Janicki Logging and Constr. Co, Inc. v. Schwabe, Williamson & Wyatt, P.C.*, 109 Wash.App. 655, 662, 37 P.3d 309 (2001).

In another case directly on point, Division 1 determined that once a notice of acceleration is conveyed to the borrower, evoking a positive rule of law, an acceleration is not nullified by a later act. *Kirsch v. Cranberry Fin., LLC*, 73108-4-1, 2013 WL 6835195, at *7 (Div. 1, Dec. 23, 2013).⁶ "Once rung, the bell is not unring." *Id.*, citing *Lunsford v. Saberhaqen Holdings. Inc.*, 139 Wn.App. 334, 343, 160 P.3d 1089 (2007).

As our Supreme Court made clear in 1917 in *Hensen v. Peter*:

If the plaintiff voluntarily omitted to prosecute his remedy until the bar of the statute attached, it is his misfortune, and the debtor is at liberty

to set up the [statute of limitations] defense, as in any other case.

Hensen v. Peter, 95 Wash. 628, 633, 164 P. 512 (1917). In *U.S. Oil*, our Supreme Court explained this longstanding rationale that the plaintiff would be able to "suspend indefinitely the running of the statute of limitations by delaying the performance of the preliminary act ..." *U.S. Oil & Refining Co. v. State Dept. of Ecology*, 96 Wn.2d 85, 91, 633 P.2d 1329 (1981) citing *Edison Oyster Co. v. Pioneer Oyster Co.*, 22 Wn.2d 616, 626, 157 P.2d 302 (1945). Permitting the creditor to decelerate at will, especially via unclear and equivocal acts, would allow it to suspend indefinitely the running of the statute of limitations. Such would defeat the purpose of the statute of limitations, which is strictly construed in Washington.

Countrywide's October 17, 2007 (CP 107-108), December 17, 2007 (CP 110-111), and September 17, 2008 (CP 113-114) notices of default and intent to accelerate were clear, unambiguous, and unequivocal affirmative acts that gave notice by which the then-holder or its servicer made known to the borrower Ryan Rickson (deceased) that it intended to declare the whole debt immediately due and payable. USBank is bound by Countrywide's acceleration. Any act by USBank or its servicer arising out of the October 2006 Note and Deed of Trust brought after October 17,

2014 is time-barred as a matter of law.

Incomplete and abandoned or discontinued nonjudicial foreclosure proceedings do not toll the statute of limitations any more than a dismissed lawsuit tolls the limitations period for filing an action. *Fittro v.*

Alcombrack, 23 Wn. App. 178, 596 P.2d 665 (1979). The stated:

When an action is dismissed, the statute of limitations continues to run as though the action had never been brought. *Humphreys v. United States*, 272 F.2d 411 (9th Cir. 1959); see also *Vance v. Seattle*, 18 Wn. App. 418, 424 n.4, 569 P.2d 1194 (1977); *Gould v. Bird & Sons, Inc.*, 5 Wn. App. 59, 485 P.2d 458 (1971). Because the action against Alcombrack was dismissed before State Farm was served, the action against Alcombrack no longer tolled the statute of limitations either as to Alcombrack or as to State Farm. Fittro's failure to serve State Farm within the 3-year statutory period bars her claim. *Fox v. Groff*, 16 Wn.App. 893, 559 P.2d 1376 (1977).

Fittro v. Alcombrack, 23 Wn. App. 178, 180, 596 P.2d 665, 666 (1979).

The court in *Logan v. N.W. Ins. Co.*, 45 Wn. App. 95, 99, 724 P.2d 1059, (1986) states it as follows:

“Where an original action is dismissed, a statute of limitations is deemed to continue to run as though the action had never been brought.”

USBank relies on and cites *Bingham v. Lechner*, 111 Wn. App. 118, 45 P.3d 562 (Div. 1, 2002) for the proposition that the statute of limitations is tolled during the entire time a non-judicial foreclosure was pending even where the nonjudicial foreclosure was never completed, no

trustee's sale was held, and the nonjudicial foreclosure was abandoned or discontinued. Such is not the law nor is it the holding of *Bingham*.

Once each event was abandoned, dismissed, canceled, or discontinued, it was as if the event had never occurred and the original timeline on the statute of limitations continued to run as though the nonjudicial foreclosures had never been initiated. In short, there is no such thing as a "tolling deduction" as USBank contends.

Because USBank waited more than six years, in violation of RCW 4.16.040 and RCW 62A.3-118(a), and is time-barred as a matter of law, RCW 7.28.300 instructs the Court to declare the Deed of Trust as being outlawed. The Estate of Ryan Erickson is entitled to quiet title removing the lien of the outlawed Deed of Trust from the property.

Walcker

RCW 7.28.300

Quieting title against outlawed mortgage or deed of trust.

The record owner of real estate may maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an action to foreclose such mortgage or deed of trust would be barred by the statute of limitations, and, upon proof sufficient to satisfy the court, may have judgment quieting title against such a lien.

Review should be accepted under RAP 13.4(b)(2) because the decision of the Court of Appeals is in conflict with a published decision of

the Court of Appeals

Review should be accepted under RAP 13.4(b)(4) because the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

D. Review Should Be Accepted Under RAP 13.4(B)(4) because the decision impacts homeowners across the state and presents an issue of substantial public interest.

