

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RESIDENTIAL CAPITAL LLC et al.,

Debtors.

)
) Case No. 12-12020 (MG)
)

) Chapter 11
)

) Jointly Administered
)
)
)

RESPONSE TO DEBTORS' OBJECTION (7017, 7018) TO PROOFS OF CLAIM

Claimants: FRANK REED, CHRISTINA REED

Proof of Claim Nos.: 3708, 3759, 4736, 4759



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Claimants/creditors Frank Reed and Christina Reed submit the following Response to the May 29, 2014 Objection (documents 7017 and 7018) of the ResCap Borrower Claims Trust (hereinafter "ResCap Trust") to their claims, numbers 3708, 3759, 4736 and 4759:

I. PRELIMINARY STATEMENT

1. In 2009 it was found that the debtors committed a wrongful in act 2008. The Chancery Court of Burlington County, NJ found as a matter of fact and law that the debtors had filed a foreclosure action against the Reeds that was not allowed by law, and as it was found to be wrongful, it was appropriately dismissed in February 2009. (See the Chancery Court's order of dismissal and its corresponding opinion). However, debtors' wrongful act had both instant and far reaching consequences for the Reeds. Consequences which have wrought both instant and long term devastating financial harm to the Reeds.

2. As a result of the debtors' wrongful foreclosure and the consequences thereof, the Reeds filed a state court action in New Jersey against GMAC and Residential Funding seeking damages based on negligence, breach of contract and other causes of action. The state court lawsuit reached the late discovery stage of litigation. Within the context of the Reeds' civil action in New Jersey, GMAC and Residential Funding attacked the Reeds' negligence and breach of contract claims via a motion to dismiss for failure to state a claim. The state court denied the motion and specifically held that the Reeds had stated a cognizable claim for both negligence and breach of contract under New Jersey law. Significant discovery was exchanged in the state court action, including the Reeds' retention of an expert witness on issues of foreseeability and damages, resulting on the provision of an expert report (see Evan Hendricks Expert Report). Indeed, GMAC challenged the Reeds' expert report via motion to strike, and the state court again disagreed with GMAC, holding that the report was valid and admissible

evidence. The Reeds ultimately discontinued the state court action without prejudice in a good faith attempt, [as participant of the Federal Reserve Consent Order,] to conserve judicial resources and the resources of the parties.

3. Now, as the pursuit of justice continues in this forum, it must, as a matter of necessity, be determined what kind of legal and/or equitable species of wrongful act the debtors actually perpetrated so they may be appropriately held to account for their wrongful behavior. (Was debtor's wrongful act negligence, a breach of contract, a breach of common law contract doctrines, a breach of a statute with a private right of action, or even a wrongful act - otherwise unactionable on its own – but nonetheless, the cause of the unjust enrichment of the debtors?)

4. It is within the pages of this document, and the Reeds' previous legal and equitable filings, that both the appropriate analysis and answers lie.

5. For the convenience of the Court and any all parties in interest an accurate summation of that analysis is as follows:

- a state court has already determined as a matter of law that the Reeds have a cognizable claim of negligence and breach of contract under New Jersey law. (See: briefs and court's order denying debtors' state court motion to dismiss the Reeds' state court action for failure to state a claim).
- additionally, the state court recognized that there also existed a cognizable claim under both the Consumer Fraud Act and Punitive Damages Act under New Jersey law. This was determined on the state court's consideration and approval of the Reeds' opposed motion to amend their original complaint. (see state court motion to amend, objection and order)
- in addition, a state court has already determined as a matter of law that certain

evidence (in the form of the Reeds' expert report), supporting the claim of negligence, as well as the Reeds' damages resulting from debtors' wrongful acts, are indeed admissible as proof against the debtors. (See: order denying debtor's motion to strike the testimony of the Reeds' expert witness).

- the debtor's regulators have openly characterized that the very type of wrongful act committed by the debtors is negligent.
- notwithstanding the preclusive effect of the aforementioned state court rulings, there exists copious amounts of clear and convincing evidence, along with on-point controlling law, which definitively proves that the debtors have committed negligent acts, breaches of contract, breaches of common law contract doctrines, and violations of various state statutes, and that they have been unjustly enriched.

II. THE OBJECTION TO PROOFS OF CLAIM MUST BE DENIED/DISMISSED BECAUSE IT IS MANIFESTLY APPARENT FROM THE OBJECTION THAT DEBTORS FAILED TO REVIEW AND ANALYZE CLAIMANTS' SUBSTANTIAL AND SUBSTANTIVE FILED PROOFS

6. It is manifestly apparent from the statements and arguments contained in the Objection that, in formulating its arguments and positions regarding the Claimants' proofs of claim, the ResCap Trust failed to review and analyze the Claimants' substantial and substantive proofs and supplemental submissions.

7. Indeed, the Objection contains clear examples of the ResCap Trust's failure to review the proofs and documents submitted with respect to the Reeds' claims, including, even, statements in the Objection which are wholly contrary to the record.

8. For instance, a review of the Objection, together with the Claimants' submitted proofs and the supplemental submissions requested by the ResCap Trust, reveals that the ResCap Trust either misstated or simply did not examine the following (this is a non-exhaustive listing):

- Numerous appraisals of the subject property and the effect thereon of the wrongful foreclosure
- below market offers to purchase the property in question
- a letter from TD Bank, required by the Equal Credit Opportunity Act, stating that the only reason that the Reeds' cash out refinance was denied was the GMAC foreclosure action
- letters from Mr. Reed's accountant and personal attorney opining to the fact that he relied on his financing relationships to buy and sell property for profit
- ignoring the fact that the Reeds in fact attempted to avail themselves of the loan modification or refinance, and inaccurately stating in their Objection, that the Reeds did not
- raising and objecting to any res judicata effect of the state court actions between the parties, where, prior to the filing of this Response, the Reeds did not specifically raise or reference res judicata, but rather, previously specifically raised collateral estoppel – which the ResCap Trust completely ignores in its Objection.

9. It is apparent from the referenced sampling above that the ResCap Trust has carelessly filed its Objection without even having reviewed the substance and content of the Claimants' proofs and the supplemental submissions requested by ResCap and provided by Claimants in July 2013. (See, for example, exhibits attached, consisting of supplemental submission by Claimants with respect to Claim No. 3708.)

10. It is an unfair affront to the Claimants and the Court, and is a waste of judicial resources, to have to engage in an in-depth review of the record, the proofs and the Objection

itself in an effort to reconcile and decipher what the ResCap Trust carelessly omitted from its review prior to making its Objection – including ResCap Trust’s neglecting to consider the whole of the Claimants’ supplemental submission of over 300 pages and 29 multi-document exhibits.

11. This being so, the Objection should be denied and dismissed in its entirety.

III. RESPONSES TO SPECIFIC OBJECTIONS

12. Notwithstanding section II. immediately above, Claimants/creditors Frank Reed and Christina Reed submit the following Responses to the specific Objections raised by The ResCap Borrower Claims Trust:

A. No Private Right of Action Under the Fair Foreclosure Act

13. The ResCap Trust takes the position that the Fair Foreclosure Act does not contain or establish a private right of action, and therefore, “all of the Reeds claims fail as a matter of law”. See Objection, Section V.B., at ¶¶ 32-34.

14. Claimants, however, have not asserted, nor do they assert now, that the Fair Foreclosure Act provides a *statutory* private right of action. Indeed, it does not (unlike, for instance a Consumer Fraud Act statute, which generally does contain a statutory private right of action).

15. Rather, as set forth in Claimants’ proofs and as discussed herein, the debtors’ undisputed violation of the Fair Foreclosure Act is a part of the factual background giving rise to Claimants’ tort, contractual and common law claims against the debtors.

16. Indeed, the debtors’ violation of the Fair Foreclosure Act, and other related wrongful acts and/or omissions, set into motion a series of events which damaged the Claimants. The nature and extent of such damage has been specifically detailed in Claimants proofs and

submissions, supported by evidence, legal authority, and expert witnesses.

17. Accordingly, it is respectfully submitted that the ResCap Trust objection regarding the Fair Foreclosure Act, as contained in Section V.B. of the Objection, is misplaced and is a moot point of law as respects the Reeds' claims.

B. The Reeds Fail to Establish a Claim for Negligence

18. The ResCap Trust takes the position that the Claimants' have failed to establish a claim for negligence under New Jersey law, stating in cursory fashion that: they have not established a duty of care; the debtors acted reasonable under the circumstances (in filing a lis pendens and foreclosure action without providing contractually and statutorily required notice or complying with statutory prerequisites); and that the Claimants have not provided any credible evidence to establish any damages. See Objection, Section V.C.iv, at ¶¶ 56-60.

19. The ResCap Trust conveniently ignores the fact that the issue of whether the Reeds have valid claim for negligence has already been determined in their favor in the parties' previous state court litigation.

20. The ResCap Trust is barred from revisiting that issue and dispute in this bankruptcy matter by virtue of collateral estoppel, the Rooker-Feldman doctrine, and/or *res judicata*.

21. Furthermore, assuming arguendo that the prior litigation and substantive court determinations in Claimants' favor are not binding in this bankruptcy action with respect to those issues as detailed herein, the Claimants have indeed stated and established a claim for negligence against the debtors under New Jersey law.

Collateral Estoppel

22. It is the Reeds' position that the issue of whether they have stated a valid claim

for negligence against GMAC and Residential Funding has already been litigated in state court and determined in the Reeds' favor, and so, the Debtors' challenge, via its Objection (see Objection at ¶¶ 56-60), as to whether the Reeds have stated a cause of action for negligence, should be barred by collateral estoppel.

23. Collateral estoppel, or issue preclusion, is distinct from *res judicata* – the preclusionary doctrine which the debtors cherry picked to briefly focus on in their Objection. See Objection, Section V.C.viii, at ¶¶ 72-74.

24. “[U]nder collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.” Burgos v. Hopkins, 14 F.3d 787, 789 (2d Cir. 1994). See Brown v. Felsen, 442 U.S. 127, 99 S.Ct. 2205, 2209 (1979)(if, in the course of adjudicating a state-law question, a state court should determine factual or legal issues, then collateral estoppel would bar relitigation of those issues in the bankruptcy court). See Restatement (Second) of Judgments § 27 (1982)(collateral estoppel, or issue preclusion, is an equitable principle that arises “[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim”).

25. It is well accepted that, in the case of prior state court orders or judgments, federal courts are required to give preclusive effect to state court judgments whenever the courts of the state in which the judgments were rendered would do so. See Allen v. McCurry, 449 U.S. 90, 96, 101 (1980)). In determining whether to give collateral estoppel effect to a prior state court order or judgment, federal courts look to the relevant state preclusion law. See Conopco, Inc. v.

Roll Intern., 231 F.3d 82, 87 (2d Cir. 2000), see Full Faith and Credit Act, 28 U.S.C. § 1738 (1994).

26. In the matter at bar, the relevant state – New Jersey – applies collateral estoppel to preclude relitigation of issues that were previously decided.

27. Under New Jersey law, the doctrine of collateral estoppel operates to foreclose relitigation of an issue if the following factors are met: (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding. See Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521, 897 A.2d 1003 (2006); In re Estate of Dawson, 136 N.J. 1, 20–21, 641 A.2d 1026 (1994); Hogg's v. New Jersey, 352 Fed.Appx. 625, 629, 2009 WL 2873251 (3rd Cir. (N.J.) 2009). See also In re Azeglio, 422 B.R. 490, 494 (Bkrcty. D.N.J. 2010)(“Like federal principles of collateral estoppel, New Jersey courts follow the collateral estoppel guidelines laid out in the Restatement (Second) of Judgments”).

28. “Fundamental to the application of estoppel is an assessment of considerations such as finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness. Indeed, such broader notions about fairness and finality echo in the variety of considerations that equity applies in estoppel-like circumstances.” Winters v. North Hudson Regional Fire and Rescue, 212 N.J. 67, 85-87, 50 A.3d 649, 659-60 (2012)(internal citations and quotation marks omitted).

29. “Unlike claim preclusion, the effectiveness of issue preclusion, sometimes called

collateral estoppel, does not require the entry of a judgment, final in the sense of being appealable. As the Supreme Court of New Jersey noted in Hills Dev. Co. v. Township of Bernards, 103 N.J. 1, 510 A.2d 621, 652 (1986), “*res judicata* is applicable only when a final judgment is rendered, and the doctrine of collateral estoppel applies whenever an action is ‘sufficiently firm to be accorded conclusive effect.’ Restatement (Second) of Judgments, § 13 at 132.” In re Brown, 951 F.2d 564, 569 (3d Cir. 1991)(“*Hills Development* is strong evidence that the Supreme Court of New Jersey is in agreement with section 13 of the Restatement (Second) of Judgments. Although we have discovered no cases from that Court specifically addressing the issue, we are confident enough that the Restatement will be considered expressive of New Jersey law on issue preclusion that we apply it here”); Dyndul v. Dyndul, 620 F.2d 409, 412 (3d Cir. 1980)(“[f]inality for purposes of issue preclusion is a more ‘pliant’ concept than it would be in other contexts”).

30. Further, the Restatement (Second) of Judgments § 27(d) (1982) provides that an issue can be resolved for collateral estoppel purposes even where it was decided as part of a denial of a dispositive motion or an interlocutory order:

“An issue may be submitted and determined on a motion to dismiss for failure to state a claim, a motion for judgment on the pleadings, a motion for summary judgment[,] . . . a motion for directed verdict, or their equivalents, as well as on a judgment entered on a verdict. A determination may be based on a failure of pleading or of proof as well as on the sustaining of the burden of proof.”

31. In the matter at bar: the parties and the relevant issue are the same (*to wit*, whether the Reeds have stated a valid claim for negligence against GMAC and Residential Funding); the parties had a full and fair opportunity to litigate the failure to state a claim issue in state court; the litigation of the issue resulted in an Order denying the GMAC’s and Residential Funding’s motion to dismiss based on the state court’s substantive finding that the Reeds had sufficiently

pled a claim for negligence against GMAC and Residential Funding under New Jersey law.

32. Similarly, the state court granted the Reeds' motion to amend their complaint to add punitive damages and consumer fraud claims against GMAC and Residential Funding, rejecting the debtors' opposition arguments that the claims could not be sustained.

33. Therefore, the Debtors are barred from relitigating the issue which they have raised in their Objection concerning whether the Reeds stated a valid negligence claim.

Rooker-Feldman Doctrine

34. In addition, it is the Reeds' position that since the issue of whether they have stated a valid claim for negligence against GMAC and Residential Funding has already been litigated in state court, the Debtors' challenge, via its Objection (see Objection at ¶¶ 56-60), as to whether the Reeds have stated a cause of action for negligence, should be barred by the Rooker-Feldman Doctrine.

35. The Rooker-Feldman doctrine bars a federal court from reviewing a state court judgment. In re GEL, LLC, 495 B.R. 240, 246 (Bankr. E.D.N.Y. 2012).

36. Specifically, the doctrine bars "state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 287 (2005).

37. For Rooker-Feldman to apply, four requirements must be met: (1) the case must be brought by a state court loser; (2) the state court loser must be complaining of injuries caused by a state-court judgment; (3) the state court loser must be inviting review of the state court judgment; and (4) the judgment must have been rendered before the federal proceedings commenced. See Hoblock v. Albany Cnty. Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005);

Green v. Mattingly, 585 F.3d 97, 101 (2d Cir. 2009).

38. Here, the four requirements are met: (1) GMAC and Residential Funding were state court losers on multiple issues, including rulings against them which held their foreclosure was wrongful, and that Reeds had cognizable claims under New Jersey law for negligence, breach of contract and punitive damages, and on the issue of whether the Reeds' expert report as to foreseeability and damages was appropriate and admissible; (2) GMAC and Residential Funding are complaining of injuries caused by the state-court decisions in that, challenging them via their Objection, the state court decisions are injurious to them as it exposes them to further litigation and risk vis a vis potential liability and the decisions' preclusive effects in favor of the Reeds; (3) GMAC and Residential Funding de facto invite the Bankruptcy Court to review the state court decisions by their asking the Bankruptcy Court, via the Objection, to disregard the holdings of the state court; and (4) the decisions in question were rendered before these federal proceedings commenced.

39. Accordingly, the Rooker-Feldman requirements are met, and the doctrine applies to preclude the debtors from challenging, within this bankruptcy proceeding and via their Objection, the adverse decisions made by the New Jersey state court as between these same parties.

Res Judicata

40. Furthermore, *res judicata* bars the debtors' current reargument of the claims that were litigated in the parties' previous proceedings.

41. The doctrine has the following elements: "(1) the final judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out

of the same transaction or occurrence as the claim in the earlier one.” McNeil v. Legislative Apportionment Comm'n of the State of N.J., 177 N.J. 364, 828 A.2d 840, 859 (2003).

42. The debtors raised virtually identical arguments against the Reeds in the parties’ prior New Jersey action which arose out of the debtors’ wrongful foreclosure. There, the court held that the Claimants had made cognizable claims under New Jersey law for negligence, breach of contract, punitive damages and consumer fraud. Accordingly, *res judicata* precludes federal court review of any of these claims presented in this case. See Hogg's v. New Jersey, 352 Fed.Appx. 625, 629, 2009 WL 2873251 (3d Cir. 2009).

Preclusionary Doctrines Aside, Negligence Established by Claimants

43. Under general principles of tort law in New Jersey, “there are two essential elements of a cause of action based on the alleged negligence of a tortfeasor which must exist in order to make that cause of action viable and a suit based thereon maintainable, namely, the act of negligence itself and a consequential injury resulting therefrom.” White v. Mattera, 175 N.J. 158, 165, 814 A.2d 627, 631-32 (2003).

44. “In order to prevail on a negligence claim under New Jersey law a plaintiff must satisfy a three-part test. The plaintiff must show that there was a duty on the part of the defendant towards the plaintiff, a breach of that duty, and evidence that the breach was the proximate cause of the injury to the plaintiff.” MCI Worldcom Network Services, Inc. v. Glendale Excavation Corp., 224 F.Supp.2d 875, 878 (D.N.J. 2002)(holding that the defendant’s failure to comply with its statutory obligation to call a utility company prior to performing excavation work was *prima facie* evidence of negligence). See also Robinson v. Vivirito, 217 N.J. 199, 208, 86 A.3d 119, 124 (2014)(“The fundamental elements of a negligence claim are a duty of care owed by the defendant to the plaintiff, a breach of that duty by the defendant, injury to the plaintiff

proximately caused by the breach, and damages. The issues of whether a defendant owes a legal duty to another and the scope of that duty are generally questions of law for the court to decide. The determination of the existence of a duty of care to avoid harm to another is ultimately governed by fairness and public policy. Foreseeability is a critical but not dispositive factor in the analysis of whether a duty of care to avoid harm to a third party is recognized”(internal citations omitted).

45. In this matter, the debtors’ duty to the Reeds is established by the foreseeability of the harm that they could cause by not acting in a prudent fashion, and by acting contrary to their contractual and statutory obligations.

46. The Reeds’ expert witness has opined in his report that it was foreseeable or should have been foreseeable by the debtors that their filing of a foreclosure action without completing all the requirements under the statutory scheme which was created for the protection of borrowers such as Mr. Reed, was imprudent behavior that would cause damage. (see Hendirck report).

47. The ResCap Trust has wholly ignored and disregarded the substantial evidentiary proofs submitted by the Claimants.

Negligence / Wrongful Act – the Regulator’s Definition

48. Although the Reeds set forth herein the various elements in fact and law which comprise the tort of negligence, and supply various corresponding factual proofs, as well as the relevant measure to gauge the wrongfulness of the debtors’ actions, one need not have to look further than the opinion of the Debtors’ Primary regulator, the Federal Reserve Board (FRB), for a clear definition and conceptualization of wrongful and/or negligent behavior, relevant to Claimants’ proof of claim.

49. It is respectfully submitted that this Court should take judicial notice of the testimony before the United States Senate; testimony that is a matter of the public record and was given by and on behalf of the Debtor's regulator, the FRB. This testimony by and on behalf of the Debtor's regulator provides a definitive definition of what actions by the Debtor, (and similarly regulated entities), constitute negligent and/or wrongful behavior.

50. Specifically, the General Counsel of the FRB, acknowledging the patterns of misconduct and negligence in the processing of foreclosures, testified, in relevant part:

"The Federal Reserve's...foreclosure review process as well as...the enforcement action that the Board issued in April 2011...were taken in response to patterns of misconduct and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing...and represented significant and pervasive failure as well as unsafe and unsound practices."

[Statement of Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve System: Submitted to the Senate Committee on Banking, Housing, and Urban Affairs Subcommittee On Housing, Transportation, and Community Development - U.S. Senate, Washington, D.C. - December 13, 2011].

51. More specifically defining the actual categories of negligent acts, is the following testimony:

*2. The servicer **initiated foreclosure** or conducted a foreclosure sale **in advance of the time allowed for foreclosure under the terms of the note and mortgage or applicable state law.***

*14. **The servicer initiated foreclosure** or completed a foreclosure sale **without providing adequate notice as required under applicable law,***

[Testimony of Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency, Before the Subcommittee on Housing Transportation, and Community Development of the Committee on Banking Housing, and Urban Affairs, United States Senate, December 13, 2011] (emphasis added).

52. It is without question that the debtors did in fact commit the acts described in items 2 and 14 of the Testimony cited immediately above vis a vis the Reeds. This was determined as a matter of fact and law in the 2009 dismissal of the debtors' 2008 foreclosure action against the Reeds.

53. Additionally, the FRB found and stated publicly and before Congress the following:

"The reviews also revealed that all of the services relied heavily on outsourcing arrangements with outside counsel and other third-party vendors to carry out foreclosure processes without adequate oversight of those arrangements." [...]

"The agencies, (FRB being one), found that the servicers reviewed, (the debtors being among those), did not properly structure, carefully conduct, or prudently manage their third party vendor relationships with outside law firms (the law firms actually conducting the foreclosure litigation)".

[Interagency Review of Foreclosure Policies and Practices, Federal Reserve System, Office of the Comptroller of the Currency Office of Thrift Supervision, Washington, D.C., April 2011, (pp.8 and 9 respectively)] (emphasis added).

54. Therefore, the combination of the authoritative definition provided by the debtors' regulator as to what comprises a negligent and/or wrongful act by the debtor and the factual determination by the New Jersey Chancery Court in the 2009 dismissal of the debtors' foreclosure action, in which it was necessarily determined that the foreclosure action was both untimely and in violation of New Jersey foreclosure law, the debtors', as a matter of law, have indisputably committed both a negligent and / or a wrongful act against the Reeds.

55. If the Court does not agree with the analysis above, Claimants respectfully submit that it should consider, at the very least, that regulator's opinion regarding the characterization of the debtors' behavior as clear and convincing evidence of negligence and/or wrongful acts.

56. In the matter at bar, it is undisputed that the debtors wrongfully and negligently

(or with gross negligence) foreclosed on the Reeds' property without proper notice in violation of the Fair Foreclosure Act, and that the debtors' acts and omissions caused corresponding damage to the Reeds as described herein and as supported by their submitted proofs.

57. "The institution of foreclosure is traumatic to the debtor mortgagor and creates a permanent court record which can be injurious to the debtor's credit. The notice of intention is meant to give the debtor a chance to prevent acceleration and institution of Foreclosure. Obviously giving the notice after Foreclosure has been instituted will not effectuate this legislative purpose." 30 N.J.Prac. Law of Mortgages § 24.16 (2d ed. 2008).

58. Accordingly, it is respectfully submitted that the Objection must be denied.

C. The Reeds Fail to Establish a Claim for Breach of Contract

59. The ResCap Trust takes the position that the Claimants' have failed to establish a claim for breach of contract under New Jersey law, stating in cursory fashion that the debtors' violation of the Fair Foreclosure Act does not constitute a breach of contract. See Objection, Section V.C.v, at ¶¶ 61-62.

60. Yet again, the ResCap Trust completely ignores the Claimants' submissions and proofs in stating its Objection.

61. Worse, the ResCap Trust completely ignores the very contracts which are relevant to the dispute between the parties – the mortgage document and note. See Mortgage at Doc 7017-6, pg 62-74 of Exhibit 3, Delehey Declaration; see Note at Doc 7017-6, pg 55-61 of Exhibit 3, Delehey Declaration.

62. The Mortgage at issue explicitly required that the Reeds be provided notice at least 30 days prior to acceleration of the mortgage obligation, and required that the notice inform the Reeds of specific information as set forth therein. Notably, the Mortgage itself explicitly and

contractually required the debtors to also provide “any other disclosure required under the Fair Foreclosure Act. See Mortgage at Doc 7017-6, pg 72 of Exhibit 3, Delehey Declaration.

63. Section 22 of the Mortgage states:

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 [pertaining to transfer of the property without the lender’s consent] 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 the Borrower, by which the default must be cured; (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, foreclosure by judicial proceeding and sale of the Property; (e) the Borrower’s right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure; and (f) any other disclosure required under the Fair Foreclosure Act, codified at §§ 2A:50-53 et seq. of the New Jersey Statutes, or other Applicable Law. If the default is not cured on or before the date specified on 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 foreclose this Security Instrument by judicial proceeding.

[Doc 7017-6, pg 72 of 103 of Exhibit 3, Delehey Declaration].

64. Furthermore, Section 8 of the Note states:

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me [the Claimants] 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.

[Doc 7017-6, pg 57 of 103 of Exhibit 3, Delehey Declaration].

65. “To establish a breach of contract claim, a plaintiff has the burden to show that the parties entered into a valid contract, that the defendant failed to perform his obligations under the contract and that the plaintiff sustained damages as a result.” Murphy v. Implicito, 392

N.J.Super. 245, 265, 920 A.2d 678, 689 (App. Div. 2007). See Video Pipeline Inc. v. Buena Vista Home Entm't, Inc., 210 F. Supp. 2d 552, 561 (D.N.J. 2002).

66. Here, it is undeniable that the debtors breached their contractual obligations to the Claimants, causing damage as described herein.

67. *The only notice which the debtors sent to the Reeds with respect to the purported default did not in any way satisfy or address any of the statutory and contractual notice requirements described herein.* See Doc 7017-6, pg 13-16 of Exhibit 3, Delehey Declaration.

68. Furthermore, in addition to the Mortgage's actual incorporation of the requirements of the Fair Foreclosure Act, the provisions of the Act are implied in the parties' contractual relations under New Jersey law. See Chase Manhattan Mortg. Corp. v. Spina, 325 N.J.Super. 42, 51, 737 A.2d 704, 709 (N.J.Super.Ch. 1998)("The obligations of a contract long have been regarded as including not only the express terms but also the contemporaneous state law pertaining to interpretation and enforcement. "This Court has said that 'the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms.' " This principle presumes that contracting parties adopt the terms of their bargain in reliance on the law in effect at the time the agreement is reached")(quoting U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 19, 97 S.Ct. 1505, 1516 (1977)).

69. In addition, the ResCap Trust conveniently ignores the fact that the issue of whether the Reeds have a valid claim for breach of contract has already been established by the prior state court actions between the parties.

70. The ResCap Trust is barred from revisiting that issue and disputing the validity of

the breach of contract claim here in this bankruptcy matter by virtue of collateral estoppel, the Rooker-Feldman doctrine, and/or *res judicata*. See discussion above, at ¶¶ 22-39.

71. Accordingly, it is respectfully submitted that the Reeds have set forth a valid claim for breach of contract and the Objection must be denied.

D. The Reeds Fail to Establish a Claim for Actual Malice in Regard to Their Claim for Punitive Damages

72. The ResCap Trust takes the position that the Claimants' have failed to establish a claim for actual malice under New Jersey law. See Objection, Section V.C.i, at ¶¶ 35-40.

73. Punitive damage claims in New Jersey are governed by statute, N.J.S.A. 2A:15-5.9 et seq., referred to as the Punitive Damages Act.

74. Under the terms of the Punitive Damages Act and New Jersey law, actual malice is not required. The ResCap Trust conveniently omits the fact that the wanton or wilful disregard of the rights of others is a legally valid alternative to actual malice. See N.J.S.A. 2A:15-5.9 et seq., see also New Jersey Model Civil Jury Charges § 8.60.

75. A punitive damages claim against the debtors is supported by the fact that a substantial part of the Reeds' damages have come from the Debtors purposeful leaving of a lis pendens in place as active on the county records for four to five years after being given notice by both the state court and the Reeds that the underlying litigation had been dismissed.

76. Punitive damages are further supported by the wilful and gross disregard with which the debtors treated their contractual and statutory obligations to the Reeds.

77. Additionally, as with other claims that were analyzed by the state court, the punitive damages claim is not reviewable by this Court pursuant to the legal doctrines of Collateral Estoppel and Rooker-Feldman. See discussion above, at ¶¶ 22-39.

78. Accordingly, it is respectfully submitted that the Objection must be denied.

E. The Reeds Fail to Establish a Claim for Malicious Use of Process

79. The ResCap Trust takes the position that the Claimants' have failed to establish a claim for malicious use of process under New Jersey law. See Objection, Section V.C.iii, at ¶¶ 43-55.

80. The Reeds have not actually attempted to state a claim for malicious use of process, explicitly or implicitly.

81. Rather, the ResCap Trust itself has chosen to characterize the Reeds' claims as such, and then pointlessly expends a substantial amount time and effort in its Objection (relative to its other particular objections) to disprove and disallow the phantom 'malicious use of process' claim. See Objection, Section V.C.iii, at ¶¶ 43-55.

82. That said, it was wholly unreasonable for the debtors to file a foreclosure complaint against the Reeds when express statutory and contractual requirements were completely unfulfilled.

83. The debtors' right to file a foreclosure action had not been perfected at the time that the debtors improperly proceeded with the action.

84. It is clearly apparent that the debtors exhibited such a gross or intentional disregard for their contractual and statutory obligations to the Reeds, that liability under a cause of action for malicious use of process is warranted.

85. Accordingly, it is respectfully submitted that the Objection must be denied.

F. The Reeds Fail to Establish a Claim for Fraud

86. The ResCap Trust takes the position that the Claimants' have failed to establish a claim for fraud under New Jersey law. See Objection, Section V.C.vi, at ¶¶ 63-67.

87. It can reasonably be inferred that the Debtors intended to defraud the Reeds into believing that their ONLY choice was to pay the note in full. The debtors blatant lack of notice required by both contract, statute and common duty and so universally seen as extremely critical, can only be seen as being motivated by an intent to force the Reeds into paying the entire note. It is clear from these proceedings that the debtors were in serious financial stress and what better way for them to alleviate that distress than to have large notes be paid in full, filling their coffers with much needed cash.

88. In addition, the ResCap Trust again ignores the fact that the issue of whether the Reeds have a valid claim for consumer fraud has already been established by the prior state court actions between the parties.

89. The ResCap Trust is barred from revisiting that issue and disputing the validity of the breach of contract claim here in this bankruptcy matter by virtue of collateral estoppel, the Rooker-Feldman doctrine, and/or *res judicata*. See discussion above, at ¶¶ 22-39.

90. Accordingly, it is respectfully submitted that the Objection must be denied.

G. The Reeds Are Not Entitled to a Constructive Trust

91. The ResCap Trust takes the position that the Claimants' are not entitled to a constructive trust on the ground that the debtor did not commit a wrongful act, and because there was no unjust enrichment. See Objection, Section V.C.vii, at ¶¶ 68-71.

92. The ResCap Trust correctly states that "[t]he right to impose a constructive trust is determined by state law", and that "New Jersey law controls this analysis because all of the critical facts in this matter stem from New Jersey". See Objection, Section V.C.vii, at ¶ 69.

93. As specifically recognized by the Second Circuit in In re Howard's Appliance Corp., 874 F.2d 88, 94 (2d Cir. 1989), under New Jersey law, "a constructive trust should be

impressed in any case where to fail to do so will result in an unjust enrichment.” Id. (internal quotations omitted), citing Stewart v. Harris Structural Steel Co., 198 N.J.Super. 255, 486 A.2d 1265, 1271 (App. Div. 1984) and D'Ippolito v. Castoro, 51 N.J. 584, 588, 242 A.2d 617, 619 (1968).

94. When property has been acquired or retained “in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.” Stewart v. Harris Structural, supra. (quoting Beatty v. Guggenheim Exploration Co., 225 N.Y. 380, 386, 122 N.E. 378, 380 (1919)); see Hill v. Warner, Berman & Spitz, P.A., 197 N.J.Super. 152, 484 A.2d 344, 352 (App. Div. 1984).

95. “The Supreme Court of New Jersey has stated that, in general, “all that is required to impose a constructive trust is a finding that there was some wrongful act, usually, though not limited to, fraud, mistake, undue influence, or breach of a confidential relationship, which has resulted in a transfer of property.” In re Howard's Appliance Corp., 874 F.2d 88, 94 (2d Cir. 1989) citing D'Ippolito, supra, 242 A.2d at 619, 38 A.L.R.3d at 677.

96. **“In fact, such a trust may arise *“even though the acquisition of the property was not wrongful.* It arises where the retention of the property would result in the unjust enrichment of the person retaining it.”** (emphasis added) In re Howard's Appliance Corp., 874 F.2d at 94, citing D'Ippolito, supra, Stretch v. Watson, 5 N.J. 268, 74 A.2d 597, 602 (1950); Stewart, supra, 486 A.2d at 1271-72.

97. Here, there exists a rule in the common law of contracts in New Jersey which states: **If a party to a contract proves that a counter-party to that contract prevented or hindered the first party’s performance of its obligations under the contract, the counterparty cannot recover for a breach that resulted from those actions.** See Ward v.

Merrimack Mut. Fire Ins. Co., 332 N.J.Super. 515, 522, 753 A.2d 1214, 1218 (App. Div. 2000)(“A party to a contract may not avail itself of a condition precedent where by its own conduct it has rendered compliance therewith impossible”); Atlantic City v. Farmers Supply & Products, 96 N.J.L. 504, 508 (E. & A. 1929); Coastal Oil v. Eastern Trailers Seaway Corp., 29 N.J. Super. 565, 577 (App. Div. 1954); Winfield v. Middlesex Contractors, 39 N.J. Super. 92, 102 (App. Div. 1950); Abeles v. Adams Engineer Co., 64 N.J. Super. 167, 178, mod. 35 N.J. 411 (App. Div. 1960)(“He who prevents a thing from being done may not avail himself of the non-performance which he himself has occasioned”). See also Creek Ranch, Inc. v. New Jersey Turnpike Authority, 75 N.J. 421, 432 (1978); Blau v. Friedman, 26 N.J. 397 (1958); see also 5 Williston on Contracts, 677 (3d ed. 1957); Restatement of Contracts § 295 (1932).

98. In the instant case it was debtors’ wrongful acts which interfered with and at least hindered the Reeds from fulfilling their “obligation” under the note and mortgage contracts. The Reeds would have paid off their mortgage, as it was their obligation to do so through their cash out refinance with TD bank or the broker Mr. Tardamossa, and/or through a sale of the property for a price unimpeded by the debtors’ wrongful lis pendens and other acts.

99. Therefore it was debtors own wrongful acts that interfered with the Reeds rightful obligation and right to extinguish the note and its corresponding lien.

100. Additionally it should be quite informative to this Court to take note that a wrongful act does not have to be one which, by and in itself, gives rise to an actionable independent cause of action. It can merely be some inappropriate act that gives rise to an unjust enrichment of a party.

101. In In Re: Howard’s Appliance, cited above, it was the mere fact that the debtor in possession’s staff had misdirected a shipment of goods to be delivered to a warehouse in

another state other than the normal warehouse routinely delivered to, that was wrongful, because that act interfered with the creditor's perfection of the liens it would have otherwise had.

102. In the Reeds' case, the affirmative defense against the debtors, created by the rule stated in paragraph 81 above, that the debtors' interference or hindrance of the Reeds' obligation to pay the note would have extinguished the note, creates a scenario whereby the debtor's would not be owed anything.

103. Thus, the debtors would in fact be unjustly enriched if they were to be paid as if the note were not extinguished by the affirmative defense to the note.

104. Accordingly, it is respectfully submitted that a constructive trust remedy in favor of the Reeds is warranted, and the Objection must be denied.

H. The Reeds Had the Option of Reinstating the Loan

105. The ResCap Trust states that the Reeds had the option of reinstating the loan at issue at any time, and therefore have no valid damages resulting from the debtors' failure to serve a Notice of Intent and improperly filing a foreclosure action against them. See Objection, Section V.C.ii, at ¶¶ 4, 41-42.

106. Troublingly, at paragraph 4 and 42 of the Objection, the ResCap Trust makes false statements and representations with respect to the Reeds' efforts to obtain a loan reinstatement and/or modification – contending that the Reeds could have reinstated the loan at any point before entry of a final judgment of foreclosure and representing that GMAC made repeated efforts to assist the Reeds in that regard.

107. In fact, the Claimants did on fact attempt to obtain reinstatement/modification of the loan and were ignored by the debtor – a fact which was admitted to the Claimants by a “ResCap GMAC” employee. See Claimant's email correspondence with Mark Folweiler,

Community Relations Specialist for GMAC ResCap.

108. Indeed, there is currently a three thousand dollar "un-applied" payment on the Claimants' account corresponding to their effort and payment, but GMAC NEVER LOGGED the workout

109. The demand for a complete payoff was the ONLY communication Mr. Reed had from GMAC until the workout.

110. In reality, and as is clear from the Reeds' claims, regardless of a potential reinstatement or modification, the damage to the Reeds was DONE THE INSTANT the improper Foreclosure was filed – which is the crux of the Reeds' claims and the proper focus of their proofs. See 30 N.J.Prac. Law of Mortgages § 24.16 (2d ed. 2008) (“The institution of foreclosure is traumatic to the debtor mortgagor and creates a permanent court record which can be injurious to the debtor’s credit. The notice of intention is meant to give the debtor a chance to prevent acceleration and institution of Foreclosure. Obviously giving the notice after Foreclosure has been instituted will not effectuate this legislative purpose”).

I. The Reeds Are Not Entitled to be Made Whole Under the FRB Consent Order

111. Despite the fact the FRB Consent Order was modified the order and the rules promulgated under the order, there was indeed a continued OPTION to “determine whether borrowers suffered financial injury as a result of errors, misrepresentations, or other deficiencies in the foreclosure process. (and) Where financial injury is found, the servicers must compensate the injured borrowers.” Statement of Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve System: Submitted to the Senate Committee on Banking, Housing, and Urban Affairs Subcommittee On Housing, Transportation, and Community Development - U.S. Senate, Washington, D.C. - December 13, 2011.

112. Pursuant to this fact, the Reeds proposed to the debtors a course of action on August 8th and 9th 2013, (after the FRB Consent Order was amended).

113. The Reeds proposed to the debtors a course of action that would have likely saved the estate the exposure to all of the Reeds' claims.

114. This would have happened at NO COST to the estate, (as the Reeds would have completely funded it), and the Reeds claims would have been rendered moot by their satisfaction from a source of money outside of the estate. (see emails to debtors' counsel James Newton).

115. However, this was rejected by the debtors. It is the Reeds' position that this was a breach of their fiduciary duty to the trust to preserve the res of the trust and since the Reeds were parties in interest in the trust, it was a breach of debtor in possession's fiduciary duty that harmed the Reeds.

116. The Reeds could have been made whole out of the FRB required fund, but for the debtor in possessions' wrongful act. Therefore the Reeds respectfully request that the debtors make the Reeds whole; and since this act was perpetrated AFTER the filing of the debtors' bankruptcy petition, it is not dischargeable or reducible under the bankruptcy and therefore must be paid in full.

117. An additional statement verifying that the Reeds would have been made whole is as follows: *When independent consultants find errors, misrepresentations or other deficiencies, their next steps are to determine whether financial injury occurred and to recommend remediation when it does. Financial injury is defined as monetary harm directly caused by servicer error.*" [Testimony of Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency, Before the Subcommittee on Housing Transportation, and Community Development of the Committee on Banking Housing, and Urban

Affairs, United States Senate, December 13, 2011].

J. The Proofs of Claim Are Not Properly Asserted Against Debtor ResCap

118. The ResCap Trust takes the position that the Claimants' Proofs of Claim are not properly asserted against debtor ResCap since the Reeds do not have any legal claims against ResCap. See Objection, Section V.D., at ¶¶ 79-81.

119. The Reeds filed proofs of claim 3708 and 4759 against Residential Capital LLC ("ResCap"), and proofs of claim 3759 and 4736 against GMAC Mortgage, LLC ("GMAC").

120. Proofs of Claim 3708 and 4759 were, in fact, intended to be filed against Residential Funding Company, LLC, a debtor entity in this bankruptcy, and the entity against which the Reeds filed their state court action and which is referenced countless times in the Reeds' submissions relevant to their Proofs of Claim in this bankruptcy.

121. In what amounts to a technological 'scrivener's error', when entering Proofs of Claim 3708 and 4759 into the website of the appointed third-party claim administrator – Kurtzman Carson Consultants or "KCC" – the Reeds mistakenly selected debtor Residential Capital LLC from the KCC website form's drop-down menu of debtor entities, as opposed to the very similarly-named Residential Funding Company LLC.

122. It is respectfully submitted that Proofs of Claim 3708 and 4759 should be amended, or that Claimants should be granted leave to file amended the proofs of claim, to correct the mistakenly-selected debtor entity from Residential Capital LLC to Residential Funding Company LLC.

123. Late-filed amendments to proofs of claim are freely allowed where it will not prejudice other parties. See Midland Cogeneration Venture Ltd. P'ship v. Enron Corp. (In re Enron Corp.), 419 F.3d 115, 133 (2d Cir. 2005). Amendments, are closely scrutinized to ensure

that the amended claim is not an “attempt to file a new claim under the guise of amendment.” Id.

124. A late-filed claim is deemed an amendment when it relates back to a “timely assertion of a similar claim or demand evidencing an intention to hold the estate liable.” In re Enron, 419 F.3d at 133.

125. “In other words, a late-filed claim will be an amendment, rather than a new claim, when: (i) a timely filed claim puts the debtor on notice that a future claim will be asserted; and (ii) the late claim relates back to a timely-filed claim.” In re Uvino, 2012 WL 892501 (Bkrcty. S.D.N.Y. 2012).

126. “A timely-filed claim provides notice when it apprises parties of the existence, nature, and amount of the claim and that it was the creditor's intent, expressed in the original claim, to hold the estate liable for the claim later set forth in the amendment.” Id.

127. A claim will relate back when it “(1) corrects a defect of form in the original claim; (2) describes the original claim with greater particularity; or (3) pleads a new theory of recovery on the facts set forth in the original claim.” In re Enron, 419 F.3d at 133 (internal quotations and citations omitted).

128. Ultimately, the decision to permit an amendment to a proof of claim “rests within the sound discretion of the bankruptcy judge.” In re McLean Indus. Inc., 121 B.R. 704, 708 (Bankr. S.D.N.Y. 1990).

129. Here, the Reeds’ voluminous submissions in support of their proofs of claim are replete with references to and allegations against Residential Funding Company LLC and GMAC.

130. The debtor estate, the ResCap Trust and all other interested parties have been on notice from the outset of the Claimants’ intention to hold the debtor estate liable for the acts and

omissions of GMAC and Residential Funding.

131. Amendment of Proofs of Claim 3708 and 4759 to correct the defect will not prejudice the parties. The Reeds' allegations, claims, demands and proofs, and the damages sought, remain unchanged.

132. Furthermore, there is no potential prejudice with respect to funding of the ResCap Trust, since the Reeds' Proofs were considered in the calculation and formulation of the funding amount. See "DIRECT TESTIMONY OF WILLIAM R. THOMPSON", Doc 5713 Filed 11/12/13, at ¶¶ 22 and 28. William R. Thompson, General Counsel for Residential Capital, LLC and its subsidiaries (collectively, the "Debtors") noted that there was a determination made that more than enough money funded the trust and that all submitted claims were considered in formulating the proper amount with which to fund it. *Id.*

133. This is not an instance of a late new claim being file under the guise of an amendment. See, e.g. In re Residential Capital, LLC, et al., Case No. 12-12020 (Bankr. S.D.N.Y. Nov. 27, 2013)(denying amendment to claimant Pappas on the ground that, in adding 114 additional properties by amendment to his original claim concerning a single property, Pappas was in fact asserting new claims and not simply amending his original one).

