Supreme Court No. 95286-8

Court of Appeals No. **75044-5-I**

SUPREME COURT
OF THE STATE OF WASHINGTON

MICHAEL SHIELDS AND BONNIE SHIELDS,

Plaintiffs-Petitioners,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR SAXON ASSET SECURITIES TRUST 2006-2 MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES 2006-2,

Defendant-Respondent,

PETITION FOR REVIEW

MICHAEL AND BONNIE SHIELDS
Plaintiffs/Appellants Pro Se
2805 Cedar Ave. So.
Renton, WA 98056
(678) 620-5983

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE STATUTES

RCW CHAPTER 61.24

CASE LAW

MISCELLANEOUS AUTHORITY

I INTRODUCTION

On March 31, 2006, Saxon Mortgage, Inc. ("Saxon") originated a mortgage refinance loan on behalf of Defendant/Appellant Michael Shields ("M. Shields"). The loan consisted of a note ("Note") and deed of trust ("DOT"), both allegedly executed on or about March 31, 2006. The Note and DOT named Saxon the Lender, and the DOT named Fidelity National Title the *trustee* and *Saxon* the beneficiary. Stewart Mortgage Services recorded the DOT in the King County Auditor's Office on April 25, 2006. True and correct copies of the Note and DOT are included in the Appendix that accompanies this Petition. The Note, including Allonge and Prepayment Addendum, is found at A-1 thru A-7 of the Appendix; the DOT is at A-8 thru A-19.

At some unspecified point in time M. Shields' loan (Note and DOT) was allegedly transferred into a securitized trust. The name of the trust that M. Shields' loan was allegedly transferred into is *Saxon Asset Securities Company Mortgage Loan Asset Backed Securities, Series 2006-2*. Deutsche Bank National Trust Company as Trustee for *Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset-Backed Certificates, Series 2006-2* ("Trust 1"). Trust 1 is the Respondent in this case, and was the Plaintiff below.

M. Shields' Note is specifically endorsed. The endorsee is Deutsche Bank National Trust Company as Trustee for the ***Registered***

Holders of Saxon Asset Securities 2006-2, Mortgage Loan Asset-Backed Certificates, Series 2006-2 ("Trust 2"). Trust 1 and Trust 2 do not have the same name, and do not appear to be the same entity. And neither Trust 1 nor Trust 2 has the same name as the Trust that allegedly purchased M. Shields' Note and DOT -- *Saxon Asset Securities Company Mortgage Loan Asset Backed Securities, Series 2006-2* ("Saxon").

Trust 1 commenced the foreclosure, but Saxon allegedly has been the owner and holder of the Note and DOT since it purchased the loan from the loan originator on an unspecified date prior to the commencement of the lawsuit that is the subject of this litigation. Additionally, the Note has always been endorsed to Trust 2.

Washington Rule of Civil Procedure ("CR") 17(a) demands that every action be prosecuted in the name of the real party in interest. Trust 1 (hereinafter "Respondent") is not the real party in interest. It is not the entity into which the loan was allegedly transferred prior to the commencement of this litigation (Saxon), and it is not the endorsee of the Note (Trust 2).

Appellants raised the real party in interest issue in the trial court. The trial court agreed that Respondent did not appear to be the real party in interest. *Appendix,* at A-28: 11 thru A-29: 9. Nevertheless, the court granted Respondent's Motion for Summary Judgment, improperly Appellants argue.

Finally, M. Shield's Note bears a *specific endorsement* from Saxon

Mortgage, Inc. to Trust 2. *Appendix,* at A-5. Thus, even though Respondent proved to the satisfaction of the trial court that it had physical possession of the Note, arguably prior to commencement of the litigation, Respondent could not have been the Note holder because the Note is endorsed to a different entity. Whether Respondent and Trust 2 are the same entity is a fact determination that can be made only by uncovering and analyzing the facts in this case. Determining and analyzing the facts in a case is the prerogative of the jury.

Trampling on the jury's prerogative, the trial court determined that the name differences between Trusts 1, 2, and Saxon were insignificant variations in the name of a single entity. The appellate court agreed.

Again, the determination of whether the differences in the names of Trusts 1, 2, and Saxon are variations on the name of a single entity is a *fact-based* determination. It is a determination that should be made by a jury, not the court. The requirement that juries make factual determinations is important in this case because Trusts 1, 2, and Saxon appear to be different legal entities. They have each been sued. *See generally Deutsche Bank National Trust Company, As Trustee For The Registered Holders Of Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2 (*Trust 2 herein*) v. Keller*; and *Deutsche Bank National Trust Company As Trustee For Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2* (Respondent herein) *v. Ford.*

Respondent is not the Note holder. Trust 2 is. So, even though Respondent proved to the satisfaction of the trial court that it had *physical possession* of the Note, it was not the Note holder because the Note is *specifically endorsed* to someone else. *See RCW 62A.1-201(b)(21)(A).*

RCW 62A.1-201(b)(21)(A) offers two ways to become the *holder* of a promissory note: (1) take physical possession of a blank-indorsed note; or (2) take physical possession of a specifically- indorsed note ***and*** be the person to whom the note is indorsed. M. Shields' Note is endorsed to *Deutsche Bank National Trust Company as Trustee for the Registered Holders of Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2* (Trust 2 herein). That is not Respondent. And, whether Respondent and Trust 2 are the same entity is not a determination the trial court should have made in the context of a summary judgment motion.

Since M. Shields' Note was specifically indorsed to someone other than Respondent, Respondent is not the note holder, even though Respondent has physical possession of the Note.

The question, "Who is the Note holder?", is obviously material. This Court has decided, on numerous occasions, that the Note holder is entitled to foreclose. The difference in the names of the trust entities, standing by itself, should have alerted the trial court, and the Court of Appeals, that summary judgment was not appropriate in this case.

II ASSIGNMENTS OF ERROR

1. The Trial Court erred by failing to grant Appellants' Motion for Dismissal.

2, The Trial Court erred by granting Respondent's Motion for Summary Judgment.

A. Issue Pertaining to Assignments of Error

1. Is Respondent Entitled to Summary Judgment if Respondent has never held Appellant's Note?

III STATEMENT OF THE CASE

On March 31, 2006, Saxon Mortgage, Inc. ("SMI") originated a mortgage refinance loan on behalf of M. Shields. The loan consisted of the Note and DOT. *Appendix*, at A-24: 9-10.

On September 26, 2008, SMI assigned all its interest in the Note and DOT to *Deutsche Bank National Trust Co. as trustee for Saxon Asset Securities Trust 2006-2* (the name is close to Trust 1's name) ("Assignment 1"). *Id.,* at A-28: 16-19. SMI recorded the assignment in the King County Auditor's Office on October 3, 2008 under file no. 20081003000851.

On or about October 22, 2008, the Loan fell into default. *Id.,* at A-24: 10-11. Approximately 14 months later, on December 29, 2009, Trust 2 (*Deutsche Bank National Trust Company, As Trustee for* <u>*The Registered Holders*</u> *Of Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset*

Backed Certificates, Series 2006-2), acting through its purported attorney in fact, Ocwen Loan Servicing, LLC ("Ocwen"), attempted to assign its interest in the DOT, ***not the Note***, to Deutsche Bank National Trust Company as Trustee for Saxon Asset Securities *Trust 2006-2* Mortgage Loan Asset-Backed *Certificates*, Series 2006-2) (Respondent) ("Assignment 2").[1] *Id.*, at A-28: 19 thru A-29: 9.

Respondent -- while in physical possession of a Note specifically endorsed to Trust 2 (*Deutsche Bank National Trust Company, As Trustee for The Registered Holders Of Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2*) -- commenced this lawsuit on or about August 15, 2014. *Id.*, at A-24: 11-12.

There is no evidence in the record that Respondent has ever held or owned M. Shields Note or DOT.

1. The July 17, 2015 hearing.

On July 17, 2015, Appellants brought on for hearing a motion for summary judgment. *Id.*, at A-21: 11-12. In relevant part, the motion was based on Appellants' claim that Respondent was not the real party in interest. *Id.*, at A-26: 23 thru A-27: 4. Respondent responded by arguing that it was entitled to foreclose because it was the Note holder. *Id.*, at A-31: 19 thru A-32: 10; and A-38: 5 thru A-39: 7. But it wasn't the Note holder, and the trial court said it did not appear to be the Note holder.

The court informed Respondent that Respondent was not an entity

[1] Assignment of a DOT without the note it secures is a nullity.

to which the Note had been indorsed or to which the DOT had been assigned. *Id.,* at A-40: 22-25. Respondent then indicated Assignment 1 had been made to Respondent. *Id.,* at A-41: 1-4. The court disagreed. It found the Note *had never been assigned to Respondent*, and that Respondent *never had a recorded interest in the Note or DOT. Id.,* A-48: 12-14.

2. The February 4, 2016 hearing.

The next substantive hearing was held on February 4, 2016. It was held to decide Respondent's motion for summary judgment. *Appendix*, at A-61: 4-6.

Respondent argued it was entitled to foreclose, notwithstanding Assignments 1 and 2, because it was the holder of the Note, and there were no genuine issues of material fact. *Id.* Of course, whether Respondent was the Note holder was THE genuine issue of material fact. An issue which Respondent wisely chose to ignore.

The court explained that it was concerned because it could not trace how Respondent became the Note's custodian. The court then informed the hearing participants that, upon Respondent meeting one condition, the court would be satisfied that SMI had transferred the Note and DOT to Respondent. The condition was that Respondent would have to:

> file the document [Note] that shows that there was, in fact, a transfer from the owner of the note, and the owner of the deed of trust to the plaintiff – ***the exact named plaintiff***. Maybe it wasn't this case. Maybe it was another Deutsche Bank case where people kept doing the names differently and saying it doesn't matter, ***but it does matter***. So you

> need to file that [the Note with the exact-named-plaintiff endorsement]. ***And then I am satisfied*** – I am satisfied ***based on that***, that they are the holders of the note, and they are entitled to enforce the note and foreclose on the deed of trust.

Id, at A-78: 21 thru A-79: 7. (emphasis added).

A note containing such an endorsement has never been filed. It could not be filed, because the only endorsement on the Note is the endorsement to Trust 2.

Finally, M. Shields' Note bears a *specific endorsement* from Saxon to *Deutsche Bank National Trust Company, As Trustee for the Registered Holders Of Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2* (Trust 3). Under current Washington law, the *holder* of a secured mortgage note, and no one else (not even the owner of the note), is entitled to enforce the DOT that secures repayment of the debt obligation for which the note is taken as payment. *Brown,* 184 Wn.2d 509, 539 – 541 (2015). Since M. Shields' Note was specifically endorsed to Trust 2 by SMI, and Respondent is not Trust 2, Respondent is not the *holder of the Note, even though Respondent has physical possession of the Note. RCW 62A.1-201(b)(21)(A).*

The appeal followed the trial court's grant of Respondent's motion for summary judgment. This Request for Review follows the Appellate Court's affirmance of the lower court ruling.

IV LEGAL STANDARDS ON REVIEW

A. Summary Dismissal of Actions

The purpose of summary judgment is to avoid trial when there is

no genuine issue of material fact. On the other hand, a trial is *absolutely necessary* if there is a genuine issue as to *any* material fact. *LaPlante v. State,* 85 Wn.2d 154, 158, 531 P.2d 299 (1975); *Morris v. McNicol*, 83 Wn.2d 491, 519 P.2d 7 (1974); *Preston v. Duncan,* 55 Wn.2d 678, 681, 349 P.2d 605 (1960). A "material fact" is one upon which the outcome of the litigation depends. *Morris v. McNicol, supra;* and *Barber v. Bankers Life & Cas. Co., 81 Wn.2d 140, 500 P.2d 88 (1972).*

Plaintiff must demonstrate by uncontroverted evidence that there is no genuine issue of material fact. *LaPlante v. State, supra* at 158*; Rossiter v. Moore,* 59 Wn.2d 722, 370 P.2d 250 (1962); and *6 J. Moore, Federal Practice* 56.07, 56.15(3) (2d ed. 1948). If Plaintiff does not sustain that burden, the court should not grant summary judgment, *regardless of whether Defendant submits affidavits or other materials or not. Preston v. Duncan, supra* at 683; See also Trautman, *Motions for Summary Judgment: Their Use and Effect in Washington*, 45 Washington Law Review 1, 15 (1970).

This court must consider all the material evidence and all the reasonable inferences that can be drawn from that evidence most favorably to the non-moving party. In this case, if, after considering the material evidence in a light most favorable to Appellants, reasonable people might reach different conclusions about that evidence, then the trial court should have denied Respondent's motion for summary judgment, and the Appellate Court should have reversed the trial court ruling. *Balise v.*

Underwood, 62 Wn.2d 195, 199, 381 P.2d 966 (1963); *See Also* 6 J. Moore, Federal Practice 56.11(3), 56.15(3).

In this case, there was no issue of material fact regarding Respondent's status as the holder of the Note. Respondent did not hold the Note when Respondent commenced the foreclosure action that is the subject of this Petition. Respondent's motion for summary judgment should have been denied, and Appellants' earlier motion for summary judgment should have been granted. The Court of Appeals should have reversed.

V ARGUMENT

A. Holder and Related Concepts Defined.

The term "holder" as utilized in RCW 61.24.005(2) is defined in RCW 62A.1-201(b)(21) as "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." If an indorsement identifies the person to whom it makes the instrument payable, it is a *special indorsement. RCW 62A.3-205(a).* After an instrument has been specially indorsed, it becomes payable to the identified person and may be negotiated only by the indorsement of that person. *Id.* If the person to whom the note is indorsed has physical possession of the Note, then the person to whom the note is indorsed is also the *holder* of the Note. *RCW 62A.1-201(b)(21).* Respondent bases its right to foreclose entirely on the claim that it is the *holder* of M. Shield's Note.

B. There is no Evidence Respondent has any connection to M. Shields' Note.

Two assignments—Assignments 1 and 2--were executed and recorded in this case. Assignment 1 assigned the Note and DOT from SMI to Trust 2. Respondent is not Trust 2.

There is a similarity in the names between Respondent and Trust 2, so there may be a temptation to say Trust 2's name is close enough to Respondent's name that Assignment 1 can be said to have been made to Respondent. But if that is true, Respondent assigned away all its interests in M. Shields' DOT in Assignment 2.