The Legislature has seen no need to amend RCW 4.16.230 or the Deeds of Trust Act to provide tolling (extension of the limitation period) for the duration of uncompleted, abandoned, discontinued nonjudicial deed of trust foreclosure proceedings

The ability of homeowners to quiet title to an outlawed deed of trust is an essential leg of the four-legged stool the Legislature created to balance competing interests in the marketability of land titles: RCW 4.16.040, RCW 4.16.230, RCW 7.28.300, and RCW 61.24.130. The Opinion kicks out the legs of the carefully crafted stool. Lienholders get additional time to foreclose. Homeowners lose their protection from protracted litigation.

Division One's Opinion directly conflicts with *Walcker v. Benson and McLaughlin*, P.S., 79 Wn. App. 739, 745-6, 904 P.2d 1176 (Div. 3 1995), *review denied*, 129 Wn.2d 1008 (1996), which refused to extend

the six-year statute of limitations to foreclose on a deed of trust, because public policy does not support an indefinite period to foreclose:

Our policy is one of repose; the goals are to eliminate the fears and burdens of threatened litigation and to protect a defendant against stale claims. *Ruth v. Dight*, 75 Wash.2d 660, 664, 453 P.2d 631 (1969). *Stenberg v. Pacific Power & Light Co.*, 104 Wash.2d at 714, 709 P.2d 793. . . . These goals are generally applicable in foreclosure proceedings, whether based on mortgages or deeds of trust. . . . The plain language of RCW 61.24.020 states that, "[e]xcept as provided" in the deed of trust act, mortgage law applies to foreclosure of deeds of trust. The act does not address the applicability of statutes of limitations. Therefore, RCW 7.28.300, which expressly makes the statute of limitations a defense in mortgage foreclosure proceedings, applies to foreclosure of trust deeds as well. Because Benson and McLaughlin failed to initiate its foreclosure within the applicable six-year limitation period, the foreclosure should be barred.

Review should be accepted to restore the Legislature's balance of the competing interests, an issue of substantial public importance. RAP 13.4(b)(4).

VI. Conclusion

Petitioner respectfully requests that this Court:

1. Reverse the Court of Appeals' affirmance of the trial court's orders.
2. Reverse the Order Denying the Estate's Motion for Summary Judgment of Quiet Title;

3. Reverse the Order Granting USBank's Cross-Motion for Summary Judgment;

4. Remand this case to the Court of Appeals and to the trial court with instructions to enter an order and judgment of quiet title as to the outlawed Deed of Trust;

5. Require USBank and/or its servicer and/or any of its successors and assigns to reconvey the property and deed of trust to the Estate of Ryan Erickson, free and clear of the lien of the outlawed Deed of Trust

6. Award the Estate its costs, disbursements and reasonable attorney fees on this review, on appeal, and in the trial court.

7. Such other relief as is just and proper.

Respectfully submitted this 26th day of July 2018.

A handwritten signature in black ink, appearing to be 'Helmut Kah', written in a cursive style with several loops and a long horizontal stroke extending to the left.

Helmut Kah, WSBA # 18541
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on July 26, 2018, a copy of the foregoing Petition for Review was served at the indicated address by Appellate E-filing to the following:

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KEVIN ERICKSON, as Personal Representative of the Estate of Ryan Erickson,)	DIVISION ONE
)	No. 77742-4-1
Appellant,)	
v.)	UNPUBLISHED OPINION
AMERICA'S WHOLESALE LENDER, a New York corporation, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., an inactive Washington corporation, U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR GSAA HOME EQUITY TRUST 2006-1, QUALITY LOAN SERVICE CORP. OF WASHINGTON and ANY AND ALL PERSONS CLAIMING ANY RIGHT, TITLE OR INTEREST IN THE PROPERTY DESCRIBED HEREIN THROUGH ANY DEFENDANT ABOVE NAMED,)	
Respondents.)	FILED: April 16, 2018

DWYER, J.— Kevin Erickson, the personal representative of his brother's estate, appeals from the trial court's order entering summary judgment in favor of U.S. Bank National Association as Trustee for GSAA Home Equity Trust 2006-1 (US Bank) and dismissing his quiet title action. On appeal, Kevin¹ contends that US Bank's foreclosure action on Ryan's estate's property is time barred by the

¹ For the sake of clarity, we will refer to Kevin Erickson and his brother Ryan Erickson by their first names.

statutory limitation period applicable to agreements in writing. Kevin also contends that US Bank's foreclosure action is time barred because US Bank and its predecessor in interest accelerated the payments due on the loan, causing the statutory limitation period on the entire debt to begin to run prematurely. Finally, Kevin contends that US Bank is time barred from enforcing payment of the loan because, he asserts, incomplete nonjudicial foreclosure proceedings do not toll the statutory limitation period. None of Kevin's claims have merit. We affirm.

The facts of this case are not in dispute. Kevin is the personal representative of the estate of his deceased brother, Ryan Erickson. On October 26, 2005, Ryan obtained a home loan from America's Wholesale Lender. Ryan signed a promissory note when he obtained the loan. The note required that Ryan make monthly installment payments over 30 years with the debt maturing on November 1, 2035. As security for the loan, Ryan signed a deed of trust on the real property.

The loan was originated by Countrywide Home Loans Incorporated and was later sold on the secondary mortgage market and placed into a securitized trust. US Bank is the current trustee of the trust. Countrywide Home Loans Servicing LP (Countrywide) is the servicer of Ryan's home loan on behalf of the holder of the promissory note.

By autumn of 2007, Ryan had fallen behind on his monthly payments. On October 17, Countrywide sent Ryan a "Notice of Default and Acceleration." The notice read, in pertinent part:

If the default is not cured on or before November 16, 2007, the mortgage payments **will be accelerated** with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property.