134. Amendment in this instance will merely correct a defect in the original Proofs, which misidentified the intended debtor because of a technological 'scrivener's error'. As noted, the Reeds' filings and supplemental submissions made and make clear that they seek to impose liability against Residential Funding and GMAC – a fact of which all interested parties have been aware.

135. Amendment will not change any other aspect of the claim, and no prejudice will result. Furthermore, amendment to correct the Proofs' defect as to the intended entity will

clearly relate back to the timely-filed original note.

136. As this Court has specifically held with respect to post bar date amendments of proofs of claim:

First, the court must determine “whether there was a timely assertion of a similar claim or demand evidencing an intention to hold the estate liable.” A claim satisfies this first prong if it: “1) corrects a defect of form in the original claim; 2) describes the original claim with greater particularity; or 3) pleads a new theory of recovery on the facts set forth in the original claim.” In other words, the amendment must relate back to the original proof of claim.

If this “relation back” inquiry is satisfied, courts then examine whether it would be equitable to allow the amendment. Courts consider the following five equitable factors in determining whether to allow an amendment:

(1) undue prejudice to opposing party; (2) bad faith or dilatory behavior on the part of the claimant; (3) whether other creditors would receive a windfall were the amendment not allowed; (4) whether other claimants might be harmed or prejudiced; and (5) the justification for the inability to file the amended claim at the time the original claim was filed.

[In re Residential Capital, LLC, 507 B.R. 477, 493-94 (Bkrctcy. S.D.N.Y. 2014)(internal citations omitted)].

137. Here, taking into account the factors above, an amendment to Proofs 3708 and 4759 to cure the mistaken selection of Residential Capital instead of Residential Funding from the computerized drop-down menu of debtors is permissible and warranted.

138. Amendment would not cause undue prejudice to any opposing party in light of the limited, technical, ‘scrivener’s error’ nature of the amendment and the fact that the parties have been on notice, vis a vis the Claimants’ supporting submissions, of the Reeds’ intention to impose liability on the debtor estate via GMAC and Residential Funding. Nor would any other claimants be harmed or prejudiced. None of the facts, figures, claims, documents or damages are affected.

139. Furthermore, the Claimants' mistake was obviously not made in bad faith nor was their conduct dilatory. Assuming the validity of the claim otherwise, if amendment is not permitted, and Proofs 3708 and 4759 are disallowed based on the Reeds' technical error, the creditors would receive an unfair windfall.

140. As noted by the court in Integrated Res., Inc. v. Ameritrust Co., N.A. (In re Integrated Res., Inc.), 157 B.R. 66, 70 (S.D.N.Y. 1993) in affirming the allowance of an amendment to a proof of claim, "[t]he critical consideration is whether the opposing party will be unduly prejudiced by the amendment." There is no such prejudice here. See also In re Newcare Health Corp., 274 B.R. 307 (Bkrtcy. D.Mass. 2002)(holding that amendment of complaint of official committee of unsecured creditors in Chapter 11 case would relate back to date that original complaint was filed in adversary proceeding, although amendment substituted previously unnamed corporate entities for misnamed operating entities; corporate entities still had same substantive defenses as if they were properly named initially, corporate entities admitted to having actual knowledge of adversary proceedings shortly after operating entities received summons and complaint, and corporate entities should have known that, but for misnomer, they would have been named as parties).

141. Accordingly, it is respectfully submitted that Proofs of Claim 3708 and 4759 should be amended to reflect debtor Residential Funding, or in the alternative, that Claimants should be granted leave to file amended proofs of claim to correct the mistakenly-selected debtor entity from Residential Capital LLC to Residential Funding Company LLC.

IV. EXISTENCE OF AND EXTENT OF DAMAGES IS NOT SPECULATIVE

142. The ResCap Trust's Objection makes repeated references to the Claimants' allegations of being damaged and the extent of the damages as being unsupported, unestablished

and speculative. See, e.g., Objection at ¶¶ 2, 51, 54, 67.

143. However, as has been noted herein, it is apparent that the ResCap Trust has not considered or reviewed the Reeds' substantial submissions, and especially, the Reeds' supplemental documentation and exhibits – which were requested and received by the debtors almost a year, in July 2013.

144. That the Reeds were damaged by the actions of the debtors is well supported by the Reeds' evidentiary submissions.

145. Specifically, the Claimants' submissions spell out in detail, supported by documentary evidence and statements from uninterested third-parties, the consequences of the debtors' wrongful foreclosure and the specific damages caused thereby.

146. For instance, the Reeds' property was in the midst of a cash-out refinance with TD Bank at the time of the wrongful foreclosure, which was then denied by TD Bank as a direct result of the debtors' actions.

147. This is specifically supported by the August 20, 2012 letter correspondence between Frank Reed and TD Bank, wherein the TD Bank Market President states that the Reeds were denied because of the pending foreclosure. The Reeds' liquidity was ruined.

148. Furthermore, the Reeds' property was on the market at the time of the wrongful foreclosure, and because of the debtors' wrongful acts, the property could no longer be sold at its proper market value. Thus, the property became essentially unsellable at its appropriate market value, having lost significant market value as a direct result of the wrongful foreclosure and lis pendens filing.

149. Contrary to the position expressed in the Objection, the Claimants have submitted clear and convincing *prima facie* evidence that a wrong and harm has occurred and that they

have been damaged as a result.

150. While it can be argued that the extent of the Claimants' damages are not certain, they do not need to be in order to be actionable and recoverable.

151. New Jersey courts "do permit considerable speculation by the trier of fact as to damages". V.A.L. Floors, Inc. v. Westminster Communities, Inc., 355 N.J.Super. 416, 424, 810 A.2d 625, 630 (App. Div. 2002).

152. In Tessmar v. Grosner, 23 N.J. 193, 203, 128 A.2d 467 (1957), the New Jersey Supreme Court stated that "[t]he rule relating to the uncertainty of damages applies to the uncertainty as to the fact of damage and not as to its amount, and where it is certain that damage has resulted, mere uncertainty as to the amount will not preclude the right of recovery." (citations omitted).

153. Although New Jersey courts do require a "reasonably accurate and fair basis for the computation of alleged lost profits," (J.L. Davis & Associates v. Heidler, 263 N.J.Super. 264, 276, 622 A.2d 923 (App. Div. 1993)), the "fact that a plaintiff may not be able to fix its damages with precision will not preclude recovery of damages." Inter Medical Supplies v. EBI Medical Systems, 181 F.3d 446, 463 (3rd Cir. 1999)(citing American Sanitary Sales Co. v. State, Dep't of Treasury, 178 N.J.Super. 429, 435, 429 A.2d 403 (App. Div.), certif. denied, 87 N.J. 420, 434 A.2d 1094 (1981)).

154. In Stanley Co. of America v. Hercules Powder Co., 16 N.J. 295, 314, 108 A.2d 616 (1954), the New Jersey Supreme Court stated the rule as follows: "Loss of profits, where based on sound fact and not on mere opinion evidence without factual support, is recognized as a proper measure of damages if 'capable of being estimated with a reasonable degree of certainty'".

155. Furthermore, “[p]rofits lost by reason of breach of contract may be recovered if there are any criteria by which probable profits can be estimated with reasonable certainty.” V.A.L. Floors, Inc. v. Westminster Communities, Inc., 355 N.J.Super. 416, 424, 810 A.2d 625, 630 (App. Div. 2002), citing Feldman v. Jacob Branfman & Son, Inc., 111 N.J.L. 37, 42, 166 A. 126 (E & A 1933); see also Restatement (Second) of Contracts § 352 (1981).

156. In V.A.L. Floors, supra, the New Jersey appellate division noted with approval the methodology utilized by certain other jurisdictions:

Judged by these criteria, we do not believe that plaintiffs were required to prove the dollar amount of their projected expenses. In *Alaska Children's Services, Inc. v. Smart*, 677 P.2d 899, 902 (Alaska, 1984), the contractor's proof as to lost profits was his testimony as to his normal profit margin applied to the bid price. From these figures a jury could compute the costs of the project, that being the bid price less the profit percentage. In reaching that conclusion the court cited to a number of cases from other jurisdictions that “have accepted as sufficient evidence a profit estimate made by the contractor.” *Ibid*. Such an opinion as to anticipated profit by one with sufficient background constitutes “*prima facie* proof of the loss.” *Nelson v. Cail*, 120 Ariz. 64, 583 P.2d 1384, 1387 (App. 1978). See also *Sir Speedy, Inc. v. L & P Graphics, Inc.*, 957 F.2d 1033, 1038 (2nd Cir.1992).

[V.A.L. Floors, supra, 355 N.J.Super. at 425-26, 810 A.2d at 631].

157. Here, it is respectfully submitted that the certainty and scope of the damages that resulted from GMAC and Residential Funding's actions has been established by clear and convincing evidence.

158. “Evidence affording a basis for estimating damages with some reasonable degree of certainty is sufficient to support an award of compensatory damages.” Paolicelli v. Wojciechowski, 132 N.J.Super. 274, 278-79, 333 A.2d 532 (App. Div. 1975), certif. den. 68 N.J. 153, 343 A.2d 441 (1975).

159. As noted by the New Jersey appellate division in American Sanitary Sales Co.,

Inc. v. State, Dept. of Treasury, Division of Purchase and Property, 178 N.J.Super. 429, 435, 429 A.2d 403, 406 (App. Div. 1981):

The ideal of a judicial system is perfect justice. However, in a case where, as here, absolute precision in fixing damages may not be attainable, we should not hesitate to seek essential justice. It would be a travesty to deny a plaintiff essential justice because the absence of means for precision precludes perfect justice.

There are numerous areas in the law where damages cannot be unmistakably assessed to the dollar.

[Id., 178 N.J.Super. at 435, 429 A.2d at 406].

160. In making its Objection, the ResCap Trust simply failed to address or cite any of the proofs provided to it by Claimants in their July 22, 2013 submission, which contained extensive documentation with respect to the existence and extent of damages caused to the Reeds.

V. THE REEDS HAVE A VALID CLAIM FOR EMOTIONAL DISTRESS

161. The facts of this matter support a claim by claimant Frank Reed for infliction of emotional distress, as previously set forth in Claimants' submissions. See Reed July 21, 2013 Basis of Claim, ¶ 14.

162. Specifically, claimant Frank Reed has been caused tremendous stress as a result of GMAC's and Residential Funding's wrongful acts and omissions, and as a result of the consequences and damages caused thereby. Furthermore, Mr. Reed is suffering from a serious heart ailment as a direct and proximate result of the continued stress caused by the debtors' wrongful acts and omissions. See Report of Dr. Sussman from Virtua Cardiology.

163. The New Jersey Supreme Court has stated that "negligent infliction of emotional distress" consists of "negligent conduct that is the proximate cause of emotional distress in a person to whom the actor owes a legal duty to exercise reasonable care." Decker v. Princeton

Packet, Inc., 116 N.J. 418, 429 (1989).

164. Infliction of emotional distress occurs “where one suffers severe emotional trauma as a result of the tortfeasor's negligent act or omission.” Gendak v. Poblete, 139 N.J. 291, 296 (1995). In recognizing that the severity of emotional distress raises questions of both law and fact, the Court has stated that it is the trial judge who “decides whether, as a matter of law, such emotional distress can be found, and the jury decides whether it has, in fact, been proved”. Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 366 (1988)(finding that a cause of action for intentional infliction may lie if the plaintiff can prove that (1) the defendant acted intentionally or recklessly, (2) that the defendant's conduct was extreme and outrageous, (3) the defendant's actions were the proximate cause of plaintiff's emotional distress, and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it).

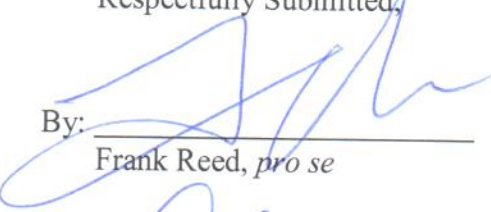
165. It is respectfully submitted that the debtors' acts and omissions as described herein negligently and recklessly caused emotional and physical harm to Mr. Reed.

VI. CONCLUSION

Wherefore, claimants Frank Reed and Christina Reed respectfully submit that the Objection of The ResCap Borrower Claims Trust to the claimants' Proofs of Claim be denied and dismissed in its entirety, and that the claims be allowed and affirmed by the Court.

Dated: 6/19/14, New Jersey
June 19, 2014

Respectfully Submitted,

By: 
Frank Reed, *pro se*

By: 
Christina Reed, *pro se*

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December 19, 2012


To Whom It May Concern:

I am Stanley P. Woodworth, CPA. I am a principal in the firm of Woodworth & St. John, LLC, and I have been Frank Reed's accountant for many years. It is in this capacity that I have firsthand knowledge that Mr. Reed routinely bought, renovated, rented and sold houses for both taxable and nontaxable gains; and that he relied on his ability to borrow to accomplish this.

Therefore, a loss of the ability of Mr. Reed to borrow would interrupt his cash flow and interrupt his ability to buy, renovate, rent and sell houses.

If there are any questions, please contact me.

Sincerely yours,



Stanley P. Woodworth
Certified Public Accountant

SPW/FR/db
1040/Reed/121912

JEFFREY S. WALTERS
LLC

3000 ATRIUM WAY SUITE #2201
MOUNT LAUREL, N.J. 08054

TELEPHONE: (856) 552-1045
FACSIMILE: (856) 974-8859

EMAIL: jeffrey_walters@comcast.net

December 28, 2012

To Whom It May Concern

**RE: Frank Reed v. GMAC Mortgage LLC and Residential Funding Corp.
Docket No. L-1526-10 (Burlington County)**

Dear Sir or Madam:

I am an attorney licensed in the State of New Jersey. I write this letter at the request of Frank Reed. It is my understanding that Mr. Reed will be submitting a Request for Independent Foreclosure Review.

Mr. Reed retained my office for the purpose of asserting an action for financial damages as a result of a foreclosure action filed against him. Under New Jersey law, the Fair Foreclosure Act requires that mortgage lenders provide borrowers with a Notice of Intention to Foreclose at least 30 days prior to instituting foreclosure proceedings. The purpose of this law is to give borrowers the opportunity to cure their mortgage arrearage before a foreclosure action is filed against them, which would cause irreparable harm to their credit and their ability to obtain credit. A borrower who receives proper notice would then have the opportunity to cure the arrears (or contest the allegation of arrears) before this type of financial damage is done. Mr. Reed contended that he never received any notice from the lender prior to the institution of foreclosure proceedings, and that if he had received such notice, he would have easily cured the arrears before the foreclosure action was filed. The Court dismissed the lender's foreclosure action against Mr. Reed when the lender was unable to demonstrate that it had sent proper notice prior to instituting the foreclosure action. The lender also filed a Lis Pendens upon filing of their improper foreclosure complaint, which clouded title to Mr. Reed's residence, and which should never have been filed in the first place. After the foreclosure action was dismissed by the Court, the lender failed to release the Lis Pendens as they were required to do, and have failed to do so to this day. This failure continues to produce ongoing financial harm.

The improperly filed foreclosure action and Lis Pendens were particularly harmful to Mr. Reed, because he historically relied on credit in order to conduct his business and real estate ventures, and to earn money from these endeavors. In fact, he was on the verge of obtaining a routine business loan when the unexpected filing of the improper foreclosure action brought his financial life to a standstill, paralyzing his ability to conduct business endeavors already in progress and planned for the future. This one initiating event sent Mr. Reed's financial life into a tailspin from which he has not recovered and which has caused him significant economic damage.

LAW OFFICES OF
JEFFREY S. WALTERS
LLC

While the case was pending in the Court, Mr. Reed received a notice informing him of his right to Independent Foreclosure Review. As a result of this, Mr. Reed voluntarily sought dismissal of his legal action, so that he could participate in Independent Foreclosure Review and avoid the continued financial expense of litigation. Mr. Reed is free to reinstate his legal action in the future if he should desire to do so.

Mr. Reed incurred a substantial bill for my services in this litigation. Attached are true copies of invoices detailing these services and the amount of legal fees.

If you have any questions about these invoices or the nature of the services provided, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey S. Walters". The signature is fluid and cursive, with the first name "Jeffrey" being more prominent.

Jeffrey S. Walters

JSW/jtg

cc: Mr. Frank Reed

XCZ 102962/wb
ZUCKER, GOLDBERG & ACKERMAN, LLC
Attorneys for Plaintiff
200 Sheffield Street, Suite 301
P.O. Box 1024
Mountainside, New Jersey 07092-0024
1-908-233-8500

THIS RELIEF SET FORTH BELOW
IS ORDERED AND FILED

FEB 09 2009

MICHAEL J. HOGAN, P.J.Ch.

GMAC MORTGAGE, LLC

Plaintiff,

vs.

Frank J. Reed, III, et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BURLINGTON COUNTY
GENERAL EQUITY PART
DOCKET NO. F-19177-08

Civil Action

ORDER GRANTING SUMMARY
JUDGMENT TO STRIKE
DEFENDANT'S ANSWER, TO ENTER
DEFAULT AND TRANSFER CASE TO
THE FORECLOSURE UNIT

THIS MATTER having been opened to the Court By ZUCKER, GOLDBERG & ACKERMAN, LLC, Esqs., Richard P. Haber, Esq., attorneys for plaintiff, GMAC MORTGAGE, LLC on notice to Frank J. Reed, III, Pro Se Defendant, for an Order to strike the contesting answer, and the Court having considered the submissions of the parties, and for good cause shown;

IT IS ON THIS 9th day of February, 2008;

ORDERED:

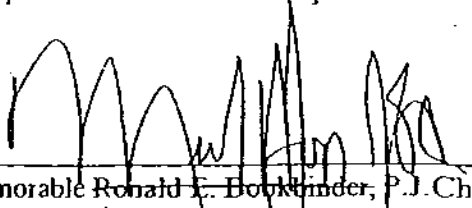
1. That the Answer and defenses filed on behalf of defendant be and are hereby stricken and that the Clerk of this Court is hereby instructed to enter default against defendant as though no answering pleading has been filed, and

2. That this matter shall be transferred to the Foreclosure Unit of the Superior Court in Trenton,

~~New Jersey to proceed as an uncontested matter; and~~

3. That plaintiff serve a copy of this Order on Frank J. Reed, III, ~~Pro Se~~ Defendant and to
counsel for all parties of interest within 7 days of plaintiff's counsel's receipt of the Order.

* Defendant's cross-motion for summary
judgment is GRANTED, per the
attached written decision


Honorable Ronald E. Bookbinder, P.J. Ch.

Michael J. Hogan

This matter was:

Opposed ✓

Unopposed.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

PREPARED BY THE COURT

_____	:	SUPERIOR COURT OF NEW JERSEY
GMAC MORTGAGE, LLC,	:	BURLINGTON COUNTY
	:	CHANCERY DIVISION
Plaintiff,	:	
	:	DOCKET NO.: BUR-F-19177-08
v.	:	
	:	
FRANK J. REED, III, et al.,	:	DECISION
	:	
Defendants.	:	
_____	:	Dated: February 6, 2009

Christopher G. Ford, Esq., Attorney for Plaintiff, GMAC Mortgage, LLC (Zucker, Goldberg and Ackerman)

Linda L. Campbell, Esq., Attorney for Defendant, Frank J. Reed, III (Kearney & Assocs.)

HOGAN, P.J. Ch.

Plaintiff GMAC Mortgage, LLC brings this present Motion for Summary Judgment to Strike Defendant's Answer, Enter Default, and transfer the matter to the Foreclosure Unit to proceed as an uncontested matter. Defendant Frank J. Reed, III has filed a Cross-motion for Summary Judgment before the Court to dismiss the Complaint for failure to provide a proper notice of intent ("NOI") as required under the New Jersey Fair Foreclosure Act ("FFA"). The court has considered those papers submitted. Proof of service has been furnished. The Court now holds, for the following reasons, Plaintiff's motion is hereby **DENIED** and Defendant's cross-motion is hereby **GRANTED**. Plaintiff's Foreclosure Complaint is dismissed without prejudice.

FACTS

On May 31, 2006, Defendant Frank J. Reed, III executed a Note in favor of MERS, as nominee for Metrocities Mortgage, LLC for the amount of \$1,000,000.00. To secure that obligation, Defendant executed a Mortgage in the same amount for real property located at 817 Matlack Drive, Moorestown, New Jersey. The Mortgage was recorded in the Burlington County Clerk's Office on Sept. 25, 2006. The Mortgage was subsequently assigned to Plaintiff GMAC Mortgage, LLC, who is alleged to be the current holder of both the Note and Mortgage. Defendant subsequently defaulted under the terms of the Note by failing and neglecting to make payments that were due on Feb. 1, 2008 and all payments due thereafter. As such, Plaintiff filed a Foreclosure Complaint on May 19, 2008.

Defendant asserts that Plaintiff failed to send a written Notice of Intent to Foreclose

pursuant to the FAA at least thirty (30) days prior to the filing of the Foreclosure Complaint.

Plaintiff asserts that it has not been able to locate a copy of the NOI that was sent to Defendant or the certified mailing receipt for the same. Plaintiff further asserts that the Answer filed by Defendant is merely a delay tactic and presents no material issue of fact that contests Plaintiff's right to foreclose.

Accordingly, Plaintiff seeks for this Court to enter an Order striking the Answer, entering default and transferring the case back to the Foreclosure Unit to proceed as an uncontested matter. Defendant seeks to dismiss the Foreclosure Complaint.

LEGAL DISCUSSION

Summary Judgment Standard

Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "A party may defeat a motion for summary judgment by demonstrating that the evidential materials relied upon by the moving party, considered in light of the applicable burden of proof, raise sufficient credibility issues to permit a rational factfinder to resolve the alleged disputed issues in favor of the non-moving party." D'Amato v. D'Amato, 305 N.J. Super. 109, 114, 701 A.2d 970 (App. Div. 1997) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523, 666 A.2d 146 (1995)).

The trial court's "function is not . . . to weigh the evidence and determine the truth . . . but to determine whether there is a genuine issue for trial." Brill, supra, 142 N.J. at 540, 666 A.2d 146 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986)). The trial judge must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Id. When the facts present "a single, unavoidable resolution" and the evidence "is so one-sided that one party must prevail as a matter of law," then a trial court should grant summary judgment. Id.

Here, the parties' submissions do not contest the relevant material facts. Therefore, no genuine questions of material fact are presented in this case, such that summary judgment is appropriate in this matter.

Notice of Intent to Foreclose

The FFA requires a residential mortgage lender to serve a written notice of intention to file foreclosure proceedings, by registered or certified mail, return receipt requested, at least thirty (30) days prior to commencing suit. N.J.S.A. 2A:50-56(a)-(b).

This duty of the lender "to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, state or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice." N.J.S.A. 2A:50-56(e). Compliance with this rule must be set forth in the pleadings of a Foreclosure Complaint. N.J.S.A. 2A:50-56(f).

Plaintiff states that, even if this Court determines that Defendant was not properly served

with a NOI in accordance with the FFA, dismissal or denial of summary judgment is not the appropriate remedy. Citing GE Capital Mortgage Servs., Inc. v. Weisman, 339 N.J. Super. 590 (Ch.Div. 2000), Plaintiff alleges that the appropriate remedy for failure to provide a proper NOI is for the foreclosure to be stayed for thirty (30) days, while the lender or its counsel sends out a letter that conforms with N.J.S.A. 2A:50-56, and that this solution provides a defendant with all the protections he or she would have had if the notice was properly sent out in the first instance. In Weisman, the foreclosing mortgagee was unable to locate its records demonstrating service of the NOI on the debtor. 339 N.J. Super. at 592. The Chancery Division found that, because total non-compliance with the FFA or bad faith were not involved, dismissal of the foreclosure action was not the appropriate remedy. Rather, that court held that the appropriate remedy in light of mortgagee's inability to demonstrate its compliance with FFA was order directing mortgagee to forward a new NOI within ten (10) days, with mortgagors entitled to thirty (30) days from the mailing of a NOI during which they could reinstate the mortgage without liability for costs and attorney fees. Id. at 595.

However, this Court notes that Plaintiff fails to cite current law, which has overturned Weisman. In EMC Mortgage Corp. v. Chaudhri, 400 N.J. Super. 126 (App.Div. 2008), the Appellate Division disapproved of the remedy employed in Weisman and held that a violation of the FFA's pre-suit notice requirement cannot be cured by proper mailing during pendency of suit, as an alternative to dismissal of action without prejudice. Id. at 587.

The Court also notes that a dismissal of a foreclosure action without prejudice has no effect on the underlying contractual obligations of the parties and does not bar reinstitution of the same claims in a later action. R. 4:37-2(a).

The Court, having considered the Plaintiff's Motion for Summary Judgment, the Defendant's Cross-Motion for Summary Judgment, and the Plaintiff's Opposition to Cross-Motion, now finds that Plaintiff failed to comply with the notice requirements of N.J.S.A. 2A:50-56 and has neglected to state such compliance in its Complaint as required under N.J.S.A. 2A:50-56(f). Accordingly, Plaintiff's Motion for Summary Judgment is hereby **DENIED** and Defendant's Cross-motion for Summary Judgment is **GRANTED**. Plaintiff's Foreclosure Complaint is dismissed without prejudice.

R: 5/28/08

XCZ 102962
ZUCKER, GOLDBERG & ACKERMAN
Attorneys for Plaintiff
200 Sheffield Street, Suite 301
P.O. Box 1024
Mountainside, New Jersey 07092-0024
1-908-233-8500

BURLINGTON COUNTY
CLERK

2008 MAY 27 P 2:41

RECEIVED

GMAC MORTGAGE, LLC

Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BURLINGTON COUNTY
DOCKET NO. F-19177-08

Frank J. Reed, III; Christina A. Reed; Mortgage Electronic
Registration Systems, Inc., as nominee for Homecomings
Financial, LLC;

Defendant(s)

Civil Action

NOTICE OF LIS PENDENS

TO WHOM IT MAY CONCERN:

Notice is hereby given of the commencement and pendency of the above entitled Civil
Action, the general objects of which are:

1. To foreclose the mortgage made by Frank J. Reed, III and Christina A. Reed,
husband and wife to Mortgage Electronic Registration Systems, Inc., as nominee
for Metrocities Mortgage, LLC dated 05/31/2006 recorded in the office of the
Burlington County Clerk, in Book 11124 of Mortgages for said County, Page 410.

SAID MORTGAGE WAS SUBSEQUENTLY ASSIGNED TO PLAINTIFF
HEREIN.

2. To recover possession of the lands described in Schedule "A" annexed hereto.
3. The Complaint in the above referenced case was filed on 05/19/2008.

ZUCKER, GOLDBERG & ACKERMAN
Attorneys for Plaintiff

By: Leonard B. Zucker
LEONARD B. ZUCKER
A MEMBER OF THE FIRM

DATED: 5/23/2008

BOOK 368 PAGES 33-35

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SCHEDULE "A"

ALL the following described property located in the Township of Moorestown, County of BURLINGTON,
State of New Jersey:

COMMONLY known as 317 MATLACK DRIVE, MOORESTOWN, NJ 08057

BEING also known as Lot 2, Block 3803 on the tax map of the Township of Moorestown.

102962D1007C05232008P63

Lis pendens

From Wikipedia, the free encyclopedia

Jump to: [navigation](#), [search](#)

Lis pendens is Latin for "suit pending."^[1] This may refer to any pending lawsuit or to a specific situation with a public notice of [litigation](#) that has been recorded in the same location where the [title](#) of [real property](#) has been recorded. This notice secures a [plaintiff's](#) claim on the property so that the [sale](#), [mortgage](#), or [encumbrance](#) of the property will not diminish plaintiff's rights to the property, should the plaintiff prevail in its case. In some jurisdictions, when the notice is properly recorded, *lis pendens* is considered [constructive notice](#) to the other litigants or other unrecorded or subordinate [lienholders](#). The term is sometimes abbreviated as "*lis pend*".

In current practice, a *lis pendens* is a written notice that a lawsuit has been filed concerning real estate, involving either the title to the property or a claimed ownership interest in it. The notice is usually filed in the county land records office. Recording a *lis pendens* against a piece of property alerts a potential purchaser or lender that the property's title is in question, which makes the property less attractive to a buyer or lender. After the notice is filed, anyone who nevertheless purchases the land or property described in the notice takes subject to the ultimate decision of the lawsuit.

The recording office will record a lis pendens upon request of anyone who claims to be entitled to do so (e.g. because he has filed a lawsuit). If someone else with an interest in the property (e.g. the owner) believes the lis pendens is not proper, he can then file suit to have it expunged.

Some states' *lis pendens* statutes require the filer of the notice, in the event of a challenge to the notice, to establish that it has [probable cause](#) or a good likelihood of success on the merits of its case in the underlying lawsuit; other states do not have such a requirement.^[2]

lis pendens applies in matters of parental responsibility as well.^[3]

Contents

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- [2 Effect](#)
- [3 See also](#)
- [4 References](#)

History

Under the common law, the mere existence of a lawsuit potentially affecting the title to real property had the legal effect of putting the entire world on constructive notice of the suit;^[4] anyone acquiring an interest in real property which was the subject of a pending suit took that

interest subject to the litigants' rights as they might be eventually determined, no matter how much later.^[5] In effect, nothing relating to the ownership of the subject matter of the suit could be definitively changed while the suit was pending.^[6] Innocent buyers might discover the existence of a lawsuit too late.

The harsh effect of this rule, and especially its effect on innocent purchasers (particularly vis-à-vis not-so-innocent sellers), led many jurisdictions to enact *lis pendens* [statutes](#) requiring a written notice, usually recorded in the land records where the real estate is located, for the notice provisions of the rule to be effective. Typically, a separate recorded instrument is required by statute if the lawsuit in question affects title to real property.^[7] If the statutory requirements are met, the world is put on "constructive notice" of the existence of the suit, and any person acquiring an interest later does so subject to the outcome of the suit.

Effect

Lis pendens is taken as constructive notice of the pending lawsuit,^[8] and **it serves to place a cloud on the title of the property** in question until the suit is resolved and the notice released or the *lis pendens* is expunged. **Careful buyers will be unwilling to purchase land subject to a "lis pendens" or will only purchase the land at a discount, prudent lenders will not lend money on the security of the land and title insurance companies will not insure the title to such land:** title is taken subject to the outcome of the lawsuit. **Because so much real property is purchased with borrowed money, this usually keeps the owner from selling the property. It also may keep the owner from borrowing money secured by the property (such as to pay the costs of defending the suit).**

It is important to note that the presence of a *lis pendens* does **not** prevent or necessarily invalidate a transfer of the property,^[9] although it makes such a transfer subject to the outcome of the litigation. Thus, the owner is not prevented from selling the land for (non-borrowed) cash, pledging it as security for a speculative loan, or giving it away—subject to the outcome of the lawsuit. However, once the *lis pendens* is recorded, the recipient (a "purchaser" or "grantee *pendente lite*")^[10] would be deemed to have notice of the litigation and might lose their title to the property if the plaintiff's suit prevails.

While it is generally thought of in connection with real property (land, buildings, and the like), the doctrine of *lis pendens* also applies to personal property.^[11] Frequently, *lis pendens* statutes only apply to real property, so the common-law doctrine probably still applies to personal property.

See also

- [Lis alibi pendens](#)

References

1. [^](#) Black's Law Dictionary, p. 950 (8th ed.), 1999.

2. [^](#) *E.g., McAteer v. Lauterbach*, 908 A.2d 1168, 1170 (D.C. 2006).
3. [^](#) Art. 16 - 20 Brussels II Regulation
4. [^](#) *E.g., First Maryland Financial Services Corp. v. District-Realty Title Insurance Corp.*, 548 A.2d 787, 791 (D.C. 1988); *Malcolm v. Superior Court (Green)*, 29 Cal.3d 518, 523 (1981).
5. [^](#) *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 161 fn. 14 (1992).
6. [^](#) *E.g., Lewis v. Jordan Investments, Inc.*, 725 A.2d 495, 500 (D.C. 1999).
7. [^](#) *E.g.*, Calif. Code of Civil Procedure §§ 405–405.61; D.C. Code § 42-1207 (formerly § 45-906.1), enacted 2000.
8. [^](#) R.I. Weil & I.A. Brown, Jr., California Practice Guide: Civil Procedure Before Trial ¶ 15:1.
9. [^](#) *E.g., 1st Atlantic Guaranty Corp. v. Tillerson*, 916 A.2d 153, 157 (D.C. 2007); see also *Morrison v. Shuster*, 1 Mackey 190, 200, 1881 U.S.App.Lexis 2702 (1881).
10. [^](#) *1st Atl. Guar. Corp. v. Tillerson*, 916 A.2d 153, 157, quoting Powell on Real Property § 82A.01 [1] (2006).
11. [^](#) *Weightman v. Washington Critic Co.*, 4 App. D.C. 136 (1894).

PLAINTIFF'S EXPERT WITNESS REPORT OF EVAN HENDRICKS

I, Evan Hendricks, provide the following Expert Report in connection with the action entitled Frank J. Reed III v. GMAC Mortgage LLC, et al., Superior Court of New Jersey, Burlington County (Docket No. L-1526-10). **Part 1** of this report addresses issues that are specific to this case, including a context and history that robustly put Defendants on notice of the problems in this case and why Defendants should have prevented them. **Part 2** includes my qualifications, list of prior cases in which I have testified, my fee, and more general opinions, such as the nature and purpose of credit scores and credit reports, and damages. It is likely that Defendants will disclose additional evidence after I have completed this expert report. If appropriate, and if justified by the production of additional evidence in discovery, I reserve the right to supplement this report at a future date.

Summary of Opinions

- This case is the result of Defendant GMAC ("GMAC") abusing both the foreclosure process and the credit reporting system to block the ability of Plaintiff Frank Reed ("Plaintiff" or "Mr. Reed") to avoid foreclosure by ruining his credit.
- GMAC abused the foreclosure process by failing to adhere to the all-important notice provisions in the Fair Foreclosure Act. It abused the credit reporting system by filing the foreclosure action, and instructing the credit reporting agencies (CRAs) to portray Mr. Reed as being in foreclosure, when the foreclosure action should never have been filed prior to providing a Notice of Intent to Mr. Reed.
- This set off a highly damaging chain reaction. The foreclosure on Mr. Reed's credit stood out as a "scarlet letter" and scuttled his soon-to-be-completed efforts to refinance his mortgage and avoid foreclosure. That in turn further worsened Mr. Reed's credit, making it impossible for him to obtain any meaningful credit, either to avoid foreclosure, extract equity from his home, or to continue Mr. Reed's real estate business.
- All of this caused Mr. Reed both economic and non-economic damages. The economic damages stemmed from the ruined credit that ended Mr. Reed's ability to continue his real estate business.
- Mr. Reed's economic damages include, but likely are not limited to, the losses from being unable to refinance his home mortgage, the losses stemming from his inability to sell his Moorestown property at the peak of the market, the losses and foreseeable losses stemming from Mr. Reed's inability to continue his real estate business and the loss of time and opportunity stemming from dealing with the unfair and incomplete/inaccurate credit reporting.

- The non-economic damages related to the stress, humiliation, mental anguish and frustration stemming from being blindsided by GMAC's non-compliant foreclosure, from watching his credit being ruined and knowing the consequences for his and his family's economic plans and aspirations, and from the consequential loss of reasonable control over such crucial personal information, making him a victim of chronic credit report inaccuracy.
- Given that this occurred during a period in which wrongful foreclosures were a growing, foreseeable problem, and that the damages stemming from wrongful foreclosures were potentially devastating, GMAC's actions in regard to Mr. Reed were reckless.
- From 1996 to the present, GMAC was put on notice by a variety of events of the importance of credit report accuracy.
- It is well known in our field that victims of chronic credit report inaccuracy endure a common pattern of harms. The damages suffered by Mr. Reed was consistent with those experienced by other victims. As mentioned above, Mr. Reed suffered damages that were peculiar to his situation.

Impact of 'Foreclosure' On Creditworthiness

It's logical that a foreclosure is devastating to a consumer's creditworthiness. After all, a home mortgage is often the most important credit obligation of an American consumer, and a foreclosure typically means that the consumer has defaulted on the mortgage to the point that the bank has to foreclose on the home and take possession of it.

Most lenders, like TD Bank in the case of Mr. Reed, have a policy of not approving (or even reviewing) credit applications from consumers who are in foreclosure. In addition, most lenders run automated scans of applicants' credit reports for key derogatory terms, and "foreclosure" is one of them. This is because underwriters typically will not give final approval to a credit application for someone who is in foreclosure.

The State of New Jersey has recognized foreclosure's devastating impact on the consumer through enactment of the Fair Foreclosure Act, which seeks to ensure that proper and timely notice is given to potential targets of foreclosure so they will have adequate opportunity to make things right and avoid losing their home. ("Institution of foreclosure is traumatic to the debtor-mortgagor and creates a permanent court record which can be injurious to the debtor's credit. The notice of intention is meant to give the debtor a chance to prevent acceleration and institution of foreclosure." See Myron C. Weinstein, "Law of Mortgages: Chapter 24: New Jersey's Fair Foreclosure Act. B. Notice of Intention." New Jersey Practice Series TM.)

GMAC knew or should have known all of this. GMAC's rushed and allegedly improper foreclosure action against Mr. Reed came during a period in which GMAC

allegedly was falsifying documents in order to foreclose on other properties. (See Paul Kiel, "Internal Doc Reveals GMAC Filed False Document in Bid to Foreclose," ProPublica, July 27, 2011. (www.foreclosuredefenseblog.com/2011/08/firm-commentary-readers-should.html))

Thus, GMAC's reckless and highly damaging improper foreclosure against Mr. Reed coincided with other reckless and presumably highly damaging improper foreclosures against other Americans, and appeared to be part of a pattern and practice of a declining mortgage lender desperate to salvage itself by trampling on its customers' rights.

GMAC's Foreclosure Doomed Mr. Reed's Re-finance, His Path To Normalcy, & Doomed Him To 'Credit Jail'

Mr. Reed had a long-standing relationship with the TD Bank President, who had been involved with numerous loans over a period of many years as part of Mr. Reed's ongoing business of buying, improving and selling real estate. In the Spring of 2008, the TD Bank President had visited one of Mr. Reed's properties and had ordered and received an appraisal.

The approval of this loan, and the consummation of this transaction, would have enabled Mr. Reed to catch up on his debts, including the GMAC mortgage, and extract equity from his home in order to conduct his business ventures.

That is when the key moment occurred. GMAC improperly moved to foreclose on Mr. Reed's home, figuratively hanging a "scarlet letter" around his creditworthiness, and scuttling the ability to consummate a loan transaction.

This in turn set off a horrific chain reaction that resulted in Mr. Reed, figuratively, being thrown into "credit jail." Unable to complete the planned transaction and obtain the necessary funds to become current on his credit obligations (and to continue his ongoing real estate endeavors), Mr. Reed suddenly could not meet his other credit obligations and quickly fell behind. Within months, his credit report was marred with a plethora of derogatory credit accounts which further doomed any hope he had of restoring his creditworthiness and returning to a normal economic life.¹ This chain reaction was caused directly by GMAC's improper foreclosure, and it devastated Mr. Reed's life.

This caused profound economic and non-economic damages to Mr. Reed. His other expert will opine on his economic damages.

¹ According to one of Mr. Reed's credit reports, a quick review indicated that eight accounts were rendered derogatory in 2008 alone.

Mr. Reed's non-economic damages relate to the stress, humiliation, mental anguish and frustration stemming from being blindsided by GMAC's non-compliant foreclosure, from watching his credit being ruined and knowing the consequences for his and his family's economic plans and aspirations, and from the consequential loss of reasonable control over such crucial personal, financial information, making him the victim of chronic credit report inaccuracy.

I have served as an expert in several cases in which consumers/plaintiffs have been victims of chronic credit report inaccuracy. In these cases, the juries recognized the profound damage to the plaintiffs. In some of the earlier cases in which I was involved, the minimum damage award was \$200,000. In more recent cases, the jury awards for actual damages have been closer to \$350,000.²

Because the chronic inaccuracy caused by GMAC cut right to the heart of Mr. Reed's ability to continue earning a living, it heightened the stress, humiliation, mental anguish and frustration he experienced from being blindsided by GMAC's non-compliant foreclosure, and from watching his credit being ruined.

² Eric Robert Drew vs. Equifax Information Services, LLC, et al., U.S. District Court for the Northern District of California, Case No. CV 07-00726-SI. \$700,000 in punitive damages, \$315,000 in emotional distress damages, and \$6,326.60 in economic damages, for a total of \$1,021,326.60; July 20, 2010

Suzanne Sloane vs. Equifax Information Services, LLC, et al., U.S. District Court for the Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. \$351,000 – \$106,000 in economic damages and \$245,000 in mental anguish, humiliation, and emotional distress damages. (August 2006)

Angela Williams v. Equifax Information Solutions, LLC: Circuit Ct. or 9th Judicial Circuit, Orange County, Florida – No. 48-2003-CA-9035-O; jury verdict, Nov. 30, 2007; (\$219,000 in actual damages and \$2.7 million in punitive damages).

Rebecca L. Valentine v. Equifax Information Services, LLC: U.S. District Court for the District of Oregon – No. 05-cv-0801; jury verdict Oct. 12, 2007; (\$200,000 in actual damages.)

Nicole M. Robinson v. Equifax Information Services, LLC: USDC-Eastern Dist. Of Virginia – No. 06-CV-1336; jury award Aug. 17, 2007; (\$200,000 in actual damages.)

Sandra Cortez vs. Trans Union, LLC., U.S. District Court for the Eastern District of Pennsylvania: No. 2:05-cv-05684-JF. (jury verdict April 26, 2007; \$50,000 actual damages, \$750,000 in punitive damages.)

Matthew Kirkpatrick v. Equifax, U.S. District Court for District of Oregon, (Slip. Op. CV-02-1197-MO; 2005 \$210,000 in actual damages.

Thomas v. Trans Union, U.S. District Court for the District of Oregon. \$5million punitive, \$300,000 actual damages for emotional distress. (2001)

Soghomonian v. TransUnion, (U.S. District Court for the Northern District of California, 2004) \$330,000 actual damages and \$660,000 punitive damages.

Cortez v. TransUnion, LLC, U.S. District Court for the Eastern District of Pennsylvania, Case Number: 2:05-cv-5684 (April 2007); \$50,000 actual damages, and \$750,000.00 in punitive damages.

Therefore, in accordance with my experience as an expert in the field of chronic credit report inaccuracy, I would value his non-economic damages, at a minimum, at \$350,000.³

Underlying Incentive For Furnishing

Many people do not realize that creditors' furnishing of their customers' data to credit reporting agencies (CRAs) is entirely voluntary. A fundamental incentive for large creditors such as GMAC in this case is that credit reporting is a cost-effective means of enhancing debt collection.

GMAC is keenly aware that credit reporting is a "powerful tool designed, in part, to wrench compliance with payment terms." (Rivera v. Bank One, 145 F.R.D. 64, 623 (D.P.R. 1993)). Creditors' collection letters and debt-collecting operators often advise customer-debtors that if they don't pay their debt it will result in highly derogatory data being entered on that customer's credit report which may remain for up to seven years. Creditors' collection letters often advise customer-debtors that, "Any potential employer, mortgage company, car dealership or creditor is likely to see this remark. Such a condition is far more damaging than the delinquent status you now maintain."

When a consumer applies for a mortgage, or other major form of credit, the mortgage or credit often is not granted until all outstanding unpaid debts listed on the credit report are resolved. Thus, a creditor that is owed money, or that still hopes to collect money whether or not it is actually owed by the consumer, enhances its ability to garner payment by reporting the debt to that consumer's credit report. This practice is highly problematic and damaging to the consumer when the consumer in fact does not actually owe the amount being reported to her credit report. However, it is conceivable that such practices would cause consumers, particularly those who did not know their rights, to consider paying off debts that they did not owe in order to remove serious derogatory data from their credit reports.