So, even if Respondent did receive an interest in the Note and DOT by Assignment 1, Respondent transferred its interest in the DOT in Assignment 2. Since the DOT contains the *power of sale* clause that grants the trustee the right to sell the property at public auction upon the borrower's default under the terms of the Note, Respondent's loss of rights under the DOT through Assignment 2 eliminated the successor trustee's legal authority to sell the property at public auction for the benefit of Respondent.

C. The trial court usurped the fact-finder function, and the Appellate Court committed reversible error by not overturning the trial court ruling.

Nicole Gostebski, a senior loan analyst for Ocwen Financial Corporation, submitted a declaration in support of Plaintiff's Motion for Summary Judgment and Entry of Judgment and Decree of Foreclosure ("*Gostebski Declaration*"). Attached to the *Gostebski Declaration* was a

copy of M. Shields' Note. Ms. Gostebski asserts Shields executed the Note as consideration for a mortgage loan granted by SMI on March 31, 2006. Further, Ms. Gostebski states the copy of the Note attached to her declaration is "[a] true and correct copy of the [March 31, 2006] note."

SMI endorsed M. Shields' Note to Trust 2 (Deutsche Bank National Trust Company as trustee for the ***registered holders*** *of Saxon Securities trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2*). Respondent's name – *Deutsche Bank National Trust Company as Trustee for Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset-Backed Certificates, Series 2006-2* – is different from the endorsee's name (Trust 2).

The question that must be answered is, "Are the names different names for the same entity?" That question can be answered only by determining and analyzing the facts of the case. Determining and analyzing the facts of a case are a jury function. Moreover, even in those cases in which the court determines the facts of the case, it is inappropriate to do so on summary judgment. The purpose of summary judgment is to determine whether there is an issue of material fact, not to decide issues of material fact.

In *Bain v. Metropolitan Mortgage Group, Inc.,* 175 Wn.2d 83, 285 P. 3d 34 (2012), the Supreme Court accepted the UCC definition of "holder" as the applicable definition of the word "holder" used in the definition of the word "beneficiary" in RCW 61.24.005(2). Because M.

Shields' Note is *specifically endorsed*, to the "holder" of the Note, Plaintiff must have physical possession of the Note ***and*** must be the person identified in the endorsement. *RCW 62A.1-201(b)(21)(A)*. The trial court found that, at best, there was a question whether Respondent could meet this two-part test. At worst, Respondent could not meet the second part of the two-part test.

After making that finding, the trial court should have denied the motion for summary judgment. Instead, it decided the question by finding Respondent the holder of the note. The decision of the question was reversible error.

The trial court itself, on more than one occasion, acknowledged that Respondent did not appear to be the person to whom the Note had been specifically endorsed. *Appendix,* at A-78: 21 thru A-79: 7. Based on that acknowledgement, the trial court should have denied summary judgment, and the case should have been allowed to proceed to trial.

Given the difference between the name of the endorsee and Respondent's name, was Respondent the entity to which the Note was endorsed? That is a second question of material fact. And the answer to that question is critically material to the outcome of the case. Why? Because this Court has repeatedly held that the Note holder is the only entity entitled to foreclose.

After determining that Respondent did not appear to be the entity to which the Note had been endorsed, the court was obligated to deny the

summary judgment motion and allow the case to proceed to trial. Not doing so was reversible error. Therefore, it was reversible error for the Court of Appeals to uphold the trial court's ruling.

In a summary judgment motion, the burden is on the movant to prove by uncontroverted facts that there is no genuine issue of material fact. *Rossiter v. Moore,* 59 Wn.2d 722, 370 P.2d 250 (1962). Regardless of whether the non-moving party submits affidavits or any other evidence, if the movant's burden is not met, summary judgment should not be granted. *See* Trautman, *Motions for Summary Judgment: Their Use and Effect in Washington,* 45 Wash. L. Rev. 1, 15 (1970).

Here, the trial court determined that Respondent did not appear to be the person to whom the Note was endorsed. That determination should have meant the doom of Respondent's summary judgment motion. The court should not have usurped the jury's function by determining the factual issue in a summary judgment hearing. The summary judgment motion should have been denied. *Balise v. Underwood,* 62 Wn.2d 195, 199, 381 P.2d 966 (1963); 45 Wash. L. Rev. 4, 5. *See also* 6 J. Moore, *Federal Practice* 56.11[3], 56.15[3]. And because it should have been denied, the Court of Appeals committed reversible error by upholding the trial court ruling.

In this case, the evidence unequivocally indicates the Note is specifically endorsed to a party other than Respondent. The trial court acknowledged this fact. The acknowledgement alone established the

existence of an unresolved material issue of fact. The trial court was not required, or even permitted, to resolve the issue on summary judgment. It was merely supposed to determine whether there was a material factual issue. If there was an issue, that issue was for the jury to decide, not the court.

We are taught to believe that, under our system, fact issues generally are determined by juries of one's peers, and legal issues are determined by the courts. That did not happen in this case. The trial court chose to usurp the jury's function, and the Appellate Court turned a blind eye to the usurpation. We implore this Court not to do the same.

This case deserves review.

VI CONCLUSION

In Washington, the holder of the note is the beneficiary and is the only person entitled to initiate a foreclosure action, judicially or non-judicially. If a note has been specifically indorsed, the only way a person can become the holder of the Note is if they have possession of the Note and they are the specific person to whom the Note is indorsed. *RCW 62A.1-201(b)(21).*

In this case, the Note is specifically indorsed to someone other than Respondent. Whether Respondent is the person to whom the Note is endorsed is a question that can be determined only by examining the facts of the case. Factual analysis is a jury function. Having determined that Respondent did not appear to be the endorsee, the trial court should have

ended its inquiry, denied Respondent's summary judgment motion, and allowed the case to go to trial. The failure to do so, was reversible error. Consequently, by not overturning the trial court's summary judgment ruling the Court of Appeals committed reversible error.

This case should be reviewed.

DATED this 9th day of January, 2018.

Respectfully submitted,

MICHAEL SHIELDS

Michael Shields,
Appellant Pro Se

BONNIE SHIELDS

Bonnie Shields,
Appellant Pro Se

DECLARATION OF SERVICE

I, Bonnie Shields, Defendant Pro se, declare as follows:

1. I am, and at all relevant times have been, a resident of the State of Washington, over the age of 21 years, competent to be a witness herein, and not a party to this litigation.

2. On 1/9/2018 I caused a true and correct copy of the Amended Statement of Arrangements to be served in the manner indicated:

Emilie K. Edling, WSBA #45042
HOUSER & ALLISON, APC
9600 SW Oak St., Ste 570
Portland, OR 97223
Phone: (503) 914-1382

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 9th day January 2018 at Renton, Washington.

Bonnie Shields

Bonnie Shields, Defendant Pro se

MICHAEL AND BONNIE SHIELDS
DEFENDANTS PRO SE
2805 CEDAR AVE. S.
RENTON, WA 98056
(678) 620-5983

APPENDIX

Loan No: 11971949
Borrower: MICHAEL SHIELDS

Data ID: 321

ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In The Wall Street Journal)—Rate Caps)
(Interest Only / ARM)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

March 31, 2006 [Date] | RENTON [City] | WASHINGTON [State]

2805 CEDAR AVENUE SOUTH
RENTON, WASHINGTON 98056
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 380,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is SAXON MORTGAGE, INC.. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.850 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest only by making payments every month for the first 60 payments (the "Interest-Only Period") in the amount sufficient to pay the interest as it accrues. Every month thereafter I will pay principal and interest by making payments in an amount sufficient to fully amortize the outstanding principal balance of the Note at the end of the Interest-Only Period over the remaining term of the Note. The principal and interest payment I pay may change as the interest rate I pay changes pursuant to Section 4 of this Note.

I will make monthly payments on the first day of each month beginning May 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before principal. If, on April 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my payments at P.O. Box 961105, Fort Worth, TX 76161-0105, or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial interest-only monthly payments will be in the amount of U.S. $ 2,485.83. This amount may change.

INITIALS: MS _____

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of April, 2008, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding SIX and 35/100 percentage points (6.350 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

Except as provided in Section 3(A) above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.8500 % or less than 6.3500 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE percentage point (1.00 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 13.8500 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

INITIALS: MS

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

INITIALS: MS _____

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

INITIALS: MS _____

Loan No: 11971949 Data ID: 321

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Michael Shields (Seal)
MICHAEL SHIELDS —Borrower

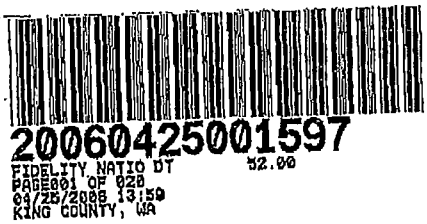
[Sign Original Only]

Without Recourse
Pay to the Order of
Saxon Mortgage, Inc.
By:
David L. Ferguson, Assistant Vice President

Without Recourse
Pay to the Order of
Deutsche Bank National Trust Company, *
Saxon Mortgage, Inc.
By:
Linda J. MacPherson, Assistant Vice President

* as Trustee for the registered holders of Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2

Return to: STEWART MORTGAGE SERVICES
ATTENTION: TRAIL DOCS
3910 KIRBY DRIVE, SUITE 300
HOUSTON, TX 77098



Lot 117, Victoria Hills, according to the plat thereof recorded in Volume113 ofPlats, Page 79 through 83, records of King County Auditor; situated in the Cityof Renton, County of King, State of Washington.

Property Tax Parcel Number: 8898701170 05

[Space Above This Line For Recording Data]

Loan No: [redacted] Data ID: 321
Borrower: MICHAEL SHIELDS

90/53

DEED OF TRUST 1006346

INSURED BY
FIDELITY NATIONAL TITLE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated March 31, 2006, together with all Riders to this document.

(B) "Borrower" is MICHAEL SHIELDS, AS HIS SEPARATE ESTATE. Borrower is the trustor under this Security Instrument.

(C) "Lender" is SAXON MORTGAGE, INC.. Lender is a CORPORATION organized and existing under the laws of the State of VIRGINIA. Lender's address is 27121 TOWNE CENTRE DRIVE, SUITE 230, FOOTHILL RANCH, CA 92610. Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is ~~ACTION ESCROW~~. Fidelity National Title

(E) "**Note**" means the promissory note signed by Borrower and dated March 31, 2006. The Note states that Borrower owes Lender THREE HUNDRED EIGHTY THOUSAND and NO/100------Dollars (U.S. $ 380,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2036.

(F) "**Property**" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "**Loan**" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "**Riders**" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☒ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☒ Planned Unit Development Rider	
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	
☒ Other(s) [specify] Arbitration Rider		

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

(J) "**Community Association Dues, Fees, and Assessments**" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "**Electronic Funds Transfer**" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "**Escrow Items**" means those items that are described in Section 3.

(M) "**Miscellaneous Proceeds**" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "**Mortgage Insurance**" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "**Periodic Payment**" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "**RESPA**" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "**Successor in Interest of Borrower**" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

P+0011971949+0817+02+12+WACNVADT

Loan No: [redacted] Data ID: 321

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of KING:

Lot 117, Victoria Hills, according to the plat thereof recorded in Volume113 ofPlats, Page 79 through 83, records of King County Auditor; situated in the Cityof Renton, County of King, State of Washington.

which currently has the address of 2805 CEDAR AVENUE SOUTH,
[Street]
RENTON, WASHINGTON 98056 ("Property Address"):
[City] [Zip Code]

P+0011971949+0517+03+12+WAGNVADT

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

P+0011971949+0017+04+12+WAONVADT

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

P+0011071949+0817+06+12+WAONVADT

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

P+0011971949+0817+07+12+WAONVADT

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

P+0011971949+0817+08+12+WAGNVADT

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

P-10011971949-0817-09-12-WACNVADT

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

P+0011971949+0817+10+12+WACNVADT

A-10

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. 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. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

24. Substitute Trustee. In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Use of Property. The Property is not used principally for agricultural purposes.

26. Attorneys' Fees. Lender 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. The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.

P+0011971949+0817+11+12+WACNVADT

A-15

Loan No: [redacted] Data ID: 321

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Michael Shields (Seal)
MICHAEL SHIELDS —Borrower

[Space Below This Line For Acknowledgment]

State of Washington §
County of KING §

On this day personally appeared before me MICHAEL SHIELDS
to me known to be the person described in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 31st day of March, 2006.

[Seal]

Notary Public in and for the State of WA
residing at Kirkland

Molly Joy Mack
(Printed Name)

My commission expires: 03/22/09

MOLLY JOY MACK NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 03-22-09

P+0011971949+0817+12+12+WAONVADT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In re: DEUTSCHE BANK NATIONAL BANK as trustee, Plaintiff, And BONNIE & MICHAEL SHIELDS, Defendant.	NO. 14-2-226187 KNT COA NO. 75044-5-1-I

BEFORE THE HONORABLE LAURA MIDDAUGH
KING COUNTY DISTRICT JUDGE.

Kent, Washington
July 17, 2015
11:01 a.m.

APPEARANCES:

For the Plaintiff:
CARA CHRISTENSEN
Houser & Allison APC
1601 5th Ave Ste 850
Seattle, WA 98101-3672
(206) 596-7838

For the Defendant:
DONNA GIBSON
Law Office of Donna Beasley Gibson PLLC
240 Auburn Way S Ste 1B
Auburn, WA 98002-5452
(253) 242-5529

Transcription Service:
HOLLY RYDEL KELLY, CET
Talk to Type Transcription
2522 N Proctor St., Ste. 319
Tacoma, WA 98406
Phone: (253) 666-8628

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

KENT, WASHINGTON, JULY 17, 2015, 11:01 A.M.

(Call to order of the Court, defendant present.)

THE COURT: Good morning. Have a seat. So we are here on Deutsche Bank versus Shields. Let's have people please identify themselves for the record. Starting with the plaintiff.

MS. CHRISTENSEN: Yes, Your Honor, Cara Christensen on behalf of Deutsche Bank as trustee.

MS. GIBSON: Donna Gibson on behalf of defendants Bonnie Shields and Michael Shields.