Ryan continued to miss payments and was sent a second "Notice of Default and Acceleration" on December 17, 2007. The second notice contained the same language as the first notice, except that Ryan was given until January 16, 2008 to cure the default.

On March 18, 2008, Countrywide sent Ryan a "Notice of Trustee's Sale" scheduled for June 20. On March 28, Ryan signed a five-month "Repayment Plan Agreement."

When Ryan continued to miss payments, Countrywide sent him a third notice, entitled "Notice of Intent to Accelerate" on September 17, 2008. This notice contained the same language as the two earlier notices of default and acceleration, except that Ryan was given until October 17 to cure the default. When Ryan failed to cure the default, Countrywide recorded four more notices of trustee's sale between January 5, 2009 and June 25, 2015. A foreclosure sale was never held.

Ryan died. On October 6, 2015, Kevin, on behalf of Ryan's estate, filed a complaint against US Bank and its predecessors in interest seeking to quiet title to the property. Later, Kevin moved for summary judgment. In response, US Bank opposed Kevin's motion for summary judgment and cross-moved for summary judgment. The trial court granted summary judgment in favor of US Bank and dismissed Kevin's quiet title claim.

II

Kevin contends that the trial court erred by denying his motion for summary judgment and dismissing his quiet title action. This is so, he asserts, because the applicable statutory limitation period regarding US Bank's ability to enforce payment of the loan obligation had expired.

We review an order granting summary judgment de novo, performing the same inquiry as the trial court. Nichols v. Peterson Nw., Inc., 197 Wn. App. 491, 498, 389 P.3d 617 (2016). In doing so, we draw "all inferences in favor of the nonmoving party." U.S. Oil & Ref. Co. v. Lee & Eastes Tank Lines, Inc., 104 Wn. App. 823, 830, 16 P.3d 1278 (2001). "Summary judgment is proper if the record shows that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law." U.S. Oil & Refining Co., 104 Wn. App. at 830.

A

Kevin first contends that US Bank's foreclosure action on his property is time barred because more than six years have passed since Ryan first defaulted on his loan payments. We disagree.

An action upon a contract or agreement in writing must be commenced within six years. RCW 4.16.040. "As an agreement in writing, [a] deed of trust foreclosure remedy is subject to a six-year statute of limitations." Edmundson v. Bank of Am., NA, 194 Wn. App. 920, 927, 378 P.3d 272 (2016).

Washington law distinguishes between demand promissory notes and installment promissory notes. Edmundson, 194 Wn. App. at 927-32. "[A]

demand [promissory] note is payable immediately on the date of its execution.” Edmundson, 194 Wn. App. at 929 (quoting GMAC v. Everett Chevrolet, Inc., 179 Wn. App. 126, 135, 317 P.3d 1074 (2014)). As such, the statutory limitation period begins to run on a demand note when it is executed. Walcker v. Benson & McLaughlin, P.S., 79 Wn. App. 739, 742, 904 P.2d 1176 (1995). An installment promissory note, on the other hand, is payable in installments and matures on a future date. See Edmundson, 194 Wn. App. at 929; see also Herzog v. Herzog, 23 Wn.2d 382, 388, 161 P.2d 142 (1945). “[W]hen recovery is sought on an obligation payable by installments, the statute of limitations runs against each installment from the time it becomes due; that is, from the time when an action might be brought to recover it.” Edmundson, 194 Wn. App. at 930 (quoting Herzog, 23 Wn.2d at 388).

Here, Ryan signed a promissory note payable in monthly installments over 30 years that fully matures on November 1, 2035. Thus, the present note is an installment note and the six-year period of limitation does not begin to run on the entire debt until the debt fully matures in 2035. Accordingly, US Bank’s foreclosure on Ryan’s property is timely because the statutory limitation period applicable to the entire loan obligation has not yet started to run and the action was brought within six years of the missed monthly installment payments. There was no error.

B

Kevin next contends that Countrywide accelerated the payments due on the loan, causing the statutory limitation period to start accruing on the date that

the loan was accelerated. This is so, he asserts, because the three notices that Countrywide sent to Ryan set forth that the loan “will be accelerated” if Ryan did not cure the default on the loan. We disagree.

i

Our Supreme Court has held “that even if the provision in an installment note provides for the automatic acceleration of the due date upon default, mere default alone will not accelerate the note.” A. A. C. Corp. v. Reed, 73 Wn.2d 612, 615, 440 P.2d 465 (1968). “Some affirmative action is required, some action by which the holder of the note makes known to the payors that he intends to declare the whole debt due.” Weinberg v. Naher, 51 Wash. 591, 594, 99 P. 736 (1909).

[A] provision hastening the date of maturity of the whole debt is for the benefit of the payee, and if he does not manifest any intention to claim it, before tender is actually made, there is in law no default such as will cause the maturity of the debt before the regular time provided in the agreement.

Coman v. Peters, 52 Wash. 574, 578, 100 P. 1002 (1909).

Here, Countrywide sent Ryan three notices warning him that the entire debt would be accelerated if he failed to cure his default. The three notices read: “If the default is not cured on or before [date], the mortgage payments **will be accelerated** with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at this time.” Countrywide did not take an affirmative action that indicated that the payments on the loan had been accelerated. Indeed, Countrywide neither declared the entire debt due nor refused to accept installment payments. See, e.g., Rodgers

v. Rainier Nat'l Bank, 111 Wn.2d 232, 757 P.2d 976 (1988) (trustee accelerated payments due on the loan by refusing partial payment and demanding principal and interest in full); Jacobson v. McClanahan, 43 Wn.2d 751, 264 P.2d 253 (1953) (lender accelerated payments due on the loan by giving notice of default and refusing to accept subsequent installment payments).