As I wrote in my book, "Credit Scores and Credit Reports,"

... Creditors view credit reporting as an arm of debt collection – a sort of last resort that will catch up with non-paying consumers sooner or later. This practice "crosses the line" when creditors and collectors threaten to report debts – or actually report debts – that they know or should know are not the responsibility of the consumer. [Page 31 – Second Edition]

³ I am sometimes reluctant to place a dollar value on non-economic damages for fear of "low-balling" what a future jury would decide. But I believe this initial estimate provides a reasonable basis for understanding Mr. Reed's minimum non-economic damages.

Potential Areas of Testimony: Damages Known & Common To Victims of Chronic Credit Report Inaccuracy

It is important that the trier of fact understands that victims of chronic credit report inaccuracy often experience a series of several known and common types of negative impacts.

Some Categories of Typical Negative Impacts of ID Theft & Chronic Inaccuracy

- (1) Inaccurately described as not creditworthy and/or less creditworthy to third parties
- (2) Improperly denied credit because of inaccurate data, or only able to obtain credit at less favorable rates
- (3) Expended time and energy to correct errors not of one's making; in addition to loss of time and energy, loss of opportunity
- (4) Wrongfully received debt collection calls
- (5) Chilled from applying for credit
- (6) Sleeplessness, physical symptoms
- (7) Sense of helplessness, loss of control over personal data
- (8) The emotional distress stemming from, and associated, with all of the above

The following factors could be used to gauge the severity of damage within each category.

Key Factors To Consider When Assessing Severity of Negative Impact

The nature and substance of the category of damage
Time & energy to solve the immediate problem
The expectation that the problem was solved
The number of recurrences
The period of time over which the problem persist

Mr. Reed's Damages Were Consistent with Other Victims of Chronic Credit Report Inaccuracy

Mr. Reed's damages were consistent with other victims of chronic credit report inaccuracy. His experiences touched on many of the eight categories cited above. In addition to the categories above, it is important for the trier of fact to understand that it can be very stressful not knowing everyone who may have associated you with highly derogatory credit data. Moreover, in my opinion, it can be difficult to maintain constructive personal relationships under stress.⁴ It can be difficult to perform adequately at one's job.

Defendant Knew or Should Have Known Its Actions Would Have Negative Impact

The history of credit reporting cited below, which includes years of Congressional testimony and legislative actions, Federal and State enforcement actions, abundant media coverage and targeted books, such as mine, should have made it abundantly clear to GMAC

⁴ In fact, the insurance industry says that stress, stemming from financial problems, can cause auto accidents, and therefore justifying its use of credit reports in setting insurance rates.

that failing to prevent Mr. Reed from becoming a victim of chronic inaccuracy would have a highly negative impact on him.

Context

Context is extremely important in this type of case, in part because credit reporting, along with inaccuracies stemming from identity theft, is a long-standing and well-known problem. An important role of experts in FCRA cases is to help the trier of fact understand the relevant context.⁵ Accordingly, I provide a brief history. An important theme emerging from this history is that a furnisher like GMAC was consistently provided notice in one form or another of the importance of ensuring the accuracy of information it reports and promptly restoring accuracy when the consumer disputes inaccuracies. This history also notified GMAC of the potential damage to consumers of both reporting erroneous information and then failing to correct it.

History of Significant Inaccuracy Problems

It is essential that the trier of fact understand that there is a long-standing problem of significant inaccuracy rates in credit reporting data. Since 1990, several non-industry studies have concluded that credit report inaccuracy is a problem of significant proportions that can have a major negative impact on the victims of inaccuracy, and that can potentially be detrimental to the credit system as well.⁶ This history is covered in Chapter 10 of my book, "Credit Scores and

⁵ Kirkpatrick v. Equifax, U.S. District Court for District of Oregon, (Slip. Op. CV-02-1197-MO; In rejecting Defendant Equifax's motion to exclude Mr. Hendricks' testimony, Judge Michael W. Mosman, ruling from the bench, stated: "As a general statement, what I'm allowing and the reason I'm allowing it is testimony that puts the particular actions of the defendant in particular here in context, in the context of the nationwide problem of identity theft, in the context of the congressional reaction to that and other issues in the credit-reporting industry, when he can by virtue of his study and his prior testimony, both in court and to Congress, make comparisons, then that's something that's helpful to the jury." (January 18, 2005; Transcript available upon request.)

⁶ Williams, James (CIS), "Credit File Errors, A Report," August 7, 1989 -- The first survey of 1,500 consumer reports and found serious error rate of 42% to 47%;

Consumers Union, "What Are They Saying About Me? The Results of A review of 161 Credit Reports From The Three Major Credit Bureaus, April 29, 1991 -- 48% contained "serious errors," defined as meaning those that could, or did, cause the denial of credit, employment or insurance.

U.S. Public Interest Research Group (US PIRG), "Nightmare On Credit Street (Or How The Credit Bureau Ruined My Life): Case Studies Documenting Consumer Complaints and Recommendation For Amending the FCRA," June 12, 1990

U.S. Public Interest Research Group (US PIRG), "Don't Call; Don't Write; We Don't Care." 1991 -- Review of 156 consumer report complaints on file at the FTC revealed that the average duration of complaints against a CRA was 22.5 weeks, or almost 6 months

U.S. Public Interest Research Group (US PIRG), "Public Enemy #1 At The FTC " October 1993, Based upon a Freedom of Information Act request, the 1993 report found that between 1990-93, problems with credit bureaus was the leading cause of complaints to the FTC (30,901, 20.6%). The 1993 PIRG

Credit Reports.” As that Chapter notes, in the early 1990s, problems with inaccuracy and “mixed files,” CRA non-responsiveness and inadequate reinvestigations became the cause of complaints to the FTC.

Of particular note was the 1993 study done by the U.S. Public Interest Research Group (US PIRG), “Public Enemy #1 At The FTC.” Based upon a Freedom of Information Act request, the 1993 report found that between 1990-93, problems with credit bureaus was the leading cause of complaints to the FTC (30,901, 20.6%). The 1993 PIRG found that 44% of complaints concerned mixed files, and that among those, 64% involved the mixing of data with total strangers.

These and other complaints prompted the FCRA’s oversight authorities – the FTC and State Attorneys General – to launch investigations and take enforcement actions. These actions resulted in a series of separate consent decrees involving Equifax, Experian and Trans Union in which each pledged to do a better job of maintaining accuracy, avoiding mixed files and the reappearance of previously deleted data, being more responsive and conducting adequate reinvestigations.

History: Increased Attention on Role of Furnisher

This Consent Agreements are also relevant because (1) they created widespread publicity about the problems of credit report inaccuracy, (2) they articulated (an agreed upon) higher and more specific standard of care to ensure accuracy and fairness, and (3) they formed the foundation for the 1996 Amendments to the FCRA. However, Congress knew that to ensure accuracy, it needed to go beyond the Consent Agreements by placing duties on furnishers to report information accurately.

The April 1994 House Banking Committee Report on the proposed amendments explained why, despite the consent agreements, and subsequent industry guidelines, legislation was necessary: “Moreover, because the industry guidelines are simply voluntary, they are unenforceable and may be changed or revoked at any time. Many of the provisions in the

found that 44% of complaints concerned mixed files, and that among those, 64% involved the mixing of data with total strangers.

U.S. Public Interest Research Group (US PIRG), “Mistakes Do Happen: Credit Report Errors Mean Consumers Lose,” March 1998

“Credit Reports: How Do Potential Lenders See You?” *ConsumerReports.org*, July 2000.

Consumer Federation of America and National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers*, December 2002.

Robert Avery, Paul Calem, Glenn Canner, and Raphael Bostic, “An Overview of Consumer Data and Credit Reporting,” *Federal Reserve Bulletin*, February 2003.

U.S. Public Interest Research Group (US PIRG), “Mistakes Do Happen: A Look at Credit Report Errors,” June 2004

consent agreements expire after a short period of time, are not enforceable by consumers, and do not apply in every state. *Additionally, these agreements do not impose any reinvestigation obligations on furnishers of information or on credit bureaus other than the three largest. Because of these limitations, federal legislation is necessary to improve accuracy-related protections for consumers. Consequently, the bill contains new reinvestigation procedures which are intended to cut down on the number of errors in consumer reports and to reduce the delay in correcting those errors.*" [Emphasis Added]

Importantly, the Consent Agreements' language on preventing reinsertion was incorporated and expanded upon in the 1996 Amendments to the FCRA. Under Sect. 1681 (a)(5)(B), information cannot be reinserted unless it is "certified" as complete and accurate by the furnisher. Moreover, a CRA, five business days prior to any reinsertion, must notify the consumer, and also provide the name and address of the furnisher and inform him or her of his right to add a statement.

Despite these Consent Decrees, the problems of mixed files, inadequate reinvestigations and reappearance did not go away. Throughout the early 1990s, Congress held a series of hearings in which numerous consumers and consumer advocates described problems with inaccuracy, mixed files, CRA non-responsiveness, and inadequate reinvestigations. This resulted in the 1996 legislative amendments to the FCRA.

I cite this brief history because it makes clear that for many years, a furnisher like GMAC has been on notice from Congress, the FTC, State AGs, the media and the public that it is important to ensure accuracy, and to reasonably investigate consumer disputes, and that it can be highly damaging when inaccurate information is not removed.

Part 2

Potential Areas of Testimony: General Issues, Context

- A. The Nature and Purpose of Credit Scores**
- B. The Nature and Purpose of Credit Reports**

Nature & Purpose of Credit Scores

It is possible that the trier of fact is not intimately familiar with either the credit reporting or credit scoring systems. If this is the case, I can provide expert testimony on the nature of both systems, how to read and understand credit reports and how to dispute errors, the parameters of credit scoring, the general impact that derogatory data have on a credit score, the interplay between identify theft, credit scoring and credit reporting, and other related matters.

A credit score is a number that reflects a consumer's creditworthiness at a given point in time. The FICO model credit score, which is used by 75 percent of lenders, is based entirely on information in a consumer's credit report. The model was developed by Fair, Isaac & Co., which

licenses it to Equifax, Experian and Trans Union and others. The scoring range for the FICO “classic” model is 300-850. The various types of “Beacon” scores sold by Equifax, and “Classic FICOs” sold by Trans Union,⁷ are based upon the FICO model. The higher the credit score, the less risky the consumer is viewed by creditors. Consequently, consumers with higher-end credit scores (720 and above) often can obtain the most favorable rates for mortgages, refinancing, personal and auto loans and auto and homeowners insurance, and also often receive solicitations for the best quality credit cards. Conversely, the lower the score, the less favorable the rate. A credit score of 620 and below is widely regarded as “sub-prime.”

Maintaining a good credit score is important because of a fundamental rule: the lower one’s score, the more one pays for credit, including higher interest on mortgages, auto loans, installment loans and credit cards.

For example, the Web site of Fair Isaac Corp., www.myfico.com,⁸ gives this example of the difference that credit scores make in terms of interest and monthly payments, on a \$300,000 30-year, fixed-rate mortgage:

Your FICO® Score	Your Interest Rate	Your Monthly Payment
760 - 850	6.148%	\$1,827
700 - 759	6.370%	\$1,871
680 - 699	6.654%	\$1,927
660 - 679	7.464%	\$2,090
640 - 659	8.816%	\$2,374
620 - 639	9.782%	\$2,584

A similar chart exists for auto loans. Moreover, about half of the major credit card companies practice “Universal Default,” meaning that these companies will raise their cardholders’ interest rates if those cardholders’ credit scores drop below certain levels – even if the cardholder never had a late payment with the company.⁹

1. The precise workings of the FICO score are highly proprietary and therefore closely guarded. However, the general parameters are publicly available:¹⁰

35% -- Payment history. Late payments, particularly major or serious derogatories, like 90-days late or worse, and particularly on important accounts like mortgages, are very damaging to one’s credit score.

⁷ In previous years, the Trans Union FICO Score was called “Empirica”

⁸ Visited September 21, 2005

⁹ Universal default is described in detail in Chapter 22 of the 2nd Edition of “Credit Scores and Credit Reports,” op. cit.

¹⁰ These parameters are published in Chpr 1 of both Editions of “Credit Scores and Credit Reports,” op. cit.

30% -- Credit Utilization. The ratio between available “revolving” credit and how much is actually used (credit card balances vs. credit card limits).

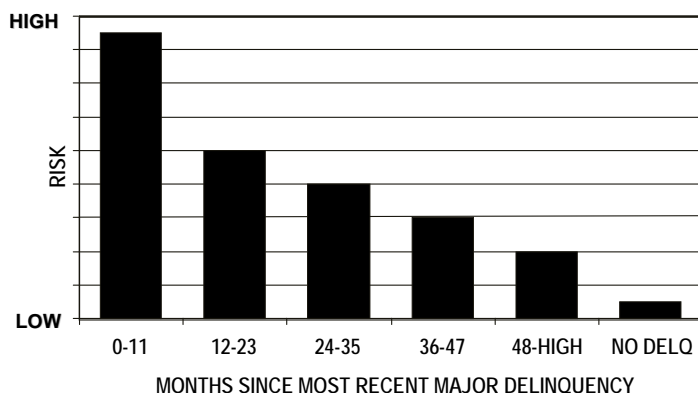
15% -- Length of Credit History. The longer you maintain a positive credit history, the better it is for your credit score.

10% -- How Much New Credit?. This relates to “inquiries” that creditors make when you apply for credit.

5% -- Healthy Mix of Credit? The scoring model prefers to see a “healthy mix” of mortgage, credit cards and perhaps other kinds of credit.

2. It is important to understand that consumers are most severely penalized when they have a serious derogatory within the past eleven months. The “importance of being recent” is illustrated by the following Fair Isaac chart, which shows, in a proportional sense, that a major delinquency in the past year has a 93% negative impact, while a major delinquency between 1-2 years-old has about a 60% negative impact; a major delinquency between 2-3 years-old has a 44% negative impact; a 3-4 year old delinquency has a 33% impact; any delinquency older than 4 years has only a 22% negative impact.

Previous credit performance



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There is growing public awareness about credit scoring, but it is by no means complete. A September 2004 survey by Opinion Research Corporation Intl. sponsored by the Consumer Federation of America (CFA) and Providian Financial, a major credit card issuer, found that:

Few consumers know what constitutes a good score. Only 12% correctly identified the low 600s as the level below which they would be denied credit or have to pay a higher, sub-prime rate. (One-third thought this level was the low

500s, and 30% said they didn't know.) And, only 13% correctly understand that scores above the low 700s usually qualify them for the lowest rates.

<http://www.consumerfed.org/092104creditscores.PDF>

A March 2005 General Accounting Office study found that about one-third of respondents had obtained their credit scores. While 70 percent of respondents correctly identified the definition of a credit score and understood many of the factors that could impact credit scores, only 28 percent could provide a number within a range of possible credit scores. In addition, consumers were more familiar with some of the factors that affected credit scores than with others. For example, while most consumers knew that skipping loan payments or making late credit card payments had a negative effect on credit scores, about half did not know that using all the credit available to them, such as reaching the maximum limit on a credit card or home equity loan, had a negative effect. Also, when asked about information that had no effect on credit scores (such as a low checking account balance), about half of consumers answered the questions incorrectly or said that they did not know, the GAO found.¹¹

Nature & Purpose Of Credit Reports

Similar to credit scoring, there is growing public awareness about the credit reporting system, but it is not universal.

According to a July 2003 survey by the Consumer Federation of America, “Only 25 percent of Americans – and less than 20 percent of those with incomes below \$35,000 – said they knew what their credit score was. But only three percent of Americans could, unprompted, name the three main credit bureaus-Experian, Equifax, and Trans Union-that provide both lenders and consumers with information from credit reports. Forty-three percent of Americans (35 percent of those with incomes below \$35,000) said they had obtained a copy of their credit report from the three credit bureaus in the past two years.”

A March 2005 General Accounting office report concluded that the public’s understanding of credit reports and credit scores was improving, but that a federal education campaign was needed to better inform those segments of the population that remain unfamiliar with the systems. The report found that 60 percent of respondents had seen their credit reports, most often because they were making a large purchase or refinancing a loan. Most of these consumers said that they understood their reports. However, about half (53 percent) did not know that information could stay on their report for 7 or 10 years.¹²

It is important that the trier of fact have an accurate understanding of the nature and purpose of credit reports. Accordingly, a brief description of the consumer report is fundamental to my opinions in this case.

¹¹ General Accounting Office, “Credit Reporting Literacy: Consumers Understood the Basics but Could Benefit from Targeted Educational Efforts” (GAO-05-223). www.gao.gov/new.items/d05223.pdf

¹² *Ibid.*

A consumer report, sometimes referred to as a credit report, consists of highly sensitive and personal information, containing a compilation of a consumer's current credit relationships, their credit history, their employment history, estimated income and identifying information, such as name, address, phone number and Social Security Number (SSN). There are three major repositories known as credit bureaus or consumer reporting agencies (CRAs) -- Equifax, Trans Union and Experian. The CRAs regularly receive updates on a consumer's credit relationships from credit grantors -- banks, mortgage companies, credit card issuers, department stores and others. The consumer report typically contains highly sensitive details about a consumer's finances, including account numbers, loan amounts, credit limits and payment history. It also can contain information on the consumer's interaction with the judicial system, including paid or unpaid civil judgments or bankruptcies.

The Credit Report consists of three (or four) basic sections:

- (1) A section with the consumer's **identifying information**-name, address, Social Security number, date of birth, previous address, employer, and sometimes phone number.
- (2) A section with the consumer's **payment history**, including mortgage, auto and installment loans, credit cards and department store cards, collections, and public records like bankruptcy and court judgments.
- (3) If applicable, a section showing **public record** information, like bankruptcies, court judgments and tax liens.
- (4) A section showing **inquiries**, in other words, those companies which accessed the report and for what purposes.

In addition, attached to the credit report is

- (1) A form for disputing errors, and
- (2) A statement of your rights under the FCRA

Each of the Big Three CRAs uses a slightly different format. A fundamental purpose of the credit report is to describe a consumer's creditworthiness. For example, the Equifax report lists the codes showing how consumers are classified when they don't pay their bills on time. Along with these numeric codes, a credit report can have a letter showing the type of credit, i.e., "R" for revolving (credit card) and "I" for installment (personal loan). The code for someone who always paid her credit card on time would be "R1." Here are the numeric codes:

- 2 : 30-59 Days Past Due
- 3 : 60-89 Days Past Due
- 4 : 90-119 Days Past Due
- 5 : Over 120 Days Past Due
- 7 : Included in Wage Earner Plan
- 8 : Repossession
- 9 : Charge Off
- Blank : No Data available for that month
- 0 : Too new to rate, or unrated
- 1 : On Time

The Trans Union and Experian credit reports describe similar categories with a text narrative, rather than with an alpha-numeric code.

It is important to note that public record information like bankruptcy, judgments and tax liens, and charge-offs (R-9) and collections, are considered some of the most negative entries. It is also important to note that when a creditor reports a negative tradeline as disputed, that tradeline typically is not scored and therefore does not negatively impact the credit score.

Credit grantors typically review a consumer's report and/or credit score when deciding to grant that consumer some form of credit, whether it is a loan or a credit card. Credit grantors also review consumer reports and/or credit scores on current customers to periodically check on their customers' creditworthiness. This is known as an "Account Review." Credit card issuers regularly use consumer reports and/or credit scores to screen consumers for "pre-approved" credit offers. Some employers use consumer reports to evaluate job applicants. Insurers use credit reports for underwriting purposes, and also use credit scores, but presumably only where not prohibited by State law.

Credit grantors typically review a consumer's report and/or credit score when deciding to grant that consumer some form of credit. Credit grantors also review consumer reports and/or credit scores on current customers to periodically check on their customers' creditworthiness. This is known as an "Account Review." Credit card issuers regularly use consumer reports and/or credit scores to screen consumers for "pre-approved" credit offers. Some employers use consumer reports to evaluate job applicants. Insurers also can use credit reports for underwriting purposes. Landlords also use credit reports for tenant screening.

Background & Qualifications (Curriculum Vitae Attached)

My expertise in credit reporting stems from several of my professional activities, including:

(1) Editor/Publisher of a specialty news reporting service that covers credit reporting, Fair Information practices and related matters;

(2) Author of the book Credit Scores and Credit Reports: How The System Really Works, What You Can Do, 3rd Edition, (Privacy Times 2005), and co-author of a book with a chapter on credit reporting;

(3) An expert witness qualified by Federal and State courts in Fair Credit Reporting Act (FCRA) litigation:

(4) an expert on credit reporting who has testified before Congress on numerous occasions, including four hearings in 2003, and who has testified twice before the California legislature in regards to legislation on the use of financial data, and who regularly presents at Continuing Legal Education and other professional events; and

(5) an expert consultant to government agencies and private corporations, a member of the Consumer Advisory Council of Experian (one of the three national Credit Reporting Agencies (CRAs), and as one who has earned FCRA Certification from the National Credit Reporting Association (NCRA).

Since 1981, I have been Editor/Publisher of *Privacy Times*, a biweekly, Washington-based newsletter that reports on privacy and information law, including the Fair Credit Reporting Act (FCRA). The newsletter ranges from 8-12 pages, 23 issues per year. Thus, I have researched, written, edited and published many articles on Congressional and State legislative actions, judicial opinions, industry trends and actions, executive branch policies and consumer news as they related to the FCRA.

I am author of the book, Credit Scores and Credit Reports: How The System Really Works, What You Can Do (3rd Edition, Privacy Times 2007). The book has 23 Chapters, 399 pages and 415 footnotes. As the title indicates, it describes how the credit scoring and credit reporting systems work and what consumers can do to obtain their reports, read and understand them, correct errors in them and enforce their rights. I also am co-author of Your Right To Privacy: A Basic Guide To Legal Rights In An Information Society (2nd Edition, Southern Illinois University Press, 1990), which has a chapter on credit reporting.

Since the early 1990s, I have served as an expert witness in numerous FCRA cases and have been qualified by the federal courts. As an expert witness, I have had the opportunity to read thousands of pages of deposition testimony by consumer reporting agency officials and by credit grantor personnel responsible for reporting data to CRAs. This is significant because CRAs and credit grantors do not openly discuss or publish information on their procedures and

practices for handling personal data. In fact, CRAs typically consider such procedures and practices to be proprietary and/or trade secrets. To my knowledge, the best (and possibly only) sources for finding candid descriptions of CRAs' and credit grantors' procedures and practices in relation to credit reporting data are the depositions of CRA and credit grantor employees in FCRA litigation. Due to my access to this information, I have augmented my specialized body of knowledge on practices and procedures related to credit scoring and credit reporting.

I have testified numerous times before Congress – always by invitation – on issues related to the collection, maintenance, security, use and disclosure of sensitive personal data, including credit reports and other financial information. (Consult CV for list of hearings and Web links to testimony.)

In 2003, the year in which Congress was dedicated to a major upgrade of the FCRA, I testified twice before the Senate and twice before the House, and presented once before the FTC. The hearings covered a wide range of credit reporting issues, accuracy, fairness, privacy, CRA procedures and security:

“The Accuracy of Credit Report Information and the Fair Credit Reporting Act,” Senate Banking Committee, July 10, 2003¹³

“The Role of FCRA in the Credit Granting Process,” House Financial Services Subcommittee on Financial Institutions & Consumer Credit, June 12, 2003¹⁴

“Database Security: Finding Out When Your Information Has Been Compromised,” Senate Judiciary Subcommittee on Technology, Terrorism and Government Information, Nov. 4, 2003¹⁵

“Fighting Fraud: Improving Information Security,” House Financial Services Subcommittee on Financial Institutions & Consumer Credit, and Oversight, April 3, 2003¹⁶

“Information Flows: The Costs and Benefits to Consumers and Businesses of The Collection and Use of Consumer Information,” Federal Trade Commission, National Workshop, June 18, 2003

Some of my recommendations were reflected in the final FCRA Amendments approved by Congress and signed by President Bush in December 2003.

On December 3, 2002, I testified before the California State Senate Insurance Committee. On January 29, 2003, I testified before the California State Assembly Insurance Committee. Both Committees were considering financial privacy legislation (SB 1), which ultimately was enacted by the legislature and signed into law in September 2003.

¹³ http://banking.senate.gov/03_07hrg/071003/index.htm

¹⁴ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=229>

¹⁵ http://judiciary.senate.gov/testimony.cfm?id=983&wit_id=2790

¹⁶ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=202>

I regularly present at Continuing Legal Education or professional seminars related to the FCRA. (Consult CV.)

Two of the three major CRAs have acknowledged that I am an expert on credit reporting as it relates to "Fair Information Practices." First developed in the United States in the late 1960s, Fair Information Practices (FIPs) standards are at the core of the FCRA and most other U.S. and European privacy and data protection laws, and serve as an internationally accepted standard for gauging privacy policy and practices.

In 1990, Equifax published "The Equifax Report on Consumers In the Information Age," a nationwide opinion survey and analysis by Louis Harris and Associates and Prof. Alan F. Westin. The report listed me as a privacy expert to whom the authors expressed appreciation for my advice on survey coverage.

In April 2002, I accepted Experian's invitation to serve on the Experian Consumer Advisory Council of Experian (formerly TRW), a national CRA and vendor of other information services. Before being disbanded in 2004, the Council met twice a year to offer non-binding advice and to discuss a host of credit reporting, marketing and other privacy-related topics.

In 2004, I passed an industry examination, thereby earning "FCRA Certification" from the National Credit Reporting Association.

Since August 1998, I have served under contract as a member of the Social Security Administration's Panel Of Privacy Experts advising the agency on a host of issues.

(Please consult the attached CV for additional information.)

Testimony & Expert Reports

Within recent years, I have testified at trial, or been deposed as an expert, in the following cases:

Andrews v. Trans Union Corp. et al., Case No. 96-7369, (USDC-C.D. Calif.), concerning theft-of-identity and consumer report inaccuracies. Expert report, deposition, trial testimony. Judge Lourdes Baird presiding. The U.S. Court of Appeals for the Ninth Circuit specifically found that my opinion on the prevalence of identity theft was relevant to the reasonableness of CRA procedures. (see 225 F.3d 1063 (2000)).

Angela P. Williams vs. Equifax Information Services, LLC, et al., Circuit Court for the Ninth Judicial Circuit, Orange County Florida. Credit Reporting. Expert disclosure and report. Deposition. Trial Testimony. Judge George A. Sprinkel IV presiding.

Eric Robert Drew vs. Equifax Information Services, LLC, et al., U.S. District Court for the Northern District of California, Case No. CV 07-00726-SI. Expert report, deposition. Trial testimony. Judge Susan Illston presiding.

Direct Data Solutions, Inc., v. Bailey & Associates Advertising, Inc.: Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida; Case No.: 07-9322 CA 09. Judge Jerald Bagley presiding.

Brenda F. Campbell v. Experian: U.S. District Court for the Western District of Missouri (No. 07-2514). FCRA. Expert report, deposition. Trial Testimony. Judge Nanette K. Laughrey presiding.

Harold & Beryllin Gamby v. Equifax Information Services, et al.: U.S. District Court for the Eastern District of Michigan [Southern Div.] (CV-06-11020-MO). FCRA, identity theft. Expert report. Deposition. Trial Testimony. Judge Marianne O. Battani presiding.

Deborah Adams v. National Engineering Service Corp./Verifications Inc.: U.S. District Court for the District of Connecticut. 3:07-cv-01035-JCH. FCRA. Expert report, deposition. Trial Testimony. Judge Warren W. Eginton presiding.

Patricia Holmes vs. TeleCheck Intl., Inc., U.S. District Court for the Middle District of Tennessee (Nashville Div.). FCRA. Expert report. Deposition. Trial Testimony. Chief District Judge Todd J. Campbell presiding.

Rebecca L. Valentine. v. Equifax Credit Information Services, et al.: U.S. District Court for the District of Oregon; No. CV 05-801-JO. FCRA, identity theft. Expert report. Deposition. Trial Testimony. Judge Robert E. Jones presiding.

Nicole Robinson vs. Equifax Information Services, LLC, et al., U.S. District Court for the Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. Expert reports. Deposition. Trial Testimony Judge Walter H. Rice presiding.

Suzanne Sloane vs. Equifax Information Services, LLC, et al., U.S. District Court for the Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. Expert reports. Deposition. Trial Testimony Judge Leonie M. Brinkema presiding.

Matthew Kirkpatrick v. Equifax, LLC, U.S. District Court for District of Oregon, (Slip. Op. CV-02-1197-MO. FCRA Expert report. Trial Testimony. Judge Michael W. Mosman presiding.

Sandra Cortez vs. Trans Union, LLC., U.S. District Court for the Eastern District of Pennsylvania: No. 2:05 -cv—05684-JF. FCRA. Expert Report. Daubert Hearing. Trial Testimony. Senior Judge John P. Fullam qualified me to testify at trial.

Federal Trade Commission vs. Accusearch, Inc., et al., U.S. District Court for the District of Wyoming, Case No. 06CV0105-D. FTC Section 5. Expert Report. U.S. Magistrate Judge William C. Beaman rejected Defendant's motion to exclude my testimony.

Eddie Silva, et al. v. Haynes Furniture Co., Inc.: U.S. District Court for the Eastern District of Virginia: No. 4:04CV82. FCRA. Fairness hearing testimony. Judge Walter D. Kelley, Jr. presiding.

Joi Helmes v. Wachovia Bank N.A.: U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria), Case No: 01-81277-RGM, Chapter 7. Post-bankruptcy credit reporting. Expert report. Deposition. Trial Testimony. Judge Robert G. Mayer presiding.

Alex Campos and Michael York v. ChoicePoint Services, Inc.: U.S. District Court for the District of Georgia (Atlanta), Civ. Action No. 1-03-CV-3577-WSD. FCRA. Expert Declaration. Fairness hearing testimony. Judge William S. Duffey, Jr. presiding.

Denis W. Stasulis v. Suntrust: U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria), Case No: 04-12542-RGM, Chapter 7. Post-bankruptcy credit reporting. Expert report. Deposition. Trial Testimony. Judge Robert G. Mayer presiding.

Dwaine Perry, et al. v. FleetBoston Financial Corp.: U.S. District Court for the Eastern District of Pennsylvania: No. 04-507. FCRA. Expert Report. Fairness hearing testimony. Judge Berle M. Schiller presiding.

Tammy Cochran v. C&M Motors, LLC, dba I-10 Toyota, et al: U.S. District Court for the Central District of California, No. CV-03-3568FMC. FCRA. Expert Report. Trial Testimony Judge Florence-Marie Cooper presiding.

Myra Coleman v. Trans Union LLC, CA4: 98-CV-169B-B (USDC-Mississippi) FCRA. Expert report, deposition, trial testimony. Judge Neal B. Biggers presiding.

Arthur Spengler v. Sears Roebuck & Co., Case No. C-03-0557. (Circuit Court, Wicomico County, Maryland). Tort, Interference with Business Relationships. Trial Testimony. Judge D. Davis qualified me as expert on credit scoring, credit reporting and FCRA-related issues.

Judy C. Thomas v. Trans Union LLC, U.S. District Court for the District of Oregon; Case No. 00-1150-JE. FCRA. Expert report, deposition, trial testimony. Magistrate Judge John Jelderks presiding.

Scott E. Campbell v. G.E. Capital Auto Lease, Circuit Court For St. Mary's County, Maryland, Case No. 99-522. FCRA, invasion of privacy. Expert report, deposition. Judge Karen Abrams qualified me to testify, but the case settled one week before trial.

Franklin F. Grizzard, Jr. v. Trans Union, L.L.C., & Equifax Information Services L.L.C., et al.: U.S. District Court for the District of Virginia (Richmond Div.); Nos. 04-CV-625 & 04-CV-626, respectively. Expert report. Affidavit. Deposition. On the eve of trial, Judge Richard Williams rejected Defendant's motion to disqualify me. The case settled shortly thereafter.

Catherine Smith, et al. v. Progressive Corporation, et al.: U.S. District Court for the Middle District of Florida (Gainesville), Case No.1:00-CV-210-MMP. Expert Report, Declaration of Value, Fairness Hearing testimony. Judge Maurice M. Paul presiding.

Franklin E. Clark, et al. v. Experian, et al.: U.S. District Court for the District of South Carolina, Case Nos. 8:00-1217-22, 8:00-1218-22, 8:00-1219-22. Affidavit, Supplemental Affidavit (both affidavits were admitted into evidence without objection). Judge Cameron McGowan Currie presiding.

Alana Valerie Sheldon v. Trans Union, LLC., LVNV Funding, LLC, & Resurgent Capital Services L.P.: U.S. District Court for the District of Maryland; 8:08-cv-00057-PJM. Expert report, deposition.

In Re: Cellphone Termination Fee Cases, Superior Court of the State of California, Alameda County, JCCP No. 4332. Deposition.

Karl Benedikt v. ChoicePoint, Inc.: U.S. District Court for the District of New Jersey [Newark Vicinage]; 07-2569. Expert report, deposition.

Abdirizak Gayre v. CSC Credit Services, Inc., Equifax Information Services, LLC, and Afni, Inc.: U.S. District Court for the District of Minnesota (C.A. No. 07-CV-0622 [JRT/FLN]). FCRA. Expert report, deposition.

Erin Ayles v. Experian Information Solutions, Inc.: U.S. District Court for the Eastern District of Virginia (Alexandria Division); 1:07cv 662. Expert report, deposition.

Maria D. v. Comcast Corp., Sacramento Superior Court, Case No. 03AS05745. Deposition.

In Re: Farmers Insurance Co., Inc., FCRA Litigation, U.S. District Court for the Western District of Oklahoma, Case No. CIV 03-158-F. FCRA. Expert report, deposition.

Steven E. Beck v. Equifax Information Services, et al.: U.S. District Court for the Eastern District of Virginia: No. 1-05cv347. FCRA. Expert report, deposition.

Ford Motor Credit Co. v. Sudesh Agrawal, Court of Common Pleas, Cuyahoga Country, Ohio; Case No. CV04536588. Credit reporting and credit scoring. Deposition.

Larry Alabran v. Capital One Services, Inc.: U.S. District Court for the Eastern District of Virginia (Richmond Division); Case No. 3:04-CV-935. Expert report, deposition.

Gail Cope v. MBNA American Bank NA: U.S. District Court for the District of Oregon; No. 04-CV-493-JE. Expert report, deposition.

Robert Gordon Peoples v. Experian Services Corp., et al.: U.S. District Court for the Central District of California: No. CV-04-1378 CAS (Ex). Expert report. Deposition.

Lottie Robertson v. Experian Information Services, Inc. & Capital One Bank: U.S. District Court for the Eastern District of Michigan (Southern Div.) No. 04-72308. Expert report. Deposition.

Barbara A. Harris v. Experian Information Solutions, Inc., and Equifax Credit Information Services, Inc.: U.S. District Court for the District of Oregon, Civil No. 01-1728-JE. FCRA. Expert reports. Deposition

Bruce Danielson v. Experian Information Solutions: U.S. District Court for the Northern District of Texas, Case No: 3-04CV-1722N. FCRA. Expert report. Deposition.

Stacy Lawton Guin, et al. v. Brazos Higher Education Service Corporation, Inc.: USDC-Minnesota – No. CV 05-668 RHK/JSM. Negligence. Security Breach. Affidavit. Deposition.

Anthony Chin v. State Dept. Federal Credit Union: Circ. Ct. Prince George's County (Maryland); Civ. Act. No. CAL04-12778; Tort. Deposition. Trial testimony.

James M. McKeown v. Sears Roebuck & Co., et al.: U.S. District Court for the Western District of Wisconsin, Civil No. Case No. 03-CV-0528 C. Expert Report, deposition.

Paulette Field v. Trans Union LLC, et al., Case No. 01 C 6390 (USDC-N.D. Illinois - Eastern Div. FCRA. Expert report. Deposition.

Earle E. Ausherman, et al. v. Bank of America Corporation et al.: U.S. District Court for the District of Maryland, Civil Action No. MJG-01-438. FCRA. Expert report. Deposition.

Jesse Klco v. Elmhurst Dodge, U.S. District Court for the Northern District of Illinois (Eastern Division) Civil Action No. 01 C 0433. FCRA. Expert report, deposition.

(David & Ruthie Keefner v. Webb Ford, Inc. & Deon L. Willis.: U.S. District Court for the Northern District of Illinois (Eastern Division), Civil Action No. 02C-4643. FCRA. Expert report. Deposition.

Anthony & Alethea Preston v. MGIC, U.S. District Court for the Middle District of Florida (Ocala), Case No. 5:03-cv-111-Oc-10GRJ. FCRA. Expert report, deposition.

Bruce Butcher and Pam Butcher v. Chase Manhattan Bank, U.S.A., Inc., U.S. District Court for District of South Carolina, Case No. 8:03-3184-26. FCRA. Expert report, deposition.

FEE

My fee is \$300 per hour for consulting and for the expert report; \$300 per hour, or a minimum of \$1,200 per day, for deposition or trial testimony, plus reasonable travel time, plus travel costs and expenses.

Evan D. Hendricks

CURRICULUM VITAE

Professional Activities

1981- Present Editor/Publisher of *Privacy Times*

Since 1981, I have been Editor/Publisher of *Privacy Times*, a biweekly, Washington-based newsletter that reports on privacy and information law, including the Fair Credit Reporting Act (FCRA). The newsletter ranges from 8-12 pages, 23 issues per year. Thus, I have researched, written, edited and published many articles on Congressional and State legislative actions, judicial opinions, industry trends and actions, executive branch policies and consumer news as they related to the FCRA.

1992 – Present Expert Witness

Qualified by the federal courts in FCRA and identity theft cases. (Complete list attached). I have read extensive deposition testimony by credit bureau and credit grantor personnel. This is significant because CRAs and credit grantors do not openly discuss or publish information on their procedures and practices for handling personal data, and the best (and possibly only) sources for finding candid descriptions of CRAs' and credit grantors' procedures and practices in relation to credit reporting data are the depositions of CRA and credit grantor employees in FCRA litigation.

1998 – Present Privacy Expert Consultant, U.S. Social Security Administration

Regularly review policies and practices in relation to the collection, use and disclosure of personal data and Social Security numbers and provide feedback and recommendations.

2002 – 2004 Member, Experian Consumer Advisory Council

Along with other Council members, I provide an outsider's view on credit reporting, marketing and other privacy issues.

July – October 2002 Consultant to U.S. Postal Service

Working with the USPS's Chief Privacy Officer, I assisted in reviewing and editing the re-write of the USPS's Privacy Act notices, with an emphasis on "Plain English."

Evan Hendricks P.O. Box 302 Cabin John, MD 20818
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Recent Testimony Before Congress & The FTC

“Credit Reports: Consumers’ Ability to Dispute and Change Information,” House Financial Services Committee, June 19, 2007.¹⁷

“Privacy in the Commercial World II,” House Energy & Commerce Subcommittee On Commerce, Trade, and Consumer Protection, June 20, 2006¹⁸

“Financial Data Protection Act of 2005,” House Financial Services Subcommittee on Financial Institutions and Consumer Credit, November 9, 2005¹⁹

“Credit Card Data Processing: How Secure Is It?” House Financial Services Subcommittee on Oversight and Investigations, July 21, 2005²⁰

“Identity Theft: Recent Developments Involving the Security of Sensitive Consumer Information,”²¹ Senate Banking Committee, March 15, 2005

“The Accuracy of Credit Report Information and the Fair Credit Reporting Act,” Senate Banking Committee, July 10, 2003²²

“The Role of FCRA in the Credit Granting Process,” House Financial Services Subcommittee on Financial Institutions & Consumer Credit, June 12, 2003²³

“Database Security: Finding Out When Your Information Has Been Compromised,” Senate Judiciary Subcommittee on Technology, Terrorism and Government Information, Nov. 4, 2003²⁴

“Fighting Fraud: Improving Information Security,” House Financial Services Subcommittee on Financial Institutions & Consumer Credit, and Oversight, April 3, 2003²⁵

“Information Flows: The Costs and Benefits to Consumers and Businesses of The Collection and Use of Consumer Information,” Federal Trade Commission, National Workshop, June 18, 2003

Books

Credit Scores and Credit Reports: How The System Really Works, What You Can Do
[3rd Edition] (Privacy Times, 2007)

Your Right To Privacy: A Basic Guide To Legal Rights In An Information Society (2nd Edition,
Southern Illinois University Press, 1990), (Includes a chapter on credit reporting)

Former Secrets: Government Records Made Public Through The Freedom of Information Act
(Campaign For Political Rights, 1982)

¹⁷ www.house.gov/apps/list/hearing/financialsvcs_dem/ht061907.shtml

¹⁸ <http://energycommerce.house.gov/108/Hearings/06202006hearing1938/Hendricks.pdf>

¹⁹ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=425>

²⁰ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=407>

²¹ <http://banking.senate.gov/index.cfm?Fuseaction=Hearings.Detail&HearingID=144>

²² http://banking.senate.gov/03_07hr/071003/index.htm

²³ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=229>

²⁴ http://judiciary.senate.gov/testimony.cfm?id=983&wit_id=2790

²⁵ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=202>

International Lectures

24th International Conference of Data Protection & Privacy Commissioners (Cardiff, Wales – Presentation published in conference proceedings, 2002)

The 23rd International Conference of Data Protection Commissioners (Paris, La Sorbonne – Presentation published in conference proceedings, 2001)

The 22nd Annual Conference on Data Protection (Venice, Italy -- 2000)

The 16th Annual Conference on Data Protection (The Hague, The Netherlands -- 1994).

In the 1980s, served as an expert consultant to both the Privacy Commissioner of Canada and Privacy Commissioner of Australia.

Presentations/Instruction At Recent CLE & Professional Seminars

“Second Law and Information Society Symposium: Enforcement, Compliance and Remedies in the Information Society,” Presenter, “Credit Report Cases – Effective Remedies?” Center on Law and Information Policy (CLIP), Fordham Law School, New York, May 29-30, 2008.²⁶

“The 1st Annual Privacy Law Scholars Conference,” Presenter, “Assessing Privacy Harm: How can victims of privacy violations prove that they have been harmed? The George Washington University Law School, Washington, DC, June 12-13, 2008.²⁷

“11th Annual Consumer Financial Services Litigation,” Practicing Law Institute, March 20-21, 2006 (New York City)

“Bankruptcy Roundtable,” and, “Fair Credit Reporting Act Roundtable,” National Consumer Law Center, October 27, 2005

“Advanced Consumer Litigation,” Texas Bar CLE, Feb. 10-11, 2005

“Financial Privacy Litigation,” (Impact of FACT Act), Practicing Law Institute, February 28- March 1, 2005 (New York City)

“The New FACT Act: Challenge & Oppty.,” Privacy & American Business, Feb. 9-10, 2004

“Understanding the FACT Act And The Impact of Multi-Agency Rulewriting Process,” Glasser LegalWorks, Sept. 28-29, 2004

“12th Annual National Conference,” National Credit Reporting Association, Nov. 10-12, 2004

Professional Societies

Past President & Board Member, American Society of Access Professionals www.accesspro.org

Industry Certification

FCRA Certification, National Credit Reporting Association (www.ncrainc.org).

Media

In addition to being a paid consultant and special guest on CNN’s IMPACT news in 1996, I am quoted regularly by major and small newspapers (including The Washington Post, New York Times, Wall Street Journal, Chicago Tribune, Los Angeles Times, Newsweek and Money Magazine), regarding issues of privacy generally and the privacy implications of consumer reporting specifically. I have appeared on National Public Radio, PBS NewsHour with Jim Lehrer, ABC Nightline and World News Tonight, NBC Nightly News, CBS Evening News, CNN News Watch, CNBC, MSNBC, Fox News, various local affiliates, and the Oprah Winfrey Show and Geraldo, regarding these issues as well.