THE COURT: All right, so I have read everything. This is not an easy summary judgment, I don't think. So let me see if I can figure out what I am understanding the issues are, and then you can correct me. From what I understand, the basic facts are -- and if I am off or if you think there is something that I haven't raised that I should have, you can let me know, OK? So this involves a foreclosure and the plaintiff is Deutsche Bank National Trust Company as trustee for Saxon Asset Securities Trust 2006-2, Mortgage Loan Asset Backed Certificates, Series 2006-2. The -- Michael Shields -- and this is -- it is not a summary judgment -- it is a 12(b)6 but people did file other things and so it is kind of treated as a summary judgment if I consider them. So Mr. Shields -- there is a question of whether Mr. Shields signed a promissory note or

not, and -- but there is no question that you signed a deed of trust that is the subject of this foreclosure. Is that correct?

MS. GIBSON: Yes.

THE COURT: Is there a question of whether he actually signed a promissory note?

MS. GIBSON: Yes, there is.

THE COURT: And he is alleging it is forged, or that there is no note in existence?

MS. GIBSON: The note that is attached to the first amended complaint is not signed.

THE COURT: So is there an allegation that -- and that is the note that you are foreclosing on -- an unsigned note?

MS. CHRISTENSEN: We have a full copy of the original note that was signed. We have it here for the Court's inspection if the Court would like to take a look at that.

THE COURT: And I understand that Mr. Shields has seen that note and been asked about that note, and he says his signature is forged. Is that correct?

MS. GIBSON: Can I look at my notes? This is the part that actually is a little bit -- I need to refresh my memory.

THE COURT: Sure. And if your confused, imagine how I feel.

MS. CHRISTENSEN: And Your Honor, to provide a little bit of additional clarification on that, there were a number of allegations that were raised in both the -- well it was the complaint that was filed by Bonnie Shields and by Michael Shields, and I believe it was 2012. And those claims against Deutsche Bank, and Saxon, and Auckland -- all of those were disposed of on summary judgment against Deutsche Bank. So I do want to ensure that the Court is aware that a number of these allegations have been raised in the past and were disposed of.

THE COURT: I am just trying to figure out what the allegations are here.

MS. CHRISTENSEN: I understand.

MS. GIBSON: Well the allegations here, Your Honor, are that service on Shields was not proper --

THE COURT: Well, let me just go back. You know, you guys live with this case and I don't. I get a notebook and I have to read what you give me and try to figure out everything that you have had a long time to look at. So you have to indulge me a little bit by allowing my mind to go where it needs to go and you will have to fill in the blanks.

MS. GIBSON: Absolutely, Your Honor.

THE COURT: So is part of the issue here is that there is no signed note?

MS. GIBSON: That is correct. There is not a signed note that became -- that was attached to this particular complaint. And if there is a note, the note that Mr. Shields signed was a fixed rate note, and this was an adjustable rate note.

THE COURT: OK. All right. And so the motion is based on the premise that there was improper -- there has not been service within the statute of limitations. The complaint was filed in -- let's see -- the loan was made -- I have on March 31, 2006. The notice of default and the notice of foreclosure was done on October 22, 2008. The complaint was filed on August 15, 2014. So any case had to be started, according to the defendant, by October -- let's see -- October 22, 2014. Or they had to file the complaint and serve that within 90 days, right?

MS. CHRISTENSEN: Correct.

THE COURT: So the allegation is the complaint was not served within 90 days, and I am gathering that the Deutsche Bank agrees that the complaint was not served on the Shields within 90 days but -- the summons and complaint -- but state that is moot because it was served on another defendant, Saxon Mortgage within -- actually on the 90th day. Is that right?

MS. GIBSON: Regrettably we had an issue with the process server whereby they served --

THE COURT: I don't care what your issues are. I just care when it was served. You know, you can blame the problems on somebody else, but that's the facts, right?

MS. GIBSON: Saxon was served, Your Honor. And in addition, Deutsche Bank also cited to a case that provided that the statute of limitations would be told pursuant to the judicial foreclosures two of which occurred at the time --

THE COURT: We can get to that if we need to. And after hearing that -- and none of that was filed. I don't think there is any dispute that none of that proof of service was filed until this motion was made.

MS. GIBSON: Correct.

THE COURT: But it was filed. So are you still disputing that there is service within the 90 days?

MS. CHRISTENSEN: We think it is suspect, Your Honor --

THE COURT: Well, that is a question of fact, then, isn't it? So --

MS. CHRISTENSEN: So that, I would concede, would be a question of fact.

THE COURT: All right, so I suppose -- and it is -- that may be an issue at trial and you may be able to inquire into that as to whether it was in fact served as there is an affidavit that says it was. But that may be an issue for trial.

So the next issue is -- so that, I think, deals with the statute of limitations for purposes of this motion. And let me just say as far as the issue of whether the filing of the notice of foreclosure extends the statute of limitations, I read the case you cited, I read the case that was cited in there. I have no idea why anybody said that. All it says was the Court and the parties agree that it is. But there is no basis that I found for anybody saying why they agreed that, and that was not the issue in that case. So while I don't think it is relevant for this motion because I can find I will deny summary judgment on the lack of service because there was proof in the record that the Saxon Mortgage company was served. I don't think there is any sufficient argument -- you know, citing a case that did not address that issue but just made the conclusory remark everybody agrees is not giving me any basis to decide. Especially when the case they rely on was not even addressing that issue. So if you do want to argue that at a later date, you are going to have to come up with an actual argument as opposed to just relying on the conclusion that someone else did not dispute it in another case.

So the next question is whether the plaintiffs -- if I am understanding this -- the plaintiffs lack standing -- and if I am understanding the defense's argument on this,

it is that the -- they are not the real party in interest because they are not -- because of various transfers, they are not the named holders of the note. Is that correct?

MS. GIBSON: Correct.

THE COURT: And also, even if they were, the note was transferred outside of the period during which the trust was allowed to accept transfers. It is a trust formed under New York law. Under New York law, such a transfer is void. And therefore, even if they were the right parties and interest, the transfer is void anyway and it would have to be Saxon Mortgage or whoever owned it at the time that transfer was made. So I am a little confused about -- that would bring this action, but whoever they are, they didn't bring it. Is that right?

MS. CHRISTENSEN: Correct.

THE COURT: And then the other basis was there was some argument that the note and deed of trust were products of over a decade of fraud, forgery, and theft. That is clearly not something that can be decided on this kind of motion. So even though it was raised, I don't think you are asking me to decide that.

So I think what need is the issue of -- argued today is the issue of whether -- since the plaintiffs alleged in their complaint that they were suing on the attached note, the attached note was not signed or complete -- there is no

doubt about that -- whether they don't have a note to sue on. It sounds like kind of a joke, but it is -- you know, if there is no signed note and this is the note they alleged they are suing on, and I believe there was a declaration from somebody from Deutsche Bank who said, yeah, this is it, and now Deutsche Bank wants to come forward and say no, no, no. We didn't mean that. We didn't mean that the note that we attached to the complaint was the note we are suing on. We mean this note is the note we are suing on, and they have that today. What does that do?

The other issue I have -- and I have a real hard time with -- I went to the amended complaint -- the original complaint was never sued on -- it was never served on anybody so I just looked at the amended complaint. And according to the amended complaint and the attachments to that, on September 26, 2008, Saxon Mortgage transferred the note and their interest under the deed of trust to Deutsche Bank National Trust Company as trustee for Saxon Asset Securities Trust 2006-2. And then there is another assignment which is not signed by anyone from Deutsche Bank National Trust Company as trustee for Saxon Asset Securities Trust 2006-2 that purports to transfer the interest from Deutsche Bank National Trust Company as trustee for Saxon Asset Securities Trust 2006-2 to Deutsche Bank National Trust Company as trustee for the registered

holders of Saxon Asset Securities Trust 2006-2, Mortgage Loan Asset Backed Certificates, Series 2006-2. And the plaintiff in this case is neither one of those people. It is Deutsche Bank National Trust Company as trustee for Saxon Asset Securities Trust 2006-2, Mortgage Loan Asset Backed Certificates, Series 2006-2. So I have no idea from this who holds these documents and whether the person that is the plaintiff who has filed this suit is any one of these people. So that is an issue that has to be addressed.

Does it matter that the only transfer I have to the -- and I am going to call the last one 2009 the registered holders, because that is the difference in the language -- does it matter that it is not signed? It is not. Does it matter that the names are different? They are. It must matter somehow, otherwise, why would the first Deutsche Bank as trustee have transferred it to the second Deutsche Bank as trustee if the name didn't matter. And if the name matters, then who owns this, and who has the right to sue?

So that is the difficulty I had when I looked at this. And the other thing I will just say in regards to the transfer if there was in fact a transfer to the plaintiff outside of the period in which the asset company, mortgage company is allowed to transfer -- is allowed to accept notes -- that the case that was cited, the Wells Fargo Bank versus Erobobo -- whatever -- I don't know if anyone else

sheparadized that, but I did -- and pretty much all the cases that cite that say that it was wrongfully decided to not finding precedent, and that the interpretation of the New York statute is properly that it is voidable rather than void. So you need to address that. And that the issue would be between the trustee and the people for whom they hold the trust -- not the people who own the note, and there was a specific case that said that. So that was what my research showed, and you need to address that. OK. So take it away. It is your motion. Go ahead.

MS. CHRISTENSEN: I think that, Your Honor, described the issue of who is the plaintiff very well in your summary of your understanding of the facts. The Shields would agree with your summary that the plaintiff is not the proper party to be bringing this action. I did want to point out on the assignment of deed of trust that we have, if you look very closely --

THE COURT: You have to specify which, because there are two.

MS. CHRISTENSEN: The assignment of deed of trust that is dated -- that bears recording number that ends in 1314.

THE COURT: OK.

MS. CHRISTENSEN: If you look under the "O" there actually is the "O" that makes up the unofficial document -- the "O" in document -- there is a signature on there --

THE COURT: Oh, is there? OK.

MS. CHRISTENSEN: It is just very hard to see.

THE COURT: I did not see that. Thank you.

MS. CHRISTENSEN: Yeah, it is very, very difficult to see and my paralegal just handed it up to me and circled it, that yes there is a signature on there. So we believe that there was a transfer, but the transfer still is not to the -- to the plaintiff -- the named plaintiff in this case. And the fact that it is not the proper party should be a basis for dismissal in and of itself.

As to Erobobo --

THE COURT: Well, let's deal with that issue, because if I dismiss on that issue, then we probably don't need to get to the next one and --

MS. CHRISTENSEN: Sure.

THE COURT: You know, as judges we don't like to make decisions we don't have to make. So let's -- address that issue. Who is the proper party and interest?

MS. GIBSON: Yes, Your Honor, Deutsche Bank as the -- in its capacity as trustee for the Saxon Asset Securities Trust 2006-2, Mortgage Loan Asset Backed Certificates, Series 2006-2 is the proper party to bring a judicial foreclosure action because it is the party that is in physical possession of the note. Washington law requires, and (indiscernible) confirmed that the proper party to

bring an action for foreclosure -- while there are a few different parties and a few different ways we can demonstrate your ability to foreclose, one of those by actual, physical possession of the note. My client in its capacity as trustee -- and as I have demonstrated here today -- is in actual, physical possession of the signed note from 2006 that Mr. Shields executed. Accordingly, regardless of the assignments, which are not required to foreclose in Washington State, my client is the party that is entitled to bring the action.

THE COURT: OK. So address that. Do they have physical possession of the note? And where does it say that?

MS. CHRISTENSEN: I'm sorry?

THE COURT: Where does it say that? I'm sorry.

MS. CHRISTENSEN: That my client has physical possession of the note? In our response. And I have physical possession of the note here in court today as well.

THE COURT: Where does it say that in your response?

MS. CHRISTENSEN: Well, it alleges it in the complaint, and let me go ahead and go to the section --

THE COURT: But you allege in the complaint that you have physical possession of the unsigned -- of the note without a signature, right?

MS. CHRISTENSEN: I do apologize for that, Your Honor, that was my error --

THE COURT: I don't want an apology. We just need to understand the legal ramifications of where we are. And I am just looking at -- you know, a brief is a brief, and I need declarations of people, you know, saying this is the truth. So I am looking for the declaration of your client that says we have physical possession of the note.

MS. CHRISTENSEN: Yes, well, Your Honor, there was actually a copy of the Renaldo Reyes declaration, which was attached, I believe, as Ms. Gibson's -- attached to her complaint -- or excuse me, attached to her declaration that specifically states when it was that Deutsche Bank initially obtained possession of the note, and the dates that they had that as well. And then at all times relevant to this particular lawsuit --

THE COURT: Hold on a second. Where is that?

MS. CHRISTENSEN: It was the declaration of Reynaldo Reyes -- a portion of it was attached to Ms. Gibson's declaration.

THE COURT: I remember, but I don't remember where that was. Do you remember where that was? Where you attached questions of the deposition?

MS. CHRISTENSEN: It appears to be Exhibit B to Ms. Gibson's motion to dismiss. It states that Mr. Reynaldo is a vice president of Deutsche Bank National Trust Company. That pursuant to the billing and servicing agreement

Deutsche Bank is the trustee and custodian that they received the original note on or about April 12, 2006. That upon receipt the note was kept in secured -- excuse me -- stored in a secured file room for safekeeping, and that they had continuous possession and it provides the date for those.

THE COURT: And that is the note that is attached. Is that the signed note?

MS. CHRISTENSEN: That is, again regrettably, Your Honor, a partial copy and I will take full responsibility for that.

THE COURT: Well, but the question is not who is going to take full responsibility. I mean, obviously if I decide against Deutsche Bank based on the fact that was only a partial copy of the note attached, full responsibility may be the subject of another lawsuit. But the question is how does that impact my decision today?

MS. CHRISTENSEN: Yes. And I --

THE COURT: If you have -- if what I have before me is that Deutsche Bank has copy -- had this note -- an unsigned note since 2006, can you enforce an unsigned note?

MS. CHRISTENSEN: Well, Your Honor, this motion in particular was brought as a 12(b)6 to the extent that Your Honor would like further briefing and declarations on summary judgment, we are more than happy to provide those.

But at least under a 12(b)6 standard, you know, all possible inferences are to be taken in the plaintiff's favor, and the Court's focus should really be on the allegations, and the hypothetical facts.

THE COURT: Well, I know. And if the fact I have before me is the only note you have is an unsigned note.

MS. CHRISTENSEN: Would Your Honor like me to approach with the note?