The notices simply informed Ryan of a future contingent event. For that event—acceleration of the entire debt—to take place, Countrywide had to take an affirmative action manifesting its intent to do so. Because this did not happen, Ryan's loan obligations were not accelerated.

ii

The deed of trust that Ryan signed as security for the loan requires the lender to provide notice before exercising its right to accelerate the loan. The deed of trust reads:

Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument. . . . If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law.

The plain language of the deed of trust demonstrates that the notices sent to Ryan were pre-acceleration notices, as required by the loan documents. They did not, by themselves, cause the loan to be accelerated.

In addition, the deeds of trust act² “precludes the creditor from enforcing the election [to accelerate a loan] prior to the eleventh day before the date of the trustee’s sale.” Meyers Way Dev. Ltd. P’ship v. Univ. Sav. Bank, 80 Wn. App. 655, 669, 910 P.2d 1308 (1996). The act sets forth, in pertinent part, that “[a]t any time prior to the eleventh day before the date set by the trustee for the sale in the recorded notice of sale . . . the borrower . . . shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice.” RCW 61.24.090(1). In this way, the legislature manifested a policy choice in favor of allowing for debtors to more easily cure their defaults. We must honor this policy choice.

Here, neither US Bank nor its predecessor in interest ever took action to accelerate the loan within 11 days of a trustee’s sale. Contrary to Kevin’s argument, RCW 61.24.090(1) precluded the debt from being accelerated at the time of the mailing of the notices at issue. For this reason, also, Kevin’s argument is unavailing.

The trial court correctly ruled that the debt was never accelerated.

C

Kevin next contends that incomplete nonjudicial foreclosure proceedings do not toll the statutory limitation period and, consequently, US Bank is unable to collect missed payments dating back to July 1, 2008, the date that Ryan stopped making payments on the loan. We disagree.

² Ch. 61.24 RCW.

A trustee may continue a foreclosure sale for “a period or periods not exceeding a total of one hundred twenty days.” RCW 61.24.040(6). We have held that the statutory limitation period applicable to enforcing payment of a loan is tolled during the duration of a foreclosure proceeding up to 120 days after the original sale date. Bingham v. Lechner, 111 Wn. App. 118, 129-31, 45 P.3d 562 (2002); accord Albice v. Premier Mortg. Servs. of Wash., Inc., 157 Wn. App. 912, 927-28, 239 P.3d 1148 (2010). The statutory limitation period is tolled for 120 days after the original sale date even when the trustee does not exercise his ability to continue the sale. Bingham, 111 Wn. App. at 131 (trustee’s “failure to [continue the sale] restarted the statute of limitations either on . . . the date scheduled for the foreclosure or 120 days thereafter”).

Here, Countrywide recorded four notices of trustee’s sale after Ryan entered into a repayment plan with Countrywide. The first trustee’s sale notice was recorded on January 5, 2009, with a sale date of April 3. The second trustee’s sale notice was recorded on July 14, 2010, with a sale date of October 15. The third trustee’s sale notice was recorded on December 10, 2014, with a sale date of April 10, 2015. The fourth trustee’s sale notice was recorded on June 25, 2015 with a sale date of October 23, 2015. The fourth sale was stayed pending the resolution of the instant quiet title action.

Because the original sale date for the December 10, 2014 notice was April 10, 2015, which was fewer than 120 days before June 25, 2015, the statutory limitation period was effectively tolled starting on December 10, 2014. There were 2,353 days between July 1, 2008 and December 10, 2014, or six years, five

months, and nine days. The January 5, 2009 and July 14, 2010 notices of trustee's sale collectively tolled the limitation period for 421 days, or a little over a year. Thus, as calculated pursuant to the law, fewer than six years have elapsed since the missed payment on July 1, 2008. Accordingly, US Bank is entitled to recover all missed payments on Kevin's promissory note and deed of trust dating back to July 1, 2008.

III

Finally, both parties request an award of attorney fees pursuant to both the attorney fee provisions of the promissory note and the deed of trust, and RCW 4.84.330. RCW 4.84.330 sets forth:

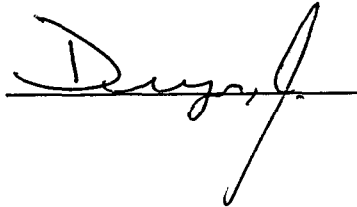
[When a] contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

The promissory note provides for attorney fees to be awarded to the note holder "[i]f the Note Holder has required [the recipient of the note] to pay immediately in full." In other words, the promissory note provides for an award of attorney fees if the note holder accelerates the loan. Because we have determined that US Bank did not accelerate the loan, this provision does not give US Bank an entitlement to an award of attorney fees.