Education

Bachelor of Arts, Columbia College, Columbia University, New York, N.Y. (1979)

²⁶ <http://law.fordham.edu/ihtml/eventitemPP.ihtml?id=37&idc=8943&template=clip>

²⁷ <http://privacyscholars.com>

MATERIALS CONSIDERED

In specific preparation for this case, I have reviewed the following:

Plaintiffs' Complaint & Attached Exhibits
Plaintiffs' credit reports
Plaintiff's deposition
Documents cited in this report

I also generally rely upon:

The Fair Credit Reporting Act & Consumer Credit Reporting Reform Act of 1996
Fair Credit Reporting Act (w/ Companion Disk & 2000 Cumulative Supplement,
National Consumer Law Center, 1998 (Boston)
Credit Scores and Credit Reports: How The System Really Works, What You Can
Do (3rd Edition, Privacy Times 2007),

My opinions in this case are also based on my 31-year profession of following privacy developments including those relating to the consumer reporting and information broker industry and the criminal justice system as a journalist, editor, publisher and privacy expert. My experience includes listening to and participating in dozens of hours of Congressional testimony, hearings before the Federal Trade Commission, media coverage, studies by independent groups, my own personal observations and numerous contacts, and my previous work preparing to be an expert witness in other FCRA cases.

Executed This The 9th Day of November 2011 in Bethesda, Maryland

/s/ Evan D. Hendricks

Evan D. Hendricks

PO Box 302

Cabin John, MD 20818

(301) 229 7002

Westlaw

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30 N.J. Prac., Law of Mortgages § 24.16 (2d ed.)

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Law Of Mortgages
Myron C. Weinstein[a0]

Chapter 24. New Jersey's Fair Foreclosure Act
B. NOTICE OF INTENTION

§ 24.16. Notice of intention—Failure to notice; allegation in complaint

West's Key Number Digest

West's Key Number Digest, Mortgages ↪413

West's Key Number Digest, Mortgages 440

West's Key Number Digest, Mortgages 444.1

West's Key Number Digest, Mortgages 450

Legal Encyclopedias

C.J.S., Mortgages § 623

C.J.S., Mortgages § 633

C.J.S., Mortgages § 635

C.J.S., Mortgages § 641

If a notice of intention is defective, defectively given or simply not given at all, the only safe course of conduct for the lender's attorney to follow is to give another notice or, if foreclosure has already been instituted, dismiss the action and give the debtor a valid notice before commencement of a new action. It is questionable whether the lender may simply give the debtor a valid notice and then file an amended complaint. If the filing of the original complaint is deemed void, it is doubtful that a void complaint can be amended. Moreover, the statute requires service of a notice of intention before the residential mortgage lender may "commence" foreclosure.[1] The filing of an amended complaint would not technically constitute the commencement of foreclosure, but rather an amendment to an existing foreclosure. In any event, a lender's attorney seeking to use the amended judgment approach should obtain an order from the vicinage chancery judge expressly permitting this procedure.

The return notice[2] used by the Office of Foreclosure provides in part:

1. No allegation in complaint concerning compliance with Notice of Intention to Foreclose requirements of the Fair Foreclosure Act.

(A) If Notice of Intention to Foreclose was not given to debtors before the filing of the complaint, then com-

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Please read page 3 & 4

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plaint must be dismissed and a new complaint filed after Notice of Intention to Foreclose has been given pursuant to the Act.

(B) If Notice of Intention to Foreclose was given to debtors pursuant to the Act, complaint must be amended to so allege. Amended Complaint or complaint and amendment to complaint must be re-served on debtors (as same is defined in the statute) with original service of process.

Thus, attorneys are forewarned. If the notice of intention has not been served on the debtors, the Office of Foreclosure will require a dismissal of the action and the filing of a new action and complaint. If the notice has been served but an allegation of compliance is not set forth in the foreclosure complaint, the Office will require an amendment and re-service.

As to Pennsylvania's Act 6,[3] which contains notice of intention requirements[4] substantially similar to the New Jersey statute, it has been held[5] that a lender's right to accelerate and foreclose exists independently of the statute which creates only a condition precedent to foreclosure. Thus, a technical failure to comply with the notice of intention requirements will be corrected by postponing plaintiff's right to proceed for 30 days to give defendants the right to cure without liability for costs and attorney's fees. Other Pennsylvania courts have taken the same approach,[6] where foreclosure complaints were not dismissed for lenders' failure to give each mortgagor a separately mailed notice of intention, where non-receipt of the notice of intention was not alleged by the mortgagors. On the other hand, other Pennsylvania courts[7] and a federal Bankruptcy Court[8] have found that the notice requirements of Act 6 are jurisdictional and failure to comply with their requirements deprives the court of jurisdiction over the subject matter.

The Bankruptcy Court has even set aside a Pennsylvania sheriff's sale for failure by the mortgagee to prove that it complied with Act 6's notice requirements.[9]

Pennsylvania courts[10] have also said that technical violations of the statute should not significantly adversely affect a lender's rights under the notice of intention.

In *GE Capital Mortgage Services, Inc. v. Weisman*,[11] plaintiff claimed that it sent a notice of intention to the mortgagor in compliance with the Fair Foreclosure Act, but was unable to prove compliance despite the fact that the mortgagor denied receiving it. Because the court found that total noncompliance or bad faith were not involved—"merely plaintiff's inability to locate the records demonstrating service"—plaintiff was directed to forward, within ten days, by certified mail, return receipt requested, a new notice of intention giving the defendants thirty days from the mailing of the notice to reinstate the mortgage without liability for costs and attorneys fees. This way "defendants would be given all that they would have been entitled to prior to the commencement of the case, and plaintiff would not be prejudiced by having to bear the cost and time of having to reinstate the foreclosure action, nor would valuable court resources be wasted through this repetitive action. Under the circumstances, equitable considerations call for the alternative relief requested to be granted." [12]

The court in *GE Capital* noted that this issue had been addressed by Pennsylvania Courts pursuant to Act 6 and that there was a split of authority on the issue as previously mentioned in this section, with some decisions dismissing the complaint outright while others merely postponed plaintiff's right to proceed for thirty days giving defendants the right to cure during that period without liability for costs and attorneys fees. The court in *GE Capital* opted for the latter.

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The decision in GE Capital can be criticized on two grounds. First, plaintiff offered no real proof that it had actually sent the notice of intention to the mortgagor in this specific instance, only a general certification from plaintiff's bank officer that it was plaintiff's customary business practice to mail the notice of intention in accordance with the statute before referring the matter to its attorney with instructions to proceed with foreclosure. Plaintiff was unable to produce a registered or certified mail receipt from the post office showing that it had sent the notice, or a return receipt verifying that the notice had been received or even a certification of mailing of the notice signed by a bank employee. Thus, the standard of proof used by the court in support of the relief it granted is subject to strong potential abuses. Any plaintiff can say *in good faith* that it was its customary business practice to mail a notice of intention to the debtor without offering specific proof in the case at hand. In this regard, total noncompliance with the notice of intention requirement and failure to prove compliance in a specific instance amounts to the same thing—failure by plaintiff to carry its burden with respect to service of the notice of intention which goes to the very heart of the statute and the rights it affords debtors. Presumably, this is a primary reason why the statute requires registered or certified mailing, return receipt requested, of the notice in the first place, to avoid the very issue raised in GE Capital.

The second ground for criticism is the court's assertion that the mortgagor would not be prejudiced by being given the notice of intention pending foreclosure; that "defendants would be given all that they would have been entitled to prior to the commencement of the case." This in the author's view is erroneous. Once foreclosure is instituted, a mortgagor in point of actual practice must hire an attorney to defend against it. This is what happened in GE Capital. This results in substantial attorneys' fees making it more expensive for the mortgagor to cure. The fact that the notice of intention cannot include any of *plaintiff's* fees and costs will be of little consolation to the debtor-mortgagor who must pay its own legal and filing fees. Moreover, a notice of intention given during the pendency of a foreclosure action pursuant to court order will by necessity be given to the debtor at a much later point in time resulting in a higher cure amount than if given prior to institution of foreclosure. This may result in the debtor's inability to cure.

Giving the notice after institution of foreclosure compresses the time period between receipt of the notice by the debtor and entry of final judgment—the point in time when the debtor's right to cure is terminated. For example, in an ordinary situation there will be at least six to eight months between receipt of the notice of intention by the debtor and entry of final judgment. This gives the debtor substantial time to avail itself of the information contained in the notice, such as credit counseling and so forth. Where the notice is given after institution of foreclosure as in GE Capital, judgment may be entered within two to three months after receipt of the notice. This prejudices the debtor's rights under the notice. Also, the institution of foreclosure is traumatic to the debtor-mortgagor and creates a permanent court record which can be injurious to the debtor's credit. The notice of intention is meant to give the debtor a chance to prevent acceleration and institution of foreclosure. Obviously, giving the notice after foreclosure has been instituted will not effectuate this legislative purpose.

It appears, however, that the Appellate Division has now spoken out on the question of what remedy should be used where plaintiff fails to give a sufficient notice of intention under the Fair Foreclosure Act. In *Cho Hung Bank v. Kim*, [13] the Appellate Division approved and in fact followed the procedure set forth in *G.E. Capital Mortgage Services, Inc. v. Weisman*.

The court reversed and remanded the Chancery Divisions denial of a R. 4:50 motion to vacate a foreclosure judgment, in part because of plaintiff's failure to give a sufficient notice of intention to the mortgagors, with directions to the Chancery Division: to resolve the Fair Foreclosure act issue and if the act is inapplicable, then plaintiff could proceed forthwith to amended judgment based upon proper proof of the amount due. If the act is

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applicable, however, plaintiff is directed, as in *G.E. Capital Mortgage Services, Inc. v. Weisman*, to send a notice of intention to the mortgagors by certified mail and, depending upon their response, for the action to then proceed in the ordinary course under the Fair Foreclosure Act.[14]

In *EMC Mortgage Corporation v. Chaudhri*,[15] the Appellate Division cited *Cho Hung Bank v. Kim*[16] for the proposition that “‘substantial compliance’ with the contents of a notice of intent, sent by a lender prior to initiation of foreclosure, pursuant to N.J.S.A. 2A:50-56(c), was not authorized by the statute’s terms.”

The Appellate Division in *EMC Mortgage Corporation v. Chaudhri*,[17] in reversing the granting of summary judgment dismissing EMC’s foreclosure complaint, disapproved of the remedy employed in *GE Capital Mortgage Servs., Inc. v. Weisman*—authorizing the mailing the notice of intention pending foreclosure to cure a technical deficiency—and ruled that the statutory mandate requires “that lenders send proper notice, by registered or certified mail, at least thirty days prior to the initiation of a foreclosure action courts are not free to deviate from the unambiguous statute.”

The Appellate Division also stated: “We concur with the trial judge’s dismissal, without prejudice, of Uni-cor’s foreclosure [EMC’s assignor] complaint due to the failure to send the notice of intent to foreclose prior to commencing suit.”[18]

[FNa0] Of The New Jersey Bar, Former Chief, Office Of Foreclosure.

[FN1] N.J.S.A. 2A:50-56(a).

[FN2] “RETURN NOTICE CONCERNING COMPLIANCE WITH FAIR FORECLOSURE ACT.”

[FN3] 41 P.S. § 103 et seq.

[FN4] 41 P.S. § 403.

[FN5] *Gettysburg National Bank v. Trace*, 13 Pa. D. & C.3d 679 (1980).

[FN6] *Central Savings & Loan Association v. Reckart*, 15 Pa. D. & C.4th 105 (1992); *Ertel v. Seitzer*, 31 Pa. D. & C.3d 332 (1982).

[FN7] *Bankers Trust Co. v. Foust*, 424 Pa.Super. 89, 621 A.2d 1054 (1993), appeal denied 535 Pa. 635, 631 A.2d 1007 (1993); *Philadelphia Housing Authority v. Barbour*, 405 Pa.Super. 140, 592 A.2d 47 (1991), affirmed 532 Pa. 212, 615 A.2d 339 (1992); *Main Line Federal Sav. And Loan Ass’n v. Joyce*, 632 F.Supp. 9 (E.D.Pa.1986).

[FN8] *In re Soto*, 221 B.R. 343, 352 (Bkrcty.E.D.Pa.1998).

[FN9] *Marra v. Stocker*, 532 Pa. 187, 615 A.2d 326 (1992); and *Sharp v. Fidelity Bond and Mortgage Co. (In re Sharp)*, 24 B.R. 817 (Bkrcty.E.D.Pa.1982).

[FN10] *In re Panas*, 100 B.R. 734, 740 (Bkrcty.E.D.Pa.1989), citing *In re Vitelli*, 93 B.R. 889, 897–99 (Bkrcty.E.D.Pa.1988), and *In re Mosley*, 85 B.R. 942 (Bkrcty.E.D.Pa.1988).

[FN11] *GE Capital Mortgage Services, Inc. v. Weisman*, 339 N.J.Super. 590, 773 A.2d 122

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(Ch.Div.2000).

[FN12] GE Capital Mortgage Services, Inc. v. Weisman, 339 N.J.Super. 590, 594, 773 A.2d 122, 124 (Ch.Div.2000).

[FN13] Bank v. Kim, 361 N.J.Super. 331, 825 A.2d 566 (App.Div.2003).

[FN14] Bank v. Kim, 361 N.J.Super. 331, 346–347, 825 A.2d 566, 575 (App.Div.2003).

[FN15] Bank v. Kim, 361 N.J. Super. 331, 825 A.2d 566 (App. Div. 2003).

[FN16] EMC Mortg. Corp. v. Chaudhri, 400 N.J. Super. 126, 946 A.2d 578, 586 (App. Div. 2008).

[FN17] EMC Mortg. Corp. v. Chaudhri, 400 N.J. Super. 126, 946 A.2d 578, 587 (App. Div. 2008).

[FN18] EMC Mortg. Corp. v. Chaudhri, 400 N.J. Super. 126, 946 A.2d 578, 587 (App. Div. 2008).

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30 NJPRAC § 24.16

END OF DOCUMENT

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1701 Route 70 East
Cherry Hill, NJ 08034
T: 888-751-9000
www.tdbank.com

August 20, 2012

Frank Reed
817 Matlack Drive
Moorestown, NJ 08057

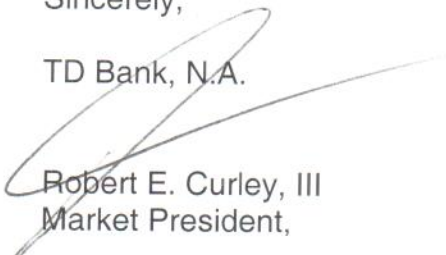
Re: Declination of Loan Secured by 817 Matlack Drive, Moorestown, NJ

Dear Mr. Reed:

As stated in your letter dated August 20, 2012, you were declined by TD Bank for a loan secured by the above property back in early 2008. The reason you were declined was due to a pending foreclosure of your first mortgage on this property that was uncovered during our underwriting process.

Sincerely,

TD Bank, N.A.



Robert E. Curley, III
Market President,

Frank Reed
817 Matlack Drive
Moorestown, NJ 08057
P: 856.956.6950
E: FrankReedNJ@aol.com

August 20, 2012

Robert E. Curley, III
SJ Market President
TD Bank
1701 Rt. 70 E.
Cherry Hill, NJ 08034

Re: Declination of Cash out Refinance on 817 Matlack Drive Moorestown, NJ 08057

Dear Mr. Curley:

During the spring of 2008 your office was processing a cash-out refinance on my primary residence located at 817 Matlack Drive Moorestown, NJ 08057.

An appraisal for this loan was done for this transaction by your bank on the house and the value was established at \$2,040,000. However, the loan in question was declined in the first week of June.

It is my recollection that the reason for this loan declination was that our primary residence had just gone into foreclosure.

I am writing you now as I cannot find a copy of any written correspondence from your bank citing the reason for the loan's declination although I do remember it being given to me verbally.

Can you now please provide to me a written correspondence confirming my recollection as to the reason for the loan's declination?

I thank you for your time and assistance in this matter.

Sincerely,



Frank Reed

Thomas J Tartamosa

253 Jackson Road Berlin, NJ 08009

Phone: 856-296-0392

Fax: 856-768-3282

F A XTo: Frank Reed804-358-4124
Fax: ~~856-778-5675~~From: Thomas TartamosaDate: 11/30, 2010RE: REFIPages including covers: 2

11/20/2010

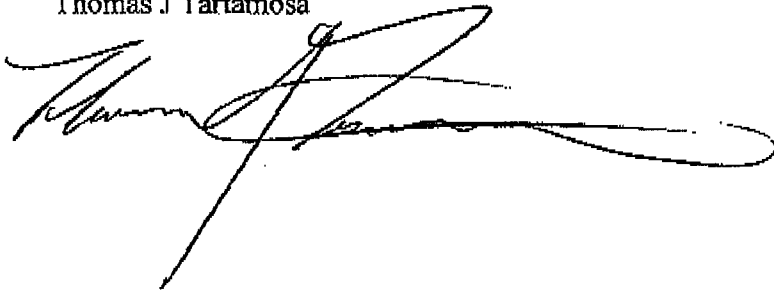
To Whom It May Concern:

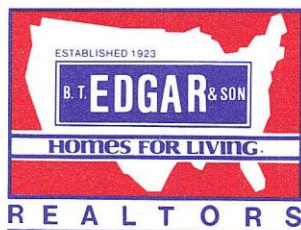
This letter is to verify that back in March of 2008 I Thomas J Tartamosa was a Loan Officer for Allied Mortgage Group of Cherry Hill NJ 08003 and had worked on situating financing for Mr. Frank Reed. Mr. Reed was able to qualify for a number of different loan programs at that time. At the time that Mr. Reed had contacted me he had his home in Moorestown NJ for sale and under a sales contract. Mr. Reed was exploring his options incase he was unable to complete that sale. These options that I presented to Mr. Reed had become null and void when his property at 817 Matlack Dr. Moorestown NJ 08057 was placed into foreclosure.

If you have any questions on this matter please feel free to contact me at 856-296-0392.

Sincerely

Thomas J Tartamosa

A handwritten signature in black ink, appearing to read 'Thomas J Tartamosa', with a long, sweeping horizontal stroke extending to the right.



"Real SERVICE in Real Estate"

July 2, 2012

Re: Below Market Offers - Reed Home - 817 Matlack Drive Moorestown, NJ 08057

To Whom It May Concern:

I am Louise Carter. I am a Realtor for BT Edgar & Son in Moorestown, NJ, and I have been a realtor representing both buyers and sellers in Moorestown, NJ since 1986. (Please see my professional biography attached hereto). As a result, I am very familiar with the Moorestown real estate market.

In this role, I came to be the listing agent for Frank Reed's home at 817 Matlack Drive Moorestown, NJ 08057. I sold Mr. Reed that property as well, and knowing the Moorestown real estate market, Mr. Reed's property and its history, it is my professional opinion, that Mr. Reed's house value has been impacted negatively by a foreclosure action filed against him by GMAC.

Prior to GMAC's foreclosure action, Mr. Reed had a contract for sale on his house for the amount of \$2,040,000, (see: contract attached hereto). However, this sale did not close.

Unfortunately for Mr. Reed, every offer on his property AFTER GMAC filed its foreclosure against him, was substantially under market value, (see: offers attached hereto); and since the potential buyers actually disclosed that the reason for their under market offer was due to their concern over the property's foreclosure status, it is clear to me that this devalued Mr. Reed's home.

Since, Mr. Reed's last offer was for \$1,100,000 and his home was valued at \$2,040,000 just before the GMAC foreclosure action, (see: Appraisal and sales contract attached hereto) it is my professional opinion that Mr. Reed has lost a value of \$940,000.

If you have any questions, please contact me.

Sincerely,

Louise Carter

Louise Carter

Realtor, GRI

B.T. Edgar & Sons, Realtors



Louise Carter | B.T. Edgar and Son Realtors

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B.T. EDGAR AND SON REALTORS

ABOUT PROPERTIES HOME SEARCH AGENTS COMMUNITIES CONTACT

Louise Carter



Louise Carter
✉ LouiseCarter@EdgarRealEstate.com
☎ Office: 235-0101 Ext. 209
☎ Fax: 856-922-9190

Full time agent since 1986 B. T. Edgar and Son since 1986 Attained GRI designation in the year 2000 Published in International Who's Who's in business, Member of the National Association of Realtors, Member of the Burlington Camden County Association of Realtors Specializes in Residential listings, relocation buyers and New Construction Attained Million Dollar Club and Circle of Excellence awards 1986-2009. Received Gold Level 1996-1998-2004-2006 and 2008 and Platinum Level in 2005. Residential and Commercial customers benefit from her knowledge and expertise and the primary goal of a job well done. She consistently achieves the multi million dollar levels of production for membership in the New Jersey Association of Realtors Million Dollar Sales Club. Louise was born and raised in the area and is the mother of four sons. A long time member of The Church of Our Lady of Good Counsel in Moorestown where she is the first woman to be appointed to the Board of Trustees. Ms. Carter is a Eucharistic Minister and also serves on the Finance Committee and Strategic Planning Task Force. She has been an active volunteer with Catholic Charities ? The diocese of Trenton? and was honored with the Burlington County Light of Hope Award. She sits on the Board of MEND (Moorestown Ecumenical Neighborhood Development) (affordable housing) as Vice President and Chairman of The Audit and Ethics committee. As a member of Curtis Auxiliary she piloted the Chaplain? s Aid program for Virtua Memorial Hospital of Burlington County, a program that continues to this day with over 60 volunteers. Taking great pride in her abilities, she plans to maintain and surpass her current level of success.

Home
Company Info
Calculator
Real Estate News



B.T. Edgar & Son
856-235-0101
fax 856-722-9190
info@edgarrealestate.com

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9:09 PM
6/18/2012

Standard Form of Real Estate Sales Contract adopted by the Burlington Camden County Association of REALTORS® and recommended for use only when: (1) A Listing Agreement has been signed by Seller; and (2) the real estate being sold involves a one-to-four family residential property. This form has been certified by the Attorney General to be in compliance with the Plain Language Law. Approval of a consumer contract by the Attorney General only means that simple, understandable and easily readable language is used. It is not an approval of the contract's terms or legality.

CONTRACT FOR SALE OF A ONE-TO-FOUR FAMILY RESIDENTIAL PROPERTY

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL IN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THIS CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

THIS CONTRACT FOR SALE has been prepared on the 8th day of December, 2007.

BETWEEN Frank J. Reed 3rd & Christina A. Reed the Seller(s)

Whose address is 817 Matlack Drive, Moorestown, NJ 08057

Scott Jacobs and Traci Jacobs and the Buyer(s)

Whose address is 350 Tom Brown Road, Moorestown, NJ 08057

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1. ATTORNEY REVIEW:

A. Study by Attorney:

The Buyer or Seller may choose to have an attorney study this Contract. If an attorney is consulted, the attorney must complete his or her Review of the Contracts within a three-day period. This Contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or the Seller reviews and disapproves of this Contract.

B. Counting the Time:

You count the three days from the date of delivery of the signed Contract to the Buyer and Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.

C. Notice of Disapproval:

If an attorney for the Buyer or the Seller reviews and disapproves of the Contract, the attorney must notify the REALTOR(S)® and the other party named in this Contract within the three-day period. Otherwise, this Contract will be legally binding as written. The attorney must send notice of disapproval to the REALTOR(S)® by certified mail, by telegram or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the REALTOR(S)® office. The attorney may also, but need not, inform the REALTOR(S)® of any suggested revision(s) in the Contract that would make it satisfactory.

2. COMMENCEMENT OF ATTORNEY REVIEW:

The parties acknowledge by their initials the date of delivery of this Contract signed by both Buyer and Seller to be as follows:

INITIALS AS TO BUYER [Signature]

DATE 12/10/07

INITIALS AS TO SELLER [Signature]

DATE 12/09/07

3. NOTICES AND FAX TRANSMISSIONS.

A. Notices:

All notices required in this Contract must be in writing. All notices shall be by certified mail, by telegram, by personal delivery, or by facsimile transmission (fax). The telegram, certified letter or facsimile transmission will be effective upon sending. The personal delivery will be effective upon delivery to the other party. Each party must accept the certified mail, telegram or facsimile transmission sent by the other party. Notices to the Seller shall be addressed as indicated on Line 18 of this Contract. Notices to the Buyer shall be addressed as indicated on Line 22 of this Contract. Notices to the Realtors® shall be addressed to the addresses as indicated in Paragraph 33 of this Contract. Notwithstanding the above, this notice provision shall not apply to Paragraph 1, entitled "Attorney Review," which has its own methods of notice that must be strictly adhered to.

B. Contract, Counter Offer, Addendum, Amendment:

The facsimile transmission (fax) of a signed copy of this Contract, any counter offer, addendum or amendment to the other party or their agent, followed by faxed acknowledgment of receipt, shall constitute delivery of the signed document. The Seller and Buyer agree to confirm the faxed transmission by mailing or personally delivering a clear copy with original signatures to the other party or their agent.

3 of 6

NOTICE

To Buyer and Seller:

Read This Notice Before Signing the Contract

The Law requires real estate brokers to give you the following information before you sign this contract. It requires us to tell you that you must read all of it before you sign. The purpose is to help you in this purchase or sale.

1. As a real estate broker, I represent:

☒ The Seller, not the Buyer

☒ The Buyer, not the Seller

☐ Both the Seller and the Buyer

☐ Neither the Seller nor Buyer.

B.T. Edgar & Son

Prudential Fox & Roach

The title company does not represent either the Seller or Buyer.

2. You will not get any legal advice unless you have your own lawyer. Neither I nor anyone from the title company can give legal advice to either the buyer or the seller. If you do not hire a lawyer, no one will represent you in legal matters now or at the closing. Neither I nor the title company will represent you in those matters.
3. The contract is the most important part of the transaction. It determines your rights, risks, and obligations. Signing the contract is a big step. A lawyer would review the contract, help you to understand it, and negotiate its terms.
4. The contract becomes final and binding unless your lawyer cancels it within the following three business days. If you do not have a lawyer, you cannot change or cancel the contract unless the other party agrees. Neither can the real estate broker nor the title insurance company change the contract.
5. Another important service of a lawyer is to order a survey, title report, or other important reports. The lawyer will review them and help to resolve any questions that may arise about the ownership and condition of the property. These reports and survey can cost you a lot of money. A lawyer will also prepare the documents needed to close title and represent you at the closing.
6. A Buyer without a lawyer runs special risks. Only a lawyer can advise a Buyer about what to do if problems arise concerning the purchase of the property. The problems may be about the Seller's title, the size and shape of the property, or other matters that may affect the value of the property. If either the broker or the title company knows about the problems, they should tell you. But they may not recognize the problem, see it from your point of view, or know what to do. Ordinarily, the broker and the title company have an interest in seeing that the sale is completed, because only then do they usually receive their commissions. So their interests may differ from yours.
7. Whether you retain a lawyer is up to you. It is your decision. The purpose of this notice is to make sure that you have the information needed to make your decision.

SELLER

DATE

SELLER

DATE

Louise M. Carter 12/9/07
Listing Broker DATE
(Licensee)

BUYER

DATE

BUYER

DATE

Wanda Jacobs 12/8/07
Selling Broker DATE
(Licensee)

88
89 **4. SALE, PURCHASE and PROPERTY.**
90

91 The Seller agrees to sell and Buyer agrees to buy under the terms of this Contract:

92 (a) All that land, building(s) and improvements in the Municipality of Moorestown, County of Burlington,
 93 and State of New Jersey, being commonly known as 817 Matlack Drive identified on
 94 the Municipal Tax Map as Block 03803, Lot(s) No(s) 00002.
 95 A description of the boundaries of the land is either attached as Schedule "A" or appears in Deed Book _____ at
 96 page _____, recorded in the Clerk or Register of Deed's Office of Burlington County.
 97 (b) All other rights of the Seller in the land.
 98

99 **5. PERSONAL PROPERTY and FIXTURES.**100 The property being transferred includes all fixtures permanently attached to the building(s), all shrubbery, plantings and fencing.
101 Also included:102 All permanently attached fixtures, wall / wall carpeting, sub zero refrigerator, all window treatments.
103104
105
106
107
108 Specifically excluded:109 Swing set, and bathroom hanging mirror.
110
111
112113 **6. PURCHASE PRICE/MANNER OF PAYMENT.**114 The purchase price is Two Million Forty Thousand Dollars \$ 2,040,000

115 Payable as follows:

116 (1) Deposit paid upon signing of the Contract \$ 50,000
 117 (2) Additional deposit to be paid on or before \$ 0
 118 (3) At settlement, by certified or cashier's check and/or mortgage company check \$ 1,990,000

119 In the event of assumption of existing first mortgage or by Seller taking back Buyers' mortgage
120 note and mortgage. *See Additional Contract Provisions*
121122
123 PURCHASE PRICE \$ 2,040,000
124
125126 **7. DEPOSIT MONIES.**

127 All deposit payments made by the Buyer on account of the purchase price shall be held in a ☐ non-interest bearing ☒ interest
 128 bearing (W-9 to be supplied to Escrow Holder with deposit) Trust Account of B.T. Edgar & Son who
 129 is called the Escrow Holder and shall be applied on account of the purchase price upon compliance by the Buyer with this
 130 Contract. In the event the W-9 form is not returned or returned incomplete or unsigned, the down payment monies shall be placed
 131 in a Non-interest bearing trust account of the Escrow Holder.
 132

133 **8. SUFFICIENT ASSETS.**

134 Buyer represents that as of the signing of this Contract, Buyer has or will have as of the date of settlement, all necessary cash
 135 assets, together with the mortgage loan proceeds, to complete settlement. Should the Buyer not have sufficient cash assets at the
 136 time of settlement, Buyer will be in breach of Contract and Seller shall be entitled to any remedies as provided by law.

137 Buyer further represents:

138 ☒ the purchase of this property is NOT contingent upon the sale of any other real estate or personal property.

139 ☐ in order to complete settlement, Buyer will require the proceeds from the sale of property located at
 140 _____, which is currently under Contract. A copy of such Contract of Sale
 141 shall be delivered to Seller, or Seller's agent, at the time of signing of this Contract.

142 ☐ in order to complete settlement, Buyer will require the proceeds from the sale of property located
 143 at _____, which is NOT currently under Contract.

144 A right of first refusal provision is attached and made a part of this Contract of Sale.
145

146 Seller represents that as of the date of settlement, Seller will have sufficient assets, including, but not limited to, the equity in the
 147 property, to satisfy all liens, encumbrances and costs to complete settlement.
 148

149 **9. MORTGAGE CONTINGENCY, PLACEMENT FEE (POINTS), COMMITMENT DATE:**

150 If payment of the purchase price requires a mortgage loan other than by the Seller or other than assumption of Seller's
 151 mortgage, the Buyer shall apply for the loan in writing on lender's standard form within seven (7) days after the expiration of
 152 the Attorney Review period (Paragraph 1) and use their best efforts to obtain it. The Buyer shall supply all necessary
 153 information and fees required by the proposed lender and shall authorize the lender to communicate with the real estate
 154 broker(s) and involved attorney(s). The Buyer shall obtain a written commitment from an established mortgage lender to make
 155 a loan on the property under the following terms.
 156

157 Principal Amount: \$ 1,632,000.00 Type of Mortgage: () VA () FHA ☒ Conventional () Other.158 Term of Mortgage: 30 years, with monthly payments based on a 30 year payment schedule.

159 If VA guaranteed or FHA insured, minimum amount of appraisal required: \$ N/A, See FHA/VA
 160 AMENDATORY CLAUSE attached to and made part of this contract.

161 At settlement, Seller shall also pay \$ 50,000.00 to be applied toward Buyer's escrow items, closing costs, and/or points.

162 This amount shall not exceed the maximum credit permitted by Buyer's Mortgage Lender. Each "point" being 1% of Buyer's
 163 mortgage loan.
 164
 165

166 The written mortgage commitment must be delivered to the Seller's agent who is the Listing Broker identified in Paragraph 33
 167 no later than the 7 day of January, 20 08. Should Buyer require additional time to obtain the written
 168 mortgage commitment, the commitment date shall automatically be extended for a period not to exceed _____ days. If such

extension shall cause the commitment date to extend beyond the settlement date specified in paragraph 14 then the settlement date shall be extended for _____ days after the revised commitment date. In the event the mortgage commitment is not delivered by the specified date, or any extended date permitted by the Seller, this Contract shall be deemed null and void. In that event, the deposit monies paid by the Buyer, shall be returned to the Buyer unless failure to obtain the mortgage commitment is the result of the Buyer's negligence or intentional conduct or failure to diligently pursue the mortgage application.

10. INSPECTION BY LENDERS, SURVEYORS: CERTIFICATIONS & REPAIRS.

Seller agrees to permit inspections of the property by authorized appraisers, inspectors and surveyors that may be requested by Buyer and/or Buyer's mortgage lender.

All mandatory certifications required by the Buyer's mortgage lender shall be paid for by the Buyer, except as otherwise provided in this Contract.

All mandatory repairs required by the Buyer's mortgage lender, or as a condition of those certifications, shall be accomplished before settlement at the Seller's expense, except as otherwise noted in this Contract. If the total cost of those repairs is more than \$ 200.00, this Contract may be declared null and void at the option of the Seller and all deposit monies paid by the Buyer toward the purchase price shall be refunded to the Buyer, without further liability to the Seller, or the Buyer may elect to make the repairs in excess of \$ 200.00 at the Buyer's expense and in that event, this contract shall remain in full force and effect.

11. FLOOD AREAS.

The federal and state governments have designated certain areas as flood areas. If the property is located in a flood area, the use of the property may be limited. The Seller is not aware that the property is in a flood area; however, this does not ensure that your lender may not require flood insurance. If Buyer's inquiry reveals that the property is in a flood area, the Buyer may cancel this Contract within ten (10) business days after the expiration of the Attorney Review Period. If the mortgage lender requires "flood insurance" then the Buyer shall be responsible for obtaining such insurance on the property.

12. POSSESSION, OCCUPANCY and TENANCIES.

Possession and occupancy will be given to Buyer at time of settlement. However, if the property is to be tenant occupied as of the date of settlement, see TENANCY ADDENDUM and leases attached and made a part of this contract.

13. DATES AND TIME FOR PERFORMANCE.

The Seller and the Buyer agree that all dates and times for performance of this Contract are OF THE ESSENCE.

This means that the Seller and Buyer must perform what is required of them within the time limits set by this Contract, or be in default, except as provided in this Contract.

14. SETTLEMENT TIME and PLACE.

Settlement is the meeting at which time the Seller transfers ownership of the property by Deed to the Buyer and the Buyer pays the Seller the remainder of the purchase price.

Settlement shall take place at Infinity Title Co. - 33 E. Main St., Moorestown, NJ or at such place as may be required by the mortgage lender on the 7th day of February, 2008 at 4:00 o'clock P.M. The date, but not the hour, shall be of the essence. Where there is a designated title insurance company, the proceeds check will be issued by it or by its authorized agent.

15. SETTLEMENT COSTS and MONEY ADJUSTMENTS.

Seller shall pay for the preparation of the Deed, realty transfer fee, lien discharge fees, if any, and one-half of the title company charges for disbursements and attendance allowed by the Commissioner of Insurance; but all searches, title insurance premium and other conveyancing expenses are to be paid for by the Buyer, unless the Seller and the Buyer provide differently in writing.

Seller and Buyer shall make prorated adjustments at settlement for items which have been paid by Seller or are due from Seller such as taxes, water and sewer charges which could be claims against the property, rental and security deposits, association and condominium dues, and fuel in Seller's tank. Adjustments of fuel shall be based upon physical inventory and pricing by the Seller's supplier; such determination shall be conclusive.

If Buyer is assuming Seller's mortgage loan, Buyer shall credit Seller for all monies such as taxes and insurance premiums paid in advance or on deposit with Seller's mortgage lender. Buyer shall receive a credit for monies which the Seller owes to Seller's Mortgage lender, such as current interest or a deficit in the mortgage escrow account. There shall be no adjustment on any Homestead Rebate due or to become due.

16. DEED and OTHER DOCUMENTS REQUIRED FOR SETTLEMENT.

A Deed is a written document used to transfer ownership of property. Seller agrees to provide and the Buyer agrees to accept a Bargain and Sale Deed with Covenants against Grantor's (Seller's) acts. This means that the Seller has done nothing to encumber the title while being the owner. If the Seller is a corporation, it will also deliver a corporate resolution authorizing the sale. The Seller shall give to the Buyer and/or title company an Affidavit of Title and executed IRS 1099S form for reporting the sale. An Affidavit of Title is a sworn statement which contains information clarifying the Seller's ownership of the property, such as marital status, right of tenants, claims on record against people having similar name as Seller.

Seller(s) state they are, are not, foreign persons or non-resident aliens for the purpose of U.S. income taxation and will, if required, provide a certificate of non-foreign status at, or before, settlement as to each Seller.

17. CERTIFICATE OF OCCUPANCY AND ZONING COMPLIANCE.

Seller makes no representation concerning existing zoning ordinances except that Seller's use of the property is not presently in violation of any zoning ordinances and its present use as a single family dwelling may be continued.

Some municipalities may require a Certificate of Occupancy or Housing Code Letter to be issued. If any is required for this property, Seller shall obtain it at Seller's expense and shall be responsible to make and pay for any repairs required in order to obtain the Certificate or Letter. However, if this expense should exceed \$ 300.00 to the Seller, then the Seller may terminate this contract and refund to the Buyer all deposit monies plus Buyer's reasonable expenses, if any, in preparing to make settlement. The Buyer may elect to make repairs in excess of \$ 300.00 at the Buyer's expense. In addition, Seller shall comply with the New Jersey State Law, and local ordinances, including but

not limited to smoke detectors, carbon monoxide detectors and indoor sprinklers, the cost of which shall not be considered as a repair cost.

18. CONDOMINIUM/HOMEOWNERS ASSOCIATION DOCUMENTS.

If the property is a condominium, or is subject to a homeowners' association, Seller shall prior to or at the time of the signing of this Contract, provide Buyer with a copy of the current rules, regulations and by-laws of the condominium, and/or homeowners' association. The name(s), address(s) and telephone number(s) of the Association(s) is/are:

N/A

Seller, if required, shall provide Buyer with written approval by the condominium or homeowners' association for Buyer's purchase of the property. Prior to settlement, Seller shall provide a "Status of Account" letter and Certificate of Insurance for the Association. Seller represents that the current annual association fee is \$N/A. Buyer acknowledges that associations commonly require a one-time non-refundable capital contribution or start-up fees.

19. QUALITY and INSURABILITY OF TITLE.

The title to be transferred shall be a marketable title and insurable at regular rates by a reputable title insurance company authorized to do business in the State of New Jersey.

The title shall be free and clear of all encumbrances including municipal liens and assessments and liabilities for future assessments for improvements constructed and completed; however, title shall be subject to liabilities for assessments for municipal improvements not completed on the date of this Contract. Seller represents that Seller ☐ has ☒ has not been notified of any such assessments. All liens and encumbrances shall be satisfied at or before time of settlement. The title shall be subject to all existing utility easements and restrictions of record, provided such easement or restriction does not unreasonably limit the use of the property. Generally, an easement is a right of a person, other than the owner, of the property to use a portion of the property for a special purpose. A restriction is a recorded limitation on the use of the property. A violation of any restriction shall not be a reason for Buyer refusing to complete settlement as long as the Title Company insures the Buyer against actual loss at regular rates.

The Seller states, to the best of the Seller's knowledge, that there are no restrictions in any conveyance or plans of record that will prohibit use and/or occupancy of the property as a single family residential dwelling. The Seller states that all buildings and other improvements on the property are within its boundary lines. Also, that no improvements on adjoining properties extend across the boundary lines of this property. In the event the Seller is unable to transfer the quality of title required and if the Buyer is unwilling to accept Seller's title without a reduction of the purchase price, the monies paid by Buyer toward the purchase price shall be returned to the Buyer, together with expenses of examining the title, making survey, mortgage application fees and Buyer's other reasonable expense in preparing for settlement without further liability to the Seller.

20. CONDITION OF PROPERTY.

The land and buildings shall be transferred in the same condition as they now appear, reasonable wear and tear excepted. This means that the property is being sold in its present conditions unless otherwise warranted hereinafter. In addition, Seller shall leave the property free of debris and in broom-clean condition.

21. SELLER'S WARRANTIES AND PRE-SETTLEMENT INSPECTION.

A warranty is a promise. Seller warrants that the plumbing, electrical and heating systems together with all equipment servicing those systems, the central air-conditioning, if existing, and all appliances, at time of settlement, are in good operating condition. Buyer shall have the right to inspect the property immediately prior to settlement to ensure that these items are in working order, also that the conditions of the property are as agreed. Seller shall have all utilities in service during the 48-hour period immediately preceding settlement.

22. SELLER'S REPRESENTATION. (Check appropriate box)

Seller represents that the property is serviced by: ☒ public ☐ private waste disposal. If private waste disposal, see attached PRIVATE WASTE DISPOSAL ADDENDUM.

Seller represents that the property is serviced by ☒ public ☐ private drinking water source. If private drinking water source, see attached WELL DRINKING WATER TEST ADDENDUM.

Seller represents that to the best of Seller's knowledge there ☒ is/are no underground fuel tank(s), ☐ is/are underground fuel tank(s) on the property, ☐ was/were underground fuel tank(s) which was/were properly removed, ☐ is/are underground fuel tank(s) which was/were properly abandoned in place pursuant to the rules and regulations of NJDEP. If an underground fuel tank(s) is present see attached UNDERGROUND FUEL TANK ADDENDUM.

23. HOME INSPECTION and REPORTS.

Although the premises is being purchased in its present condition, it is recommended that the Buyer obtain an inspection. The Seller will make the property available to the Buyer's qualified inspectors for the purpose of inspecting the property at Buyer's expense to assure that:

- A. The heating, air-conditioning, plumbing and electrical systems are in good operating condition.
- B. The foundation and structure of the building(s) and garage(s) are sound and that there is no water intrusion into the premises;
- C. The roof and flashings do not leak and are structurally sound;
- D. The doors and windows (including seals), fireplaces and chimneys are in good operating condition;
- E. There are no adverse environmental conditions affecting the property, such as the presence of toxic mold, radon gas of 4.0 pCi/l or greater, air-borne asbestos fibers, toxic chemicals or other pollutants in the soil, air or water.

These inspections are to be performed within 10 business days from the expiration of the Attorney Review Period. If the reports disclose defects in the items mentioned above, Buyer shall supply to Seller or Seller's agent within that 10 day period, those portions of the reports describing said defects, together with a list of requested repairs. The Seller shall then have 5 business days to respond in writing to the Buyer or Buyer's agent. If the Seller does not respond within 5 business days, or if the Seller refuses to make the requested repairs at Seller's expense, then the Buyer may cancel this Contract by giving written notice to the Seller or Seller's agent within 3 business days thereafter. In that event, all deposit monies shall be returned to Buyer and neither party shall have any further obligation to the other.

330 If Buyer does not obtain and deliver these inspection reports within that 10-day period, Buyer's rights under this
 331 paragraph shall be deemed waived and this Contract shall remain binding. The time for delivery of these reports is
 332 of the essence.

333 "Qualified inspector" is defined as someone who is licensed or certified by a governmental authority having jurisdiction
 334 for such purposes. Where licensure or certification is not required by law for any such inspector, the term "qualified
 335 inspector" shall mean persons who are regularly engaged in the business of inspecting residential properties for a fee
 336 and who generally maintain good reputations for skill and integrity in their areas of expertise.
 337 The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a
 338 structural element, system or subsystem is not by itself a material defect.

339 Maintenance and cosmetic items that are included in inspection reports are for the Buyer's information only and are not
 340 covered by the provisions of this paragraph.

341 Should Buyer's inspection fail to reveal existing defects in the property, Buyer's sole and exclusive remedy shall be
 342 against the inspectors providing such services.