THE COURT: No. No. Based on your complaint, all you have is an unsigned note. What you are saying is "oops" we should have provided you with a signed note, but we didn't. We could. But we didn't. So on 12(b)(6), if what you are saying is -- yeah, 12(b)(6) just look at -- you know, look at all this stuff and say this is the note we had -- is that enforceable? I mean, either it is 12(b)(6) and I am looking at what you have got which is an unsigned note and incomplete note because there are pages missing. Or there is some basis to say we need to go back and get the real note done here. So that is kind of the conundrum that you have that you need to address. So -- which -- and I don't know the answer to that at this point because nobody briefed that for me. And -- so.

Do you want to respond to what she said about there are declarations saying that they have the note?

MS. GIBSON: Well, Mr. Reyes' declaration was that the

unsigned note was the note they had been in possession of all along, and the complaint is based on the unsigned note, then your decision should be based on the unsigned note. They have not -- up until argument -- put forth the fact that they do have the signed note -- alleged signed note. If the complaint is based on the unsigned note, and they are going to rely on Mr. Reyes declaration, which we had, it is the unsigned note. If they want to present the signed note, they should have attached the signed note when they filed the complaint and filed the -- and amended the complaint. It has been almost a year since it was filed, and they are just now discovering that they have a signed note?

THE COURT: OK.

MS. GIBSON: And as to the 12(b)(6) standard, I believe at the beginning of argument you stated you were treating this like a summary judgment motion and --

THE COURT: Well when people treat it as a summary judgment motion, it turns into a summary judgment motion. That is the problem with 12(b)(6)s is people come in and say give me a 12(b)(6) ruling and then attach declarations with things that aren't a part of the complaint, like you did. And then it no longer is a 12(b)(6) motion, it is basically a summary judgment motion. So the question is, does -- and Deutsche Bank treated it as a summary judgment

motion because they also provided declarations that were outside the pleadings. So everybody treated this as a summary judgment motion, so, so will I. Otherwise, I will have to strike your basis that there is -- that there has been a service. And I don't think you want me to do that. But because that was not part of the record until this motion came up. And I am looking at your brief and my recollection -- the attorneys know this, and I think -- are you the Shields?

MR. SHIELDS: Yes.

THE COURT: OK. The attorneys know this, but I am going to say this so you understand because you are probably not -- maybe you are not involved in court a lot, but I get these papers a few weeks before the hearing and I review them all and review the records and try to figure them out, and I am like everyone else. I get stuck on something sometimes -- like I didn't see the signature on the assignment. And so the reason we have argument is -- one of the reason is so the attorneys can get me unstuck so that I can be -- when I look at something I can say this really appears to me to be something, and then the attorney comes forward and says no offense judge, but you have no idea what you are talking about -- here is the signature. You know, so that is one of their jobs is to point this out to me. And I did not look at this from what Deutsche Bank's

argument is today, which is if we have the note, we can enforce it whether it has been assigned to us or not. And I am looking for that in your brief.

Can you point me to that?

MS. CHRISTENSEN: Yes, Your Honor, on page 8 we talk about the standard that is required in order to plead -- well, beginning on the bottom of page 7 -- the standard that is required to plead an order to (indiscernible) plead a motion for a decree of foreclosure it says there is a note and deed of trust authorizing the acceleration of the debt, and that the plaintiff is the owner or holder of the note and deed of trust, and that there has been a default. And those three items are what is required in order to proceed with a judicial foreclosure action.

THE COURT: And holder means I have physical possession of it no matter who actually owns the note.

MS. CHRISTENSEN: Yes, Your Honor. And if you go down to the bottom of page 8, it talks about the UCC definition of a person that is entitled to enforce the note. And under the UCC the person entitled to enforce the note means the holder of an instrument, a non-holder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to the provisions of a loss note. And the UCC then defines, you know, the holder a certain

way. And again, pursuant to the pooling and servicing agreement, and Deutsche Bank's possession of the note, it is our position that we are entitled to enforce it.

THE COURT: And the UCC defines the holder as anyone who is in physical possession of the note whether they own it or not.

MS. CHRISTENSEN: Correct, Your Honor.

THE COURT: Is that right? I don't know.

MS. CHRISTENSEN: I'm sorry, are you --

THE COURT: No, I'm talking to the defendant.

MS. CHRISTENSEN: Yes, there is a recent decision that came out in Trujillo because there was a question as to whether you needed to be the owner of the note or the holder of the note, and Trujillo confirmed that it was the holder of the note.

THE COURT: OK. So do you want to address that?

MS. GIBSON: My understanding is Trujillo is still pending at the Supreme Court.

THE COURT: Well, until it is pending, then we are stuck with the Court of Appeals ruling.

MS. GIBSON: But again, Your Honor, is Deutsche Bank doing this -- are they claiming to hold the note on behalf of the certificate holders, or are they claiming to hold the note on behalf of the trust?

THE COURT: Well, they -- I don't know. They claim that

-- Deutsche Bank claims it is the holder of the note, as against to anybody. Right?

MS. CHRISTENSEN: In its capacity as trustee. And Your Honor, I did also --

THE COURT: A trustee for who?

MS. CHRISTENSEN: As trustee for the Saxon Asset Securities Trust 2006-2, Mortgage Loan Asset Backed Certificates, Series 2006-2.

THE COURT: I guess, you know, I'm totally confused. You know, is it -- the name of the plaintiff is not the name of anybody involved in this lawsuit except Deutsche Bank now comes and says here is a totally separate entity, we have physical possession of the note as a trustee for somebody, and I guess -- then I guess what your argument is if the actual person who -- if the actual trust thinks that Deutsche Bank should not have that note, then they have to be joined. They should file their own action and say wait Deutsche Bank, you don't get this money, we do. Is that what you are saying?

MS. CHRISTENSEN: Well, there is not a dispute from the trust that Deutsche Bank is the trustee.

THE COURT: Of course there is a dispute. I mean, you created the dispute in your complaint because the name of the plaintiff is not the name of anyone who has been assigned this note.

MS. CHRISTENSEN: Well, first of all, Your Honor, the original assignment was assigned to, quote, Deutsche Bank National Trust Company as trustee for Saxon Asset Securities Trust 2006-2.

THE COURT: Yes. This complaint was filed by -- I'll do it again -- Deutsche Bank National Trust Company as trustee for Saxon Asset Securities Trust 2006-2, Mortgage Loan Asset Backed Certificates, Series 2006-2. There is a difference. Didn't you notice that?

MS. CHRISTENSEN: There is a slight difference, Your Honor. We would take the position that it is semantics only. It is the first assignment essentially identifies Saxon Asset Securities Trust 2006-2. The full name is Saxon Asset Securities Trust --

THE COURT: How do I know that?

MS. CHRISTENSEN: 2006 dash -- Your Honor, we are happy to provide additional briefing. Again, we took the position this was a 12(b)(6).

THE COURT: Well, you didn't take the position it was a 12(b)(6) because you filed something outside of relying on that. So it wasn't a 12(b)(6) in that regard. But even as a 12(b)(6), you don't own this note. So your only basis is that you are the physical holder of this note no matter who owns it. The named plaintiff here is the physical holder of it, and as the physical holder, you are entitled to enforce

it even if you have no legal right to it. Because you are not the holder of the note under any of the documents that you supplied in your amended complaint.

MS. CHRISTENSEN: Again, we have possession of the note here, and as indicated in our response brief, we are prepared to show it to the Court.

THE COURT: That is not the issue, is it counsel? And you know, I will be honest with you, I don't know what to do here. The plaintiff is not the -- this note was never assigned to the plaintiff according to the plaintiff. According to the documents you supplied to the Court, the note was never assigned to the plaintiff. So that would say to me that this plaintiff -- this plaintiff -- does not have the right to enforce the note. The note that was attached to the complaint that you want to enforce is not signed. Even looking at the documents that the plaintiff provided, the statement from the employee of Deutsche Bank says this is the note, and it is not signed. It is a little bit more complete, I think, than the one attached to the complaint -- I didn't compare them page by page -- but it is not signed. So in order to defeat the 12(b)(6) I have to find that you have possession of a note that you don't -- that is different than the note you are trying to enforce. Because you say you are trying to enforce to unsigned note -- that is what your amended complaint says. And I have to

find that you, the plaintiff, has the original of the note -- of a different note -- than is attached to the complaint. I am having trouble doing that. Could you have corrected that? I bet you could have. You could have filed a second amended complaint and said, oops, we didn't attach a copy of the true note we are enforcing and here it is. We have it. And even though we are not the owners of the note, we have it in our physical possession. These are the facts that you say I need to find in order to deny their motion. I need to find that the note you are seeking to enforce is not the note attached to the amended complaint, which you -- and I mean you Deutsche Bank, whoever drafted that, and I am sure it wasn't you -- said was the note you are trying to enforce. I need to find that the plaintiff has possession of a different note than was attached. And then according to you it doesn't make a difference who actually -- and I think she is right. The problem with notes is that if somebody -- the reason why we require the original note is that if someone comes in and says I am enforcing this note and they only provide a copy, and they get paid for it, but the original is out there, somebody else can still come in and say, hey, I've got this note and enforce it, and that is why we require the originals -- but I guess you need to walk me through an argument about how I deal with what I have before me to deny their motion. And I agree

that there are things that could have been done to address these issues. But they aren't, and they haven't been done today, and today is where we are. So take it away.

MS. CHRISTENSEN: Well, again, Your Honor, the assignment issue is a separate issue. There is no requirement again that any assignments be recorded in the State of Washington in order to proceed with either a judicial or non-judicial foreclosure sale. So again, I would like to go ahead and put the assignments aside. And again, we have brought in the physical copy of the original blue ink signed note.

THE COURT: I don't have that. I don't have that. This is not part of anything that is before me --

MS. CHRISTENSEN: We indicated --

THE COURT: Where is -- where in all the paperwork that I got from anybody did anybody come in and say, oops, here is the original of the note, we should have done this.

MS. CHRISTENSEN: And we -- if the Court allows us (indiscernible) we are happy to submit a second amended complaint.

THE COURT: Well, I'm sure you are, but we are here today, so you need to address where we are today. Everybody in summary judgments after the Court makes its ruling wants to come back and say, oh, well, now that I know how you are going to rule, let me change what I am going to say, and,

you know, it is like at some point you would have to just say, say what you are going to say, and you are stuck with it. So you could have made a motion to amend. You could have made a motion to continue this. You could have attached -- you know, said here is the note. You didn't do any of that. So I am not quite sure why I should let you do that now after you have had all this time and you haven't done that. So if you want to argue why, you know, go ahead, but they are here, and they filed their motion in a timely fashion and this case has been pending for long enough for somebody to have picked up on this error, I would have hoped.

MS. CHRISTENSEN: OK. Well, and Your Honor, there is also a second copy of the adjustable rate note which was provided, again, in -- in Ms. Beasley's declaration. A copy of that does include the second page, and it does include the signature page by Mr. Shields and reflects that it was endorsed as well.

THE COURT: And where is that?

MS. CHRISTENSEN: That was attached as an exhibit to Ms. Shield's declaration. I believe it was Exhibit 7 -- excuse me -- as an exhibit to Ms. Gibson's declaration. And that was a copy of the note that was previously circulated --

THE COURT: What exhibit is that, please?

MS. CHRISTENSEN: I'm sorry?

THE COURT: What exhibit?

MS. CHRISTENSEN: Exhibit 7, I believe.

THE COURT: To whose declaration?

MS. CHRISTENSEN: Ms. Gibson's.

THE COURT: Oh, I have Exhibit A, B, Cs. Exhibit G, no?

MS. CHRISTENSEN: Exhibit E.

THE COURT: All right. I have Exhibit E as a case -- the Wells Fargo versus Erobobo case.

Do you know where it is, ma'am? It is your declaration. Help us out here.

MS. GIBSON: Your Honor, I didn't print my declaration, but I am going to find it for you.

MS. CHRISTENSEN: It looks like it might have been Exhibit C. It was the declaration of Michael K. Ryan in support of defendant Saxon Mortgage, Inc.'s, motion to dismiss. And I believe that Exhibit D was a copy of the note that was introduced at the deposition of Michael Shields.

THE COURT: All right. So there was a signed copy of the note provided to me by the defendant. OK.

MS. CHRISTENSEN: And Your Honor to the extent that Your Honor is going to be considering this as a motion for summary judgment, we would take the position then that because there are multiple copies of the note that are floating around, that it would be left to either further

briefing or it is a disputed issue of fact than as to which copy of the note has been in Deutsche Bank's possession.

THE COURT: OK. Go ahead.

MS. GIBSON: Your Honor, the note that is attached to my declaration is not authenticated by Deutsche Bank. We would also argue that you can't put the assignment aside. Yes, they are not required for a foreclosure, but one was done. So if it is not required, one, why was it done --

THE COURT: Good question.

MS. GIBSON: And to quote you from the beginning, if names matter, why wasn't assignment done? And we believe that the assignment, whether it is required or not, was done, and that assigned the plaintiff by executing that assignment assigned its interest away. If you assign your interest away, can you then --

THE COURT: But I don't find that plaintiff ever had an interest.

MS. GIBSON: Exactly. But then can you then -- even if they did have an interest, it was assigned. And then if you assign your interest away, how can you then step back and say, oh, wait, I want to enforce this? Even though I assigned it.

THE COURT: If names matter -- and they must have mattered to Deutsche Bank because they changed the name of the assignment -- if names matter, then this deed of trust

and the note were never assigned to the plaintiff. Just looking at the two assignments, there was never an assignment to the named plaintiff in this case, because the names are different. I don't know why. I don't know why they -- I don't know why it was assigned to the first Deutsche Bank as trustee, and then they felt the need to assign it to another name. I have no idea why. I suspect it is because names matter and the first name that they picked was not, in fact, the trust to which the note was being assigned, because a trust is a trust. And it has a name, and it matters whether you use the correct name.

So, this named plaintiff never had a recorded interest in this note and deed of trust based on what I have been provided by the parties in this case. Based on that, I am going to allow further briefing on the issue of the affect of that -- that is -- and the problem is the plaintiff alleges that it is enforcing a note and it attaches the note. The note is unsigned. The defendant provides a copy of the complete assigned note -- a signed note. So I guess the question is, what is the effect of that? I have to say if I had not had a copy of that signed note from the defendant, we wouldn't be here. But we are here, and I respect the defendant's honesty in providing that. So I need to know based on what I have before me, for purposes of this motion -- plaintiff has no -- has not been assigned

the note. May the plaintiff enforce the note anyway? That is, and if the plaintiff is the holder of the unsigned note, is that sufficient to put the issue of whether the signed note I have been provided is the actual note that they are enforcing so that we are not going to dismiss the case.