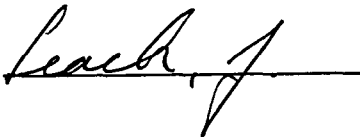
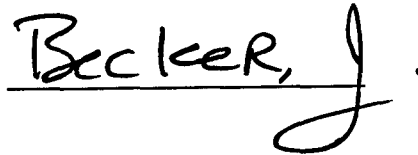
The deed of trust sets forth that the "[l]ender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument." In his complaint, Kevin asserted that US Bank's "Deed of Trust is an impermissible cloud and encumbrance on

the title for a debt that is not collectible.” Moreover, Kevin prayed for a judgment “forever barr[ing] [US Bank] from having or asserting any right, title, estate, lien, or interest in or to the hereinabove described property.” Thus, the present action is an action regarding the enforceability of the terms of the deed of trust. US Bank is the prevailing party. Accordingly, US Bank is entitled to an award of attorney fees and costs pursuant to the applicable provision of the deed of trust. Upon a proper application, a commissioner of our court will make a suitable award.

Affirmed.

A handwritten signature in cursive script, appearing to be "Dwyer", written over a horizontal line.

We concur:

A handwritten signature in cursive script, appearing to be "Leach", written over a horizontal line.A handwritten signature in cursive script, appearing to be "Becker, J.", written over a horizontal line.

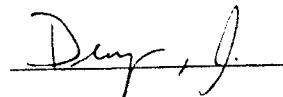
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KEVIN ERICKSON, as Personal)	
Representative of the Estate of Ryan)	DIVISION ONE
Erickson,)	
)	No. 77742-4-1
Appellant,)	
v.)	ORDER DENYING MOTION
)	TO PUBLISH OPINION
AMERICA'S WHOLESALE LENDER,)	
a New York corporation, MORTGAGE)	
ELECTRONIC REGISTRATION)	
SYSTEMS, INC., an inactive)	
Washington corporation, U.S. BANK)	
NATIONAL ASSOCIATION AS)	
TRUSTEE FOR GSAA HOME EQUITY)	
TRUST 2006-1, QUALITY LOAN)	
SERVICE CORP. OF WASHINGTON)	
and ANY AND ALL PERSONS)	
CLAIMING ANY RIGHT, TITLE OR)	
INTEREST IN THE PROPERTY)	
DESCRIBED HEREIN THROUGH)	
ANY DEFENDANT ABOVE NAMED,)	
)	
Respondents.)	
_____)	

Respondent U.S. Bank National Association as Trustee for GSAA Home Equity Trust 2006-1 having filed a motion to publish opinion, and a majority of the panel having considered its prior determination and finding that the opinion will not be of precedential value; now, therefore, it is hereby

ORDERED that the unpublished opinion filed April 16, 2018, shall remain unpublished.

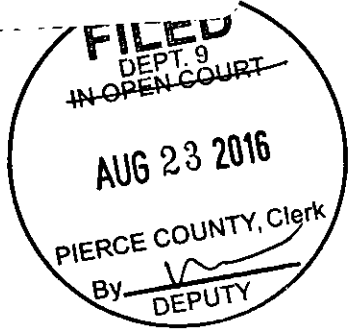
For the Court:





15-2-12744-1 47467280 OR 08-25-16

Honorable Edmund Murphy
Hearing Date: August 19, 2016
9:00 AM



ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE

KEVIN ERICKSON, as Personal Representative
of the Estate of Ryan Erickson,

Case No. 15-2-12744-1

Plaintiff,

~~PROPOSED~~ ORDER ON CROSS-
MOTIONS FOR SUMMARY
JUDGMENT *EM*

v.

AMERICA'S WHOLESALE LENDER, a New
York corporation, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., an inactive
Washington corporation, U.S. BANK NATIONAL
ASSOCIATION AS TRUSTEE FOR GSAA
HOME EQUITY TRUST 2006-1, QUALITY
LOAN SERVICE CORP., OF WASHINGTON
and ANY AN ALL PERSONS CLAIMING ANY
RIGHT, TITLE OR INTEREST IN THE
PROPERTY DESCRIBED HEREIN THROUGH
ANY DEFENDANT ABOVE NAMED,

Defendants.

THIS MATTER ^{19,} having come before the Court for hearing on August , 2016 on Plaintiff
Kevin Erickson's ("Plaintiff"), as Personal Representative of the Estate of Ryan Erickson, Motion
for Summary Judgment and Defendant U.S. Bank National Association as Trustee for GSAA
Home Equity Trust 2006-1's ("US Bank" or "Defendant"), ^{*cross-motion for Summary Judgment.*} by and through its undersigned
attorneys, and the Court having heard the arguments of counsel, having reviewed and considered
the pleadings, documents and evidence in the Court's record, including:

~~PROPOSED~~ ORDER ON CROSS MOTIONS *EM*
FOR SUMMARY JUDGMENT
CASE NO. 15-2-12744-1 - PAGE - 1

HOLLAND & KNIGHT LLP
2300 US Bancorp Tower
111 SW Fifth Avenue
Portland, OR 97204
Telephone: 503.243.2300

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8/25/2016

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8/25/2016

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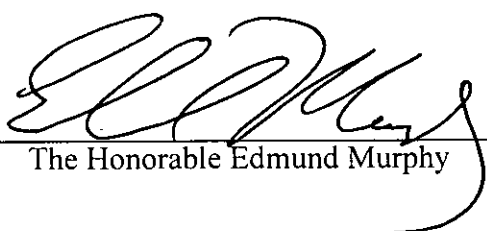
- 1. Plaintiff's Motion for Summary Judgment and Legal Memorandum in Support Thereof;
- 2. Declaration of David C. Hammermaster dated March 31, 2016;
- 3. Declaration of Kevin Erickson dated March 31, 2016;
- 4. Defendant's Opposition to Plaintiff's Summary Judgment Motion and Cross-Motion for Summary Judgment and Legal Memorandum in Support Thereof;
- 5. Declaration of Fay Janati dated April 20, 2016;
- 6. Plaintiff's Reply and Response to Defendant's Response and Counter Motion for Summary Judgment;
- 7. Supplemental Declaration of David C. Hammermaster in Support of Motion for Summary Judgment; and
- 8. Defendant's Response and Reply In Support of Cross-Motion For Summary Judgment,

and the Court being otherwise fully advised in the premises,

NOW, THEREFORE, it is hereby ORDERED that:

- 1. Defendant's cross-motion for summary judgment is hereby GRANTED;
- 2. Plaintiff's summary judgment motion is DENIED and Plaintiff's claim against Defendant is dismissed with prejudice; and
- 3. The preliminary injunction previously entered by the Court is hereby dismissed and a new sale date is to be set pursuant to RCW 61.24.130(3).

DATED this 23rd day of August, 2016.



 The Honorable Edmund Murphy

1 RESPECTFULLY SUBMITTED BY:

2 HOLLAND & KNIGHT LLP

3 By: s/ David J. Elkanich

4 David J. Elkanich, WSB No. 35956

5 E-mail: david.elkanich@hkllaw.com

6 Garrett S. Garfield, WSB No. 48375

7 2300 US Bancorp Tower

8 111 SW Fifth Avenue

9 Portland, OR 97204

10 Telephone: 503.243.2300

11 Fax: 503.241.8014

12 Attorneys for Defendants U.S. BANK NATIONAL

13 ASSOCIATION AS TRUSTEE FOR GSAA

14 HOME EQUITY TRUST 2006-1

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[PROPOSED] ORDER ON CROSS MOTIONS
FOR SUMMARY JUDGMENT
CASE NO. 15-2-12744-1 - PAGE - 3

HOLLAND & KNIGHT LLP
2300 US Bancorp Tower
111 SW Fifth Avenue
Portland, OR 97204
Telephone: 503.243.2300



P.O. Box 660070
Dallas, TX 75265-0070

Send Payments to:
PO Box 660070
Dallas, TX 75265-0070

October 17, 2007

Ryan S Erickson
9410 150TH STREET CT E
PUYALLUP, WA 98375-8442

Account No.: 113767579
Property Address:
9410 150th Street CT E
Puyallup, WA 98375

NOTICE OF DEFAULT AND ACCELERATION

Dear Ryan S Erickson:

Countrywide Home Loans Servicing LP (hereinafter "Countrywide") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. **The total amount now required to reinstate the loan as of the date of this letter is as follows:**

<u>Monthly Charges:</u>	09/01/2007	\$3,431.44
<u>Late Charges:</u>	09/01/2007	\$69.55
<u>Other Charges:</u>	Total Late Charges:	\$0.00
	Uncollected Costs:	\$0.00
	Partial Payment Balance:	(\$0.00)
TOTAL DUE:		\$3,500.99

You have the right to cure the default. To cure the default, on or before November 16, 2007, Countrywide must receive the amount of \$3,500.99 plus any additional regular monthly payment or payments, late charges, fees and charges, which become due on or before November 16, 2007.

The default will not be considered cured unless Countrywide receives "good funds" in the amount \$3,500.99 on or before November 16, 2007. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. Countrywide reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before November 16, 2007, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law. However, Countrywide and the Noteholder shall be entitled to collect all fees and costs incurred by Countrywide and the Noteholder in pursuing any of their remedies, including but not limited to reasonable attorney's fees, to the full extent permitted by law. Further, you may have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

Your loan is in default. Pursuant to your loan documents, Countrywide may, enter upon and conduct an inspection of your property. The purposes of such an inspection are to (i) observe the physical condition of your property, (ii) verify that the property is occupied and/or (iii) determine the identity of the occupant. If you do not cure the default prior to the inspection, other actions to protect the mortgagee's interest in the property (including, but not limited to, winterization, securing the property, and valuation services) may be taken. **The costs of the above-described inspections and property preservation efforts will be charged to your account as provided in your security instrument.**

If you are unable to cure the default on or before November 16, 2007, Countrywide wants you to be aware of various options that may be available to you through Countrywide to prevent a foreclosure sale of your property. For example:

- Make your check payable to Countrywide Home Loans
- Write your account number on your check or money order
- Write in any additional amounts you are including (if total is more than \$5000, please send certified check)
- Don't attach your check to the payment coupon
- Don't include correspondence
- Don't send cash

Please write your account number on all checks and correspondence
We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law

Account Number: 113767579-7
Ryan S Erickson
9410 150th Street CT E

Balance Due for charges listed above: \$3,500.99 as of 10/17/2007.

Please update a new information on the reverse side of this coupon.

BLQ/SE/IV

Additional Principal

Additional Escrow

Other

Check Total

Countrywide
PO BOX 660070
Dallas, TX 75265-0070
11111

113767579700000350099000350099

EXHIBIT

"A"

USB000016

- **Repayment Plan:** It is possible that you may be eligible for some form of payment assistance through Countrywide. Our basic plan requires that Countrywide receive, up front, at least 1/3 of the amount necessary to bring the account current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.
- **Loan Modification:** Or, it is possible that the regular monthly payments can be lowered through a modification of the loan by reducing the interest rate and then adding the delinquent payments to the current loan balance. This foreclosure alternative, however, is limited to certain loan types.
- **Sale of Your Property:** Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through Countrywide even if your home is worth less than what is owed on it.
- **Deed-In-Lieu:** Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with Countrywide, you must contact us immediately. If you request assistance, Countrywide will need to evaluate whether that assistance will be extended to you. In the meantime, Countrywide will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by November 16, 2007 as outlined above will result in the acceleration of your debt.