343 Attached is a Seller's disclosure statement to Buyer regarding the property (Check appropriate box)

344 ☐ Yes

345 ☒ No

346
 347 **24. INFESTATION and/or DAMAGE by WOOD BORING INSECTS.**

348 The Buyer is permitted to have the accessible areas of the building and detached garage(s) inspected by a reputable
 349 exterminating company of Buyer's choice to determine if there is any damage caused or infestation by termites or other
 350 wood destroying insects. The Buyer will pay for this inspection. The inspection report shall be furnished to the Seller
 351 or Seller's agent no later than 10 days prior to settlement. If infestation or damage is found, the Seller, at the
 352 Seller's expenses, shall have the infestation treated and have repaired or replaced any wood which is deemed to be
 353 unserviceable in the opinion of a professional engineer or building contractor. Treatment and/or repairs are to be
 354 completed before settlement. If the estimate for the treatment and/or repairs exceeds \$1,500.00, Seller, at
 355 Seller's option, may cancel this Contract. If Seller elects to cancel this Contract, all deposit monies plus the Buyer's
 356 reasonable expenses, if any, in preparing to make settlement shall be refunded to the Buyer. The Buyer may agree to
 357 accept the premises without the treatment and/or repairs in which case the Seller shall allow a credit of up to
 358 \$1,500.00 against the purchase price at time of settlement. The failure of the Buyer to furnish the inspection
 359 report to the Seller or Seller's agent within the time provided will constitute a waiver by the Buyer or Buyer's rights
 360 under this clause.

361
 362 **25. RADON INFORMATION. (Check one)**

363 ☐ Seller has obtained a radon test. The results of the test are being provided to the Buyer.

364 ☒ Seller represents that Seller is unaware of any such tests having been made.

365
 366 **26. LEAD-BASED PAINT DOCUMENT ACKNOWLEDGMENT (applies to dwellings built before 1978)**

367 Buyer acknowledges receipt of the EPA pamphlet entitled "Protect Your Family From Lead in Your Home". Moreover,
 368 a copy of a document entitled DISCLOSURE OF INFORMATION AND ACKNOWLEDGMENT LEAD-BASED
 369 PAINT AND LEAD-BASED PAINT HAZARDS has been fully completed and signed by Buyer, Seller and
 370 Broker(s) and is attached and made part of this Contract.

371
 372 **27. LEAD-BASED PAINT and/or LEAD-BASED PAINT HAZARD CONTINGENCY CLAUSE.**

373 This paragraph is applicable to all dwellings built prior to 1978. Unless the Buyer and Seller agree to a longer or shorter
 374 period, Buyer has a ten (10) business day period within which to complete an inspection and/or risk assessment (the
 375 "Inspection") of the Property by a certified inspector/risk assessor for the presence of lead-based paint hazards. The
 376 Inspection shall be ordered and obtained by the Buyer at the Buyer's expense, within ten (10) business days from the
 377 expiration of the Attorney Review Period. If the Inspection indicates that no lead-based paint or lead-based paint hazard
 378 is present at the Property, this contingency clause shall be deemed to be null and void. If the Inspection indicates that
 379 lead-based paint or lead-based paint hazard is present at the Property, this contingency clause will terminate at the time
 380 set forth above unless within five business days of receiving the inspection results, the Buyer delivers a copy of the
 381 inspection and/or risk assessment report to the Seller and Broker(s) and (a) advises Seller and Broker(s), in writing that
 382 Buyer is voiding this Contract; or (b) delivers to Seller and Broker(s) a written amendment (the "Amendment") to this
 383 Contract listing the specific existing deficiencies and corrections required by the Buyer. The Amendment shall provide
 384 that the Seller agrees to (a) correct the deficiencies; and (b) furnish the Buyers with a certification from a certified
 385 inspector/risk assessor that the deficiencies have been corrected, before the date of settlement. The Seller shall have
 386 5 days after receipt of The Amendment to sign and return it to Buyer or send a written counter-proposal to Buyer. If
 387 Seller does not sign and return the amendment or fails to offer a counter-proposal, this Contract shall be null and void
 388 and all deposit monies paid by Buyer toward the purchase price shall be refunded to the Buyer, without further liability
 389 to the Seller. In the event Seller offers a counter-proposal, Buyer shall have 5 days after receipt of the counter-
 390 proposal to accept it. If the Buyer fails to accept the counter-proposal within the time limit provided, this Agreement
 391 shall be null and void and all deposit monies paid by Buyer toward the purchase price shall be refunded to the Buyer,
 392 without further liability to the Seller.

393
 394 **28. NOTICE OF OFF-SITE CONDITIONS. (This statement is required by the New Jersey Real Estate Commission for
 395 Residential Resale Properties).**

396 Pursuant to the New Residential Construction Off-Site Conditions Disclosure Act, P.L. 1995, c.253 the clerks of
 397 municipalities in New Jersey maintain lists of off-site conditions which may affect the value of residential properties in
 398 the vicinity of the off-site condition. Purchasers may examine the lists and are encouraged to independently investigate
 399 the area surrounding this property in order to become familiar with any off-site conditions that may affect the value of
 400 the property. In cases where a property is located near the border of a municipality, purchasers may wish to also
 401 examine the list maintained by the neighboring municipality. If new construction, see attached NOTIFICATION
 402 REGARDING OFF-SITE CONDITIONS ADDENDUM.

403
 404 **29. AIRPORT SAFETY ZONE. (Check applicable box)**

405 Seller represents that the property identified in Paragraph 1 of this Contract ☐ is ☒ is not located in an AIRPORT
 406 SAFETY ZONE as defined by the New Jersey Air Safety and Zoning Act of 1983, amended by L1991C445.

30. **MEGAN'S LAW STATEMENT.** (This statement is required by the New Jersey Real Estate Commission.)
Under New Jersey Law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in the area. In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law and are unable to obtain such information for you. Upon settlement, the county prosecutor may be contacted for such further information as may be disclosable to you.

31. **DISPUTE BETWEEN SELLER AND BUYER OVER DEPOSIT.**

The Escrow Holder is not required to resolve any dispute which might arise between the Seller and Buyer concerning deposit payments in the Trust Account. The Escrow Holder will require from both the Seller and Buyer their written permission to pay out the deposit payment from the Trust Account. If the dispute is not resolved, the Escrow Holder will retain the deposit money until the Buyer and/or Seller receive an order from the Court regarding distribution.

32. **FAILURE OF BUYER OR SELLER TO SETTLE: BROKER'S RIGHT TO BROKERAGE FEE:**

In the event the Seller or Buyer fails to settle in accordance with this Contract, either may commence any legal or equitable action against the other as may be permitted by law. If Seller breaches this Contract, Seller will nevertheless be liable to the Broker for a brokerage fee as otherwise set forth in the Listing Agreement Contract. If Buyer breaches this Contract, Buyer will nevertheless be liable to the Broker for damages as determined by the Court, which may be equivalent to the brokerage fee in this Contract.

33. **BROKERAGE FEE: LIEN ON PROCEEDS.**

The Seller agrees to pay the named real estate broker(s) for services rendered in procuring this sale. This fee is payable as follows:

<u>B.T. Edgar & Son</u>	<u>Ph#: (856) 235 0101</u>	<u>As stated in Listing Agreement</u>
Listing Broker		Brokerage Fee 2% of sales pr.
<u>27 E. Main Street, Moorestown, NJ 08057</u>	<u>Fax: (856) 722 9190</u>	
Address and Telephone Number		

<u>Prudential Fox & Roach</u>	<u>Ph# (856) 234 0011</u>	<u>As stated in MLS</u>
Selling Broker		Brokerage Fee 2% of sales pr.
<u>1 W. Main Street, Moorestown, NJ 08057</u>	<u>Fax: (856) 234 3979</u>	
Address and Telephone Number		

The brokerage fee shall be due and payable at the time of actual settlement and all purchase money consideration has been received by the Seller. The Seller agrees and acknowledges that the dollar amount of the brokerage fee shall be a lien (a legal claim) on the purchase money proceeds derived from the sale of the subject property. The Seller, by this Contract, authorizes and directs the Buyer's attorney, or the title insurance company, whichever is the case, to pay to the broker(s) the full brokerage fee out of the proceeds of sale, prior to the payment of any funds to the Seller. The brokerage fee bill, duly receipted by the broker or broker's agent, or the closing attorney's or title insurance company's check in payment of such brokerage fee, shall be deemed a release and discharge of this lien.

34. **SELLER NOT LIABLE TO BUYER AFTER SETTLEMENT.**

All warranties, guarantees, representations of Seller concerning the property, the systems servicing the property, the appliances, lot lines, location of structures, driveways, fences and any other matter affecting this Contract, unless otherwise set forth in writing shall be absolutely void after settlement or delivery and acceptance of possession or occupancy, whichever is earlier. Buyer acknowledges they have the right to purchase a home warranty.

35. **RISK OF LOSS.**

The risk of loss or damage to the property by fire or otherwise, except ordinary wear and tear, is the responsibility of the Seller until settlement.

36. **NO RELIANCE ON OTHERS.**

This Contract is entered into by the Seller and Buyer based upon their full understanding of the meaning of all the provisions of this Contract, and upon the knowledge of the parties as to the value of the land and whatever buildings are upon same, and not on any representations made by either of them to the other, or by the real estate broker(s) involved. The Broker(s) named in this Contract, their personnel and associates are not to be held liable either to Seller or Buyer for the performance or non-performance of any of the terms of this Contract. Seller and Buyer agree that they are entering into this Contract without any reliance upon any representations or statements which may have been made by personnel or associates of the realty firm(s).

37. **CONSUMER INFORMATION STATEMENT ACKNOWLEDGMENT.**

By signing below the Seller(s) and Buyer(s) acknowledge they received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firms involved in this transactions prior to the first showing of the property.

38. **DECLARATION OF LICENSEE BUSINESS RELATIONSHIP(S).**

<u>B.T. Edgar & Son</u>	(name of firm) AND
<u>Louise Marsh Carter</u>	(name(s) of licensee(s))

AS ITS AUTHORIZED REPRESENTATIVE(S), ARE WORKING IN THIS TRANSACTION AS (choose one):

<input checked="" type="checkbox"/> SELLER'S AGENT(S)	<input type="checkbox"/> BUYER'S AGENTS(S)
<input type="checkbox"/> DISCLOSED DUAL AGENT(S)	<input type="checkbox"/> TRANSACTION BROKER(S)

<u>Prudential Fox & Roach</u>	(name of firm) AND
<u>Holly Donahue</u>	(name(s) of licensee(s))

INDICATED THAT IT IS OPERATING IN THIS TRANSACTION AS A (choose one):

<input type="checkbox"/> SELLER'S AGENT(S)	<input checked="" type="checkbox"/> BUYER'S AGENT
<input type="checkbox"/> DISCLOSED DUAL AGENT(S)	<input type="checkbox"/> TRANSACTION BROKER

39. NO ASSIGNMENT OR RECORDING.

This Contract shall not be assigned. This means that neither the Buyer nor the Seller may transfer the rights under this Contract to anyone else. Neither this Contract nor a memorandum of it shall be recorded in the County Recording Office.

40. ENTIRE CONTRACT, NO ORAL REPRESENTATIONS.

This contract is the entire and only Contract between Buyer and Seller and cancels and replaces any previous agreements between them. This Contract may be changed only in writing signed by both Buyer and Seller. ANY REPRESENTATIONS OR AGREEMENTS NOT CONTAINED IN THIS CONTRACT ARE OF NO EFFECT.

41. BINDING ON SUCCESSORS.

This Contract is binding not only on the Seller and Buyer, but also on their heirs, personal representatives, and successors.

42. ADDITIONAL CONTRACT PROVISIONS.

A. Seller agrees to finish the basement bathroom, now partially finished.

B. Contingent upon appraisal equal to or greater than sale price of \$2,040,000.00

43. ACKNOWLEDGMENT OF TERMS OF CONTRACT.

The Seller and Buyer agree to the terms of this Contract by signing below. If a corporation is a party, this Contract is signed by its proper corporate officers pursuant to a corporate resolution, and its corporate seal is affixed.

Witness	<u>James M. Carter</u>	Date	<u>12/9/07</u>	SELLER	<u>[Signature]</u>	Date	<u>12/08/07</u>
Witness	<u>[Signature]</u>	Date	<u>12/9/07</u>	SELLER	<u>[Signature]</u>	Date	<u>12/9/07</u>
Witness	<u>Abby Donahue</u>	Date	<u>12/8/07</u>	BUYER	<u>[Signature]</u>	Date	<u>12/8/07</u>
Witness	<u>[Signature]</u>	Date	<u>12/08/07</u>	BUYER	<u>Wade Jacobs</u>	Date	<u>12/08/07</u>

THIS CONTRACT PREPARED BY: _____
(Individual Licensee)

Seller's Statement To Buyer Regarding Residential Property

The following is a statement, made by the seller, of information concerning the condition of the property located at _____

This disclosure is not a warranty of any kind by the seller or any agent of the seller in this transaction, and is not a substitute for any inspections or warranties the purchaser may wish to obtain.

To the Seller

Please complete the following form, including past history of problems if known. Do not leave any spaces blank. If the condition is not applicable to your property, mark "NA" in the blank. Attach additional pages if additional space is required. Be sure to sign the last page.

The following are representations made by the seller and are not the representations of seller's agents.

Appliances/Systems

The items below are in good working order:

	Yes	No	Repairs within last 2 years
Range/Oven	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Microwave	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Hood/fan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Dishwasher	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Refrigerator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Washer/Dryer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Yes No Repairs within last 2 years

Hot Water Heater	<input checked="" type="checkbox"/>	_____
Trash compactor	<input checked="" type="checkbox"/>	_____
Central air	<input checked="" type="checkbox"/>	_____
Water softener	<input checked="" type="checkbox"/>	_____
Attic fan	<input checked="" type="checkbox"/>	_____
Sump pump	<input checked="" type="checkbox"/>	_____
Ceiling fan	<input checked="" type="checkbox"/>	_____
TV antenna	<input checked="" type="checkbox"/>	_____
Garage door opener & remote controls	<input checked="" type="checkbox"/>	_____
Fireplace & chimney	<input checked="" type="checkbox"/>	_____
Other:	<input type="checkbox"/>	_____

Explanations of "No" and "Repair" responses, if any:

Property Conditions & Improvements

1. Basement: Has there been evidence of or problems with water leakage?

☐ Yes ☒ No ☐ Unknown

If yes, please explain, including the frequency and extent of the problem.

2. Insulation: Please describe if known

Has urea formaldehyde foam insulation (UFFI) been installed?

☐ Yes ☒ No ☐ Unknown

If removed, by whom and when?

3. Roof: Age of roof: 2 Any leaks?

☐ Yes ☒ No ☐ Unknown

If yes, please explain.

4. Water System: Well or city water? (Please circle.) If well, please describe type of well (depth/diameter)? city

Age of well: _____ Any known problems or repairs?

☐ Yes ☐ No ☐ Unknown

If yes, please describe.

Has the water been tested?

☐ Yes ☒ No ☐ Unknown

If yes, date of last report and results:

5. Drainage System: Septic tanks/drain fields or city sewer system? (Please circle.) Any known problems or repairs?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

Location of septic field? back

6. Heating System: Type: hot air

Age of heating system: 2

Any known problems or repairs?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

7. Plumbing System:

☒ Copper ☐ Galvanized ☐ Other

Any known problems or repairs?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

8. Electrical System:

☐ Yes ☒ No ☐ Unknown

Capacity: _____ amps

Any known problems or repairs?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

9. Aluminum Wiring:

☐ Yes ☒ No ☐ Unknown

10. Infestation: History, if any, of termites, carpenter ants, etc.?

☐ Yes ☒ No ☐ Unknown

Any treatments for infestation?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

Presently under warranty?

☒ Yes ☐ No ☐ Unknown

With whom?

Please describe any repairs.

11. Asbestos: Is asbestos present in any form in or on the property?

☐ Yes ☒ No ☐ Unknown

If yes, where?

Has it been removed or encapsulated?

☐ Yes ☐ No ☐ Unknown

If removed, from where, when and by whom?

12. Radon: Has the property been tested for the presence of radon gas?

☐ Yes ☒ No ☐ Unknown

If yes, what were the test results?

13. Landfill: Is the property located in close proximity to a landfill?

☐ Yes ☒ No ☐ Unknown

If yes, which landfill and location?

14. Environment: Are you aware of any environmental concerns?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

15. Principal Uses: Are you aware of any principal uses of the property other than as residential property, such as commercial or farming?

☐ Yes ☒ No ☐ Unknown

If yes, please describe the use.

Other Items

As the seller, are you aware of any of the following:

16. Features of the property shared in common with adjoining landowners, such as walls, fences, roads or driveways whose use or responsibility for maintenance may have an effect on the property?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

17. Rights-of-way, easements or similar matters that may affect the property?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

18. Room additions or structural modifications?

☒ Yes ☐ No ☐ Unknown

If yes, please describe work and identify who did the work.

See floor plan
basement bath

19. Underground storage tanks on the property?

☐ Yes ☒ No ☐ Unknown

If yes, please describe type, location and size of tank.

20. Settling, flooding, drainage, grading, or soil problems?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

21. Major damage to the property or any of the structures from fire, wind, floods or landslides?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

22. Any zoning violations or nonconforming uses?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

23. Homeowners association which has any authority over the property?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

24. Any "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned)?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

25. Any assessments, liens, or judgments against the property or owners?

☐ Yes ☒ No ☐ Unknown

If yes, please describe.

26. Please state any other facts or information relating to this property that would be of interest to a buyer.

To the extent of the seller's knowledge as a property owner, the seller acknowledges that the information contained above is true and accurate for those areas of the property listed.

(Seller)

(Date)

(Seller)

(Date)

To the Buyer

The buyer is urged to carefully inspect the property and, if desired, to have the property inspected by an expert. The buyer understands that there are areas of the property of which seller has no knowledge and that this disclosure statement does not encompass those areas. The buyer also acknowledges that he has read and received a signed copy of this statement from the seller or the seller's agent.

(Buyer)

(Date)

(Buyer)

(Date)

RIDER TO CONTRACT FOR SALE

THIS RIDER TO CONTRACT FOR SALE ("Rider") is made this 18th day of December, 2007, by and between **SCOTT JACOBS and TRACI JACOBS**, husband and wife (the "Buyer") and **FRANK J. REED, III and CHRISTINA A. REED**, husband and wife (the "Seller") and amends that certain Contract for Sale dated as of December 8, 2007 (the "Contract") for real property known as 817 Matlack Drive, Moorestown, New Jersey 08057, being described and depicted on the Municipal Tax Map of Moorestown Township as Block 3803, Lot 2 (the "Property").

The Buyer and the Seller intending to be legally bound hereby agree to amend the Contract as follows:

1. Line 20 of the Contract shall be amended to include Miriam Jacobs.
2. Line 109 of the Contract shall be amended and restated so that the swing set and bathroom hanging mirror are specifically excluded. The Seller shall replace the bathroom hanging mirror with a standard grade mirror of comparable size; or, in the alternative, shall repair any damage to the wall after the bathroom hanging mirror is removed by Seller.
3. Line 209 of the Contract shall be amended and restated so that Settlement shall take place at the law offices of Sherman, Silverstein, Kohl, Rose & Podolsky, P.A., 4300 Haddonfield Road, Suite 311, Pennsauken, New Jersey 08109. The remainder of paragraph 14 shall be unchanged.
4. Line 323 of the Contract shall be amended to reflect that the inspections are to be performed within 10 business days from December 17, 2007.
5. Line 343-345 of the Contract shall be amended so that the block marked "yes" shall be checked by Seller. Seller's Property Disclosure Statement is attached to the Contract.

6. Paragraph 32 of the Contract (Failure of Buyer or Seller to Settle; Broker's Right to Brokerage Fee) shall be amended so that the second and third sentences therein shall be deleted in their entirety.

7. Paragraph 42 of the Contract (Additional Contract Provisions) shall be amended and restated as follows:

A. Seller agrees to finish the basement bathroom, now partially completed, at Seller's sole cost and expense (the "Basement Bathroom Work"). The Basement Bathroom Work shall be completed in a good and workmanlike manner on or before Closing. Buyer shall have an opportunity to inspect the Basement Bathroom Work on or about January 8, 2008.

B. Subparagraph 42.B of the Contract is deleted and replaced with the following provision:

Buyer's obligation to purchase the property shall be contingent upon the Lender's appraisal being equal to or greater than the Purchase Price. In the event that the Lender's appraisal is less than the Purchase Price, the Buyer shall be entitled to cancel the Contract upon written notice to the Seller and Seller's agent on or before the Mortgage Commitment Date whereupon the deposit shall be returned to Buyer and neither party shall have any further liability or obligation to the other hereunder.

C. Seller shall, at the time of Closing, deliver to Buyer the 10-year home warranty provided by Builder.

D. Upon execution of this Rider by Seller, Seller shall provide Buyer, Buyer's agent and Buyer's counsel with the Seller's Owner's Title Policy of Insurance and most recent survey of the Property.

8. Upon execution of this Rider by Buyer and Seller, the Attorney Review Period provided for in paragraph 1 of the Contract shall be concluded and the Agreement (as defined below) shall be in full force and effect and binding upon the parties hereto.

9. Notices required under this Rider or the Contract will be accepted by recognized overnight courier or by confirmed facsimile transmission followed by postage prepaid first class mail.

10. The Buyer and the Seller agree that if the Buyer defaults under the Contract, the Seller's damages will be difficult to determine and that the deposit represents a fair estimate of the Seller's damages. The Seller's sole and exclusive remedy in the event of the Buyer's default under the Contract, shall be to retain the deposit as complete and liquidated damages for the Buyer's default hereunder.

11. Except as otherwise changed by this Rider, the Contract shall continue in full force and effect. In the event of a conflict between the provisions of this Rider and the Contract, the provisions of this Rider shall control.

12. This Rider may be executed in any number of counterparts, each of which shall be considered an original and together shall constitute a single Agreement. For purposes of this Rider, a counterpart transmitted by facsimile shall constitute an original.

IN WITNESS WHEREOF, the Buyer and the Seller execute this Rider the date first written above.

Scott Jacobs, Buyer

Traci Jacobs, Buyer

Miriam Jacobs, Buyer



Frank J. Reed, III, Seller



Christina A. Reed, Seller

10. The Buyer and the Seller agree that if the Buyer defaults under the Contract, the Seller's damages will be difficult to determine and that the deposit represents a fair estimate of the Seller's damages. The Seller's sole and exclusive remedy in the event of the Buyer's default under the Contract, shall be to retain the deposit as complete and liquidated damages for the Buyer's default hereunder.

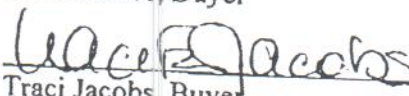
11. Except as otherwise changed by this Rider, the Contract shall continue in full force and effect. In the event of a conflict between the provisions of this Rider and the Contract, the provisions of this Rider shall control.

12. This Rider may be executed in any number of counterparts, each of which shall be considered an original and together shall constitute a single Agreement. For purposes of this Rider, a counterpart transmitted by facsimile shall constitute an original.

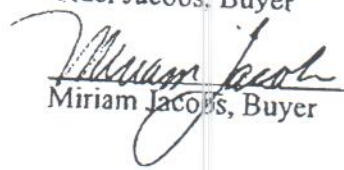
IN WITNESS WHEREOF, the Buyer and the Seller execute this Rider the date first written above.



Scott Jacobs, Buyer



Traci Jacobs, Buyer



Miriam Jacobs, Buyer

Frank J. Reed, III, Seller

Christina A. Reed, Seller

This appraisal has been performed for Commerce Bank in connection with a loan request made by you. Commerce Bank makes no representations regarding the accuracy of the information contained in the appraisal and assumes no liability in connection with this appraisal.



COMPLETE APPRAISAL SUMMARY REPORT

LOCATED AT:
817 Matlack Drive
Block 3803 Lot 2
Moorestown, NJ 08057

FOR:
Commerce Bank
2059 Springdale Road
Cherry Hill, NJ 08003

AS OF:
1/21/2008

An Administrative Compliance Review has been completed on this report.
This report has been deemed acceptable by Commerce Bank.

(Reviewed by)

(Date)

BY:
Peter R. McCaffrey
Robert M. Sapio Real Estate Appraisal & Consulting, LLC

File No. 08011502

Robert M. Sapio
Real Estate Appraisal & Consulting, LLC
314 Cherry Avenue
Voorhees, NJ 08043

Telephone No.: (856) 429-2789
Fax No. : (856) 795-2297

January 25, 2008

Joseph Graves
Commerce Bank
2059 Springdale Road
Cherry Hill, NJ 08003

RE: Reed
817 Matlack Drive
Moorestown, NJ

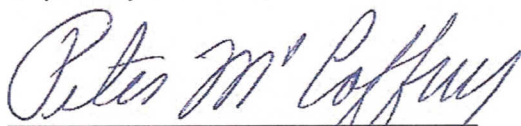
Dear Mr. Graves:

In accordance with your request, enclosed is one copy of the appraisal report of the captioned property. The purpose of the appraisal was to estimate market value of the captioned property, as improved, in unencumbered fee simple title, subject to the Assumptions and Limiting Conditions contained in the URAR form 439, the Certification and this report.

This report is prepared in compliance with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.

This is a complete appraisal in a summary report.

Respectfully submitted,


Peter McCaffrey, SLREA RA 00154

Borrower Reed 3rd, Frank & Christina			
Property Address 817 Matlack Drive			
City Moorestown	County Burlington	State NJ	Zip Code 08057
Lender Commerce Bank			

APPRAISAL AND REPORT IDENTIFICATION

This Appraisal conforms to one of the following definitions:

- ☒ Complete Appraisal
The act or process of estimating value, or an estimate of value, performed without invoking the Departure Provision.
- ☐ Limited Appraisal
The act or process of estimating value, or an estimation of value, performed under and resulting from invoking the Departure Provision.

This Report is one of the following types:

- ☐ Self Contained Report
A written report prepared under Standards Rule 2-2(A) of a complete or limited appraisal performed under Standard 1.
- ☒ Summary Report
A written report prepared under Standards Rule 2-2(B) of a complete or limited appraisal performed under Standard 1.
- ☐ Restricted Report
A written report prepared under Standards Rule 2-2(C) of a complete or limited appraisal performed under Standard 1.

Comments on Appraisal and Report Identification

Note any departures from Standards Rules 1-2, 1-3, 1-4, plus any USPAP-related issues requiring disclosure:

Uniform Residential Appraisal Report

File # 08011502

SUBJECT

CONTRACT

NEIGHBORHOOD

SITE

IMPROVEMENTS

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address	817 Matlack Drive	City	Moorestown	State	NJ	Zip Code	08057
Borrower	Reed 3rd, Frank & Christina	Owner of Public Record	Reed 3rd, Frank & Christina	County	Burlington		
Legal Description	Block 3803 Lot 2						
Assessor's Parcel #	03803 - 00002	Tax Year	2007	R.E. Taxes \$	30,748		
Neighborhood Name	N/A	Map Reference		Census Tract	7005.051		
Occupant	<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Vacant	Special Assessments \$		<input type="checkbox"/> PUD HOA \$		<input type="checkbox"/> per year <input type="checkbox"/> per month	
Property Rights Appraised	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Other (describe)						
Assignment Type	<input type="checkbox"/> Purchase Transaction <input type="checkbox"/> Refinance Transaction <input checked="" type="checkbox"/> Other (describe)	Market Value					
Lender/Client	Commerce Bank	Address	2059 Springdale Road, Cherry Hill, NJ 08003				
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No							
Report data source(s) used, offering price(s), and date(s). The subject is currently under contract for \$2,040,000. Listed with Edgar & Son, LLC, Louise Carter-agent, (856) 235-0101.							
I <input type="checkbox"/> did <input checked="" type="checkbox"/> did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. Contract not provided to appraiser.							
Contract Price \$ Date of Contract Is the property seller the owner of public record? <input type="checkbox"/> Yes <input type="checkbox"/> No Data Source(s)							
Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? <input type="checkbox"/> Yes <input type="checkbox"/> No							
If Yes, report the total dollar amount and describe the items to be paid. N/A							
Note: Race and the racial composition of the neighborhood are not appraisal factors.							
Neighborhood Characteristics		One-Unit Housing Trends		One-Unit Housing		Present Land Use %	
Location	<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Property Values	<input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining	PRICE	AGE	One-Unit	98 %
Built-Up	<input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply	<input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	\$ (000)	(yrs)	2-4 Unit	%
Growth	<input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time	<input type="checkbox"/> Under 3 mths <input checked="" type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths	900	Low	New	Multi-Family %
Neighborhood Boundaries are Main Street East, Westfield Road north, Cinnaminson Township west and Lenola Road south.				2,900	High	90	Commercial 2 %
				1,850	Pred.	5	Other %
Neighborhood Description The subject is located in a prestigious residential neighborhood of executive style single family detached dwellings. Schools, parks and recreational facilities are scattered around the Township. Employment and shopping centers are located along State Highway Routes 38, 73 and 130.							
Market Conditions (including support for the above conclusions) Property values appear stable. Demand and supply are in balance. Marketing times for similar properties average 3-6 months. Most sales are conventional financing with some FHA. Conventional mortgages available at prevailing rates and discounts. No adverse affect on Market Value.							
Dimensions 270 x 185 x 111.42 x 156.41		Area	26,572 Sq. Ft.	Shape	Irregular	View	Good
Specific Zoning Classification R1A		Zoning Description Residential					
Zoning Compliance <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal Nonconforming (Grandfathered Use) <input type="checkbox"/> No Zoning <input type="checkbox"/> Illegal (describe)							
Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe							
Utilities	Public Other (describe)	Public Other (describe)	Off-site Improvements - Type		Public	Private	
Electricity	<input checked="" type="checkbox"/> <input type="checkbox"/>	Water	<input checked="" type="checkbox"/> <input type="checkbox"/>	Street Asphalt	<input checked="" type="checkbox"/> <input type="checkbox"/>		
Gas	<input checked="" type="checkbox"/> <input type="checkbox"/>	Sanitary Sewer	<input checked="" type="checkbox"/> <input type="checkbox"/>	Alley	<input type="checkbox"/> <input type="checkbox"/>		
FEMA Special Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		FEMA Flood Zone	C	FEMA Map #	340105 0005B	FEMA Map Date	9/4/1991
Are the utilities and off-site improvements typical for the market area? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe							
Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe							
There are no known adverse easements or encroachments. Highest and best use is continued residential. Zoning conformance is a legal matter and an attorney's opinion should be sought to confirm the foregoing conclusion.							
General Description		Foundation		Exterior Description materials/condition		Interior materials/condition	
Units <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	<input type="checkbox"/> Concrete Slab <input type="checkbox"/> Crawl Space	Foundation Walls	Poured Concrete/Gd.	Floors	Hwd,Cpt,Tile/Good		
# of Stories 2.5	<input checked="" type="checkbox"/> Full Basement <input type="checkbox"/> Partial Basement	Exterior Walls	Stucco,Wood/Good	Walls	Drywall/Good		
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det./End Unit	Basement Area 1,820 sq.ft.	Roof Surface	Fiberglass/Good	Trim/Finish	Wood/Good		
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	Basement Finish 60 %	Gutters & Downspouts	Aluminum/Good	Bath Floor	Tile/Good		
Design (Style) 2 1/2st.Colonial	<input type="checkbox"/> Outside Entry/Exit <input checked="" type="checkbox"/> Sump Pump	Window Type	Anderson/Good	Bath Wainscot	Tile/GOod		
Year Built 2006	Evidence of <input type="checkbox"/> Infestation	Storm Sash/Insulated	Yes/Good	Car Storage	<input type="checkbox"/> None		
Effective Age (Yrs) 1	<input type="checkbox"/> Dampness <input type="checkbox"/> Settlement	Screens	Yes/Good	<input checked="" type="checkbox"/> Driveway	# of Cars 6		
Attic <input type="checkbox"/> None	Heating <input checked="" type="checkbox"/> FWA <input type="checkbox"/> HWBB <input type="checkbox"/> Radiant	Amenities	<input type="checkbox"/> Woodstove(s) #	Driveway Surface	Asphalt		
<input type="checkbox"/> Drop Stair <input type="checkbox"/> Stairs	<input type="checkbox"/> Other Fuel	<input checked="" type="checkbox"/> Fireplace(s) # 3	<input type="checkbox"/> Fence	<input checked="" type="checkbox"/> Garage	# of Cars 3		
<input checked="" type="checkbox"/> Floor <input type="checkbox"/> Scuttle	Cooling <input checked="" type="checkbox"/> Central Air Conditioning	<input type="checkbox"/> Patio/Deck	<input checked="" type="checkbox"/> Porch	<input type="checkbox"/> Carport	# of Cars		
<input type="checkbox"/> Finished <input type="checkbox"/> Heated	<input type="checkbox"/> Individual <input type="checkbox"/> Other	<input type="checkbox"/> Pool	<input type="checkbox"/> Other	<input type="checkbox"/> Att. <input type="checkbox"/> Det. <input type="checkbox"/> Built-in			
Appliances <input checked="" type="checkbox"/> Refrigerator <input checked="" type="checkbox"/> Range/Oven <input checked="" type="checkbox"/> Dishwasher <input checked="" type="checkbox"/> Disposal <input checked="" type="checkbox"/> Microwave <input checked="" type="checkbox"/> Washer/Dryer <input type="checkbox"/> Other (describe)							
Finished area above grade contains: 14 Rooms 7 Bedrooms 7.5 Bath(s) 6,555 Square Feet of Gross Living Area Above Grade							
Additional features (special energy efficient items, etc.). Three zone heat and air, basement finished with full bath, bedroom and game room. Three fireplaces and upgrades throughout the dwelling.							
Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). The subject is in very good condition with no apparent needed repairs. The subject is under two years old and was built by Maines, one of South Jersey's premier builders.							
Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe							
There are no physical deficiencies or adverse conditions.							
Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe							

Uniform Residential Appraisal Report

File # 08011502

There are 9 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 1,539,000 to \$ 2,150,000	
There are 4 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 1,850,000 to \$ 2,900,000	
FEATURE SUBJECT COMPARABLE SALE # 1 COMPARABLE SALE # 2 COMPARABLE SALE # 3	
Address 817 Matlack Drive 804 Matlack Drive 807 Riverton Road 301 E. Oak Avenue Moorestown, NJ 08057 Moorestown, NJ 08057 Moorestown, NJ 08057 Moorestown, NJ 08057	
Proximity to Subject same street 1/4 mile 1 mile	
Sale Price \$ \$ 1,850,000 \$ 1,900,000 \$ 2,150,000	
Sale Price/Gross Liv. Area \$ sq.ft. \$ 327.84 sq.ft. \$ 343.33 sq.ft. \$ 429.14 sq.ft.	
Data Source(s) MLS MLS MLS	
Verification Source(s) Broker Broker Broker	
VALUE ADJUSTMENTS DESCRIPTION DESCRIPTION +(-) \$ Adjustment DESCRIPTION +(-) \$ Adjustment DESCRIPTION +(-) \$ Adjustment	
Sales or Financing Concessions CNV None CNV None CNV None	
Date of Sale/Time 8/20/2007 1/5/2007 8/17/2006 -103,200	
Location Good Good Good	
Leasehold/Fee Simple Fee Simple Fee Simple Fee Simple	
Site .61 acres .69 acres 2.10 acres -20,000 .96 acres	
View Good Good Good	
Design (Style) 2 1/2st.Colonial 2 1/2st.Colonial 2st French 2st Colonial	
Quality of Construction Good Good Good Superior -50,000	
Actual Age 1 1 10 eff. 2 86 eff. 10 +50,000	
Condition Good Good Good	
Above Grade Total Bdrms. Baths Total Bdrms. Baths Total Bdrms. Baths Total Bdrms. Baths	
Room Count 14 7 7.5.5 11 5 4.5 +50,000 10 5 5.5 +25,000 11 5 5.5 +25,000	
Gross Living Area 6,555 sq.ft. 5,643 sq.ft. 5,534 sq.ft. 5,010 sq.ft. +115,500	
Basement & Finished Rooms Below Grade 1,820 Sq.Ft./Bat GameRm,Bed Full, Bath GameRm Full, 1/2 Bath GameRm	
Functional Utility Good Good Good	
Heating/Cooling FHA/Central FHA/Central HWBB/Central FHA/Central	
Energy Efficient Items 3 zone heat/air 3 zone heat/air 3 zone heat/air 3 zone heat/air	
Garage/Carport 3 car 3 car 3 car 2 car +10,000	
Porch/Patio/Deck Porch Patio Deck, Patio Patio	
3 F/P 1 F/P +10,000 3 F/P Pool, Fence -20,000	
3 F/P	
Net Adjustment (Total) \$ 131,100 \$ 83,200 \$ 27,300	
Adjusted Sale Price Net Adj. 7.1 % Net Adj. 4.4 % Net Adj. 1.3 %	
of Comparables Gross Adj. 7.1 % \$ 1,981,100 Gross Adj. 6.5 % \$ 1,983,200 Gross Adj. 17.4 % \$ 2,177,300	
<input checked="" type="checkbox"/> did <input type="checkbox"/> did not research the sale or transfer history of the subject property and comparable sales. If not, explain	

My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.				
Data Source(s) Public Records				
My research <input type="checkbox"/> did <input checked="" type="checkbox"/> did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.				
Data Source(s) Public Records				
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).				
ITEM SUBJECT COMPARABLE SALE #1 COMPARABLE SALE #2 COMPARABLE SALE #3				
Date of Prior Sale/Transfer 5/31/2006 N/A N/A N/A				
Price of Prior Sale/Transfer 1,574,619				
Data Source(s) Public Records				
Effective Date of Data Source(s) 1/21/2008				
Analysis of prior sale or transfer history of the subject property and comparable sales The subject was purchased on 5/31/2006 as new construction. The subject is currently listed for sale with Edgar & Sons, LLC-Moorestown. The listing agent is Louise Carter. The listing is for \$2,296,000 and is currently under agreement for \$2,040,000.				

Summary of Sales Comparison Approach See attached addendum.

Indicated Value by Sales Comparison Approach \$ 2,040,000			
Indicated Value by: Sales Comparison Approach \$ 2,040,000 Cost Approach (if developed) \$ 1,946,169 Income Approach (if developed) \$ N/A			
All weight is placed on the Sales Comparison Approach to value.			

This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or <input type="checkbox"/> subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair:	
Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 2,040,000 , as of 1/21/2008 , which is the date of inspection and the effective date of this appraisal.	

Uniform Residential Appraisal Report

File # 08011502

Page 22 of 44

ADDITIONAL COMMENTS

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.
Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value)

COST APPROACH

ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE	= \$	500,000
Source of cost data	DWELLING 6,555 Sq.Ft. @ \$ 190.00	= \$	1,245,450
Quality rating from cost service Effective date of cost data	Basement 1,820 Sq.Ft. @ \$ 80.00	= \$	145,600
Comments on Cost Approach (gross living area calculations, depreciation, etc.)	3 F/P	= \$	18,500
The Reproduction Cost was derived from the Marshall and Swift	Garage/Carport 888 Sq.Ft. @ \$ 40.00	= \$	35,520
Evaluation Service and cost data contained in the appraisers files.	Total Estimate of Cost-New	= \$	1,445,070
	Less Physical Functional External		
	Depreciation 28,901	= \$(28,901)
	Depreciated Cost of Improvements	= \$	1,416,169
	"As-is" Value of Site Improvements	= \$	30,000
Estimated Remaining Economic Life (HUD and VA only) Years	INDICATED VALUE BY COST APPROACH	= \$	1,946,169

INCOME APPROACH TO VALUE (not required by Fannie Mae)

INCOME

Estimated Monthly Market Rent \$	X Gross Rent Multiplier	= \$	Indicated Value by Income Approach
Summary of Income Approach (including support for market rent and GRM)			

PROJECT INFORMATION FOR PUDs (if applicable)

PUD INFORMATION

Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☐ No Unit type(s) ☐ Detached ☐ Attached
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal Name of Project

Total number of phases	Total number of units	Total number of units sold
Total number of units rented	Total number of units for sale	Data source(s)

Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion.

Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data Source

Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities.

Uniform Residential Appraisal Report

File # 08011502

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Uniform Residential Appraisal Report

File # 08011502

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

Uniform Residential Appraisal Report

File # 08011502

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

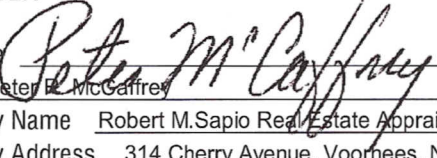
24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature 
 Name Peter M. McGaffrey
 Company Name Robert M. Sapio Real Estate Appraisals
 Company Address 314 Cherry Avenue, Voorhees, NJ 08043
 Telephone Number (856) 429-2789
 Email Address rms@rmsapio.com
 Date of Signature and Report January 30, 2008
 Effective Date of Appraisal 1/21/2008
 State Certification # _____
 or State License # 42RA00015400
 or Other (describe) _____ State # _____
 State NJ
 Expiration Date of Certification or License 12/31/2009

ADDRESS OF PROPERTY APPRAISED

817 Matlack Drive
Moorestown, NJ 08057
 APPRAISED VALUE OF SUBJECT PROPERTY \$ 2,040,000
 LENDER/CLIENT
 Name Joseph Graves
 Company Name Commerce Bank
 Company Address 2059 Springdale Road, Cherry Hill, NJ 08003
 Email Address joseph.graves@yesbank.com

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
 Name _____
 Company Name _____
 Company Address _____
 Telephone Number _____
 Email Address _____
 Date of Signature _____
 State Certification # _____
 or State License # _____
 State _____
 Expiration Date of Certification or License _____

SUBJECT PROPERTY

- ☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
 Date of Inspection _____
☐ Did inspect interior and exterior of subject property
 Date of Inspection _____

COMPARABLE SALES

- ☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
 Date of Inspection _____

Borrower	Reed 3rd, Frank & Christina				
Property Address	817 Matlack Drive				
City	Moorestown	County	Burlington	State	NJ Zip Code 08057
Lender	Commerce Bank				

SCOPE

This is the extent of the process of collecting, confirming and reporting market data.

The primary source of the market data used in this report was the Multiple Listing Service in the subject County. Also, where necessary, market data from the appraiser’s files and public records were utilized.

INCOME APPROACH

The Income Approach was not developed due to the lack of rental data in the local market which precludes developing a market rental estimate for the subject. Nearly all dwellings, locally, are owner occupied. This situation also causes a dearth of sold rental properties making it virtually impossible to derive a gross rent multiplier.

ZONING

A representative of the zoning office indicates the subject property building lot is legal, conforming and the existing improvements can be rebuilt if destroyed or are found to be uninhabitable.

Zoning conformance is a legal matter, we suggest an attorney’s opinion be sought to confirm the appraiser’s conclusion.

MORE THAN SIX MONTHS

In order to present the most similar sales, it is necessary to select sale 3, which is more than six months old, due to the low sale turnover in the subject neighborhood.

Stmt8-062701
• Statement of Limiting Conditions :

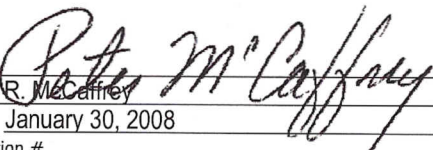
USE,COPIES,PUBLICATION,DISTRIBUTION OF THIS REPORT:
This appraisal report is prepared for the sole and exclusive use of Commerce Bank, N.A., to assist in determining the collateral values for mortgage financing. It is no to be relied upon by third parties for any purpose, whatsoever.

The report may not be used for any purpose by any person or party other than the client or the party to whom it is addressed or copied without the written consent of an officer of the appraisal firm (Robert M. Sapio, Real Estate Appraisal & Consulting, LLC) and then only in its entirety.

Possession of this report or any copy thereof does not carry with it the right of publication, nor may it be used for other than its intended use; the physical report(s) remain the property of the appraiser for the use of the client, the fee being for the analytical services only.

Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations efforts, news, sales, other media, without the written consent and approval of an officer of the Sapio firm, nor may any reference be made in such a public communication to the Appraisal Institute or the MAI or SRA designations.

This supersedes No. 10 on page 1 of the Statement of Limiting Conditions.