MS. CHRISTENSEN: I'm sorry, Your Honor, can you repeat that?

THE COURT: No, because it was so confusing even I don't remember what it was. Plaintiff has not been assigned the note. They allege they have, but they have not because their name is not on any of the assignments. But my recollection is I have your amended complaint up here. And the allegation of the plaintiffs are that they have an interest in the real property based on a deed of trust -- on the 3-31-2006 deed of trust. If someone has never been assigned a deed of trust, can they foreclose on the deed of trust, or can they just collect on the note if they are the holder of the note. If the UCC law is you are the holder of the note, whether you have it legally or not by a legal transfer. You are the holder of the note. You have the physical note. You seek to enforce the note. Does the security go with the note if you have not been assigned the security, the deed of trust?

MS. CHRISTENSEN: Yes, Your Honor, the transfer of the

note necessarily transfers with it the interest in the deed of trust.

THE COURT: I am not sure that that is the case when you are relying on a recorded instrument. So go over those specific issues. If you hold the note -- assuming that plaintiff is not the holder of the note under an assignment -- just not. Names aren't correct. But assuming they are the physical holder of the note, may they enforce the note, even though they are not the assigned holders -- the legal assigned holders presumed to the assignments that are on record? And if they can, maybe foreclose on the deed of trust, even though they are not the beneficiaries under the deed of trust? Do they have the right -- since they are not the beneficiaries under the deed of trust -- to direct the trustee to foreclose on the note? To foreclose on the deed of trust? Somebody has to tell the trustee to do it. And if you are not the beneficiary of the deed of trust, you have the authority to do that.

The other issue is, does it matter what name the plaintiff sues under? The plaintiff is telling me it doesn't make any difference. The fact that the name -- the fact that our name is not the same as either one of the ones on the assignment -- it doesn't make any difference. And if you are right, that as the holder of the note, you get to foreclose -- you get to direct the trustee to

foreclose on it, and you get the security to do the note -- then you are right, it doesn't matter what name it is. You could come in as Joe Smith and say, I have the note, so I am suing to collect on the note and I am foreclosing in your property. And then it would be up to the -- anyone else who claimed an interest to say wait a minute, it is our note. You don't get to do that. And what is the effect -- and then again, what is the effect of the fact that in their complaint they are alleging that they are foreclosing on a note that is unsigned? There is a signed copy out there. But they are not -- but we don't know if they are the same. So what is that -- what is the effect of that?

And I have to say, I don't know how this is going to come down. I will tell you honestly I am appalled at Deutsche Bank. And I am not criticizing this attorney at all, but I am appalled at the way Deutsche Bank is handling this case. And my suspicion is that this will go up to the Court of Appeals and the Supreme Court because the technical mistakes that have been made have clouded all of the issues in this case. And that is why I am requiring all of those technical issues to be addressed specifically. And no offense intended, ma'am, but your brief was a little bit hard to follow -- the defense. So you need to be very particular in how you address these issues, all right? And only address the issues that need to be addressed. There

may very well be fraud and that kind of stuff, but that is not what we are here today to talk about, and I am not swayed by the fact that someone comes in here and argues that my client has been unfairly prejudiced, etc., and so forth. I'm looking at the law, and that is what I want to look at, and you need to direct me there. And the reason I have a lot of these questions is because neither one -- nobody really looked at these issues and how they affect the decision. So you need to do that.

As far as the trust -- again, I think I have found that the issue is to whether it is void or voidable. I think it is clear under case law it is voidable. And even if -- of course it was never transferred to this plaintiff so it is almost a moot issue. But I don't find that that would void -- that it is void -- it should be voidable by whoever was transferring it. So I am not inviting, asking, or accepting any new declarations. You are stuck with what you decided to give me, on both sides. And I am just asking for briefing on the legal issues you have created. All right? So any questions -- so I am ruling that if this case goes forward, the argument that it was -- the signature on anything was forged, that there was fraud, etc., and so forth -- that is a factual issue that I can't decide now. I am finding that there was proper service within the 90 days, because there was service on Saxon Mortgage. But I am

not foreclosing. If defendant wishes to pursue that in discovery -- that if they can establish that the affidavits of service were fraudulent that that service then would not be valid. I am finding, based on what I have before me, and based on the briefing that I received, that the statute of limitations was not extended by the two aborted notices of foreclosure.

MS. GIBSON: Are you referring to the non-judicial foreclosure action?

THE COURT: Yes, the non-judicial foreclosure actions. Now the Court of Appeals may disagree with me, but that would be because you guys actual gave them briefing on the issues, and I didn't get it, and I didn't find anything that lead me to that conclusion, other than does it mention a case where it was not an issue. But I am wanting the additional briefing on those issues that I have raised. And what timing do you need for those? I will take -- because I think these are issues that are raised by the plaintiff in response -- though I agree it was in their brief -- I hadn't recalled it -- the idea that even if they weren't the legal owners, they were the physical holders of the note, and so they had the right to enforce it. I am going to let the defense respond to that, and I will let the plaintiff have a reply. As far as the issue of the unsigned note and the effect of the unsigned note -- whether they

can now -- whether that is sufficient to allege that there is a signed note -- defense raised that. So I am going to allow plaintiff to file an additional response on that, and defense will have the last word on that issue. And then the issue of does name matter was raised by the defense -- not responded to, I don't believe, sufficiently by the plaintiff. So I am going to allow plaintiff additional briefing on that, and defense has the last word on that one. OK? So when -- what time frame do you want? So everybody gets to file one more paper on each issue -- not two. One. No more declarations, just legal argument. How long do you need?

MS. GIBSON: I am on vacation all next week.

THE COURT: I am asking -- just give me a date. I don't care. I work here all the time. Do you have a trial date?

MS. GIBSON: We stipulated to amend the trial date. I don't recall it ever being -- was it signed?

MS. CHRISTENSEN: It was. I would have to double check. I would request that at least --

MS. GIBSON: I think it is the end of the year.

MS. CHRISTENSEN: I would request at least 30 to probably 45 days to get the briefing in. I am scheduled to have a baby on or about the fourth.

THE COURT: Well, just hold that off. Come on.

MS. CHRISTENSEN: It doesn't really give me a whole lot

of control on my end, unfortunately.

THE COURT: Let me see here. Your trial date is 1-19-16. I mean, it is fine with me. Where do you stand on discovery? Do you need any additional discovery?

MS. CHRISTENSEN: We would likely do some additional discovery.

THE COURT: What about you?

MS. GIBSON: I don't believe we have done any discovery. We were waiting for this motion, which got rescheduled, obviously.

THE COURT: Yes. OK. So 30 days is fine with me. So whoever has the first one has to get it out in 30 days. Whoever has the response -- 15 days after that? Does that work? So that would mean that initial briefing -- if that is your responsibility -- is due August 17. Does that work? You have to speak up yes or no. I can't read minds. August 17 for initial briefing, and then August 31 for responses and replies? Yes? OK. I'm saying that. That is what it is because nobody is speaking up.

MS. CHRISTENSEN: So sorry, Your Honor. You said August 17 for the initial briefing, and then you said August 31 for the responses?

THE COURT: Yes.

MS. CHRISTENSEN: And then what about -- I believe you mentioned that for the legal owner's argument that --

THE COURT: Everybody gets one brief on the issue. Somebody -- and I just told everybody what their job was -- who is filing the first brief. That is the one that is due by the 30th. And then the person that is filing the response to that -- that is due by the 17th. The first one is due by the 17th, and then the next one is due two weeks after that, by the 31st. Sometimes it is the plaintiff who is filing the initial brief, and the defendant is responding. Sometimes it is the defendant who is filing the initial brief, and the plaintiff is responding.

MS. CHRISTENSEN: Yes. I was just -- I apologize. I was under the impression that for that first issue of the ability to foreclose -- even if not the legal owner -- I had written down in my notes that we were to prepare the initial briefing, defendant was to respond, so we were to prepare a reply.

THE COURT: No reply.

MS. CHRISTENSEN: No reply. OK.

THE COURT: No, I said that you had raised the issue. I want one additional brief from each party on each issue. And if you raised it in your trial brief -- in your motion brief -- then the other side gets a chance to respond, and you get a chance to reply to that. But not motion response, reply. No. It is additional brief, and a response from whoever is doing the initial ones. OK? Can you put that

into an order?

MS. GIBSON: I think so.

THE COURT: All right.

MS. GIBSON: Are we going to do additional argument, or no?

THE COURT: I will tell you after I get your briefs whether I want additional argument. If your briefs are sufficiently clear --

MS. GIBSON: OK.

THE COURT: I probably will not. If they are not sufficiently clear, then you may be in trouble anyway. So try to make them very clear on the issues I have raised, OK? So that is your schedule. If you would please -- it is defendant's motion. So if you could please do this up in an order -- you don't have to do it today -- about who is going to be briefing first on what issues, and who is going to be briefing second.

MS. CHRISTENSEN: Do you want the order to also include the initial ruling that you made?

THE COURT: Yes. So you get all that done, and you can exchange that with her. If you do not have to me by July 27th either an agreed order -- as far as my rulings today -- or the defendant's proposed order saying we couldn't reach an agreement -- I'll dismiss the motion. So you have a big incentive to make sure that you get that order to

her. And we are a digitally recorded order room. I can listen to my own recording and if I forget what I said, I just listen to it again. So it is not a problem. And you can buy the recording for, like, 10 bucks, 15 bucks -- 20 bucks. Wow. You should have had this last year. It would have been 10 bucks. But it is 20 bucks for the recording which is available today, down at the clerk's office if you need the recording. OK? Questions?

MS. GIBSON: Thank you, Your Honor.

THE COURT: All right. Thank you.

(Proceedings adjourned at 12:10 p.m.)

VERIFICATION OF TRANSCRIPTIONIST

STATE OF WASHINGTON |

County of Pierce |

I, Holly Rydel Kelly, certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am an authorized transcriptionist;
2. I received the electronic recording directly from the trial court conducting the hearing
3. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge in reviewing the transcript;
4. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
5. I have no financial interest in the litigation.

Dated this 15th day of June 2016 at Tacoma, Washington.

Holly Rydel Kelly, CET

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In re: DEUTSCHE BANK NATIONAL BANK as trustee, Plaintiff, And BONNIE & MICHAEL SHIELDS, Defendant.	NO. 14-2-226187 KNT COA NO. 75044-5-1-I

BEFORE THE HONORABLE LAURA MIDDAUGH
KING COUNTY DISTRICT JUDGE.

Kent, Washington
February 4, 2016
4:07 p.m.

APPEARANCES:

For the Plaintiff:
SAKAE S. SAKAI
First American Title
818 Stewart St Ste 800
Seattle, WA 98101-3328
(206) 728-0400

For the Defendant:
JAMES WEXLER
2025 201st Ave SE
Sammamish, WA 98075-9641
(206) 849-9455

Transcription Service:
HOLLY RYDEL KELLY, CET
Talk to Type Transcription
2522 N Proctor St., Ste. 319
Tacoma, WA 98406
Phone: (253) 666-8628

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

KENT, WASHINGTON, FEBRUARY 4, 2016, 4:07 P.M.

(Call to order of the Court, defendant present.)

THE COURT: ... please identify themselves for the record.

MR. SAKAI: Sakae Sakai for the plaintiffs.

MR. WEXLER: James Wexler for the Shields, the defendant.

THE COURT: So this is back here for the (indiscernible).

MR. WEXLER: (Indiscernible).

THE COURT: I did just receive something entitled defendant's RPC 3.3 document which I have not read.

MR. WEXLER: Yes. We submitted that this morning. I called bailiff and alerted her to it. It is something you can consider or not. I understand the timing. We will be arguing those points anyway, but we had seen some -- what we considered to be serious enough issues to bring to your attention before we start arguing about some issues that we decided to put a few pages into the record, mostly, so that it is there.

THE COURT: OK. So why don't you summarize very briefly what your position is?

MR. SAKAI: As to this RPC notice, or as to --

THE COURT: No, as to this motion.

MR. SAKAI: So just very briefly, the evidence

establishes that our client is entitled to enforce the note. There has been a default and Article 3 is a relevant authority that says the holder is entitled to enforce the note. There is no evidence that has been presented by the Shields that would create a genuine issue for trial, so we are entitled to summary judgment.

THE COURT: So you are the holder of the note because you have it?

MR. SAKAI: And it is a requisite endorsement to my client, which are the two requirement under UCC.

THE COURT: Where is that?

MR. SAKAI: On -- I can show -- I brought the note with me, and I can present to you --

THE COURT: You need to show it to opposing counsel before you show it to me.

All right. So we have a note between Michael Shields, right? And Saxon Mortgage, Inc. And that is the deed of trust that was -- secured by a deed of trust, and that is in 2006, is that correct?

MR. SAKAI: Correct, Your Honor.

THE COURT: And this is the only note and deed of trust we are talking about, right?

MR. SAKAI: Correct.

THE COURT: The other ones have all been paid.

MR. SAKAI: I can't speak on behalf of the other

creditors, but we are seeking to foreclose this note and this deed of trust.

THE COURT: Well, but you have alleged -- and this is part of the problem I have -- is that some iteration of Deutsche Bank appears for everybody, it sounds like. And the names are all confused. And so I am trying to figure out what Deutsche Bank knows, who they actually are representing or are trustees for, and what exactly they are saying. Because you can't know something as Deutsche Bank here, and say, but I don't know about this here, even though I'm the same person.

MR. SAKAI: So my understanding is that there is another deed of trust -- this is what the evidence shows -- the Saxon deed of trust is what we reference to in our motion. And there is beneficiary designated and assigned, and associated with that deed of trust -- Deutsche Bank Trust Company Americas, which is actually a different company than Deutsche Bank National Trust Company --

THE COURT: Yes, I'm sure it is.

MR. SAKAI: And there has been, apparently, a reconveyance presented and allegations that there is some kind of conspiracy theory or malfeasance on the part of my client in relation to this separate loan that was not reconveyed.

THE COURT: So I am trying to track this. In 2006, Mr.

Shields signed a note and deed of trust to Saxon Mortgage, Inc., right?

MR. SAKAI: Correct.