Time is of the essence. Should you have any questions concerning this notice, please contact Loan Counseling Center immediately at 1-800-869-0702. Our office hours are between 8:15 AM and 5:15 PM (Central Time).

Sincerely,

Loan Counseling Center

E-mail use: Providing your e-mail address below will allow us to send you information on your account
 Account Number: 135707670
 Ryan S Erikson E-mail address

How we post your payments: All accepted payments of principal and interest will be applied to the longest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (i) to outstanding monthly payments of principal and interest, (ii) escrow delinquencies, (iii) late charges and other amounts you owe in connection with your loan and (iv) to reduce the outstanding principal balance of your loan. Please specify if you want an additional amount applied to future payments, rather than principal reduction.

Postdated checks: Countrywide's policy is to not accept postdated checks, unless specifically agreed to by a loan counselor or technician.

USB000017



P.O. Box 850070
Dallas, TX 75285-0070

Send Payments to:
PO Box 850070
Dallas, TX 75285-0070

December 17, 2007

Ryan S Erickson
9410 150TH STREET CT E
PUYALLUP, WA 98375-8442

Account No.: 113767579
Property Address:
9410 150th Street CT E
Puyallup, WA 98375

NOTICE OF DEFAULT AND ACCELERATION

Dear Ryan S Erickson:

Countrywide Home Loans Servicing LP (hereinafter "Countrywide") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. **The total amount now required to reinstate the loan as of the date of this letter is as follows:**

<u>Monthly Charges:</u>	11/01/2007	\$3,431.44
<u>Late Charges:</u>	11/01/2007	\$69.55
<u>Other Charges:</u>	Total Late Charges:	\$0.00
	Uncollected Costs:	\$15.00
	Partial Payment Balance:	(\$0.00)
TOTAL DUE:		\$3,515.99

You have the right to cure the default. To cure the default, on or before January 16, 2008, Countrywide must receive the amount of \$3,515.99 plus any additional regular monthly payment or payments, late charges, fees and charges, which become due on or before January 16, 2008.

The default will not be considered cured unless Countrywide receives "good funds" in the amount \$3,515.99 on or before January 16, 2008. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. Countrywide reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before January 16, 2008, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law. However, Countrywide and the Noteholder shall be entitled to collect all fees and costs incurred by Countrywide and the Noteholder in pursuing any of their remedies, including but not limited to reasonable attorney's fees, to the full extent permitted by law. Further, you may have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

Your loan is in default. Pursuant to your loan documents, Countrywide may, enter upon and conduct an inspection of your property. The purposes of such an inspection are to (i) observe the physical condition of your property, (ii) verify that the property is occupied and/or (iii) determine the identity of the occupant. If you do not cure the default prior to the inspection, other actions to protect the mortgagee's interest in the property (including, but not limited to, winterization, securing the property, and valuation services) may be taken. The costs of the above-described inspections and property preservation efforts will be charged to your account as provided in your security instrument.

If you are unable to cure the default on or before January 16, 2008, Countrywide wants you to be aware of various options that may be available to you through Countrywide to prevent a foreclosure sale of your property. For example:

Please write your account number on all checks and correspondence.
We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

Account Number: 113767579
Ryan S Erickson
9410 150th Street CT E

Balance Due for charges listed above: \$3,515.99 as of 12/17/2007.

- Make your check payable to Countrywide Home Loans
- Write your account number on your check or money order
- Write in any additional amounts you are including (if total is more than \$5000, please send certified check)
- Don't attach your check to the payment coupon
- Don't include correspondence
- Don't send cash

Please update e-mail information on the reverse side of the coupon

Additional
Receipt

RI GISEIN

Additional
Electron

Other

Check
Total

Countrywide
PO BOX 850070
Dallas, TX 75285-0070
|||

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USB000011

- **Repayment Plan:** It is possible that you may be eligible for some form of payment assistance through Countrywide. Our basic plan requires that Countrywide receive, up front, at least 1/3 of the amount necessary to bring the account current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.
- **Loan Modification:** Or, it is possible that the regular monthly payments can be lowered through a modification of the loan by reducing the interest rate and then adding the delinquent payments to the current loan balance. This foreclosure alternative, however, is limited to certain loan types.
- **Sale of Your Property:** Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through Countrywide even if your home is worth less than what is owed on it.
- **Deed-in-Lieu:** Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with Countrywide, you must contact us immediately. If you request assistance, Countrywide will need to evaluate whether that assistance will be extended to you. In the meantime, Countrywide will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by January 16, 2008 as outlined above will result in the acceleration of your debt.

Time is of the essence. Should you have any questions concerning this notice, please contact Loan Counseling Center immediately at 1-800-669-0102. Our office hours are between 8:15 AM and 5:15 PM (Central Time).

Sincerely,

Loan Counseling Center

E-mail User: Providing your e-mail address below will allow us to send you information on your account
Account Number: 113707670
Ryan S Erickson E-mail address

How we post your payments: All accepted payments of principal and interest will be applied to the largest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (i) to outstanding monthly payments of principal and interest, (ii) escrow deficiencies, (iii) late charges and other amounts you owe in connection with your loan and (iv) to reduce the outstanding principal balance of your loan. Please specify if you want an additional amount applied to future payments, rather than principal reduction.