Signature 	Signature _____
Name <u>Peter R. McCaffrey</u>	Name _____
Date Signed <u>January 30, 2008</u>	Date Signed _____
State Certification # _____ State _____	State Certification # _____ State _____
Or State License # <u>42RA00015400</u> State <u>NJ</u>	Or State License # _____ State _____

Borrower	Reed 3rd, Frank & Christina					
Property Address	817 Matlack Drive					
City	Moorestown	County	Burlington	State	NJ	Zip Code 08057
Lender	Commerce Bank					

Sales Comparison Approach

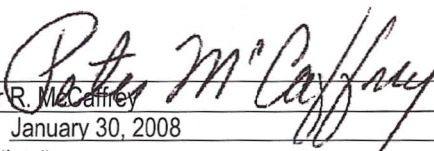
Sale No. 1 is 804 Matlack Drive in Moorestown. The sale is similar to the subject located within the subject's development. The sale is built by the same developer, Roger Maines, as the subject. The sale is a two and a half story colonial dwelling with similar construction to the subject. The subject has superior room count, bedroom count and bathroom count and an upward \$50,000 adjustment was made for those items. The sale has a full finished basement with a full bath. Sale has three-zone heat, three-car garage and a patio in the rear. The sale is in very good condition similar to the subject. The sale has a total of 5,643 square feet of gross living area.

Sale No. 2 is 807 Riverton Road in Moorestown. The sale is a two story French colonial style dwelling located within the several blocks of the subject. The sale is located on a rear flag lot and has 2.10 acres. This sale has ten rooms, five bedrooms and five and one half baths for a total gross living area of 5,534 square feet. The sale has a full finished basement with a full bath, three-zone heat and a deck and patio in the rear. The sale is in very good condition.

Sale No. 3 is 301 East Oak Avenue in Moorestown. This sale is located in a downtown section of Moorestown Township. This sale is smaller in overall building size with a total of eleven rooms, five bedrooms and five and one half baths for a total of 5,010 square feet of gross living area. The sale has a full finished basement with a powder room. The sale has superior construction to the subject with a slate roof, stone siding and copper gutters and downspouts. The sale is superior with an inground pool and a fence. The sale is in good condition with an effective age of eight to ten years.

Sale No. 3 settled on August 17, 2006 and a 4% downward time adjustment was necessary.

After adjustments the sales indicated a value range of \$1,981,100 to \$2,177,300. All three sales have occurred between August 2006 and August 2007. It is my opinion, the sales indicate a value of \$2,040,000 to the subject.

Signature 

Name Peter R. McCaffrey

Date Signed January 30, 2008

State Certification # _____ State _____

Or State License # 42RA00015400 State NJ

Signature _____

Name _____

Date Signed _____

State Certification # _____ State _____

Or State License # _____ State _____

Borrower	Reed 3rd, Frank & Christina				
Property Address	817 Matlack Drive				
City	Moorestown	County	Burlington	State	NJ Zip Code 08057
Lender	Commerce Bank				



Subject Front
817 Matlack Drive
Sales Price
GLA 6,555
Total Rooms 14
Total Bedrms 7
Total Bathrms 7.5.5
Location Good
View Good
Site .61 acres
Quality Good
Age 1



Subject Rear



Subject Street

Borrower	Reed 3rd, Frank & Christina				
Property Address	817 Matlack Drive				
City	Moorestown	County	Burlington	State	NJ
Lender	Commerce Bank	Zip Code	08057		



Comparable 1

804 Matlack Drive
Proximity same street
Sale Price 1,850,000
GLA 5,643
Total Rooms 11
Total Bedrms 5
Total Bathrms 4.5
Location Good
View Good
Site .69 acres
Quality Good
Age 1



Comparable 2

807 Riverton Road
Proximity 1/4 mile
Sale Price 1,900,000
GLA 5,534
Total Rooms 10
Total Bedrms 5
Total Bathrms 5.5
Location Good
View Good
Site 2.10 acres
Quality Good
Age 10 eff. 2



Comparable 3

301 E. Oak Avenue
Proximity 1 mile
Sale Price 2,150,000
GLA 5,010
Total Rooms 11
Total Bedrms 5
Total Bathrms 5.5
Location Good
View Good
Site .96 acres
Quality Superior
Age 86 eff. 10

File No. 08011502

THIS DOCUMENT IS PRINTED ON WATERMARKED PAPER, WITH A MULTI-COLORED
BACKGROUND AND MULTIPLE SECURITY FEATURES. PLEASE VERIFY AUTHENTICITY.

State Of New Jersey
New Jersey Office of the Attorney General
Division of Consumer Affairs

THIS IS TO CERTIFY THAT THE
Real Estate Appraisers Board

HAS LICENSED

PETER R. MCCAFFREY
117 OAKMONT RD
MOUNT LAUREL NJ 08054-2310

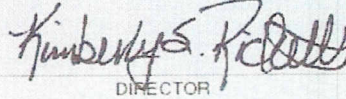
FOR PRACTICE IN NEW JERSEY AS A(N): Licensed Residential Appraiser

11/17/2005 TO 12/31/2007
VALID

42RA00015400

LICENSE/REGISTRATION/CERTIFICATION #


Signature of Licensee/Registrant/Certificate Holder


DIRECTOR

Borrower	Reed 3rd, Frank & Christina				
Property Address	817 Matlack Drive				
City	Moorestown	County	Burlington	State	NJ Zip Code 08057
Lender	Commerce Bank				

NATIONAL FLOOD INSURANCE PROGRAM

FIRM


FLOOD INSURANCE RATE MAP

TOWNSHIP OF
MOORESTOWN,
NEW JERSEY
BURLINGTON COUNTY

PANEL 5 OF 10
(SEE MAP INDEX FOR PANELS NOT PRINTED)

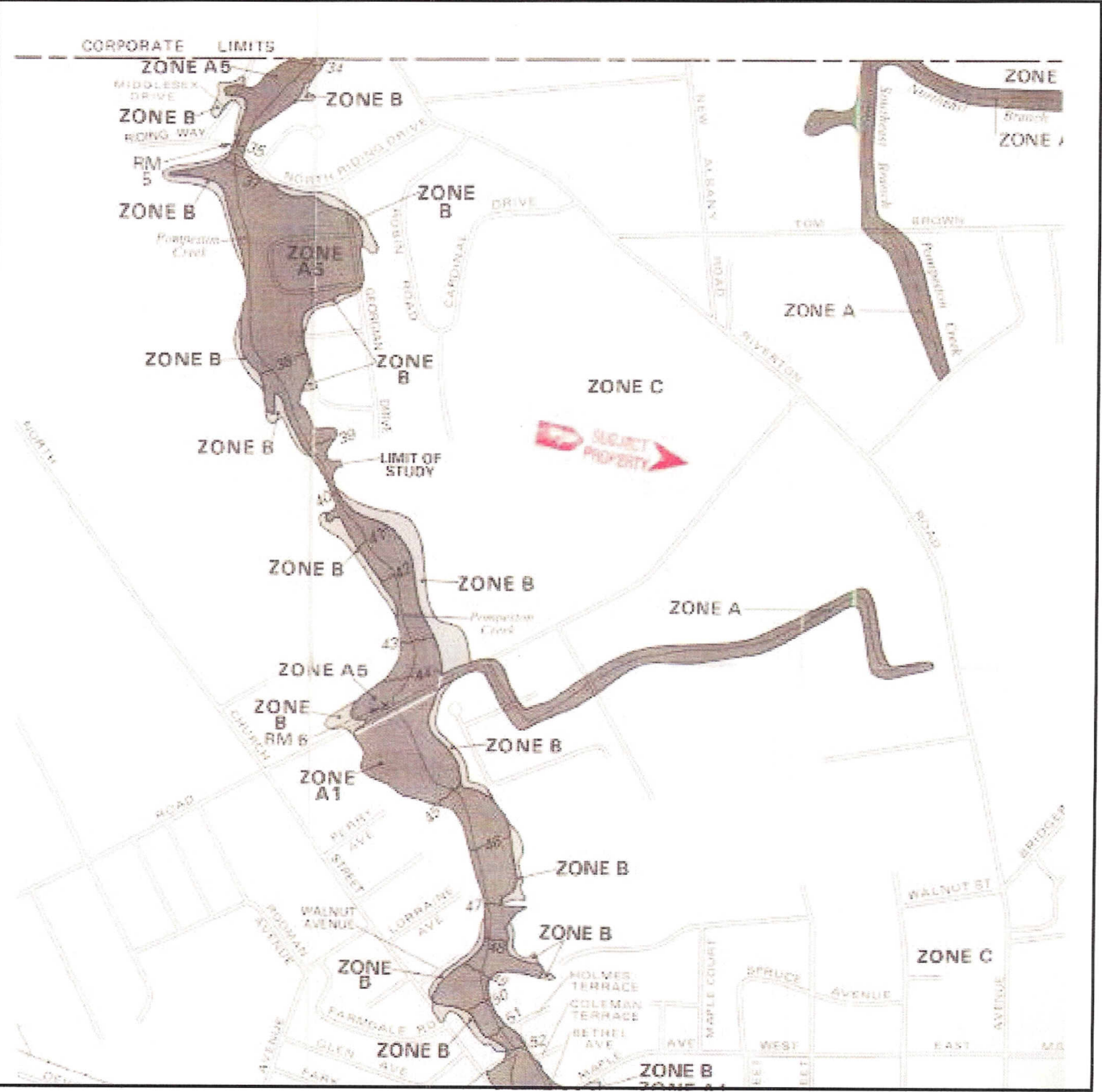
COMMUNITY-PANEL NUMBER
340105 0005 B

MAP REVISED:
SEPTEMBER 4, 1991

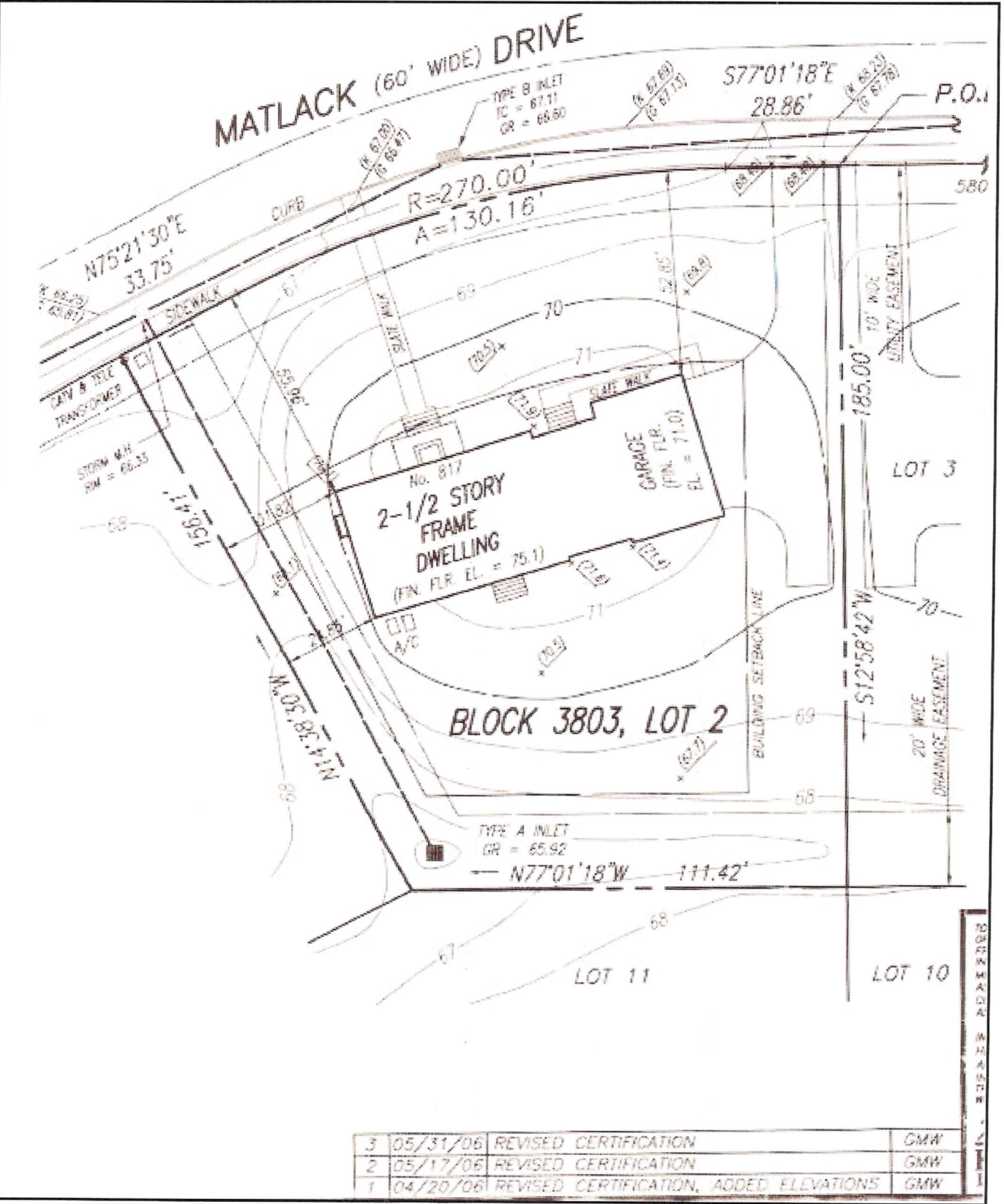


Federal Emergency Management Agency

Borrower	Reed 3rd, Frank & Christina		
Property Address	817 Matlack Drive		
City	Moorestown	County	Burlington
		State	NJ
		Zip Code	08057
Lender	Commerce Bank		



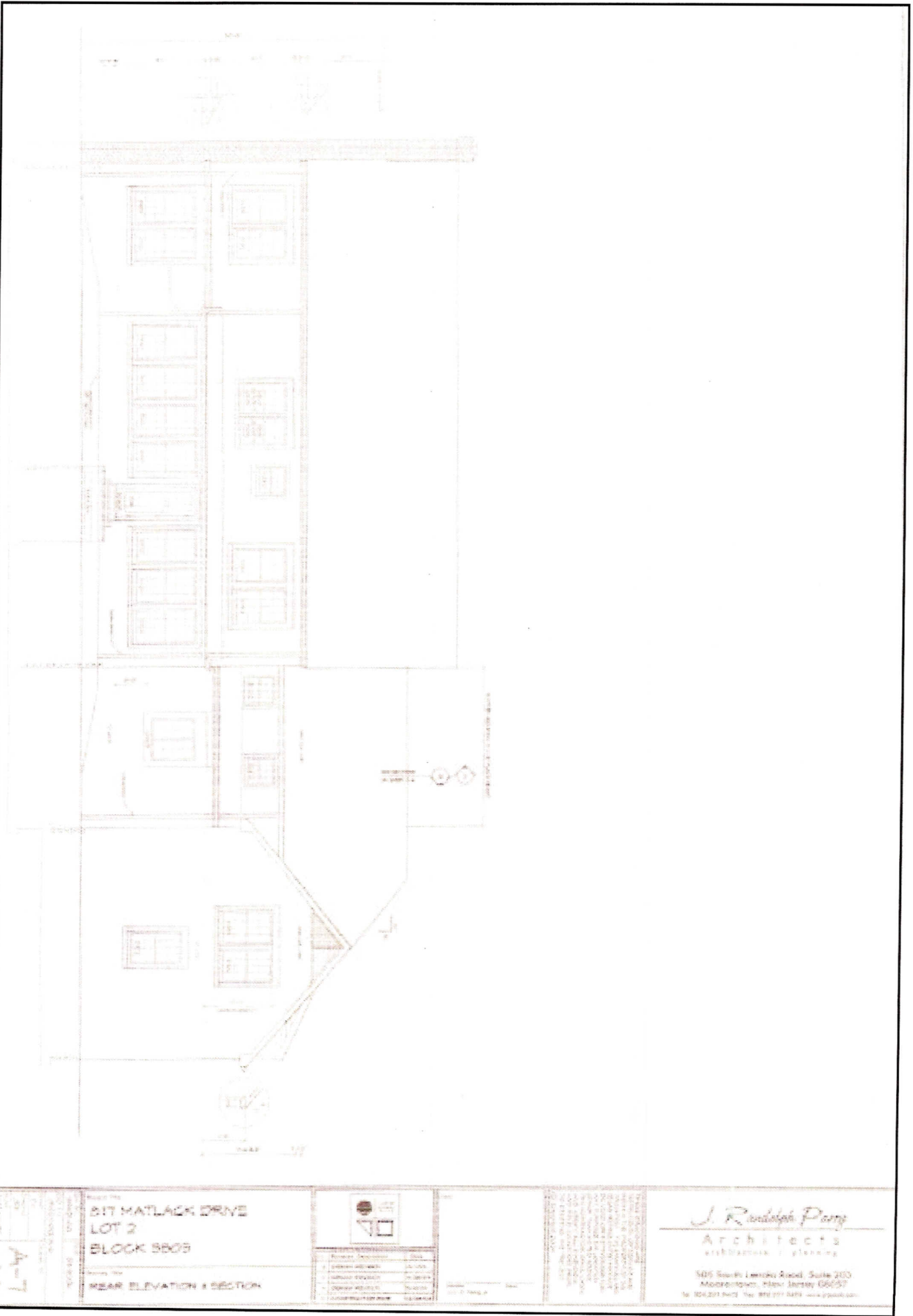
Borrower	Reed 3rd, Frank & Christina		
Property Address	817 Matlack Drive		
City	Moorestown	County	Burlington
Lender	Commerce Bank	State	NJ
		Zip Code	08057



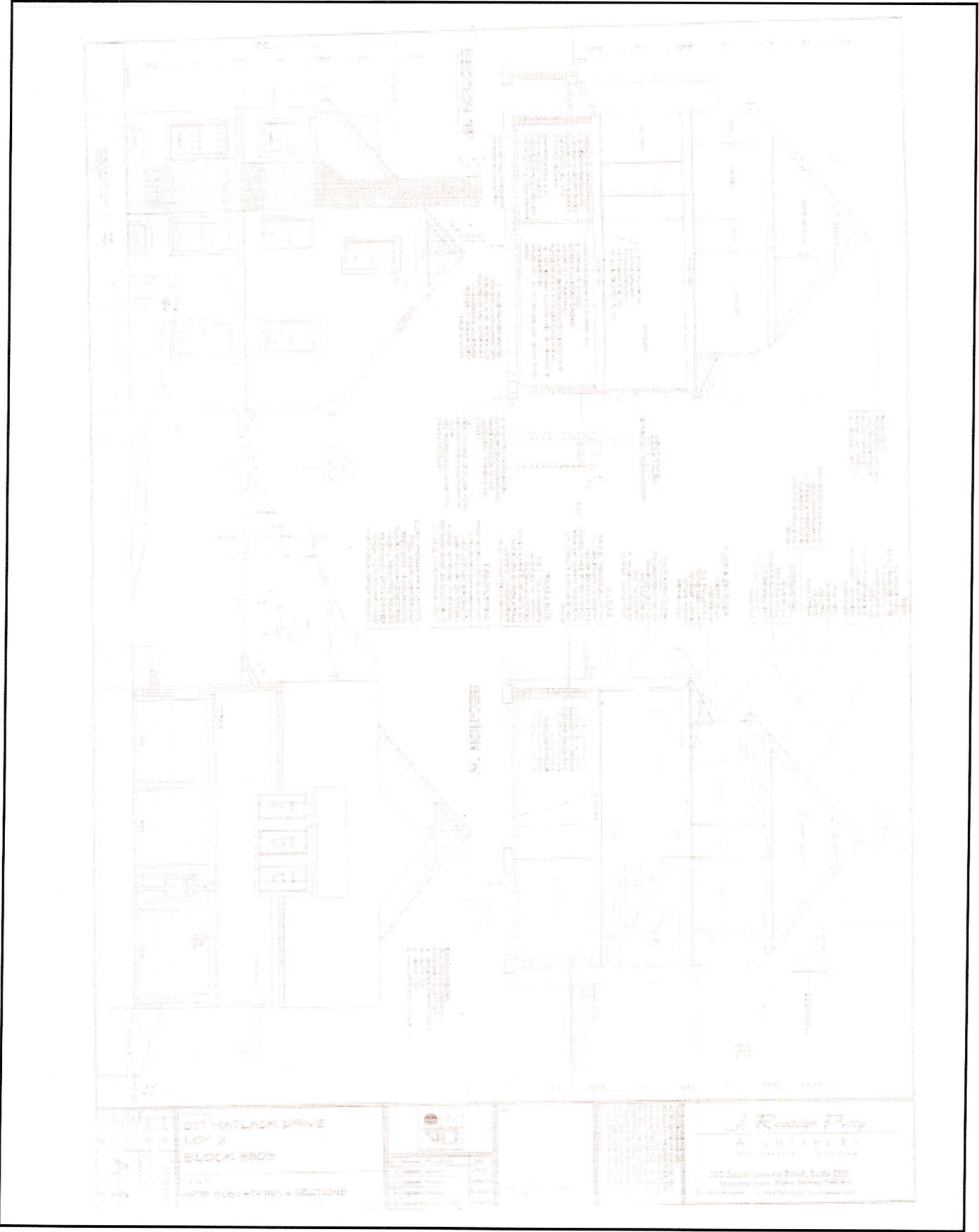
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City	Moorestown	County	Burlington	State NJ Zip Code 08057
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City	Moorestown	County	Burlington	State NJ Zip Code 08057
Lender	Commerce Bank			



Floor Plan
Pg 37 of 44

Borrower	Reed 3rd, Frank & Christina			
Property Address	817 Matlack Drive			
City	Moorestown	County	Burlington	State NJ Zip Code 08057
Lender	Commerce Bank			



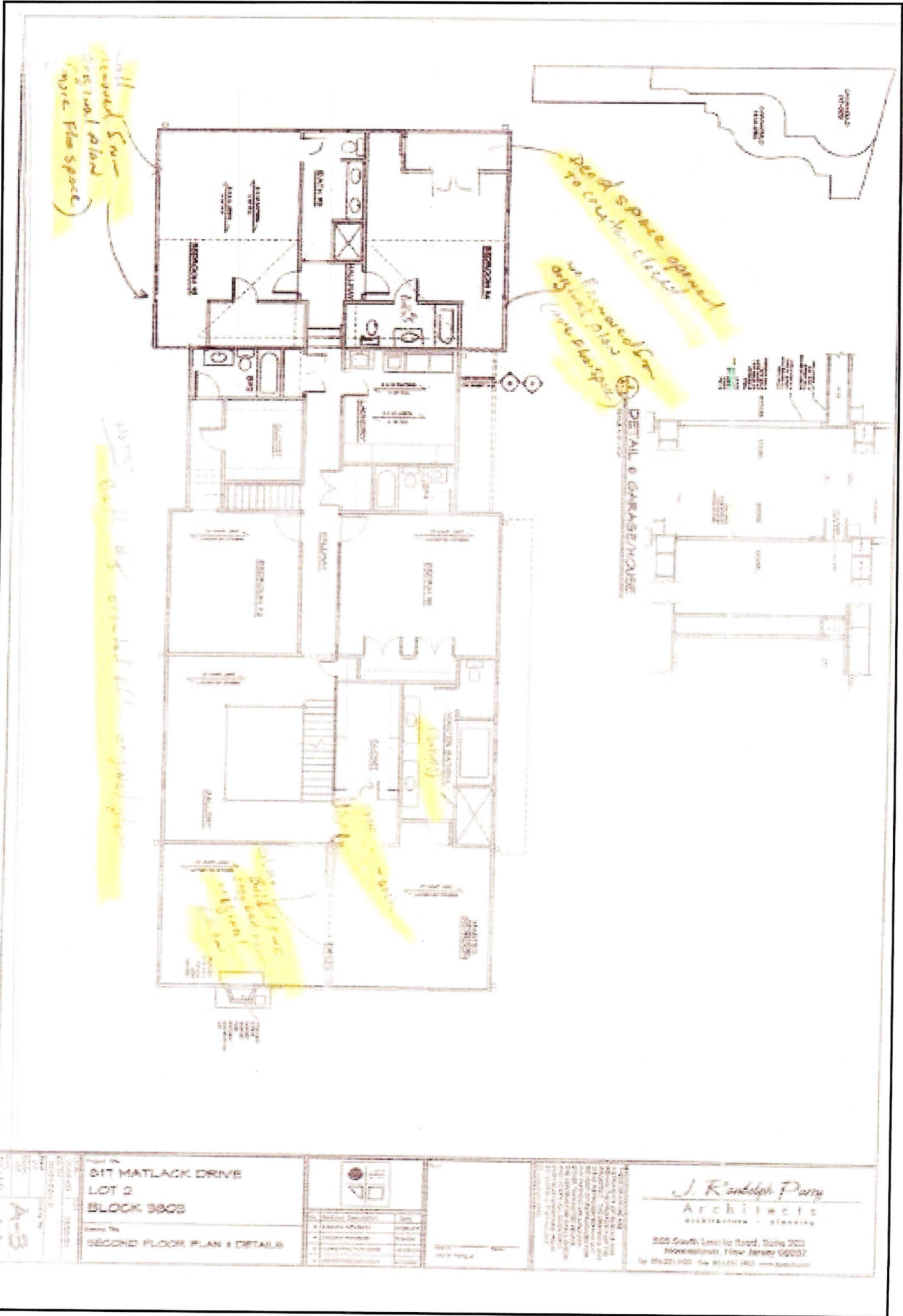
817 MATLACK DRIVE
LOT 2
BLOCK 3809

DATE: 06/19/14
DRAWN BY: JRP
CHECKED BY: JRP
FIRST FLOOR PLAN

J. Randolph Parry
Architects
with interior • planning

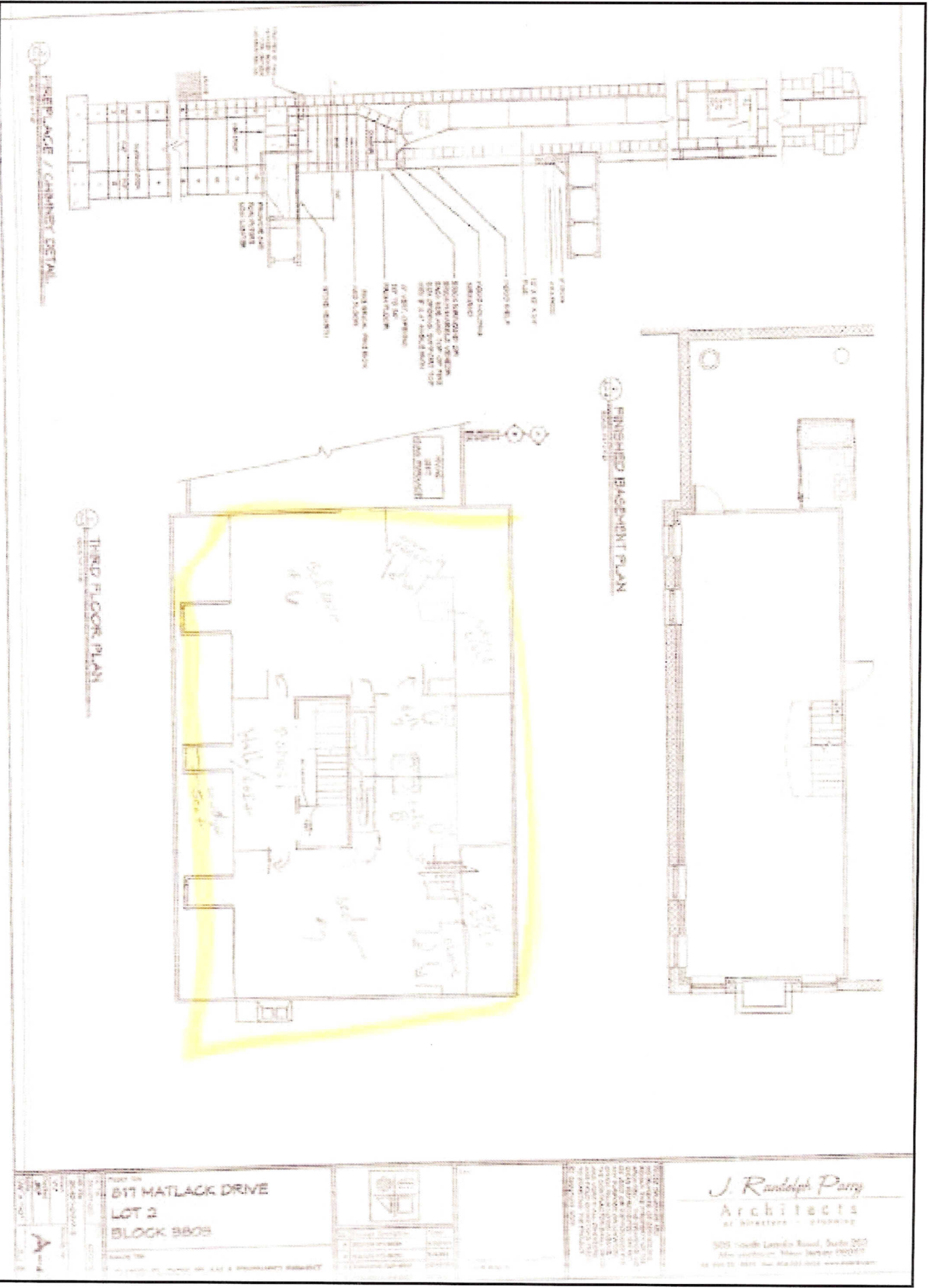
505 South L. Moore Road, Suite 201
Moorestown, New Jersey 08057
Tel: 856.261.1201 • Fax: 856.261.1202 • www.jrparchitects.com

Borrower	Reed 3rd, Frank & Christina			
Property Address	817 Matlack Drive			
City	Moorestown	County	Burlington	State NJ Zip Code 08057
Lender	Commerce Bank			

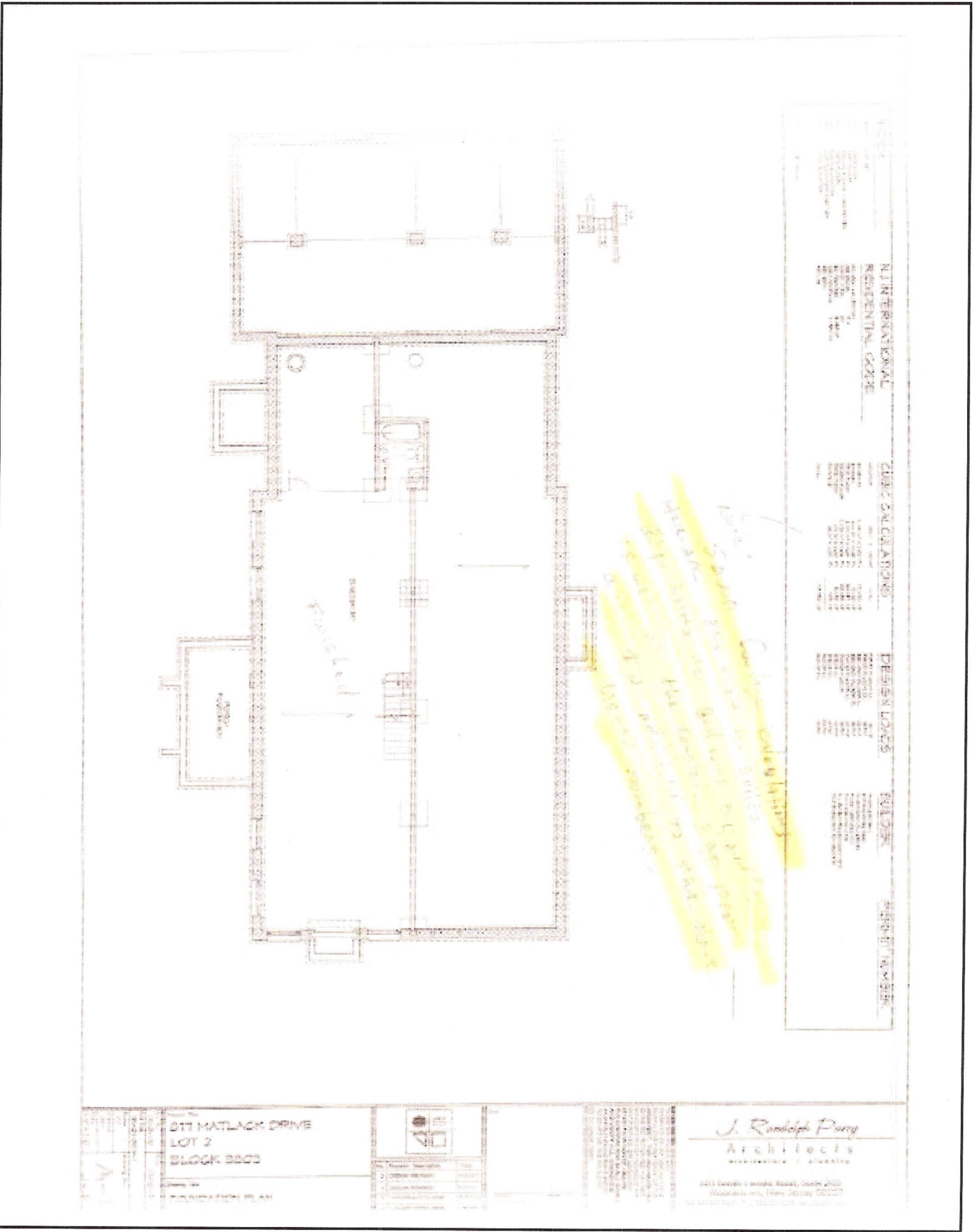


Floor Plan
Pg 39 of 44

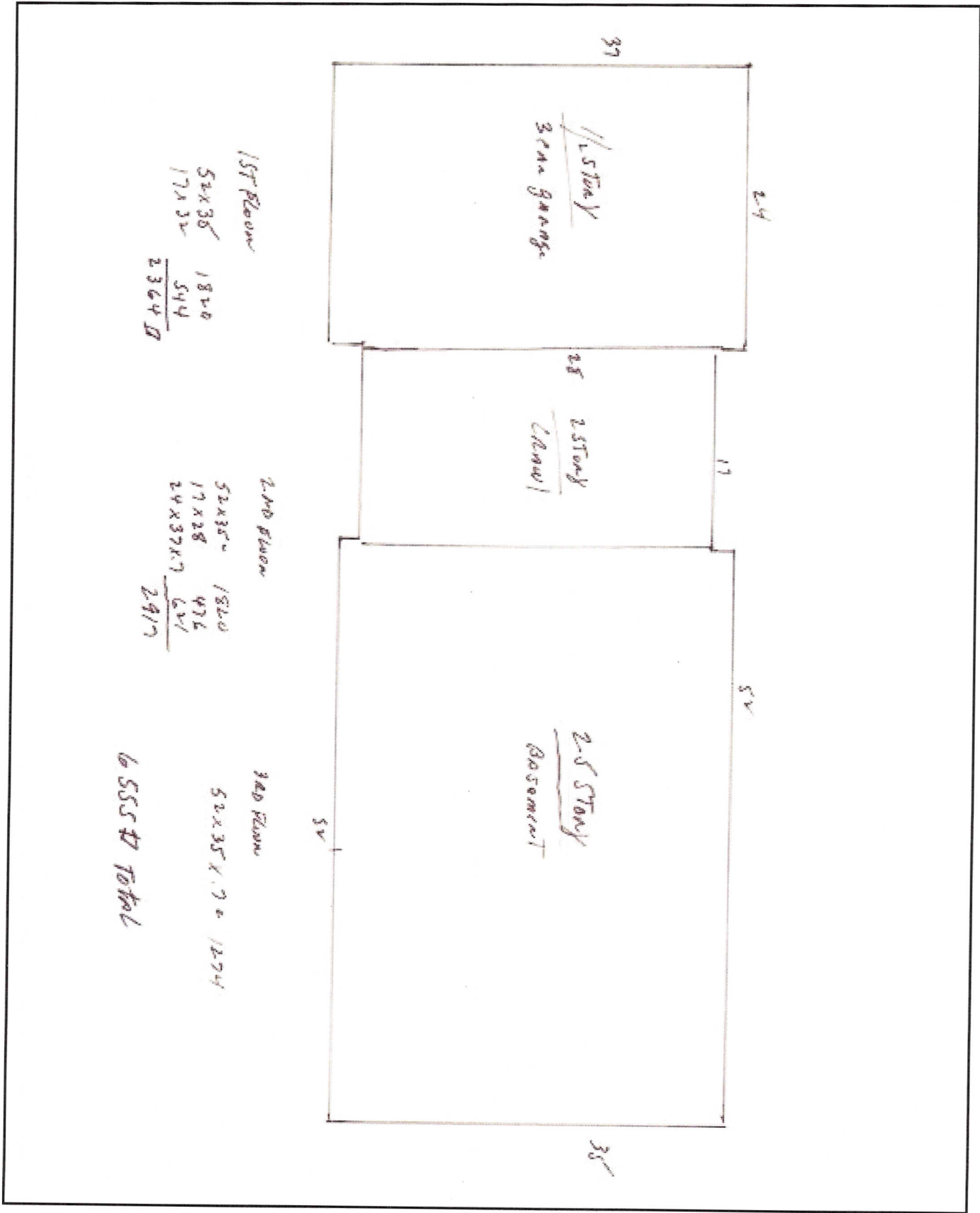
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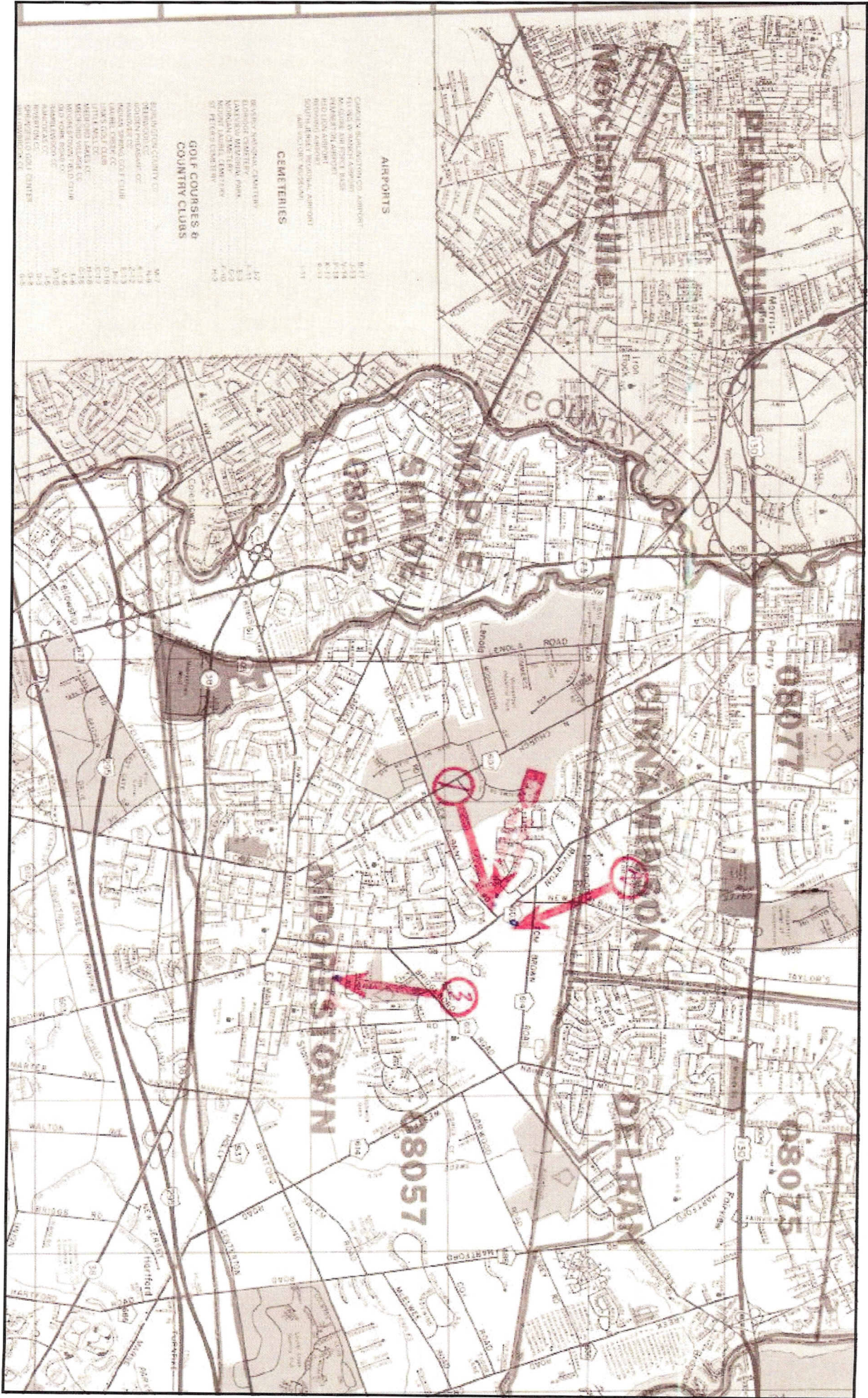
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		State	NJ
		Zip Code	08057
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Borrower	Reed 3rd, Frank & Christina			
Property Address	817 Matlack Drive			
City	Moorestown	County	Burlington	State NJ Zip Code 08057
Lender	Commerce Bank			





PROPOSAL TO PURCHASE

THIS IS A PRELIMINARY DOCUMENT. COMPLETE TERMS AND CONDITIONS OF THE TRANSACTION SHALL BE CONTINUED IN A MUTUALLY AGREEABLE CONTRACT FOR SALE BETWEEN THE PARTIES.

Frank & Gina Roccisano referred to as Buyer, authorizes
Naoji Morinchi to present the following proposal to purchase property situated at:
817 Matlack Drive, Moorestown, NJ 08057

for the sum of \$ 1,300,00 ☐ Check
DEPOSIT MADE WITH THIS PROPOSAL \$ ☐ Money Order
which shall be applied on account of purchase price ☐ Cash

BUYER AGREES TO MAKE AN ADDITIONAL PAYMENT OF \$ 13,000
at time of signing of Contract for Sale.

BUYER AGREES TO PAY \$
Balance Due in cash, certified check, and/or mortgagor's check at time of final settlement.

THE CONTRACT FOR SALE will be subject to Buyer obtaining a ☐ FHA ☐ VA ☒ Conventional ☐ Other Mortgage
in the amount of \$ 1,040,000

OR

☐ Assumption of existing mortgage at a rate of % maturing in approximately
..... years with an approximate balance of \$

THE PROJECTED SETTLEMENT DATE is to be on or before 30 days before 4:00 P.M. at the office of
Foundation Infinity Title or at the office of any reputable Title Company.

THIS PROPOSAL is made on the following Terms and Conditions:

(1) **PERSONAL PROPERTY & FIXTURES.** The Property being transferred includes all fixtures permanently attached to the building(s), all shrubbery, plantings, and
fencing. Also included All appliances & light fixtures

Specifically excluded:

(2) **POSSESSION & OCCUPANCY.** Possession and Occupancy will be given to the Buyer at (check one) ☒ time of settlement or ☐ other:

(3) **INSPECTIONS.** The following inspections shall be ordered by the Buyer:
☒ Wood-Boring Insects Report ☐ Bacteriological and chemical analysis of the private well drinking water
☐ Examination of the on-site waste disposal system ☒ Other: Home Inspection

(4) **SUFFICIENT ASSETS.** The Buyer represents that as of the signing of this Proposal, he/she has or will have as of the date of settlement, all necessary cash assets to
complete settlement. However, Buyer further represents:
☒ the purchase of this property is NOT contingent upon the sale of any other real estate or personal property
☐ he/she will require the proceeds from the sale of property located at
..... in order to complete settlement.

(5) **OTHER:**

BY SIGNING BELOW the buyer(s) acknowledge they received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firms involved in
this transaction prior to the first showing of the property.

B.T. Edgar & Son Realtors (name of firm) AND
Naoji Morinchi (name of licensee(s)),

AS ITS AUTHORIZED REPRESENTATIVE(S), ARE WORKING IN THIS TRANSACTION AS (choose one):

☐ SELLER'S AGENT(S) ☐ BUYER'S AGENT(S)
☒ DISCLOSED DUAL AGENT(S) ☐ TRANSACTION BROKER(S)

INFORMATION SUPPLIED BY (name of listing firm) HAS INDICATED THAT IT IS OPERATING IN THIS TRANSACTION AS A (choose one):
☐ SELLER'S AGENT(S) ☐ BUYER'S AGENT(S)
☐ DISCLOSED DUAL AGENT(S) ☐ TRANSACTION BROKER(S)

THIS PROPOSAL shall be presented to the seller's agent and subject to approval by the seller. If this offer is not accepted by the Seller within 7 days,
the offer shall be considered cancelled and deposit will be returned to the Buyer upon clearance of Buyer's funds with the Broker's banking institution.