THE COURT: Saxon Mortgage, Inc., conveyed that deed of trust and the interest in their note to Deutsche Bank National Trust Company as trustee for Saxon Asset Securities Trust 2006-2, Mortgage Loan Asset Backed Certificates, Series 2006-2 -- when?

MR. SAKAI: Let's see.

THE COURT: Or how did you guys get it?

MR. SAKAI: The note was conveyed directly to Deutsche Bank National Trust Company and they --

THE COURT: This trust company?

MR. SAKAI: Correct. Who is the custodian.

THE COURT: As trustee for this --

MR. SAKAI: Of the Saxon Assets Securities Trust, who then --

THE COURT: -- 2006-2, Mortgage Loan Asset Backed Certificates, Series 2006-2?

MR. SAKAI: Exactly. And then --

THE COURT: When was that? Show me?

MR. SAKAI: We don't have that date in the record. And the reason why we didn't put that date in the record is because there was litigation already pending -- and I'll get there. The reason why we didn't put that in the record

is because Auckland Loan Servicing -- the servicer of this Shields mortgage loan -- requested that note for purposes of this litigation prior to the initiation of this lawsuit. So this whole time, this note has been in our office so we can initiate the lawsuit --

THE COURT: I'm not asking where the note is. I'm just asking you to track the transfers for me, because I can't do it.

MR. SAKAI: I don't have the exact date the note was actually --

THE COURT: The only thing I have is that Saxon Mortgage, Inc., owned this, was the beneficiary of the deed of trust, the owner of the note -- hold on. Where did I put my notes? I am going to have you take these original documents back. Please take these. So I am just trying to -- you should be able to document how you -- you have the note and you say you are the owner of the note. Tell me how? I don't get it.

MR. SAKAI: We can get a declaration from the custodian, Deutsche Bank National Trust Company, establishing the exact date they received the note and deed of trust in its safe, and then sent it to Auckland, who then sent it to us for purposes of this litigation. But because we held the note before the lawsuit was even filed, our position was the client is the holder regardless.

THE COURT: So your position is we have the note -- even if we don't have it legally -- even if we are not -- if it was never transferred to us, we have the physical note so we can enforce it.

MR. SAKAI: Well, if you look at -- in the UCC article 3301, so long as you have possession of the note with the requisite endorsement, you are the holder --

THE COURT: Where is the endorsement? That is what I am trying to figure out. Where is the endorsement?

MR. SAKAI: I am going to bring the note back up, Your Honor, so I can show it to you.

THE COURT: All right. And what was the date of that? You don't know when that happened?

MR. SAKAI: I don't know when the trust actually received physical possession of the note, but the UCC doesn't require the holder to establish when it actually received the note, so long as it has possession of the note --

THE COURT: Yeah, no, no, I don't care when. I am just trying to figure it out because you guys -- this is such a mess, as you know, and I'll be honest with you, the people that come in here representing Deutsche Bank are not very good about actually following through with where notes are and how they got there. There are steps that are missed that nobody ever tells me about. And I'm supposed to just

say, well, trust us. Somewhere, there is this thing that gave us the note, and I don't know why I don't have a copy of that. That would have just answered the question, wouldn't it? It would have just said Saxon Mortgage, Inc., signed it over to us, here is proof.

MR. SAKAI: Well, Your Honor, in my experience litigating these cases we can prevail on just possession and the endorsement and the recent Slotke opinion, which is a judicial foreclosure -- in that case the court recognized the situation where --

THE COURT: Where is the endorsement? What exhibit is this?

MR. SAKAI: The endorsement is on the note which is Exhibit 1 -- Exhibit A to the (Gastepski) declaration. I would like to point out, Your Honor, in the Slotke decision that recently came out that is published, counsel for the foreclosing beneficiary brought the note with him or her to the Court and the Court of Appeals found that was sufficient.

THE COURT: Exhibit A is not anything signing this over to you.

MR. SAKAI: The signature page on Exhibit A that is signed by Michael Shields, there is the special endorsement to Deutsche Bank National Trust Company.

THE COURT: I am sorry, where is it that Saxon signs it

over to Deutsche Bank?

MR. SAKAI: It is on the signature page of Exhibit A, which is the fifth page.

THE COURT: My Exhibit A, Exhibit A2?

MR. SAKAI: The Gastepski declaration.

THE COURT: To whose declaration?

MR. SAKAI: The Gastepski. Nicole Gastepski.

THE COURT: OK. That is what I thought you said. Nicole Gastepski in your motion, right?

MR. SAKAI: Correct.

THE COURT: Exhibit A. There is two pages.

MR. SAKAI: Exhibit A has -- Exhibit A is a note, and it should have --

THE COURT: Not mine. Maybe this is part of the problem, I wasn't getting all of the paperwork.

MR. SAKAI: Are you looking at the supplemental declaration or --

THE COURT: The regular one.

MR. SAKAI: I could bring up my copy, Your Honor. I apologize.

THE COURT: Is it in your copy?

MR. WEXLER: No.

THE COURT: This is part of the problem, evidently.

MR. SAKAI: Well, I do know we served the entire document to Mr. Shields' counsel. But I can bring forward

my --

THE COURT: OK. So. But now we have -- I have seen the note -- has been signed over appropriately with all of the correct initials and numbers and everything. So why can't they foreclose?

MR. WEXLER: Well, one, we think there is a lot of questions of fact about this case, including what Your Honor has pointed out --

THE COURT: But that question of fact was solved.

MR. WEXLER: Well, we think there is questions of fact about who owns the note.

THE COURT: Why?

MR. WEXLER: They may be possessing, but they haven't proven that they own it.

THE COURT: They have the note that was signed over from Saxon Meeting, Inc., who was the owner of the note, right? And it was signed over to Deutsche Bank National Trust Company as trustee for Saxon Asset Securities Trust 2006-2, Mortgage Loan Asset Backed Certificates, Series 2006-2.

MR. WEXLER: That is not proof that they are the owner. Under Article 9, which does apply to counsel's, I guess, misstated the law for sure -- 9 -- 62(a)9(a)203(a)(b) and (g) is the axiom, the note of the deed of the trust follows the note. That is the law in the State of Washington. And in that law it specifically says you have to be able to

document that you paid value or gave value you for it. In addition, under (g), that is the most crucial part -- they have to prove that they are the owner. That section 203(g) is --

THE COURT: How do they prove they are the owner?

MR. WEXLER: Well, they have to have some proof that they gave consideration for it. If they can't prove that, then they don't own the note. They have to prove that they gave value for it, and how they got it. So if they have possession of the note, that is not the same thing as possession and (indiscernible) and the ability to enforce the deed of trust. 203(g) specifically says that you have to be able to be the owner of the note to enforce the deed of trust. So if they want to sue on the note --

THE COURT: So if I sign my note over to them --

MR. WEXLER: Then they can sue on the note. They can't enforce the deed of trust. That is how it works. You have to prove that you own it. You may possess it, if that is what they did. They still have to show how they possessed it. But you cannot enforce the deed of trust unless you are the owner. Not just the holder, but the owner of the note.

THE COURT: If I sign it over to them, aren't they the owner?

MR. WEXLER: No. They have to prove that they are owner. They could have signed it over in a custodial receipt, like

he was talking about. It is in their vault, whatever.

THE COURT: I just saw it. It just was transferred over to them.

MR. WEXLER: That is physical possession. It is not the --

THE COURT: No, it wasn't. It said it was signed Saxon, Inc., here, you own this now. Are we not looking at the same thing?

MR. WEXLER: Well, they have to prove they gave consideration for it. There was no known consideration. They are just the holder of the note. They have to prove they own it to be able to enforce the deed of trust. And the deed of trust -- again, that is 150 year old law. You have to do it by a deed of conveyance. Where is the document conveying -- the deed of conveyance statute which controls here, has to be in effect as well.

THE COURT: So you are saying that they have to get something from Saxon Mortgage, Inc., saying they paid us for this?

MR. WEXLER: Yeah, well, again, it is either --

THE COURT: Is that what you are requiring?

MR. WEXLER: Yeah, they need to be able to prove that they are the owners, not just the holders.

THE COURT: And you are saying in order to prove they are the owners -- I am trying to follow you -- in order to

prove they are the owners they have to prove not just that Saxon Mortgage, Inc., signed over their interest in the note to them --

MR. WEXLER: Correct. Correct.

THE COURT: But that they actually gave --

MR. WEXLER: Consideration --

THE COURT: Consideration for that.

MR. WEXLER: Which is what the statute requires. 203(g)(b) -- Section B, 203(b)(1) specifically says one of the incidents of proving this is that you have to show that you gave value for it. I mean, there is a lot of litigation in case law in determining whether the value they gave qualifies even. But that is always a question of fact that needs to be resolved. And it is -- again, they have had this for 8 or 9 years --

THE COURT: Oh, please, I know.

MR. WEXLER: You know the history --

THE COURT: The fact Deutsche Bank is just -- it is -- it is obscene what is happening with these things.

MR. WEXLER: This is people's homes. They have to get it right. They have to dot their I's cross their T's, the statute is all about being strictly construed --

THE COURT: You need to file a copy of that note that shows it was actually signed from Saxon Mortgage, Inc., to --

MR. SAKAI: We will get that filed. One thing I really want to address, Your Honor, that I think opposing counsel has an ethical obligation to address, is the Slotke opinion, which I believe opposing counsel was part of because it was against my firm as well, involving a Division 1 published opinion, which expressly rejects all of these arguments. And I can bring it up to the Court, Your Honor, to the bench -- I can show it to Mr. Wexler -- but I know he is aware of this opinion, which expressly says that ownership is not required to enforce a note in a judicial foreclosure proceeding.

MR. WEXLER: Well, first of all, Your Honor, yes, I was counsel for Ms. Slotke and that just came down. It is going to be on appeal to the Supreme Court.

THE COURT: Well, until it is overruled by the Supreme Court, it is law.

MR. WEXLER: Well, the argument is that the statute is what controls, and the court has to apply the law. The law as written by the legislature. And the fact that a particular court doesn't follow the law --

THE COURT: Do you agree that the issues were decided in that case?

MR. WEXLER: No. They were not decided. The whole point was that was a judicial foreclosure versus a deed of trust foreclosure -- completely different laws apply. In this

instance -- in Slotke's incident -- yeah, there is questions about ownership, but they didn't prove that.

THE COURT: What is the cite on that?

MR. SAKAI: It is case number 73631-1.

THE COURT: So it just came out.

MR. SAKAI: Yes. I can bring it up to the bench.

MR. WEXLER: Your Honor, we have some threshold -- we have some threshold issues here about procedure. Number one --

THE COURT: Hold on a second.

MR. WEXLER: -- we did not get the alleged affidavits of service for the original documents that go back years which apparently counsel filed on Monday. We had no discovery. One of the conditions of us taking this case was there will be no more discovery. So there was no -- documents came in on Monday, which by the way I never got. I happened to look --

THE COURT: Hold it. Stop. Stop.

MR. WEXLER: I just happened to look.

THE COURT: I'm not sure what it is you are talking about.

MR. WEXLER: I'm talking about the proof that they served within 90 days of filing their complaint.

THE COURT: Didn't we deal with this before?

MR. SAKAI: Yeah, I'm not really sure why -- it is not

really germane to the issue --

MR. WEXLER: It is fairly germane. Excuse me. It is truly germane.

THE COURT: No, but didn't we deal with this before --

MR. SAKAI: Just let me answer the question, counsel --

THE COURT: Didn't we deal with this before in a prior --

MR. WEXLER: Well, let me make my argument and then you can answer the question.

THE COURT: No. No. I get to decide who I talk to. Not you.

MR. WEXLER: OK. OK.

THE COURT: Didn't we deal with this before?

MR. SAKAI: Yes, I believe we dealt with it, and I believe the evidence established that one of the defendants was served within 90 days --

THE COURT: Right.

MR. SAKAI: So that resolves the issue as to whether service is proper.

THE COURT: And your position is that they --

MR. WEXLER: We disagree with that --

THE COURT: Stop. Your position is, if I understand it, that even if they did serve Saxon Mortgage, Inc., they weren't a real party in interest, and they knew they weren't a real party in interest, it was just to avoid the

statute of limitations issue they tucked them in and served them on the 90th day.

MR. WEXLER: Exactly.

THE COURT: And that is because the identity of Deutsche Bank and all the people that know that Deutsche Bank should have known that there was that reconveyance.

MR. WEXLER: And that is why they are so adamant about trying to make a motion in their last minute effort in their paperwork to strike the very deed of reconveyance that they accidentally or otherwise sent to my client. And she I here. She can testify how she got it, because that is not a recorded document. And they have hid that intentionally from this court for a year and a half. If Your Honor had this a year and a half ago when they started, then you wouldn't have made the decision you did, because that reconveyance deed makes it pretty clear that there was no real dispute ever between these two parties. Years ago, they had resolved this. All that had to be done, and under the statute there is a procedure where it is possible for an attorney representing Saxon could easily have filed a notarized statement with the court, and filed it to prove that they -- payment had been made, and it was s resolved issue. So if there was no dispute between them, how could they have been properly served? That is a misrepresentation. We think it is intentional. It is not

accidental. And it was hidden. And that is why they are making a motion, now, today in the middle of this paperwork to try and strike it, because we found it, we had it, we got it from Ms. Shields -- that's how she happened to get it. They produced it to her. They can't challenge its authenticity. I mean, it is their own document, and they have been sitting on it -- in whatever vault they keep these things -- and they never produced it.

THE COURT: Hold on a second.

MR. SAKAI: We did not produce that document.

MR. WEXLER: It was sent -- I didn't get it. My client got it. She is right here. She can testify. It got sent to her while she was handling this case pro se. And then -- and it is only -- in their brief in response to our -- which we spent a lot of time on trying to point out that they are not properly served. They were definitely had --

THE COURT: OK. Stop. Stop! So I am looking a the substitution of trustee and full reconveyance, which is signed by Deutsche Bank Trust Company Americas, formerly known as Bankers Trust Company, as trustee and custodian by -- Saxon Mortgage Services, Inc. That is Deutsche Bank Trust Company America is not the plaintiff in this case. Is it?

MR. WEXLER: Well, that seems to be the question. As Your Honor said, it is kind of hard to follow who the

players are, but no, they are not, as far as I understand it.

THE COURT: Saxon Mortgages Services, Inc. -- what is their relationship to anybody? They weren't the beneficiary of the deed of trust.