Postdated checks: Countrywide's policy is to not accept postdated checks, unless specifically agreed to by a loan counselor or technician.

USB000012



P.O. Box 650070
Dallas, TX 75265-0070

Business Address:
450 American Street
Simi Valley, CA 93065-6286

Send Payments to:
P.O. Box 650070
Dallas, TX 75265-0070

September 17, 2008

Ryan S Erickson
9410 150TH STREET CT E
PUYALLUP, WA 98375-8442

Account No.: 113767579
Property Address:
9410 150th Street CT E
Puyallup, WA 98375-8442

NOTICE OF INTENT TO ACCELERATE

Dear Ryan S Erickson:

Countrywide Home Loans Servicing LP (hereinafter "Countrywide") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. **The total amount now required to reinstate the loan as of the date of this letter is as follows:**

<u>Monthly Charges:</u>	08/01/2008	\$3,480.80
<u>Late Charges:</u>	08/01/2008	\$69.55
<u>Other Charges:</u>	Total Late Charges:	\$130.10
	Uncollected Costs:	\$816.37
	Partial Payment Balance:	(\$0.00)
	TOTAL DUE:	\$4,505.82

You have the right to cure the default. To cure the default, on or before October 17, 2008, Countrywide must receive the amount of \$4,505.82 plus any additional regular monthly payment or payments, late charges, fees and charges, which become due on or before October 17, 2008.

The default will not be considered cured unless Countrywide receives "good funds" in the amount \$4,505.82 on or before October 17, 2008. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. Countrywide reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before October 17, 2008, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law. However, Countrywide and the Noteholder shall be entitled to collect all fees and costs incurred by Countrywide and the Noteholder in pursuing any of their remedies, including but not limited to reasonable attorney's fees, to the full extent permitted by law. Further, you may have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

Your loan is in default. Pursuant to your loan documents, Countrywide may, enter upon and conduct an inspection of your property. The purposes of such an inspection are to (i) observe the physical condition of your property, (ii) verify that the property is occupied and/or (iii) determine the identity of the occupant. If you do not cure the default prior to the inspection, other actions to protect the mortgagee's interest in the property (including, but not limited to, winterization, securing the property, and valuation services) may be taken. The costs of the above-described inspections and property preservation efforts will be charged to your account as provided in your security instrument and as permitted by law.

If you are unable to cure the default on or before October 17, 2008, Countrywide wants you to be aware of various options that may be available to you through Countrywide to prevent a foreclosure sale of your property. For example:

Please write your account number on all checks and correspondence.
We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

BLQNSENV 2644 09/28/2008

Account Number: 113767579-7
Ryan S Erickson
9410 150th Street CT E

Balance Due for charges listed above: \$4,505.82 as of September 17, 2008.

- Make your check payable to Countrywide Home Loans
- Write your account number on your check or money order
- Write in any additional amounts you are including (if total is more than \$5000, please send certified check)
- Don't attach your check to the payment coupon
- Don't include correspondence
- Don't send cash

Countrywide
PO BOX 650070
Dallas, TX 75265-0070
|||..||

Please update e-mail information on the reverse side of this coupon.

BLQNSENV

Additional
Principal

Additional
Escrow

Other

Check
Total



11376757970000450582000450582

USB000026

- **Repayment Plan:** It is possible that you may be eligible for some form of payment assistance through Countrywide. Our basic plan requires that Countrywide receive, up front, at least 1/2 of the amount necessary to bring the account current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.
- **Loan Modification:** Or, it is possible that the regular monthly payments can be lowered through a modification of the loan by reducing the interest rate and then adding the delinquent payments to the current loan balance. This foreclosure alternative, however, is limited to certain loan types.
- **Sale of Your Property:** Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through Countrywide even if your home is worth less than what is owed on it.
- **Deed-in-Lieu:** Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with Countrywide, you must contact us immediately. If you request assistance, Countrywide will need to evaluate whether that assistance will be extended to you. In the meantime, Countrywide will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by October 17, 2008 as outlined above will result in the acceleration of your debt.

Additionally, the U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling across the nation. Housing counselors can help you understand the law and your options. They can also help you to organize your finances and represent you in negotiations with your lender if you need this assistance. You may find a HUD-approved housing counselor near you by calling 1-800-669-4287. For the hearing impaired, HUD Counseling Agency (TDD) numbers are available at 1-800-877-8339.

Time is of the essence. Should you have any questions concerning this notice, please contact Loan Counseling Center immediately at 1-800-669-0102. Our office hours are between 8:15 AM and 5:15 PM (Central Time).

Sincerely,

Loan Counseling Center

E-mail use: Providing your e-mail address below will allow us to send you information on your account.
 Account Number: 113787679
 Ryan S Erickson E-mail address

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USB000027

HELMUT KAH, ATTORNEY AT LAW

July 26, 2018 - 4:56 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 77742-4
Appellate Court Case Title: Kevin Erickson, Appellant v. America's Wholesale Lender, et al., Respondents
Superior Court Case Number: 15-2-12744-1

The following documents have been uploaded:

- 777424_Petition_for_Review_20180726165541D1808443_0117.pdf
This File Contains:
Petition for Review
The Original File Name was PETITION FOR REVIEW.pdf

A copy of the uploaded files will be sent to:

- david.elkanich@hklaw.com
- garrett.garfield@hklaw.com

Comments:

Sender Name: Helmut Kah - Email: helmutkah@outlook.com

Address:

20205 144TH AVE NE STE 208
WOODINVILLE, WA, 98072-4451

Phone: 206-234-7798

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