BUYER Signed: [Signature] 3-20-10
SS#:
Date:
Signed:
SS#:
Date:

Presenting Agency: B.T. Edgar & Son
Address: 27 E. Main Street
Moorestown, NJ 08057
Office Tel#: 856-235-0101
Office FAX#: 856-722-9190
Agent's Name: Naoji Morinchi
Agent's MLS Public ID: 60012567

FORM#001(8/98)

From: Lmcarts <Lmcarts@aol.com>
To: frankreedva <frankreedva@aol.com>
Subject: Fwd: (no subject)
Date: Mon, May 9, 2011 1:58 pm

Attached Message

From: Singh, Nina <Nina.Singh@uphs.upenn.edu>
To: Louise Carter <lmcarts@aol.com>
Subject:
Date: Sun, 8 May 2011 09:00:03 -0700

Hello Louise,
We would like to place the following offer on your pocket listing, Matlack.

Price \$1,100,000
Down payment \$220,000 (20 percent)
Deposit \$60,000 upon agreement of price.

We can close as early as 30 days, but are amenable to a longer escrow if the seller would like; however we do not want to close later than the end of august.

Additionally, upon agreement of the sales price, **we would like a full description of what the legal dealings are with the bank and seller, as this may affect the closing,** from the seller's attorney. As we would like for our attorney to review this.

Thank you, Kris and Nina

Sent from my iPhone

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

EXHIBIT 11



"Real SERVICE in Real Estate"

June 25, 2012

Re: Below Market Offer - Reed Home - 817 Matlack Drive Moorestown, NJ 08057

To Whom It May Concern:

I am Naoji Moriuchi. I am a Realtor for BT Edgar & Son in Moorestown, NJ.

On March 20, 2010 I submitted an offer to Frank Reed's listing agent, Louise Carter. This offer was an offer to purchase Mr. Reed's house at 817 Matlack Drive Moorestown, NJ 08057.

My client became interested in purchasing Mr. Reed's house after seeing his house listed for sale. However, upon investigating the house in preparation for making an offer, my client and I became aware via the County Court House and public records that GMAC had executed a lispendens on Mr. Reed's property at 817 Matlack Drive Moorestown, NJ indicating that it was in foreclosure litigation. This placed Mr. Reed's house in the category of a "distressed" property.

Therefore, based on the comparable properties and the fact that this was a "distressed" property and in consideration of the associated risks with a "distressed" property, my client submitted an offer below fair market value.

A copy of my profile, the offer and the lispendens is attached to assist in the matter.

If there are any questions please contact me.

Sincerely,

NaojiMoriuchi
Realtor Associate
BT Edgar & Son Realtors

Enclosed: Attachments



Naoji Moriuchi | B.T. Edgar and Son Realtors

http://www.edgarrealestate.com/naoji-moriuchi

bt edgar and son

AOL Mail (988) Naoji Moriuchi | B.T....

B.T. EDGAR AND SON REALTORS

ABOUT PROPERTIES HOME SEARCH AGENTS COMMUNITIES CONTACT


Home
Company Info
Calculator
Real Estate News

TRADES, FREE LIVING
B.T. Edgar & Son
856-235-0101
fax 856-722-9190
info@edgarrealestate.com

NEED ASSISTANCE?

Find My Dream Home?
What Is My Home Worth?
Help Me Relocate!

Naoji Moriuchi



Naoji Moriuchi
B.T. Edgar & Son
Office: 235-0101 Ext. 211
Fax: 856-922-9190

Naoji grew up in Moorestown, graduated from Moorestown Friends School, and played on Moorestown's soccer and jigsaw club teams.

As a Realtor Associate with B.T. Edgar & Son, Realtors, Naoji combines a deep understanding of real estate data, with technology and disciplined marketing/sales tactics to sell residential real estate, commercial properties and land in Moorestown and the surrounding areas.

Accomplishments include:

- (1) Features in NINEY magazine, CNX.com and HGTV as a local real estate expert.
- (2) Top 3% sales agent in Burlington and Camden County since 2005.
- (3) 2005 and 2006 NAR Circle of Excellence Bronze Award for sales volume & units sold.

In addition to these proven results Naoji volunteers his time through local community organizations as a member of Moorestown's Breakfast Rotary, a member of various committees for Moorestown Friends School and as a volunteer firefighter. In the past Naoji enjoyed his time as a coach for Moorestown's Lacrosse Club.

To learn more about Naoji Moriuchi, his views on Moorestown real estate trends and what his clients say about him visit [his LinkedIn](#) or [his Blog](#).

Or if you live in the Moorestown, Cinnaminson, Mount Laurel, Delran, Medford or surrounding areas please call him at 856-235-0101 extension 211 for a FREE, no obligation, consultation regarding the value of your home.

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Design by Agent Image - Real Estate Website Design | Sitemap

8:59 PM
6/18/2012



PROPOSAL TO PURCHASE

THIS IS A PRELIMINARY DOCUMENT. COMPLETE TERMS AND CONDITIONS OF THE TRANSACTION SHALL BE CONTINUED IN A MUTUALLY AGREEABLE CONTRACT FOR SALE BETWEEN THE PARTIES.

Frank & Gina Roccisano referred to as Buyer, authorizes
Naoki Morinchi to present the following proposal to purchase property situated at:
817 Matlack Drive, Moorestown, NJ 08057
for the sum of \$1,300.00
DEPOSIT MADE WITH THIS PROPOSAL \$1,300.00 ☐ Check
which shall be applied on account of purchase price \$ ☐ Money Order
☐ Cash
BUYER AGREES TO MAKE AN ADDITIONAL PAYMENT OF \$13,000
at time of signing of Contract for Sale.
BUYER AGREES TO PAY \$
Balance Due in cash, certified check, and/or mortgagor's check at time of final settlement.
THE CONTRACT FOR SALE will be subject to Buyer obtaining a ☐ FHA ☐ VA ☒ Conventional ☐ Other Mortgage
in the amount of \$1,040,000
OR
☐ Assumption of existing mortgage at a rate of % maturing in approximately years with an approximate balance of \$
THE PROJECTED SETTLEMENT DATE is to be on or before 30 days before 4:00 P.M. at the office of
Foundation Infinity Title, or at the office of any reputable Title Company.

THIS PROPOSAL is made on the following Terms and Conditions:

- (1) **PERSONAL PROPERTY & FIXTURES.** The Property being transferred includes all fixtures permanently attached to the building(s), all shrubbery, plantings, and fencing. Also included: All appliances & light fixtures
Specifically excluded:
- (2) **POSSESSION & OCCUPANCY.** Possession and Occupancy will be given to the Buyer at (check one) ☒ time of settlement or ☐ other:
- (3) **INSPECTIONS.** The following inspections shall be ordered by the Buyer:
☒ Wood-Boring Insects Report ☐ Bacteriological and chemical analysis of the private well drinking water
☐ Examination of the on-site waste disposal system ☒ Other: Home Inspection
- (4) **SUFFICIENT ASSETS.** The Buyer represents that as of the signing of this Proposal, he/she has or will have as of the date of settlement, all necessary cash assets to complete settlement. However, Buyer further represents:
☒ the purchase of this property is NOT contingent upon the sale of any other real estate or personal property
☐ he/she will require the proceeds from the sale of property located at in order to complete settlement.
- (5) **OTHER:**

BY SIGNING BELOW the buyer(s) acknowledge they received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firm involved in this transaction prior to the first showing of the property.

B.T. Edgar & Son Realtors, (name of firm) AND
Naoki Morinchi, (name of licensee(s)),

AS ITS AUTHORIZED REPRESENTATIVE(S), ARE WORKING IN THIS TRANSACTION AS (choose one):

☐ SELLER'S AGENT(S) ☐ BUYER'S AGENT(S)
☒ DISCLOSED DUAL AGENT(S) ☐ TRANSACTION BROKER(S)

INFORMATION SUPPLIED BY (name of listing firm) HAS INDICATED THAT IT IS OPERATING IN THIS TRANSACTION AS A (choose one):
☐ SELLER'S AGENT(S) ☐ BUYER'S AGENT(S)
☐ DISCLOSED DUAL AGENT(S) ☐ TRANSACTION BROKER(S)

THIS PROPOSAL shall be presented to the seller's agent and subject to approval by the seller. If this offer is not accepted by the Seller within 30 days, the offer shall be considered cancelled and deposit will be returned to the Buyer upon clearance of Buyer's funds with the Broker's banking institution.

Presenting Agency: B.T. Edgar & Son
Address: 27 E. Main Street
Moorestown, NJ 08057
Office Tel#: 856-235-0101
Office FAX#: 856-722-9190
Agent's Name: Naoki Morinchi
Agent's MLS Public ID: 60012567

BUYER Signed: [Signature] 3-20-10
SS#:
Date:
Signed:
SS#:
Date:

FORM#001(8/88)

R: 5/28/08

XCZ 102962
ZUCKER, GOLDBERG & ACKERMAN
Attorneys for Plaintiff
200 Sheffield Street, Suite 301
P.O. Box 1024
Mountainside, New Jersey 07092-0024
1-908-233-8500

BURLINGTON COUNTY
CLERK

2:30 MAY 27 P 2:41

RECEIVED

GMAC MORTGAGE, LLC

Plaintiff

vs.

Frank J. Reed, III; Christina A. Reed; Mortgage Electronic
Registration Systems, Inc., as nominee for Homecomings
Financial, LLC;

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BURLINGTON COUNTY
DOCKET NO. F-19177-08

Civil Action

NOTICE OF LIS PENDENS

TO WHOM IT MAY CONCERN:

Notice is hereby given of the commencement and pendency of the above entitled Civil
Action, the general objects of which are:

1. To foreclose the mortgage made by Frank J. Reed, III and Christina A. Reed,
husband and wife to Mortgage Electronic Registration Systems, Inc., as nominee
for Metrocities Mortgage, LLC dated 05/31/2006 recorded in the office of the
Burlington County Clerk, in Book 11124 of Mortgages for said County, Page 410.

SAID MORTGAGE WAS SUBSEQUENTLY ASSIGNED TO PLAINTIFF
HEREIN.

2. To recover possession of the lands described in Schedule "A" annexed hereto.
3. The Complaint in the above referenced case was filed on 05/19/2008.

ZUCKER, GOLDBERG & ACKERMAN
Attorneys for Plaintiff

By: Leonard B. Zucker
LEONARD B. ZUCKER
A MEMBER OF THE FIRM

DATED: 5/23/2008

BOOK 368 PAGES 33-35

102962D1007C05232008P62

SCHEDULE "A"

ALL the following described property located in the Township of Moorestown, County of BURLINGTON,
State of New Jersey:

COMMONLY known as 817 MATLACK DRIVE, MOORESTOWN, NJ 08057

BEING also known as Lot 2, Block 3803 on the tax map of the Township of Moorestown.

102962D1007C05232008P63

EXHIBIT 12



Stevie Watson
Tuckahoe Sales
Long and Foster Real Estate
8804 Patterson Avenue
Richmond, VA 23229-6361

June 20, 2012

Re: Lost Sale Profit for 9717 Old Dell Trace Richmond, Virginia 23238

To Whom It May Concern:

I am Stevie Watson. I am, and continue to be, a succesful realtor in the Richmond, Virgina marketplace. Some of my credentials of note are:

- Award-Winning Top-Producer
- Ranked in the TOP 1% of all Realtors in America
- A TOP TEAM for Long and Foster in the Richmond area

(see: published bio attached)

For a number of years now, I have known Frank Reed. During this time, I have known him to purchase, renovate and / or build and sell for a profit both residential and commercial property. I have also participated in several transactions with Mr. Reed as either the buyer's and/or seller's agent.

As a result, I have a first-hand familiarity with Mr. Reed's property located at 9717 Old Dell Trace Richmond, Virginia 23238. This property in particular has even been featured in a published article about "Notable Neighborhoods" in the Richmond, Virginia area, *(see: article attached)*.

Now, I am aware that during 2008 Mr. Reed was in the middle of an extensive expansion and capital renovation of this property. I am also aware that Mr. Reed intended to sell the property for a profit as it had recently appraised for a minimum of \$1,725,000. *(see: appraisal attached)* Unfortunately, Mr. Reed did not finish this project and the market has since drastically declined. The current 100% assessed value of Mr. Reed's property is \$608,400 *(see both: Henrico County Tax Department Value attached and Henrico County valuation methodology indicating 100% market valuation process attached)*.

However, if Mr. Reed had finished the work on his house at 9717 Old Dell Trace Richmond, Virginia 23238, and had offered it for sale from June 2008 through the summer of 2009, it is my opinion that the house would have sold for the appraised value of \$1,725,000. Therefore, it is my estimation that Mr. Reed has currently lost a value of at least \$1,116,600.

If you have any questions please feel free to contact me.

Sincerely,

Stevie Watson

Stevie Watson
Associate Broker, GRI, RRI
Long and Foster Real Estate, Inc.

County
 VA-CHESTERFIELD
 VA-GOODLAND
 VA-ANOVER
 0304

A Grand New Hospital
Henrico Doctors' Expansion p. 2

A Look at the Arts
Creative Projects in the City p. 10

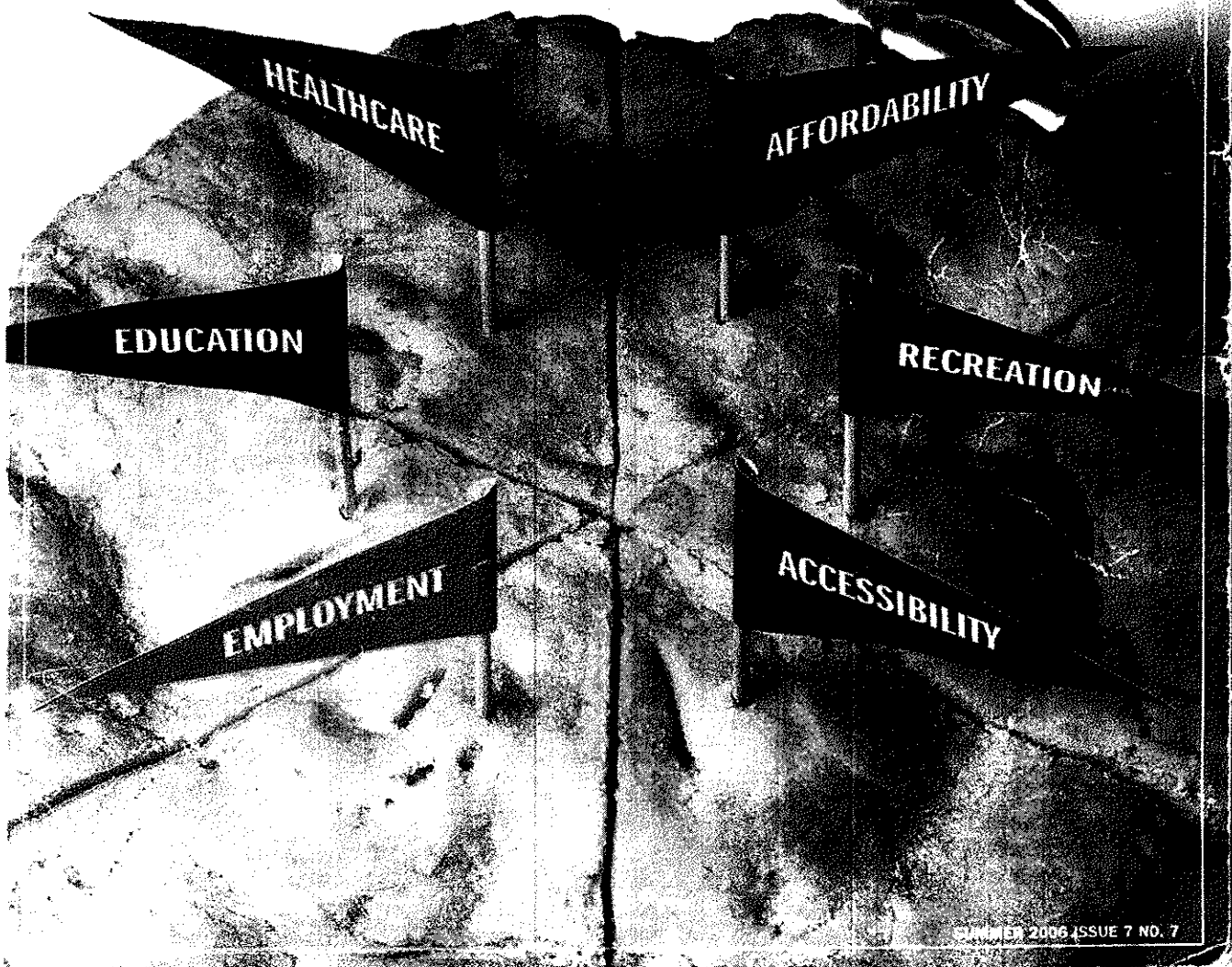
Batter Up!
Tuckahoe Little League p. 24

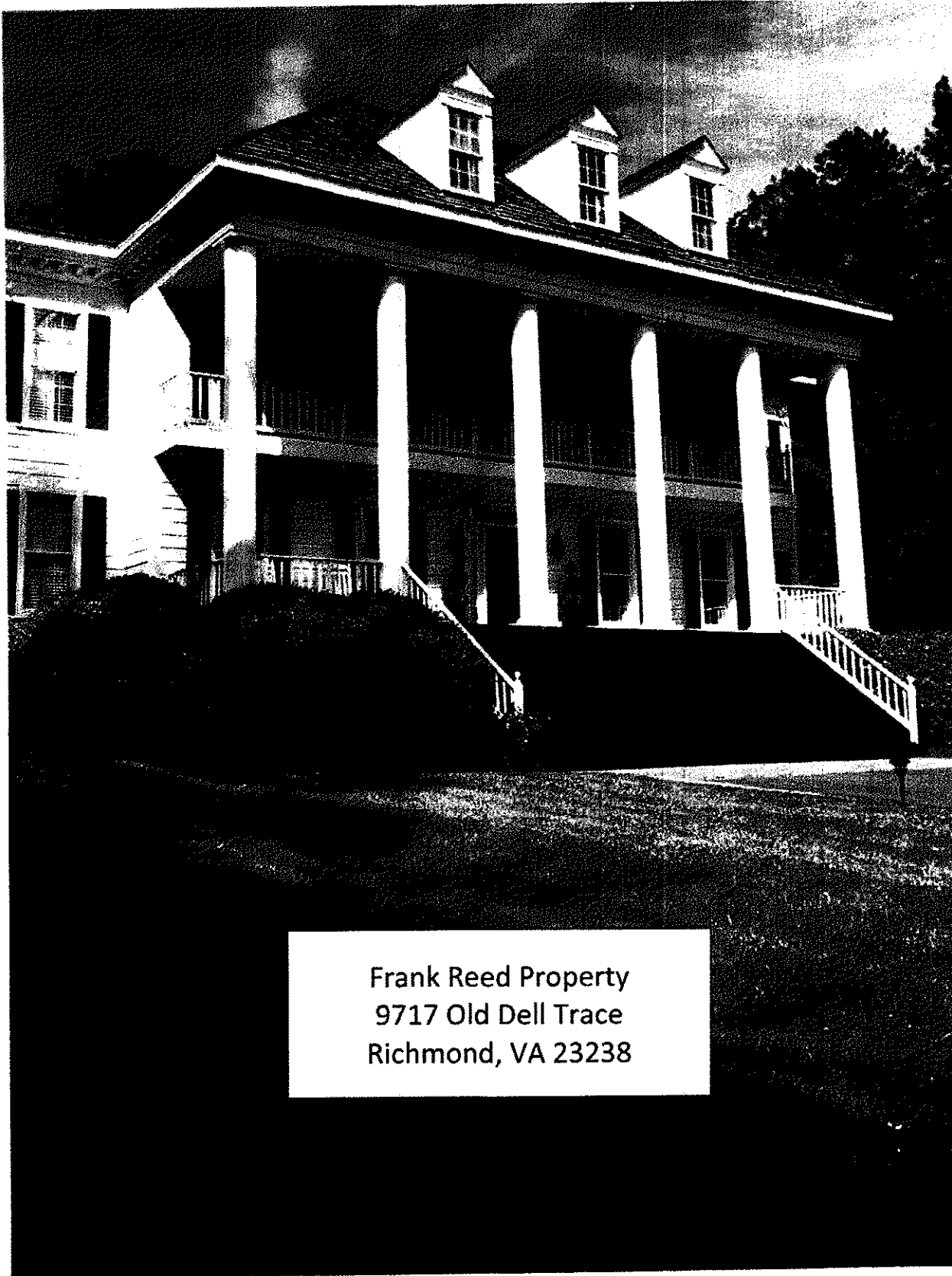
THE AMERICAS

HENRICO

IN THE HEART OF CENTRAL VIRGINIA

whole
Get your slice of the pie.





Frank Reed Property
9717 Old Dell Trace
Richmond, VA 23238

PHOTO BY JAMES HANDELSON WITH PERMISSION OF JAMES HANDELSON

NOTABLE NEIGHBORHOODS

*T*HE WORD "NEIGHBORHOOD" COMES FROM THE MIDDLE ENGLISH, NIGHBOER, a farmer (boer) who lived close (nigh), and hood, a suffix which denoted one's unique condition or character. Ultimately then, the first neighborhoods developed among people who felt a close affinity for one another, both in terms of shared responsibility and social class. Neighbors looked out for one another, lent a hand, swapped stories, offered solace. Neighborhoods reflected the aspirations of the residents and recreated the values of their social class in the children who grew up there.

How good it is to find a home that reflects your highest aspirations; how much better to find it in a neighborhood that embraces you, draws you in, makes you and your family better and more involved. In Henrico County, many such neighborhoods beckon.

RIVER ROAD

For many, Richmond, Virginia conjures up images of the Old South: stately homes situated on gracious, tree-lined streets; a slow pace of life where iced tea or a Mint Julep can be savored on a screened porch during a long sleepy afternoon; children playing on broad green lawns under a sultry summer sun. Remarkably, the image lives on in one of Henrico County's oldest neighborhoods.

The River Road corridor, stretching from the Richmond city line at its eastern terminus to Goochland County in the west, charts a course along the James River. Along the way, it encompasses many of Metropolitan Richmond's most prestigious addresses. Drive west on River Road into Henrico County and the first impression you get is "Old Money." These homes are not the cookie-cutter construction of new development, but uniquely personal creations, each situated on a spacious lot with long-established trees and gently manicured plantings. While a few are the definition of ostentatious display, most of the homes along this stretch of road are the model of understated elegance.



*Kids ride bikes
and roller blade
down the bike
path, teens play
stickball at the
end of the count-
less cul-de-sacs.
new norms push
strollers on the
sidewalks -
you can't help
but smile.*

*With homes starting at \$200,000
in Twin Hickory and spanning into
millions for estates in Windsor on
the James, newcomers to Henrico
County have a range of options to
fit their wallet.*



As River Road passes the newly redesigned Tuckahoe Course of the Country Club of Virginia, tony shops give way to the ivy-covered homes and stunning campus of the University of Richmond. As you pass Forest Avenue, take a left into the secluded Windsor on the James. The all-brick mansions in this small, exclusive neighborhood are meant to impress with vast, manicured lawns and Georgian grandeur.

More typical of the homes along River Road, however, is the well-established neighborhood of Mooreland Farms. Every lot is different and every home is unique. The architecture runs from '70s era tri-levels, Dutch Colonials, and traditional Cape Cods to energy-efficient homes with vast walls of windows, and multi-storied homes that seem to mold themselves to the terrain. With creative landscaping, homeowners have put to advantage the steeply rolling hills that rise up from the James River, creating shade gardens and terraced lawns. The mood here is gracious living. A long-established neighborhood, Mooreland Farms is an area in transition. Long time residents share the streets with young, well-to-do families. The result is a real neighborhood feel.

GRAYSON HILL

Don't want the hassle of a lawn? Prefer to spend your money on the inside of your home than the

outside? Condo living may be for you. In the past five years, the Richmond area has become crazy for luxury condos and townhomes, and Henrico County is helping to scratch that itch. Development has begun in the east end of the County at Rockett's Landing. In the west end, Gumenick Properties is meeting market demand with Grayson Hill.

Situated on 50 acres of prime real estate at the corner of Patterson Ave. and Gaskins Road, Grayson Hill offers five distinct floor plans in a wide range of prices, from the upper \$300s to the \$600s. The brick architecture is reminiscent of traditional 18th century colonial buildings with amenities that are typical of upscale, luxury living: hardwood floors throughout the common areas, granite countertops in the kitchen, and massive master suites.

Grayson Hill is trying hard to create ample open spaces to give the feel of a rambling English country garden to its layout. All of the homes feature 2-car garages, so the property will avoid the look of a parking lot. With a large lake bisecting the planned layout, and a concerted effort to maintain as many of the trees as possible, the developers have tried hard to match the elegance of the landscaping to the elegance of the homes.

The first homes went on sale a year ago and response was strong, with deposits on more than 40% of the homes offered in the first phase. Another 19 homes were offered for sale this spring with reservation agreements on another 18. Less than a quarter of the homes have yet been offered for sale. With shopping and dining nearby, easy access to all the major highways, and ample recreation just minutes away, demand is sure to be strong for the remaining homes.

TWIN HICKORY

When new businesses move to town, their employees are understandably concerned. Where will we live? How much will it cost? Are the schools good? Are there good restaurants, nice shops, friendly people? A drive to Henrico County's Twin Hickory development answers all of their questions.

In the far west end of Henrico County, Twin Hickory is a mixed, residential development of

apartments, town homes, affordable single family homes, and upscale residences. This new development already has the feel of home. Drive down the streets and you know you are in a well-planned community. Most of the homes are brick front Transitionals, and family is the theme. Everywhere you look there are children. Basketball hoops dot the side of the road. Wood-towered playgrounds dominate many backyards. Frisbees are flying. Kids ride bikes and roller blade down the bike path, teens play stickball at the end of the countless cul-de-sacs, new moms push strollers on the sidewalks (a new development with sidewalks!) — you can't help but smile.

Students in the Twin Hickory zone attend Deep Run High School and its excellent feeder schools. Only in its fourth year, Deep Run has already made a name for itself. It is consistently one of the top scoring schools in Virginia on State Standards of Learning tests. In addition, the school has also already won multiple state championships in athletics.

For recreation, the location can't be beat. Movie theaters, soccer fields, an ice skating rink, bowling alleys, driving ranges, and a top-rated golf course are all just minutes away. Dining options are endless, with the upscale Short Pump Town Center and all its perimeter shops just down the street. At one end of the development, the Shady Grove YMCA draws hundreds of people every day; a new Recreation Center is under construction across the street. At the other end of the development, the Short Pump Community Center is also under construction.

The suburbs are about family: providing the best for your children and taking advantage of all the amenities at an affordable price. Twin Hickory has all of this and is an attractive option for people relocating to Richmond.

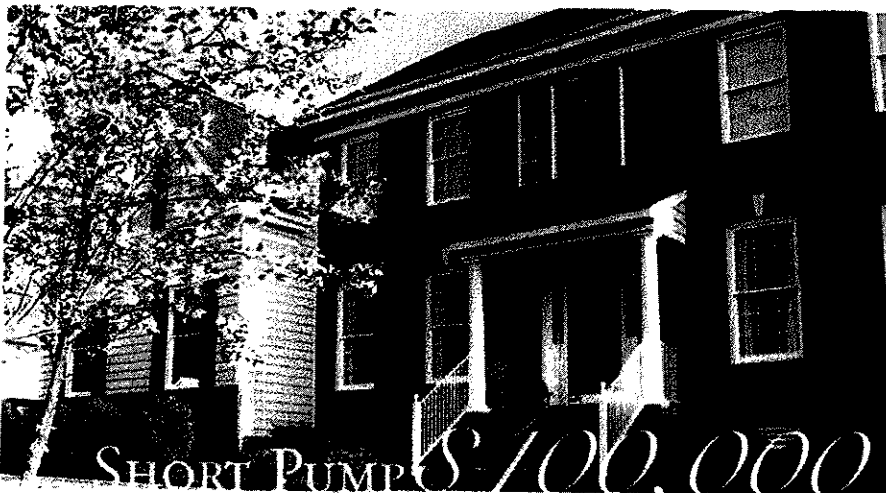
At its best, a home is an extension of a family's personality. For some the quest for precisely manicured boxwoods and razor sharp edges between their

perfect lawn is the highest aspiration, a form of genteel elegance that once was the purview of only the wealthiest country squire. For others, nothing more fully expresses filial bliss than an endless array of primary-colored toys strewn about a well-traveled yard: part playpen, part dog run. For others, an elegantly appointed home, maintenance free, in a close-knit urban community of like-minded souls is the ideal.

Henrico County has it all and prides itself on being a great place to live, work, and raise a family, with friendly people, an affordable cost of living, great schools, and an ideal location. In an era when neighborhoods have become geographical expressions only, it is nice to know that there are still places you can live and work where you feel connected, not cut off. Stuck within our McMansions, frozen to stone by the Medusan glare of cable TV, desperately seeking connection and solace in internet chatrooms with people we will never see, we may never even know the people next door. But it doesn't have to be that way. Open your door, meet your neighbors, share your dreams. ■

The luxurious feel of Grayson Hill (above) is helping to meet the demand for upscale condos and townhomes in Henrico County.

In an era when neighborhoods have become geographical expressions only, it is nice to know that there are still places you can live and work where you feel connected, not cut off.



Disclaimer: Listed prices are estimates only of real estate value of specific homes pictured.

Uniform Residential Appraisal Report

File # R0803120

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address 9717 Old Dell Trace **City** Richmond **State** Va **Zip Code** 23233
Borrower Reed, Frank **Owner of Public Record** Reed, Frank **County** Henrico
Legal Description Lot 16 Block A Section A Country Club Colony **Tax Year** 2008 **R.E. Taxes \$** 7,780.41
Assessor's Parcel # 740-735-9162 **Map Reference** Henrico 23233 **Census Tract**
Neighborhood Name West End
Occupant ☐ Owner ☐ Tenant ☒ Vacant **Special Assessments \$** N/A ☐ PUD **HOA \$** ☐ per year ☐ per month
Property Rights Appraised ☒ Fee Simple ☐ Leasehold ☐ Other (describe)
Assignment Type ☐ Purchase Transaction ☒ Refinance Transaction ☐ Other (describe)
Lender/Client To Be Determined **Address** To Be Determined
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☒ Yes ☐ No
Report data source(s) used, offering price(s), and date(s). The subject was listed in January 2007 and sold to the current owner in March 2007.
I ☐ did ☐ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.
Contract Price \$ **Date of Contract** **Is the property seller the owner of public record?** ☐ Yes ☐ No **Data Source(s)**
Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☐ No
If Yes, report the total dollar amount and describe the items to be paid.
Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics		One-Unit Housing Trends		One-Unit Housing		Present Land Use %	
Location <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Property Values <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining	PRICE	AGE	One-Unit	60 %		
Built-Up <input type="checkbox"/> Over 75% <input checked="" type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	\$ (000)	(yrs)	2-4 Unit	%		
Growth <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time <input type="checkbox"/> Under 3 mths <input checked="" type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths	400	Low	New	%		
Neighborhood Boundaries The subject's marketing area is generally bounded by Patterson Ave to the north, Parham Road to the east, the James River to the south, and Goochland County to the west.		2,500	High	80	%		
Neighborhood Description The subject is located in the prestigious far west end. Demand for real estate is consistently some of the highest in the Richmond Metro Area. All amenities are convenient to this area. Major amenities offered by the Downtown Central Business District are within a twenty minute commute. Good quality to excellent quality home comprise the neighborhood.		700	Pred.	20	%		
Market Conditions (including support for the above conclusions) Current market conditions are considered to be favorable at this time. Conventional, FHA and VA loans are typical for the area with sellers contributions to closing being minimal. Supply and demand appears to be in balance. Exposure time is deemed to be equal to marketing time.							
Dimensions See Plat. Area 1.21 Ac +/- Shape Basically Rectangle View Average							
Specific Zoning Classification R-O Zoning Description Single Family Residential							
Zoning Compliance <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal Nonconforming (Grandfathered Use) <input type="checkbox"/> No Zoning <input type="checkbox"/> Illegal (describe)							
Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe							

Utilities **Public** **Other (describe)** **Public** **Other (describe)** **Off-site Improvements - Type** **Public** **Private**
Electricity ☒ ☐ **Water** ☒ ☐ **Street** Asphalt ☒ ☐
Gas ☒ ☐ **Sanitary Sewer** ☒ ☐ **Alley** None/Typical ☐ ☐
FEMA Special Flood Hazard Area ☐ Yes ☐ No **FEMA Flood Zone** **FEMA Map #** **FEMA Map Date**
Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No **If No, describe**
Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No **If Yes, describe**
The site is very well landscaped with mature trees and shrubs. There is an exposed aggregate walk to the circular drive.

General Description		Foundation		Exterior Description		materials/condition		Interior		materials/condition	
Units <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	<input type="checkbox"/> Concrete Slab <input type="checkbox"/> Crawl Space	<input type="checkbox"/> Full Basement <input checked="" type="checkbox"/> Partial Basement	Foundation Walls Brick&Block/Good	Floors Cer/Wd/Crpt/VGGood							
# of Stories 2.5	<input type="checkbox"/> Full Basement <input checked="" type="checkbox"/> Partial Basement	Basement Area 1,736 sq.ft.	Exterior Walls Hndbd/Hardiplank/Gd	Walls Drywall/VGGood							
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det./End Unit	Basement Finish 60 %	Roof Surface CedShk/DimShgl/Gd	Trim/Finish Ext. Wd/VGGood								
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	<input checked="" type="checkbox"/> Outside Entry/Exit <input type="checkbox"/> Sump Pump	Gutters & Downspouts Aluminum/Good	Bath Floor Ceramic/VGGood								
Design (Style) Colonial	<input type="checkbox"/> Evidence of <input type="checkbox"/> Infestation	Window Type Wood Dbl Hngl/Good	Bath Wainscot Ceramic/VGGood								
Year Built 1988	<input type="checkbox"/> Dampness <input type="checkbox"/> Settlement	Storm Sash/Insulated Insulated/Good	Car Storage None								
Effective Age (Yrs) 3	<input type="checkbox"/> Heating <input checked="" type="checkbox"/> FWA <input type="checkbox"/> HWBB <input type="checkbox"/> Radiant	Screens Yes	Driveway # of Cars 4+								
Attic <input type="checkbox"/> None	<input type="checkbox"/> Other <input type="checkbox"/> Fuel Gas	Amenities <input type="checkbox"/> Woodstove(s) #	Driveway Surface Asphalt								
<input type="checkbox"/> Drop Stair <input checked="" type="checkbox"/> Stairs	<input type="checkbox"/> Cooling <input checked="" type="checkbox"/> Central Air Conditioning	Fireplace(s) # 2	Garage # of Cars 2								
<input type="checkbox"/> Floor <input type="checkbox"/> Scuttle	<input type="checkbox"/> Individual <input type="checkbox"/> Other	Patio/Deck Rear	Carport # of Cars								
<input type="checkbox"/> Finished <input type="checkbox"/> Heated		<input type="checkbox"/> Pool	Other Balcony								
<input type="checkbox"/> Att. <input type="checkbox"/> Det. <input checked="" type="checkbox"/> Built-in											

Appliances ☐ Refrigerator ☒ Range/Oven ☒ Dishwasher ☒ Disposal ☒ Microwave ☐ Washer/Dryer ☐ Other (describe)
Finished area above grade contains: 13 Rooms 7 Bedrooms 7.5 Bath(s) 7,289 Square Feet of Gross Living Area Above Grade
Additional features (special energy efficient items, etc.) See attached addenda.
Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). The subject is a very well constructed colonial style dwelling that has recently been renovated and had a rear addition added. As of the date of inspection, construction was approximately 60%. No functional or external obsolescence was observed.
Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☒ No **If Yes, describe**
Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☐ Yes ☒ No **If No, describe**

Uniform Residential Appraisal Report

File # R0803120

There are 4 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 1,000,000 to \$ 2,000,000	
There are 6 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 1,000,000 to \$ 2,000,000	
FEATURE	SUBJECT
Address	9717 Old Dell Trace Richmond, Va 23233
Proximity to Subject	0.96 miles SW
Sale Price	\$ 1,900,000
Sale Price/Gross Liv. Area	\$ 279.41 sq.ft.
Data Source(s)	Public Records, MLS
Verification Source(s)	Visual
VALUE ADJUSTMENTS	DESCRIPTION
Sales or Financing Concessions	None Known
Date of Sale/Time	CI 6/2007
Location	Good
Leasehold/Fee Simple	Fee Simple
Site	Average/1 ac
View	Average
Design (Style)	Colonial
Quality of Construction	Good/Frame
Actual Age	20 Yrs/3 Eff
Condition	V.Good
Above Grade	Total Bdrms. Baths
Room Count	13 7 7.5
Gross Living Area	7,289 sq.ft.
Basement & Finished	1,736 Sq.Ft.
Rooms Below Grade	Basement
Functional Utility	Good
Heating/Cooling	FWA/CAC
Energy Efficient Items	Fully Insulated
Garage/Carport	2 car B/I Gar
Porch/Patio/Deck	Pch,Bal,Deck
Net Adjustment (Total)	\$ -113,825
Adjusted Sale Price of Comparables	\$ 1,786,175
I <input checked="" type="checkbox"/> did <input type="checkbox"/> did not research the sale or transfer history of the subject property and comparable sales. If not, explain	
My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.	
Data Source(s) Public Records, MLS	
My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.	
Data Source(s) Public Records, MLS	
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).	
ITEM	SUBJECT
Date of Prior Sale/Transfer	3/19/2007
Price of Prior Sale/Transfer	\$899,000
Data Source(s)	Public Records, MLS
Effective Date of Data Source(s)	March 22, 2008
Analysis of prior sale or transfer history of the subject property and comparable sales	
Comparable sale three was a corporate relocation. The relocation company took possession of the property just before it was sold.	
Summary of Sales Comparison Approach See attached addenda.	
Indicated Value by Sales Comparison Approach \$ 1,725,000	
Indicated Value by: Sales Comparison Approach \$ 1,725,000 Cost Approach (if developed) \$ Income Approach (if developed) \$	
The Cost Approach and Income Approach to value were deemed not applicable. The Direct Sales Comparison Approach was deemed to yield meaningful results because it directly reflects the actions and motivations of both buyers and sellers.	
This appraisal is made <input type="checkbox"/> "as is", <input checked="" type="checkbox"/> subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or <input type="checkbox"/> subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair. Final inspection by MG Miller and Associates is required.	
Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 1,725,000 as of March 18, 2008, which is the date of inspection and the effective date of this appraisal.	

Uniform Residential Appraisal Report

File # R0803120

This is a Summary Appraisal Report which is intended to comply with the reporting requirements under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. It presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation that is not provided with the report concerning the data, reasoning and analysis is retained in the appraiser's file. The depth of the discussion contained in this report is specific to the needs of the client and for the intended use stated in the report. The appraiser is not responsible for unauthorized use of this report.

I certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

I certify that the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the effective date of this appraisal, Alex J. Uminski, SRA has completed the continuing education requirements of the Appraisal Institute.

ADDITIONAL COMMENTS

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) The cost approach was deemed not applicable to the age of the subject.

COST APPROACH

ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE	= \$
Source of cost data	DWELLING Sq. Ft. @ \$	= \$
Quality rating from cost service	Sq. Ft. @ \$	= \$
Effective date of cost data		
Comments on Cost Approach (gross living area calculations, depreciation, etc.)		
	Garage/Carport Sq. Ft. @ \$	= \$
	Total Estimate of Cost-New	= \$
	Less Physical Functional External	
	Depreciation	= \$()
	Depreciated Cost of Improvements	= \$
	"As-is" Value of Site Improvements	= \$
Estimated Remaining Economic Life (HUD and VA only) 60 Years	INDICATED VALUE BY COST APPROACH	= \$

INCOME

INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent \$	X Gross Rent Multiplier	= \$	Indicated Value by Income Approach
Summary of Income Approach (including support for market rent and GRM)			

PUD INFORMATION

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? <input type="checkbox"/> Yes <input type="checkbox"/> No Unit type(s) <input type="checkbox"/> Detached <input type="checkbox"/> Attached			
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.			
Legal Name of Project			
Total number of phases	Total number of units	Total number of units sold	
Total number of units rented	Total number of units for sale	Data source(s)	
Was the project created by the conversion of existing building(s) into a PUD? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, date of conversion.			
Does the project contain any multi-dwelling units? <input type="checkbox"/> Yes <input type="checkbox"/> No Data Source			
Are the units, common elements, and recreation facilities complete? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe the status of completion.			
Are the common elements leased to or by the Homeowners' Association? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, describe the rental terms and options.			
Describe common elements and recreational facilities.			

Uniform Residential Appraisal Report

File # R0803120

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Uniform Residential Appraisal Report

File # R0803120

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

Uniform Residential Appraisal Report

File # R0803120

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature [Signature]
Name Alex J. Uminski, SRA
Company Name MG Miller Valuations
Company Address 5316 Patterson Ave, Richmond, VA 23226
Telephone Number 804-288-9583
Email Address alexu@mgmiller.com
Date of Signature and Report March 25, 2008
Effective Date of Appraisal March 18, 2008
State Certification # 4001 001450
or State License # _____
or Other (describe) _____ State # _____
State Virginia
Expiration Date of Certification or License 02/28/2010

ADDRESS OF PROPERTY APPRAISED

9717 Old Dell Trace
Richmond, Va 23233
APPRAISED VALUE OF SUBJECT PROPERTY \$ 1,725,000

LENDER/CLIENT

Name _____
Company Name To Be Determined
Company Address To Be Determined
Email Address _____

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

- ☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____
☐ Did inspect interior and exterior of subject property
Date of Inspection _____

COMPARABLE SALES

- ☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

Uniform Residential Appraisal Report

File # R0803120

FEATURE		SUBJECT		COMPARABLE SALE #4		COMPARABLE SALE #5		COMPARABLE SALE #6	
Address		9717 Old Dell Trace Richmond, Va 23233		9608 Cragmont Drive Richmond, Va 23233					
Proximity to Subject		0.31 miles NE							
Sale Price		\$		\$ 1,295,000		\$		\$	
Sale Price/Gross Liv. Area		\$ sq.ft.		\$ 215.51 sq.ft.		\$ sq.ft.		\$ sq.ft.	
Data Source(s)		Public Records/MLS							
Verification Source(s)		Visual							
VALUE ADJUSTMENTS		DESCRIPTION		DESCRIPTION		+(-) \$ Adjustment		DESCRIPTION	
Sales or Financing		None Known							
Concessions		Conventional							
Date of Sale/Time		CI 12/2007							
Location		Good		Good					
Leasehold/Fee Simple		Fee Simple		Fee Simple					
Site		Average/1 ac		Average					
View		Average		Average					
Design (Style)		Colonial		Colonial					
Quality of Construction		Good/Frame		Sup/Brick		-75,000			
Actual Age		20 Yrs/3 Eff		11 Yrs/5 Eff		+10,000			
Condition		V.Good		Good		+10,000			
Above Grade		Total Bdrms. Baths		Total Bdrms. Baths				Total Bdrms. Baths	
Room Count		13 7 7.5		12 5 3F2		+22,500			
Gross Living Area		7,289 sq.ft.		6,009 sq.ft.		+96,000		sq.ft.	
Basement & Finished		1,736 Sq.Ft.		None		+50,000			
Rooms Below Grade		Basement		Crawl Space					
Functional Utility		Good		Good					
Heating/Cooling		FWA/CAC		FWA/CAC					
Energy Efficient Items		Fully Insulated		Fully Insulated					
Garage/Carport		2 car B/I Gar		2 car att Gar					
Porch/Patio/Deck		Pch,Bal,Deck		Cv Stp,Deck		+5,000			
Net Adjustment (Total)				<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 118,500		<input type="checkbox"/> + <input type="checkbox"/> - \$		<input type="checkbox"/> + <input type="checkbox"/> - \$	
Adjusted Sale Price of Comparables				Net Adj. 9.2 % Gross Adj. 20.7 % \$ 1,413,500		Net Adj. % Gross Adj. % \$		Net Adj. % Gross Adj. % \$	
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).									
ITEM		SUBJECT		COMPARABLE SALE #4		COMPARABLE SALE #5		COMPARABLE SALE #6	
Date of Prior Sale/Transfer		3/19/2007		No known transfers in the past year.					
Price of Prior Sale/Transfer		\$899,000							
Data Source(s)		Public Records, MLS		Public Records, MLS					
Effective Date of Data Source(s)		March 22, 2008		March 22, 2008					
Analysis of prior sale or transfer history of the subject property and comparable sales									
Analysis/Comments									

Supplemental Addendum

File No. R0803120

Owner	Reed, Frank		
Property Address	9717 Old Deli Trace		
City	Richmond	County	Henrico
		State	Va
		Zip Code	23233
Lender	To Be Determined		

• **URAR : Improvements - Additional Features**

No Personal Property Appraised. Extensive trim throughout, marble flooring in foyer, granite countertops, top of the line kitchen appliances, whirlpool tub, steam shower, trayed ceilings, B/I bookcases/entertainment centers, electric garage door openers, circular drive that is granite lined, federal style colonial porch.