MR. WEXLER: It says Deutsche Bank Trust Company Americas.

THE COURT: So it is not the same plaintiff. I don't know -- and that is what I was trying to figure out -- I don't know what relationship Saxon Mortgage Services, Inc., has to Saxon Mortgage, Inc. They are two different corporations by their name.

MR. WEXLER: It is confusing, and it is a question of fact.

THE COURT: It is confusing.

MR. WEXLER: I mean, that is the whole purpose of today is to point out there are material questions of fact. The Court is struggling with it, I'm struggling with it, even counsel has struggled with understanding it himself. So it is something that needs to be vetted fully.

THE COURT: But only if it is relevant does it need to be vetted. And I guess -- I am satisfied, and you will need to file the document that shows that there was, in fact, a transfer from the owner of the note, and the owner of the deed of trust to the plaintiff -- the exact named

plaintiff. Maybe it wasn't this case. Maybe it was another Deutsche Bank case where people kept doing the names differently and saying it doesn't matter, but it does matter. So you need to file that. And then I am satisfied -- I am satisfied based on that, that they are the holders of the note, and they are entitled to enforce the note and foreclose on the deed of trust.

MR. SAKAI: Well, we respectfully -- obviously disagree --

THE COURT: I know you do. But I am satisfied once I have that connecting link. There was no connecting link until you showed me that today. Maybe you meant to attach it, but it was not in the paperwork that I got. And I did not compare my paperwork with what was filed in ECR.

Now the question of the statute of limitations is -- it is -- I don't -- it is quite clear to me, and I don't think it is wrong or -- I think I can take judicial notice of all of these -- the problems we have had with all of these agencies that did these subprime mortgages and transferred to and from and built all of these weird mortgage loan documents -- the stuff that they did. And it is hard to figure out and I will say that I am not -- I am not happy with Deutsche Bank in its many iterations that come before me where I have to spend literally hours going through trying to figure out the steps. This is something that DB

should be doing for me that I should not be doing. I should not be having to play connect the dots here. But they have connected in this case. They don't always connect, but they have connected in this case. Now the issue of the statute of limitations, my recollection is we did argue about this whether there was service within the 90 days. It was established that they served Saxon -- I have this -- and you know, this is a summary judgment motion and it is not required to be on the record. Do you mind waiting for a few minutes? Do you have some place you have to go?

UNIDENTIFIED SPEAKER: It is OK.

THE COURT: Do you have a copy of the order that was entered in this last --

MR. SAKAI: Regarding the motion to dismiss end of service?

THE COURT: Yes.

MR. SAKAI: I don't have a copy of it.

THE COURT: Yes. I thought I recalled this, that I allowed discovery on the issue of service on Saxon Mortgage, Inc., and that was July 30, 2015. So if there had been issues about that, and I said that if discovery was made you could have done discovery -- you could have done discovery and it could be raised later on. But now you are here saying we have to do discovery on this issue.

MR. WEXLER: Well, there is an issue about when this was

served.

THE COURT: Then you should have done discovery on it before today.

MR. WEXLER: Well, we were precluded from doing discovery before.

THE COURT: No, I said on the order entered July 30, 2015, that was I think before the discovery cut off.

MR. SAKAI: Yeah, and that was also about five months before the last time we were here.

MR. WEXLER: Well, a month ago we were told no more discovery, so.

THE COURT: No. It was too late because your trial date was already up.

MR. WEXLER: I understand.

THE COURT: You had the right to do discovery in July 2015, then you should have done discovery then if you thought it was appropriate.

MR. WEXLER: So why did they bring this out now?

THE COURT: Why did they?

MR. WEXLER: Three days ago they bring out a proof of some sort that these documents were served -- the complaint and the summons -- was served a day before their deadline.

THE COURT: I found that it was served on July 30, 2015. I made that finding. And then I said if this doesn't preclude the defendant from seeking discovery on this

issue. But based on what I have, I found that there was service, and if there were further issues, discovery should have been had then. We are now having -- (indiscernible) the trial date if I recall correctly -- so we can deal with this. It is not the time to come and say, well, wait a minute, I really need more discovery. Discovery was available. I cut discovery off through the summary judgment motion because it was too late.

MR. WEXLER: I understand. We are just saying that they just produced two days ago a statement that this was served a year ago. And why did they wait so long to --

THE COURT: I already had that proof because I made that finding in July. I don't know why you just got it.

MR. WEXLER: Well, because he just served it. He just filed it.

THE COURT: OK. I already made that finding. I made that finding in July. And you could have done discovery on that. So your argument that -- the argument that it is clear from the records that they knew or should have known that Saxon -- the one they served, Saxon Mortgage, Inc. -- had not interest and so they were just adding them so that they could serve them on the 90th day -- number one, it doesn't make a whole lot of sense because I think they filed, and then served them. So they wouldn't have known -- the complaint was filed before they were up against the 90-day

deadline, if I recall correctly. So it doesn't make any sense to argue that. And the other thing is, the names that I have are not the same.

MR. WEXLER: Well, that raises another question. When did they actually -- when did they change hands? When did the documents change hands? They say it was in the trust, and --

THE COURT: It doesn't affect what we are doing today. Saxon Mortgage, Inc., has said we are not claiming any interest in the property at all, if I recall correctly. So first the mortgage in 2003, which I think it was paid off. The mortgage in 2006 they are saying, we are out of here. We don't want anything to do with this.

MR. WEXLER: So why is counsel trying to make a motion to suppress the deed of reconveyance?

THE COURT: I don't know.

MR. SAKAI: Because it doesn't comply with the rules of evidence, and a lot of the Shields' argument is based on it, so I want to preserve all of our arguments in case this gets appealed.

THE COURT: It is not relevant to the issue.

MR. SAKAI: I agree. There is no statute of limitation s argument even presented in the response at all.

THE COURT: Well, and the statute of limitations would only be if I could find based on the evidence I have before

me that the plaintiff knew that Saxon had no interest and filed this so that they could serve them on the 90th day to preserve the statute of limitations. Which doesn't work according to the timing in this case. It just doesn't make any sense. So you need to file that note --

MR. SAKAI: Would you like me to file the note or some kind of supplemental declaration?

THE COURT: Yeah, what we are going to do is see that copy machine right there? You are just going to copy that right now. We are going to put a coversheet on it and file it so that that is in the record that there was in fact -- yes -- can you figure that out?

MR. SAKAI: I don't want to shred the original note.

THE COURT: It should be OK as long as there are no staples in it. So, I am going to grant the summary judgment motion -- I don't know if you have an order. And based on what I have before me, I can't find that there was any attempt to defraud the Court or because of this -- just put a coversheet and say additional documents considered at the hearing -- and there is just not -- there is no evidence to show that.

MR. WEXLER: We understand what you are saying. I respectfully disagree that they sat on this for so long, they hid the documents from everybody until the last second. They are trying to suppress it saying that I can't

authenticate it. It is their own document. And it is strict evidence that they knew for eight years that they had no dispute. They definitely had no dispute. Why else would they have kept it from the Court? Except --

THE COURT: I don't know. Except that -- I can tell you quite frankly because I don't -- no offense to this attorney, but I have found pretty much everything that Deutsche Bank has done over the years that I have seen from 2000 on and that kind of stuff has been very, very sloppy --

MR. WEXLER: Exactly.

THE COURT: Honestly.

MR. WEXLER: And on the basis of sloppiness alone --

THE COURT: Well if the basis of sloppiness alone could make you win, you would win. But it doesn't. So I am looking at the substitution of trustee and full reconveyance. And even considering that document, it does not support your position because it is not a clear recon -- it is not a clear reconveyance. It is not clear that this plaintiff knew about this, and it is a ridiculous document. It purports to be signed by DB Trust Company as trustee and custodian by Saxon Mortgaging Services, Inc., for Saxon Mortgage, Inc. I don't even know how these people relate to Saxon Mortgage, Inc.

MR. WEXLER: Why create a document like that if it is

between themselves?

THE COURT: It is not between themselves, that is what I am saying, sir. It is not between themselves. The names -- and I will say that I understand that Deutsche Bank has used a lot of names and they get very confused about who they are and what they are filing, and they have lost cases in my courtroom because of that. But not in this one. So.

MR. WEXLER: We would like a copy of that note by the way, we don't have it.

MR. SAKAI: It is going to be filed. You can just pull it off --

MS. SHIELDS: No, we want it.

MR. SAKAI: Just pull it off ECR.

THE COURT: Just make them another copy of it now.

MR. SAKAI: You want another copy?

THE COURT: Yeah, make another copy of it. So I need the order -- do you have an order?

MR. SAKAI: I do, Your Honor.

THE COURT: And I am going to -- would you send this to me by Word?

MR. SAKAI: Yes, I will, Your Honor.

THE COURT: I am going to make sure that everything is here that I considered --

MR. SAKAI: I'll send you a Word copy.

THE COURT: Send me a Word copy, and I will enter it,

and then send copies out to both sides. All right? OK, I'll send you a copy next week.

MR. SAKAI: Thank you, Your Honor.

THE COURT: I know you filed a motion for reconsideration last time -- wasn't that you?

MR. SAKAI: No.

THE COURT: Somebody did in the case. Don't file a motion for reconsideration until you actually get the copy of the order. Even if you want to, don't file it until the order has actually been entered. I think that happened in this case where I got the motion for reconsideration before the order was actually signed, and it was a little confusing. So, but -- and you are obviously free to file a motion for reconsideration, but if you think I am whether wrong, you might want to save your energy for the Court of Appeals.

MR. SAKAI: I hear you loud and clear

THE COURT: Just saying. OK.

MR. WEXLER: Thank you, Your Honor.

MR. SAKAI: Thank you, Your Honor.

(Proceedings adjourned at 4:46 p.m.)

VERIFICATION OF TRANSCRIPTIONIST

STATE OF WASHINGTON

County of Pierce

I, Holly Rydel Kelly, certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am an authorized transcriptionist;
2. I received the electronic recording directly from the trial court conducting the hearing
3. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge in reviewing the transcript;
4. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
5. I have no financial interest in the litigation.

Dated this 15th day of June 2016 at Tacoma, Washington.

Holly Rydel Kelly, CET

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

DEUTSCHE BANK NATIONAL TRUST COMPANY, as trustee for Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates Series 2006-2,	)	No. 75044-5-I
Respondent,	)	
v.	)	
MICHAEL SHIELDS; BONNIE SHIELDS,	)	
Appellants,	)	
FIDELITY NATIONAL TITLE INSURANCE COMPANY; SAXON MORTGAGE, INC.,	)	UNPUBLISHED OPINION
Defendants.	)	FILED: October 2, 2017

VERELLEN, C.J. — Deutsche Bank National Trust Company filed a lawsuit seeking to judicially foreclose a deed of trust encumbering property owned by Michael Shields. The trial court granted summary judgment in favor of Deutsche Bank and issued a decree of foreclosure. Shields and his sister Bonnie appeal, contending that Deutsche Bank was not entitled to foreclose, notwithstanding its physical possession of the original note executed by Shields in favor of the lender. We affirm.

FACTS

In 2006, Michael Shields borrowed $380,000 from Saxon Mortgage Inc. To memorialize the obligation, Shields executed an adjustable rate note. To secure payment on the note, the parties executed a deed of trust encumbering real property owned by Shields in Renton, Washington.

Shortly after, Shields's loan was transferred to securitized trust Saxon Asset Securities Trust 2006-2, Mortgage Loan Asset Backed Certificates Series 2006-2, with Deutsche Bank National Trust Company designated as the trustee. Also in 2006, Deutsche Bank took possession of the original note. Saxon Mortgage specifically endorsed the note to Deutsche Bank and also endorsed the note in blank on an allonge.[1] Neither endorsement is dated.

Shields defaulted on the loan in June 2008 by failing to make payments due under the terms of the note. In connection with efforts to initiate nonjudicial foreclosure, Deutsche Bank issued notices of trustee's sale through a successor trustee in 2010 and again in 2012. Neither sale occurred. Deutsche Bank discontinued the 2012 sale after Shields filed a lawsuit seeking to enjoin the trustee's sale and raised additional claims against Deutsche Bank and others. In 2014, the trial court granted summary judgment in favor of Deutsche Bank and dismissed Shields's claims.

On August 15, 2014, Deutsche Bank filed a complaint for judicial foreclosure.[2] Shields moved to dismiss to the lawsuit. The trial court denied the motion to dismiss

---

[1] A "blank indorsement" is an endorsement that does not identify a person to whom the instrument is payable. RCW 62A.3-205(b). An "allonge" is a paper attached to a negotiable instrument for purposes of receiving further endorsements. BLACK'S LAW DICTIONARY 92 (10th ed. 2014).

[2] Deutsche Bank subsequently twice amended the complaint.

and later granted Deutsche Bank's motion for summary judgment and entered an order of judgment and decree of foreclosure. Shields appeals.

ANALYSIS

We review an order granting summary judgment de novo.[3] Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.[4] "In reviewing a summary judgment order, we view the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party."[5]

Shields contends summary judgment was improperly granted because Deutsche Bank was not the holder of the note and had "no legal right to commence foreclosure."[6]

A deed of trust may be judicially foreclosed to secure the performance of an obligation to the beneficiary by a borrower on a negotiable instrument such as a promissory note.[7] A "person entitled to enforce" a negotiable instrument is "the holder of the instrument."[8] The "holder" of a note is "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession."[9] A note endorsed in blank is payable to the bearer and "may be

---

[3] Deutsche Bank Nat. Trust Co. v. Slotke, 192 Wn. App. 166, 170, 367 P.3d 600, review denied, 185 Wn.2d 107, 377 P.3d 746 (2016).

[4] CR 56(c).

[5] Holmquist v. King County, 182 Wn. App. 200, 207, 328 P.3d 1000 (2014).

[6] Appellant's Br. at 2.

[7] Slotke, 192 Wn. App. at 171.

[8] RCW 62A.3-301; see also Brown v. Dep't of Commerce, 184 Wn.2d 509, 524-25, 359 P.3d 771 (2015); Bain v. Metro. Mortg. Grp., Inc., 175 Wn.2d 83, 104, 285 P.3d 34 (2012).

[9] RCW 62A.1-201(b)(21)(A).

negotiated by transfer of possession alone."[10] The holder of the note, which is the evidence of the debt, has the power to enforce the deed of trust because the deed of trust follows the note by operation of law.[11]

It is undisputed that Deutsche Bank possessed the note at all times relevant to this litigation. Nevertheless, Shields claims that Deutsche Bank could not enforce the note because the note was specifically endorsed to Deutsche Bank National Trust Company "as Trustee for *the registered holders of* Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2," whereas the party seeking foreclosure as identified by the caption of the complaint is "Deutsche Bank National Trust Company as Trustee for Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2."[12]

Both the endorsement and the complaint identify "Deutsche Bank National Trust Company" as trustee. Shields cannot demonstrate that the complaint fails to satisfy our state's liberal notice pleading standards because it omits the phrase "the registered holders of" in designating the name of the trust.[13] Shields also fails to explain why Deutsche Bank's possession of the note is not dispositive because in addition to the specific endorsement, the note was also endorsed in blank on the allonge. Deutsche

---

[10] RCW 62A.3-205(b).

[11] Bain, 175 Wn.2d at 104 (the deeds of trust act "contemplates that the security instrument will follow the note, not the other way around").

[12] Clerk's Papers (CP) at 1, 960 (emphasis added).

[13] Pacific Northwest Shooting Park Ass'n v. City of Sequim, 158 Wn.2d 342, 352, 144 P.3d 276 (2006) (notice pleading "requires a simple concise statement of the claim and the relief sought") (citing CR 8(a)); State v. Adams, 107 Wn.2d 611, 620, 732 P.2d 149 (1987) ("pleadings are to be liberally construed; their purpose is to facilitate a proper decision on the merits, not to erect formal and burdensome impediments to the litigation process").

Bank's production of the original note, endorsed in blank, for inspection by the trial court was sufficient to prove its status as the holder of Shields's note.[14] Finally, the Uniform Commercial Code, Title 62A RCW, requires only that the trustee, not the beneficiary, be named as the party to whom the instrument is payable.[15] Shields presents no compelling argument that the failure to reference the "registered holders" of the trust in the complaint affects the authority of the trustee to enforce the terms of the note.

Shields also points to variances in the name of the trust that appear in documents executed in 2008 and 2010 which assign a beneficial interest in the deed of trust.[16] But again, the holder is entitled to enforce the terms of the note.[17] And Shields offers no authority suggesting that assignments of interest negotiate the note or otherwise affect the determination of the entity entitled to enforce the note. As explained, because it is undisputed that Deutsche Bank possessed the note, both endorsed in blank and specifically endorsed to Deutsche Bank as trustee, Deutsche Bank was the holder of the note.

---

[14] See Slotke, 192 Wn. App. at 175-76.

[15] RCW 62A.3-110(2)(i) (if an instrument is payable to a trust, "the instrument is payable to the trustee . . . whether or not the beneficiary or estate is also named"). Shields maintains in his reply brief that this provision is material only to the issue of whether Deutsche Bank is the holder of the note, but that in order to enforce the deed of trust, an entity must be both the holder and owner of the note. This position is at odds with our Supreme Court's analysis. Brown v. Dep't of Commerce, 184 Wn.2d 509, 524-25, 359 P.3d 771 (2015); see also Slotke, 192 Wn. App. at 173.

[16] In the assignment recorded in 2008, Saxon Mortgage, Inc. assigned its beneficial interest in the deed of trust to "Deutsche Bank National Trust Company" as trustee for "Saxon Asset Securities Trust 2006-2." CP at 63. The assignment recorded in 2010 again assigns beneficial interest to Deutsche Bank as trustee, and the name of the trust matches the name of trust stated in the endorsement on the note. CP at 65.

[17] RCW 62A.3-301.

Shields also claims that Deutsche Bank is not the real party of interest under CR 17(a) and cannot maintain this legal action as a foreign entity according to RCW 23.95.505(2). But CR 17(a) explicitly allows a trustee to maintain a legal action. And even assuming that Deutsche Bank is not registered under the Uniform Business Organizations Code to do business in Washington state, a separate provision of the statute, RCW 23.95.520(h), provides that enforcing mortgages or security interests in property does not constitute doing business for purposes of registration of a foreign business entity.

Shields also challenges the court's order on procedural grounds. He maintains that the court granted summary judgment based on Deutsche Bank's representation that the endorsement on the note exactly matched the caption of the complaint and on the condition that Deutsche Bank file such a note, but that condition was not met. In fact, the record shows that although the complete copy of the note including the endorsement from Saxon Mortgage to Deutsche Bank was not attached to the original or first amended complaint, the court reviewed the original note at the summary judgment hearing and determined that the note was specifically endorsed to Deutsche Bank as trustee. Deutsche Bank's counsel complied with the court's request to scan and file a copy of the original note to make it a part of the record.

Shields identifies no evidence that creates a genuine issue of material fact about Deutsche Bank's status as the holder of the note. We therefore decline to address Deutsche Bank's alternative argument that Shields's arguments are barred by collateral estoppel.

Finally, Deutsche Bank argues it is entitled to attorney fees and costs on appeal pursuant to RCW 4.84.330, RAP 14, and RAP 18.1. RCW 4.84.330 permits a party to recover reasonable attorney fees and costs in any action on a contract where the contract provides for this award. Here, the note provides that the lender "will have the right to be paid back by [the borrower] for all of its costs and expenses in enforcing this [n]ote to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees."[18] RAP 14.2 provides for an award of costs to the substantially prevailing party on review, and RAP 18.1(a) allows a party to recover reasonable attorney fees or expenses on appeal if applicable law grants the party the right to recover these fees and expenses. Because Deutsche Bank has prevailed on appeal, its reasonable attorney fees and costs incurred on appeal are awarded upon compliance with RAP 18.1.

Affirmed.

WE CONCUR:

COX, J.

[18] CP at 958.

FILED
11/9/2017
Court of Appeals
Division I
State of Washington

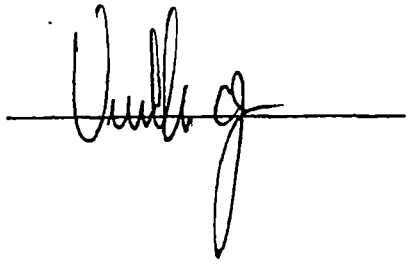
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

DEUTSCHE BANK NATIONAL TRUST COMPANY, as trustee for Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates Series 2006-2, Respondent, v. MICHAEL SHIELDS; BONNIE SHIELDS, Appellants, FIDELITY NATIONAL TITLE INSURANCE COMPANY; SAXON MORTGAGE, INC., Defendants.	)	No. 75044-5-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellants have filed a motion for reconsideration of the court's October 2, 2017 opinion. Following consideration of the motion, the panel has determined it should be denied. Now, therefore, it is hereby

ORDERED that the appellants' motion for reconsideration is denied.

FOR THE PANEL:



RCW 62A.1-201

General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this title that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this title that apply to particular articles or parts thereof:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in RCW **62A.1-303**.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this title may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from

surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by this title as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith," except as otherwise provided in Article 5 of this title, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" with respect to a negotiable instrument, means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this title.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A of this title. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under RCW **62A.2-401**, but a buyer may also acquire a "security interest" by complying with Article 9A of this title. Except as otherwise provided in RCW **62A.2-505**, the right of a seller or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9A of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under RCW **62A.2-401** is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to RCW **62A.1-203**.

(36) "Send" in connection with a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

[**2012 c 214 § 109; 2001 c 32 § 9;** 2000 c 250 § 9A-802; **1996 c 77 § 1.** Prior: 1993 c 230 § 2A-602; **1993 c 229 § 1; 1992 c 134 § 14; 1990 c 228 § 1; 1986 c 35 § 53; 1981 c 41 § 2;** 1965 ex.s. c 157 § 1-201.]

NOTES:

Reviser's note: This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW **62A.1-201**. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.

HEREIN SUBD.		COMPARE FORMER
(1)	RCW:	(i) 22.04.585(1)
		(ii) 62.01.191
		(iii) 63.04.755(1)
		(iv) 81.32.531(1)
(2)		None
(3)		None
(4)	RCW:	(i) 30.52.010
		(ii) 62.01.191
(5)	RCW	62.01.191
(6)	RCW	81.32.011[1]
(7)		None
(8)		None
(9)	RCW	61.20.010
(10)		None
(11)	RCW:	(i) 63.04.040
		(ii) 63.04.720
(12)		None

HEREIN SUBD.		COMPARE FORMER
(13)	RCW	63.04.755(1)
(14)	RCW:	(i) 22.04.585(1)
		(ii) 62.01.191
		(iii) 63.04.755(1)
		(iv) 81.32.531(1)
(15)	RCW	63.04.755(1)
(16)	RCW	63.04.755(1)
(17)	RCW:	(i) 22.04.585(1)
		(ii) 63.04.060
		(iii) 63.04.070
		(iv) 63.04.755(1)
(18)		None
(19)	RCW:	(i) 22.04.585(2)
		(ii) 23.80.220(2)
		(iii) 63.04.755(2)
		(iv) 81.32.531(2)
(20)	RCW:	(i) 22.04.585(1)
		(ii) 62.01.191
		(iii) 81.32.531(1)
(21)		None
(22)		None
(23)	RCW	63.04.755(3)
(24)	RCW	62.01.006(5)
(25)	RCW	62.01.056
(26)		None
(27)		None
(28)	RCW:	(i) 22.04.585(1)
		(ii) 23.80.220(1)
		(iii) 61.20.010
		(iv) 62.01.191
		(v) 63.04.755(1)
		(vi) 81.32.531(1)
(29)		None
(30)	RCW:	(i) 22.04.585(1)
		(ii) 23.80.220(1)

HEREIN SUBD.		COMPARE FORMER
		(iii) 61.20.010
		(iv) 62.01.191
		(v) 63.04.755(1)
		(vi) 81.32.531(1)
(31)		None
(32)	RCW:	(i) 22.04.585(1)
		(ii) 23.80.220(1)
		(iii) 61.20.010
		(iv) 63.04.755(1)
		(v) 81.32.531(1)
(33)	RCW:	(i) 22.04.585(1)
		(ii) 23.80.220(1)
		(iii) 61.20.010
		(iv) 63.04.755(1)
		(v) 81.32.531(1)
(34)		None
(35)		None
(36)		None
(37)	RCW	61.20.010
(38)		None
(39)		None
(40)		None
(41)		None
(42)		None
(43)		None
(44)	RCW:	(i) 22.04.585(1)
		(ii) 23.80.220(1)
		(iii) 61.20.010
		(iv) 62.01.025
		(v) 62.01.026
		(vi) 62.01.027
		(vii) 62.01.191
		(viii) 63.04.755(1)
		(ix) 81.32.531(1)
(45)	RCW:	(i) 22.04.020

HEREIN SUBD.		COMPARE FORMER
		(ii) 63.04.755(1)
(46)	RCW	62.01.191

[1]The repeal of RCW sections 81.32.010 through **81.32.561** ". . . shall not affect the validity of sections 81.29.010 through **81.29.050**, chapter 14, Laws of 1961 (RCW **81.29.010** through **81.29.050**)." Section 10-102(a)(xvii), chapter 157, Laws of 1965 ex. sess.

Application—Savings—2012 c 214: See notes following RCW **62A.1-101**.

Effective date—2001 c 32: See note following RCW **62A.9A-102**.

Effective date—2000 c 250: See RCW **62A.9A-701**.

Effective date—1993 c 230: See RCW **62A.11-110**.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW **62A.11-111** and **62A.11-112**.

Short title—1992 c 134: See RCW **63.19.900**.

Effective date—1981 c 41: See RCW **62A.11-101**.

RCW 61.24.005

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.

(2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

(3) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

(4) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

(5) "Department" means the department of commerce or its designee.

(6) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

(7) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

(8) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.

(9) "Housing counselor" means a housing counselor that has been approved by the United States department of housing and urban development or approved by the Washington state housing finance commission.

(10) "Owner-occupied" means property that is the principal residence of the borrower.

(11) "Person" means any natural person, or legal or governmental entity.

(12) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

(13) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit. For the purposes of the application of RCW **61.24.163**, owner-occupied residential real property includes residential real property of up to four units.

(14) "Senior beneficiary" means the beneficiary of a deed of trust that has priority over any other deeds of trust encumbering the same residential real property.

(15) "Tenant-occupied property" means property consisting solely of residential real property that is the principal residence of a tenant subject to chapter **59.18** RCW or other

building with four or fewer residential units that is the principal residence of a tenant subject to chapter **59.18** RCW.

(16) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW **61.24.010**(2).

(17) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

[**2014 c 164 § 1.** Prior: **2011 c 364 § 3; 2011 c 58 § 3;** prior: **2009 c 292 § 1; 1998 c 295 § 1.**]

NOTES:

Findings—Intent—2011 c 58: "(1) The legislature finds and declares that:

(a) The rate of home foreclosures continues to rise to unprecedented levels, both for prime and subprime loans, and a new wave of foreclosures has occurred due to rising unemployment, job loss, and higher adjustable loan payments;

(b) Prolonged foreclosures contribute to the decline in the state's housing market, loss of property values, and other loss of revenue to the state;

(c) In recent years, the legislature has enacted procedures to help encourage and strengthen the communication between homeowners and lenders and to assist homeowners in navigating through the foreclosure process; however, Washington's nonjudicial foreclosure process does not have a mechanism for homeowners to readily access a neutral third party to assist them in a fair and timely way; and

(d) Several jurisdictions across the nation have foreclosure mediation programs that provide a cost-effective process for the homeowner and lender, with the assistance of a trained mediator, to reach a mutually acceptable resolution that avoids foreclosure.

(2) Therefore, the legislature intends to:

(a) Encourage homeowners to utilize the skills and professional judgment of housing counselors as early as possible in the foreclosure process;

(b) Create a framework for homeowners and beneficiaries to communicate with each other to reach a resolution and avoid foreclosure whenever possible; and

(c) Provide a process for foreclosure mediation when a housing counselor or attorney determines that mediation is appropriate. For mediation to be effective, the parties should attend the mediation (in person, telephonically, through an agent, or otherwise), provide the necessary documentation in a timely manner, willingly share information, actively present, discuss, and explore options to avoid foreclosure, negotiate willingly and cooperatively, maintain a professional and cooperative demeanor, cooperate with the mediator, and keep any agreements made in mediation." [**2011 c 58 § 1.**]

Short title—2011 c 58: "This act may be known and cited as the foreclosure fairness act." [**2011 c 58 § 2.**]