• **URAR : Sales Comparison Analysis - Summary of Sales Comparison Approach**

All sales are high end homes in the subjects marketing area. Comp Sale one is a new dwelling transfer from a nearby development of new homes. Demand for this new development is superior to that of the subjects development as reflected in the location adjustment. Comp sale two is a similar renovated dwelling on a larger site. This sale is located in a similar established development near the subject. It was selected for its basement. This sale also included an adjoining lot that can be sold off separately. The site adjustment reflects the size difference and the additional lot. This adjustment causes the gross adjustments to exceed 25%. Comp sale three is an unrenovated dwelling that is located along a heavily traveled road. The location adjustment was made to reflect the external obsolescence caused by this main road. This adjustment causes the gross adjustments to exceed 25%. Comp sale four is supplied as additional support. This sale is located very close to the subject. This sale lacks a basement. The actual age of this sale is less than the subject, but the subject is totally renovated with a lower effective age. All sales were given adequate consideration when arriving at a final value estimate.

Subject Photo Page

Owner	Reed, Frank				
Property Address	9717 Old Dell Trace				
City	Richmond	County	Hennico	State	Va Zip Code 23233
Lender	To Be Determined				



Subject Front

9717 Old Dell Trace
Sales Price
Gross Living Area 7,289
Total Rooms 13
Total Bedrooms 7
Total Bathrooms 7.5
Location Good
View Average
Site Average/1 ac
Quality Good/Frame
Age 20 Yrs/3 Eff



Subject Rear



Subject Street

Photograph Addendum

Owner	Reed, Frank				
Property Address	9717 Old Dell Trace				
City	Richmond	County	Henrico	State	Va Zip Code 23233
Lender	To Be Determined				



Side View of Addition



Alternative Rear View of Dwelling

Comparable Photo Page

Owner	Reed, Frank				
Property Address	9717 Old Dell Trace				
City	Richmond	County	Henrico	State	Va Zip Code 23233
Lender	To Be Determined				



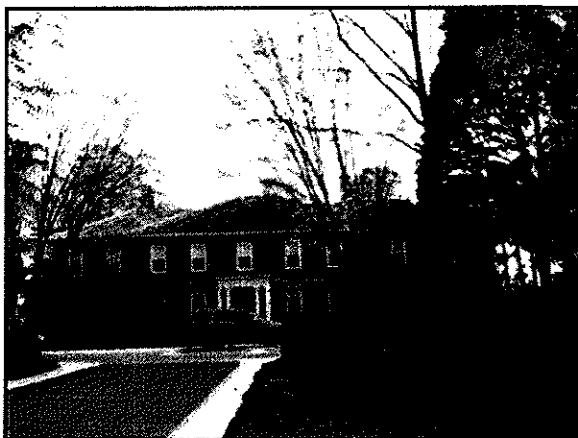
Comparable 1

1001 Middle Quarter Ct
Prox. to Subject 0.96 miles SW
Sales Price 1,900,000
Gross Living Area 6,800
Total Rooms 14
Total Bedrooms 5
Total Bathrooms 5F2
Location Superior
View Average
Site Average/1 ac
Quality Sup/Brick
Age New



Comparable 2

10 Nomas Lane
Prox. to Subject 0.74 miles NW
Sales Price 1,962,000
Gross Living Area 4,400
Total Rooms 17
Total Bedrooms 7
Total Bathrooms 7.5
Location Good
View Average
Site Sup/2.2ac+Lot
Quality Equiv/Stucco
Age 23 Yrs/3 Eff



Comparable 3

9130 River Road
Prox. to Subject 0.75 miles E
Sales Price 1,450,000
Gross Living Area 5,648
Total Rooms 13
Total Bedrooms 5
Total Bathrooms 4.5
Location Average
View Average
Site Superior/1.85ac
Quality Sup/Brick
Age 19 Yrs/8 Eff

Comparable Photo Page

Owner	Reed, Frank				
Property Address	9717 Old Dell Trace				
City	Richmond	County	Henrico	State	Va Zip Code 23233
Lender	To Be Determined				



Comparable 4

9608 Cragmont Drive
Prox. to Subject 0.31 miles NE
Sales Price 1,295,000
Gross Living Area 6,009
Total Rooms 12
Total Bedrooms 5
Total Bathrooms 3F2
Location Good
View Average
Site Average
Quality Sup/Brck
Age 11 Yrs/5 Eff

Comparable 5

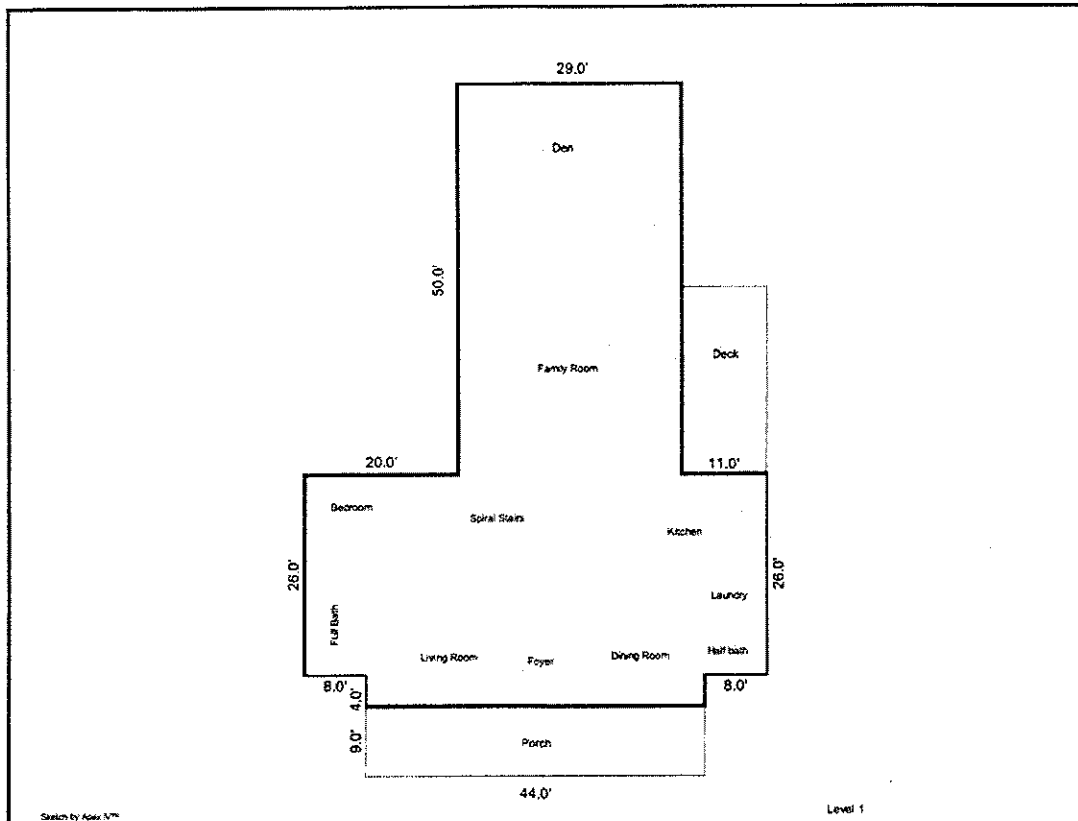
Prox. to Subject
Sales Price
Gross Living Area
Total Rooms
Total Bedrooms
Total Bathrooms
Location
View
Site
Quality
Age

Comparable 6

Prox. to Subject
Sales Price
Gross Living Area
Total Rooms
Total Bedrooms
Total Bathrooms
Location
View
Site
Quality
Age

Building Sketch

Owner	Reed, Frank				
Property Address	9717 Old Dell Trace				
City	Richmond	County	Henrico	State	Va Zip Code 23233
Lender	To Be Determined				



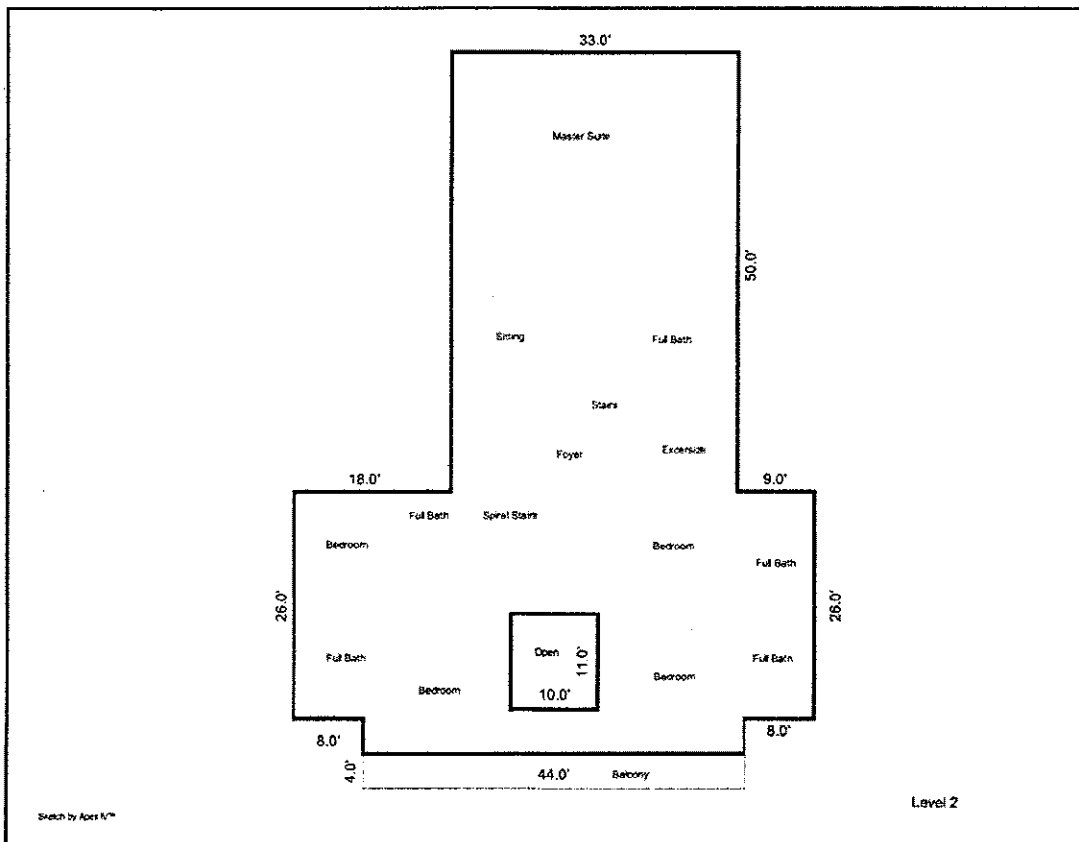
Comments:

AREA CALCULATIONS SUMMARY			
Code	Description	Net Size	Net Totals
GLA1	First Floor	3186.0	3186.0
P/P	Porch	396.0	
	Deck	264.0	660.0
Net LIVABLE Area		(Rounded)	3186

LIVING AREA BREAKDOWN			
Breakdown			Subtotals
First Floor			
4.0	x	44.0	176.0
29.0	x	50.0	1450.0
26.0	x	60.0	1560.0
3 Items			(Rounded) 3186

Building Sketch

Owner	Reed, Frank		
Property Address	9717 Old Dell Trace		
City	Richmond	County	Henrico
		State	Va
		Zip Code	23233
Lender	To Be Determined		



Comments:

AREA CALCULATIONS SUMMARY			
Code	Description	Net Size	Net Totals
GLA2	Second Floor	3386.0	
	Second Floor	-110.0	3276.0
P/P	Balcony	176.0	176.0
Net LIVABLE Area		(Rounded)	3276

LIVING AREA BREAKDOWN		
Breakdown		Subtotals
Second Floor		
33.0 x	50.0	1650.0
26.0 x	60.0	1560.0
4.0 x	44.0	176.0
10.0 x	11.0	-110.0
4 Items		(Rounded)
		3276

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Building Sketch

File No. R0803120 Page #15

Owner	Reed, Frank				
Property Address	9717 Old Dell Trace				
City	Richmond	County	Henrico	State	Va
Zip Code	23293				
Lender	To Be Determined				

Level 3

Basement

Sketch by Peter L. M.

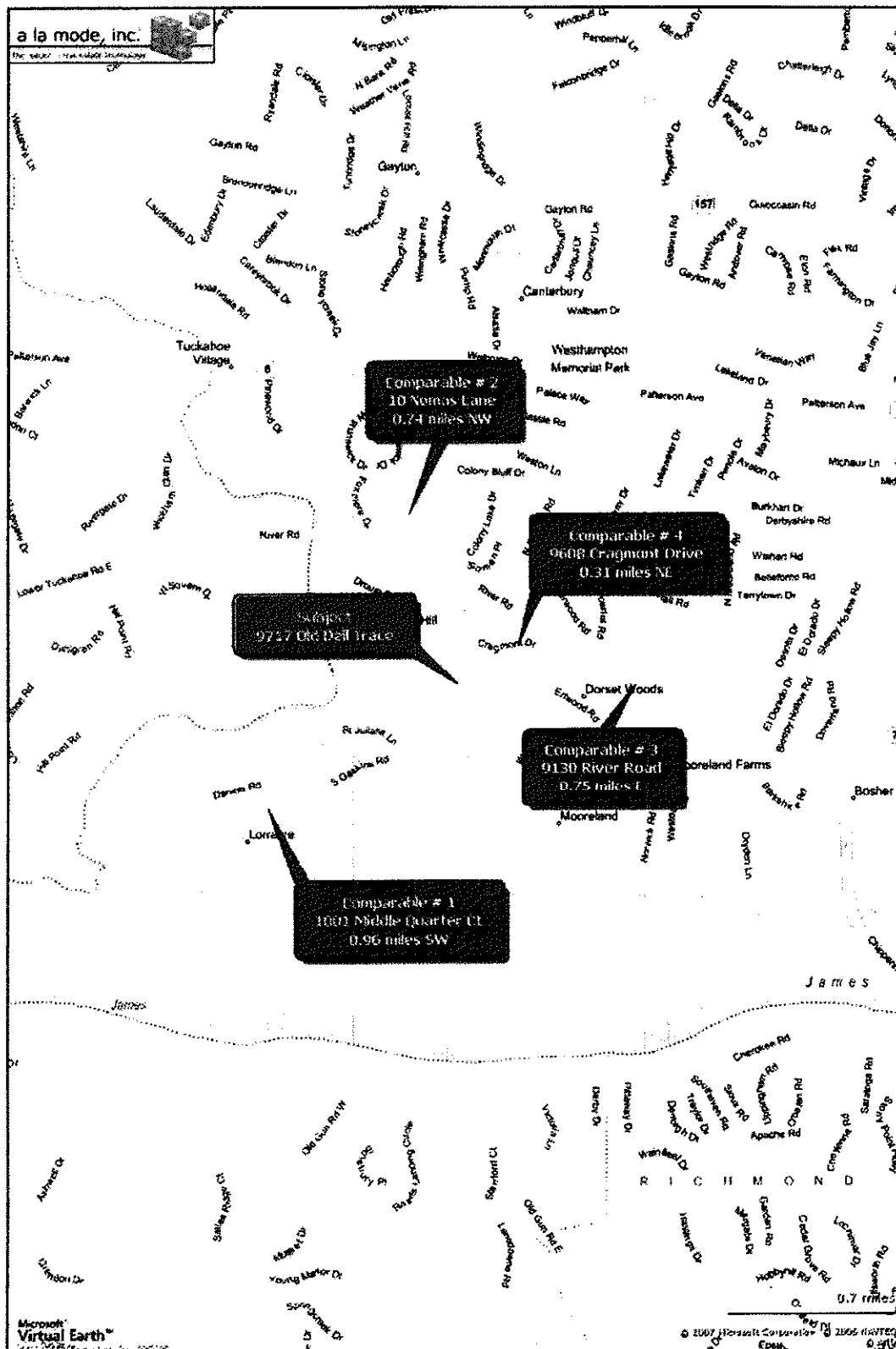
Comments:

AREA CALCULATIONS SUMMARY			
Code	Description	Net Size	Net Totals
GLA3	Third Floor	826.5	826.5
BSMT	Basement	1033.0	
	Garage	703.4	1736.4
Net LIVABLE Area		(Rounded)	827

LIVING AREA BREAKDOWN		
Breakdown		Subtotals
Third Floor		
5.0 x 8.5		42.5
28.0 x 28.0		784.0
2 Items		(Rounded) 827

Location Map

Owner	Reed, Frank						
Property Address	9717 Old Dell Trace						
City	Richmond	County	Henrico	State	Va	Zip Code	23233
Lender	To Be Determined						





**COUNTY OF HENRICO - FINANCE DEPARTMENT
REAL ESTATE ASSESSMENT DIVISION**

Address: 4301 E. Parham Rd.
Henrico, VA 23273-2745
Phone: 804-501-4300
Fax: 804-501-5420

Base Information

Parcel ID 740-735-9162
State Code Resid (Urban)
Tax Type Reg Taxable
Zone R-O
Tax Dist Regular
Magisterial Tuckahoe
Subdivision Country Club Colony
Section A
Block A
Lot 16
Map Page # 172
Vision PID # 11996

Parcel Address 9717 OLD DELL TRCE
Appraiser X
Neighborhood 1-070
Acreage 0
Owner (Jan 1) REED FRANK J III & C A
Owner (Cur) REED FRANK J III & C A
Mailing Address
817 MATLACK DR
MOORESTOWN NJ
Zip 08057-1443
Old Map # 0110050000A 0016
Pre 1992 Map # 81 A1 34

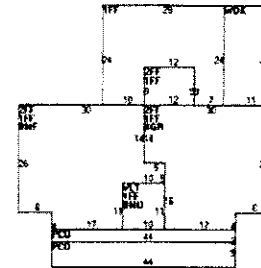
Image



Last Photo Update 02/01/1997

Residential Information

Usecode 210 Res - Subd (1 Fam)	Year Built 1988	Sq Ft Finished Living 4,166
Style 01 Colonial	No. of Stories 2	Finished Attic 0
Grade AA	Total Rooms 10	Unfinished Living 0
Ext. Walls 02 Composition	Bedrooms 4	Basement 1,736
Roof 2 Wood Shingle	Half Bathrooms 2	Finished Basement 838
Heating 02 Forced Air	Full Bathrooms 5	Bsmt Type W Walkout
Air Cond. 01 Yes	Fireplace(s) 3	Basement Garage 2



Last Transfer

Sale Date	Sale Price	Deed Book	Page	Previous Owner	Validity of Sale	# of Parcels
03/30/2007	\$899,000	4315	186	POLLARD MATTHEW E & E L		1

Current Assessment

Year	Date	Land	Land Use	Improvements	Total
2011	03/10/2011	\$250,000		\$358,400	\$608,400

Additions and Outbuildings

Type	Improvement	Measurement
Addition	Deck	264 Square Feet
Addition	Porch Covered	528 Square Feet

Sketch Details

Code	Desc	Gross	Living
VLT	Vaulted Area	110	0
1FF	1st Fl Finished	2,432	2,432
2FF	2nd Fl Finished	1,734	1,734
BGR	Bsmt Garage	788	0
BMF	Basement Finished	838	0
BMU	Basement Unfinished	110	0
PCO	Porch Covered	528	0
WDK	Deck	264	0

Land Information

Type	# Units	Unit Type	Sqft	Zone
G4	1	LOTS	0	R-O

Map

Notes

9-24-2003.....Pollard, Matthew E. & Elizabeth L.....DB 3545-2288..... 3-30-2007 Reed, Frank J. III & Christina A. DB 4315-186



HENRICO COUNTY VIRGINIA

SEARCH

Wednesday, Nov 2, 2011
64.0°F A Few Clouds

HOME

ABOUT HENRICO

SERVICES

DEPARTMENT OF

GOVERNMENT

303

CONTACTS

THE NEW YORK PUBLIC LIBRARY

- Wednesday, March 23, 1966

Finance

- Online Real Estate Data
- Disclaimer
- Changing the way Agents Do Business - WME Conference
- Changing the way Agents Do Business - Video
- Phones by Topic
- Real Estate
- Business
- Payment Options
- Approved Tax and Fee Schedule
- Proposed APR 2011 - 2012
- Approved Annual Fiscal Plan 2010-2011

Real Estate Assessment

Title 58.1-3201 of the Code of Virginia provides for the assessment of real property at 100% of fair market value. Fair market value is the probable amount a property would sell for today if exposed to the market for a reasonable period. Henrico County employs an annual reassessment program to ensure that property is assessed uniformly and at its market value. The Real Estate Assessment Division is part of the Department of Finance and is charged with the review and reassessment of all real property effective January 1 of each year.

How Assessments are Determined

Real estate assessments are based on the typical selling price of comparable properties and reflect the actions of buyers and sellers in the local market. The Real Estate Assessment Division is responsible for reviewing market transactions and using the data to assess each property accordingly. Each year staff analyzes thousands of real estate transfers, of which the majority are residential properties. Additionally, transactions for previous years are examined. Sales information is gathered from recorded deeds, buyers, sellers, real estate professionals, and the selling prices are compared to the assessed values to determine an assessment/sales ratio. A neighborhood is selected for reassessment when its assessment/sales ratio is significantly below or above 100 percent. Once it is determined that an area must be reassessed, three valuation approaches, i.e., sales comparison, cost, or income are considered. Typically, the sales comparison approach is chosen for residential properties. Comparable sales information is used as a basis for the assessment of individual properties after the transactions are carefully analyzed to consider differences in size, quality, condition, location, and other amenities.

Due to the limited number of local commercial property transactions, regional and national information must be collected for analysis. In addition to replacement cost data and market data, commercial properties are selected for reassessment based on potential rental income, occupancy levels, and investor demand.

Hommes 2-2 Finances 2-2 Résultat Économique Dispositif

100% of market value

EXHIBIT 13

Oxford House, Inc.

1010 Wayne Avenue, Suite 300
Silver Spring, Maryland 20910

July 10, 2012

Re: Frank Reed's Oxford House Rental Properties

To Whom It May Concern:

I am J. Paul Molloy, Chief Executive Officer and founder of Oxford House World Services, a national, private, not-profit organization comprised of Self-Run, Self-Supported, Addiction Recovery Houses.

Let it be hereby known that Frank Reed had been a landlord of Oxford Houses since 1993 for the properties at:

52 Stone Hollow Drive Sicklerville, NJ

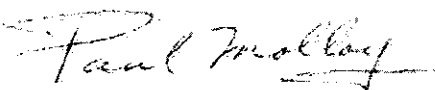
318 Columbia Avenue Stratford, NJ

21 Darien Drive Cherry Hill, NJ

Oxford House would most likely have continued to rent those houses from Mr. Reed but for foreclosure action.

If you have any questions or comments, please contact me.

Sincerely,



Paul Molloy
Co-founder and CEO

EXHIBIT 14

Appraisal Report

Loan # 20359219001

This appraisal has been performed for TD Bank, N.A. in connection with a loan request made by you. TD Bank, N.A. makes no representations regarding the accuracy of the information contained in the appraisal and assumes no liability in connection with this appraisal.



205,000
value

COMPLETE APPRAISAL SUMMARY REPORT

LOCATED AT:

52 Stone Hollow Drive
Block 12701 Lot 7
Winstow Township, NJ 08081

FOR:

TD Bank, N.A.
2059 Springdale Road
Cherry Hill, NJ 08003

AS OF:

11/5/2009

BY:

Peter McCallrey
Robert M. Sapio Real Estate Appraisal & Consulting, LLC

File No. 09101802

Robert M. Sapio
Real Estate Appraisal & Consulting, LLC
314 Cherry Avenue
Voorhees, NJ 08043

Telephone No.: (856) 429-2789
Fax No.: (856) 795-2297

November 6, 2009

Joseph Graves
TD Bank, N.A.
2059 Springdale Road
Cherry Hill, NJ 08003

RE: Reed & Tsafos
52 Stone Hollow Drive
Winslow Township, NJ

Dear Mr. Graves:

In accordance with your request, enclosed are two copies of the appraisal report of the captioned property. The purpose of the appraisal was to estimate market value of the captioned property, as improved, in unencumbered fee simple title, subject to the Assumptions and Limiting Conditions contained in Fannie Mae Form 2055, the Certification and this report.

This report is prepared in compliance with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.

This is a complete appraisal in a summary report.

Respectfully submitted,

Peter McCaffrey

File No. C9101602

This Appraisal conforms to one of the following definitions:

This Appraisal conforms to one of the following definitions:

- ☐ **Complete Appraisal**
The act or process of estimating value, or an estimate of value, performed without invoking the Departure Provision.
- ☒ **Limited Appraisal**
The act or process of estimating value, or an estimation of value, performed under and resulting from invoking the Departure Provision.

This Report is one of the following types:

- ☐ **Self Contained Report**
A written report prepared under Standards Rule 2-2(A) of a complete or limited appraisal performed under Standard 1.
- ☒ **Summary Report**
A written report prepared under Standards Rule 2-2(B) of a complete or limited appraisal performed under Standard 1.
- ☐ **Restricted Report**
A written report prepared under Standards Rule 2-2(C) of a complete or limited appraisal performed under Standard 1.

Comments on Appraisal and Report Identification

Comments on Appraisal and Report Identification
Note any departures from Standards Rules 1-2, 1-3, 1-4, plus any USPAP-related issues requiring disclosure:

[illegible]

Robert M. Sapio, MAI, SRPA APPRAISERS & CONSULTANTS

Exterior-Only Inspection Residential Appraisal Report File # 06101802

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address: 52 Stone Hollow Drive City: Winslow Township State: NJ Zip Code: 08061
 Owner: Reed, Frank & Tiafot, Christine Owner of Public Record: Reed, Frank & Tiafot, Christine County: Camden
 Legal Description: Block 12701 Lot 7
 Assessor's Parcel #: 38-12701-00007 Tax Year: 2008 R.E. Taxes: \$ 6,582
 Neighborhood Name: Stone Hollow Map Reference: Census Tract:
 Occupant: ☒ Owner ☐ Tenant ☐ Vacant Special Assessments: ☐ PUD ☐ HGA \$ ☐ per year ☐ per month
 Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Other (describe):
 Assignment Type: ☐ Purchase Transaction ☐ Refinance Transaction ☒ Other (describe): Market Value
 Lender/Client: TD Bank, N.A. Address: 2059 Springdale Road, Cherry Hill, NJ 08003
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☐ Yes ☒ No
 Report data source(s) used, offering price(s), and date(s):

☐ I did ☐ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. N/A

Contract Price \$ Date of Contract Is the property sold the owner of public record? ☐ Yes ☐ No Data Source(s):
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☐ No
 If Yes, report the total dollar amount and describe the terms to be paid. N/A

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics				One-Unit Housing Trends				One-Unit Housing		Present Land Use %	
Location	Urban	<input checked="" type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Property Values	Increasing	<input checked="" type="checkbox"/> Stable	<input checked="" type="checkbox"/> Declining	PRICE	AGE	One-Unit	95 %
Built-Up	<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25-75%	<input type="checkbox"/> Under 25%	Demand/Supply	<input checked="" type="checkbox"/> Shortage	<input type="checkbox"/> In Balance	<input type="checkbox"/> Over Supply	\$ (000)	(Yr)	2-4 Unit	%
Growth	<input checked="" type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Slow	Marketing Time	<input checked="" type="checkbox"/> Under 3 mths	<input type="checkbox"/> 3-6 mths	<input type="checkbox"/> Over 6 mths	170	Low	Multi-Family	%
Neighborhood Boundaries are Cross Keys Road west, Route 705 south, Williamstown Road east and				225	High	30	Commercial	5 %			
Route 706 north.				205	Prod.	17	Other	%			

Neighborhood Description: The subject is located in a residential neighborhood of various style single family detached dwellings. Schools, parks and recreational facilities are scattered throughout the Township. Atlantic City Expressway is nearby for access to Philadelphia and South Jersey Shore.

Market Conditions (including support for the above conclusions): Property values are decreasing. Demand and supply are in balance. Marketing time is 3 to 6 months. Highest and Best Use is continued residential.

Dimensions: 95 X 100 Area: 8,500 Sq.Ft. Shape: Rectangular View: Average
 Specific Zoning Classification: RL Zoning Description: Residential
 Zoning Compliance: ☒ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe):
 Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe:
 Sites: Public ☐ Other (describe): Public ☐ Other (describe): Off-site Improvements - Type: Public ☐ Private ☐
 Electricity: ☒ Gas: ☐ Water: ☒ Sanitary Sewer: ☐ Storm Asphalt: ☒ Alley: ☐
 FEMA Special Flood Hazard Area: ☐ Yes ☒ No FEMA Flood Zone: C FEMA Map #: 340148 0028B FEMA Map Date: 1/20/1982
 Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe:
 Are there any adverse site conditions or external factors (assessments, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe:
 There are no known adverse site conditions or easements.

Source(s) Used for Physical Characteristics of Property: ☐ Appraisal Files ☐ MLS ☒ Assessment and Tax Records ☐ Prior Inspection ☐ Property Owner
 Data Source for Gross Living Area: Tax Assessor

General Description	General Description	Heating/Cooling	Amusement	Car Storage
Units: <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	Concrete Slab <input type="checkbox"/> Carpet Space <input checked="" type="checkbox"/> FPA/T/RWB	<input checked="" type="checkbox"/> Radiant <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Rink(s) # <input type="checkbox"/> Woodstock #	<input type="checkbox"/> None <input checked="" type="checkbox"/> Driveway # of Cars: 2
# of Stories: 2	<input checked="" type="checkbox"/> Full Basement <input type="checkbox"/> Finished <input type="checkbox"/> Partial Basement <input type="checkbox"/> Finished		<input type="checkbox"/> Patio/Deck	Driveway Surface: Concrete
Type: <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det./End Unit	Exterior Walls: Vinyl	Fuel: Gas	<input checked="" type="checkbox"/> Porch <input type="checkbox"/> Pool	Garage: # of Cars: 2
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	Roof Surface: Asphalt	<input checked="" type="checkbox"/> Central Air Conditioning <input type="checkbox"/> Individual	<input type="checkbox"/> Fence <input type="checkbox"/> Other	Carport: # of Cars
Design (Style): Colonial	Gutters & Downspouts: Aluminum	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Attached <input type="checkbox"/> Detached	<input type="checkbox"/> Built-In
Year Built: 1989	Window Type: Aluminum			
Effective Age (Yrs): 12	Appliances: <input checked="" type="checkbox"/> Refrigerator <input checked="" type="checkbox"/> Range/Oven <input checked="" type="checkbox"/> Dishwasher <input type="checkbox"/> Disposal <input type="checkbox"/> Microwave <input checked="" type="checkbox"/> Washer/Dryer <input type="checkbox"/> Other (describe):			
Finished area above grade contains: 9 Rooms	4 Bedrooms	2.5 Baths	2,376 Square Feet of Gross Living Area Above Grade	
Additional features (special energy efficient items, etc.): porch in front and fireplace in family room.				

Describe the condition of the property and data source(s) including appraisal needed repairs, deterioration, renovations, remodeling, etc. The subject was inspected from the street. The front and two sides were visible from the street. The subject appears to be in average condition. There were no visible repairs noted at time of inspection.

Are there any apparent physical deficiencies or adverse conditions that affect the usability, soundness, or structural integrity of the property? ☐ Yes ☒ No
 If Yes, describe:

There are no apparent physical deficiencies or adverse conditions.

Does the property generally conform to the neighborhood functional utility, style, condition, use, construction, etc.? ☒ Yes ☐ No If No, describe:

Exterior-Only Inspection Residential Appraisal Report File # 09101602

There are 8 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 170,000 to \$ 225,000	
There are 8 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 170,000 to \$ 225,000	
FEATURE	SUBJECT
Address	52 Stone Hollow Drive Winslow Township, NJ 08081
Proximity to Subject	2 blocks
Sale Price	\$ 203,000
Sale Price/Gross Ltr. Area	\$ 85.44 sq.ft.
Data Source(s)	MLS
Verification Source(s)	Broker
VALUE ADJUSTMENTS	DESCRIPTION
Sales or Financing Concessions	None
Date of Sale/Time	6/28/2009
Location	Average
Leasehold/Fee Simple	Fee Simple
Site	65 x 100
View	Average
Design (Style)	Colonial
Quality of Construction	Average
Actual Age	17
Condition	Average
Above Grade	Total (Beds, Baths)
Room Count	9 4 2.5
Gross Living Area	2,376 sq.ft.
Basement & Finished Rooms Below Grade	Full Unfinished
Functional Utility	Average
Heating/Cooling	FHA/Central
Energy Efficient Items	Standard
Garage/Carport	2 car
Porch/Patio/Deck	Porch, Patio
Fireplace	None
Pool, Fence	None
Net Adjustment (Total)	\$ -5,300
Adjusted Sale Price of Comparables	\$ 197,700
<input checked="" type="checkbox"/> did <input type="checkbox"/> did not research the sale or transfer history of the subject property and comparable sales. If not, explain	

My research <input type="checkbox"/> did <input checked="" type="checkbox"/> did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.	
Data Source(s) Public Records	
My research <input type="checkbox"/> did <input checked="" type="checkbox"/> did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.	
Data Source(s) Public Records	
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 5).	
ITEM	SUBJECT
Date of Prior Sale/Transfer	11/5/1993
Price of Prior Sale/Transfer	N/A
Data Source(s)	Public Records
Effective Date of Data Source(s)	11/5/2009
Analysis of prior sale or transfer history of the subject property and comparable sales The subject has not been listed or sold in the previous three years.	
Summary of Sales Comparison Approach All sales are similar two story colonial dwellings from within subject's Stone Hollow development. Sales are equal in location, quality of construction and age. Sales 2 and 3 were recently remodeled and updated and a minus \$10,000 adjustment was made.	
Indicated Value by Sales Comparison Approach \$ 205,000	
Indicated Value by: Sales Comparison Approach \$ 205,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$ N/A	
All weight is placed on the Sales Comparison Approach to value.	
This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or <input type="checkbox"/> subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require attention or repair:	
Based on a visual inspection of the exterior areas of the subject property from at least the street, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 205,000 as of 11/5/2009, which is the date of inspection and the effective date of this appraisal.	

Exterior-Only Inspection Residential Appraisal Report Form # 09101002

ACCT CHAC COMMENTS

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.
Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value)

ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE	= \$
Source of cost data	DWELLING	Sq. Ft. @ \$ = \$
Quality rating from cost service		Sq. Ft. @ \$ = \$
Effective date of cost data		Sq. Ft. @ \$ = \$
Comments on Cost Approach (notes living area calculations, depreciation, etc.)		Sq. Ft. @ \$ = \$
	Garage/Carport	Sq. Ft. @ \$ = \$
	Total Estimate at Cost-New	= \$
	Less: Physical	Functional
	Depreciation	External
	Depreciated Cost of Improvements	= \$
	"As-is" Value of Site Improvements	= \$

Estimated Remaining Economic Life (HUD and VA only)	Years	INDICATED VALUE BY COST APPROACH	= \$
INCOME APPROACH TO VALUE (not required by Fannie Mae)			
Estimated Monthly Market Rent \$	X Gross Rent Multiplier	= \$	Indicated Value by Income Approach
Summary of Income Approach (including support for market rent and GRM)			

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☐ No Unit type(s) ☐ Detached ☐ Attached

Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal Name of Project

Total number of phases	Total number of units	Total number of units sold
Total number of units rented	Total number of units for sale	Data source(s)

Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion

Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data Source(s)

Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities.

Exterior-Only Inspection Residential Appraisal Report FAE # 09101602

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit, including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a visual inspection of the exterior areas of the subject property from at least the street, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

The appraiser must be able to obtain adequate information about the physical characteristics (including, but not limited to, condition, room count, gross living area, etc.) of the subject property from the exterior-only inspection and reliable public and/or private sources to perform this appraisal. The appraiser should use the same type of data sources that he or she uses for comparable sales such as, but not limited to, multiple listing services, tax and assessment records, prior inspections, appraisal files, information provided by the property owner, etc.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
3. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
4. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or, for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
5. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Exterior-Only Inspection Residential Appraisal Report FM # 09101602

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a visual inspection of the exterior areas of the subject property from at least the street. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

Exterior-Only Inspection Residential Appraisal Report File # 09101802

20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.
21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).
22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.
23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.
24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.
25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature Pete M. Caffrey
Name Peter McCaffrey
Company Name Robert M. Sacio Real Estate Appraisals
Company Address 314 Cherry Avenue, Voorhees, NJ 08043
Telephone Number (855) 781-3006
Email Address pete@rmsacio.com
Date of Signature and Report November 08, 2009
Effective Date of Appraisal 11/5/2009
State Certification # _____
or State License # 42RA00015400
or Other (describe) _____ State # _____
State NJ
Expiration Date of Certification or License 12/31/2009
ADDRESS OF PROPERTY APPRAISED
52 Stone Hollow Drive
Winslow Township, NJ 08081

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

- ☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____

COMPARABLE SALES

- ☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

APPRAISED VALUE OF SUBJECT PROPERTY \$ 205,000
LENDER/CLIENT
Name _____
Company Name TD Bank, N.A.
Company Address 2059 Springfield Road, Cherry Hill, NJ 08003
Email Address _____

General Text Addendum

File No. 09101602

Borrower/Client Read, Frank & Tsafos, Christine				
Property Address 52 Stone Hollow Drive				
City	Winslow Township	County Camden	State NJ	Zip Code 08061
Lender TD Bank, N.A.				

Strut8-062701

• Statement of Limiting Conditions •

USE, COPIES, PUBLICATION, DISTRIBUTION OF THIS REPORT:

This appraisal report is prepared for the sole and exclusive use of TD Bank, N.A., to assist in determining the collateral values for mortgage financing. It is not to be relied upon by third parties for any purpose, whatsoever.

The report may not be used for any purpose by any person or party other than the client or the party to whom it is addressed or copied without the written consent of an officer of the appraisal firm (Robert M. Sapio, Real Estate Appraisal & Consulting, LLC) and then only in its entirety.

Possession of this report or any copy thereof does not carry with it the right of publication, nor may it be used for other than its intended use; the physical report(s) remain the property of the appraiser for the use of the client, the fee being for the analytical services only.

Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations efforts, news, sales, other media, without the written consent and approval of an officer of the Sapio firm, nor may any reference be made in such a public communication to the Appraisal Institute or the MAI or SRA designations.

This supersedes No. 10 on page 1 of the Statement of Limiting Condition

10

10/2/14
11:21

10/2/14
11:21

Signature *Robert M. Sapio*
Name Robert M. Sapio
Date Signed November 08, 2009
State Certification # _____ State _____
Or State License # 428AD0015400 State NJ

Signature _____
Name _____
Date Signed _____
State Certification # _____ State _____
Or State License # _____ State _____

Subject Photo Page

Borrower/Client	Reed, Frank & Tsafos, Christine				
Property Address	52 Stone Hollow Drive				
City	Winslow Township	County	Camden	State	NJ
Lender	TD Bank, N.A.			Zip Code	08081



Subject Front

52 Stone Hollow Drive
Sales Price
GLA 2,376
Total Rooms 8
Total Bedrms 4
Total Bathrms 2.5
Location Average
View Average
Site 65 x 100
Quality Average
Age 17

Subject Rear

Subject Street



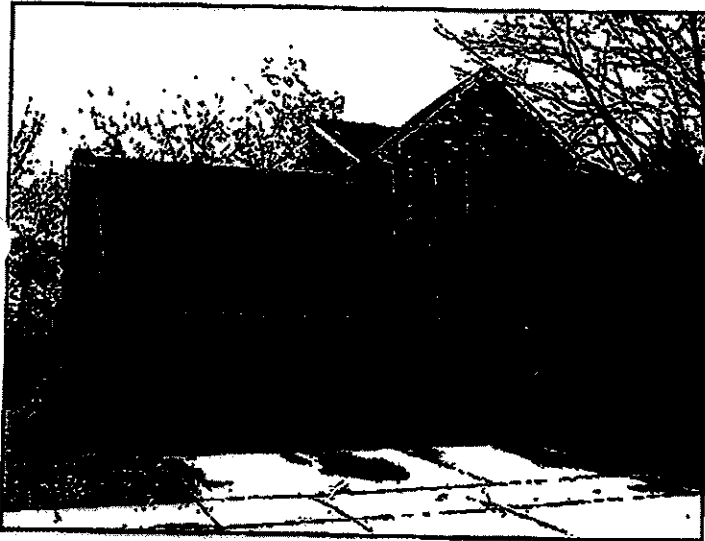
Comparable Photo Page

Borrower/Client	Reed, Frank & Taelos, Christine				
Property Address	52 Stone Hollow Drive				
City	Winslow Township	County	Camden	State	NJ
Zip Code	08061				
Lender	TD Bank, N.A.				



Comparable 1

27 Country Hollow Circle
Proximity 2 blocks
Sale Price 203,000
GLA 2,376
Total Rooms 9
Total Bedrooms 4
Total Bathrooms 2.5
Location Average
View Average
Site 50 x 114
Quality Average
Age 17



Comparable 2

41 Chapel Circle
Proximity 1 block
Sale Price 219,000
GLA 2,210
Total Rooms 7
Total Bedrooms 3
Total Bathrooms 2.5
Location Average
View Average
Site 75 x 100
Quality Average
Age 20

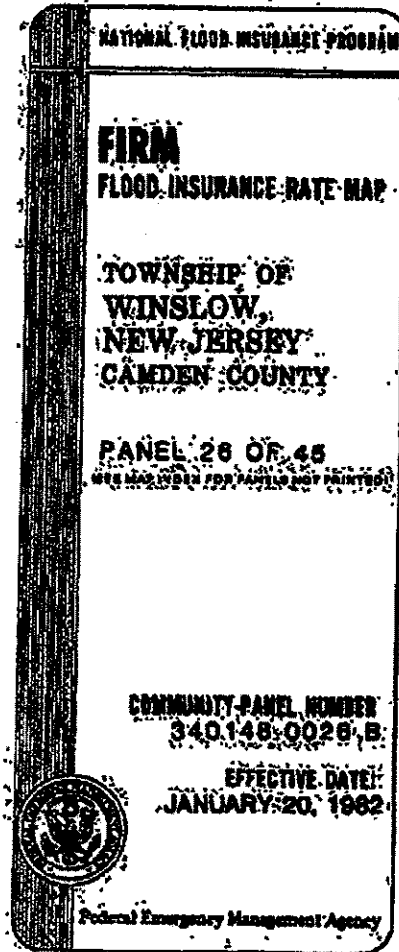


Comparable 3

14 Hidden Hollow Lane
Proximity 2 blocks
Sale Price 218,000
GLA 1,962
Total Rooms 8
Total Bedrooms 4
Total Bathrooms 2.5
Location Average
View Average
Site 65 x 127
Quality Average
Age 21

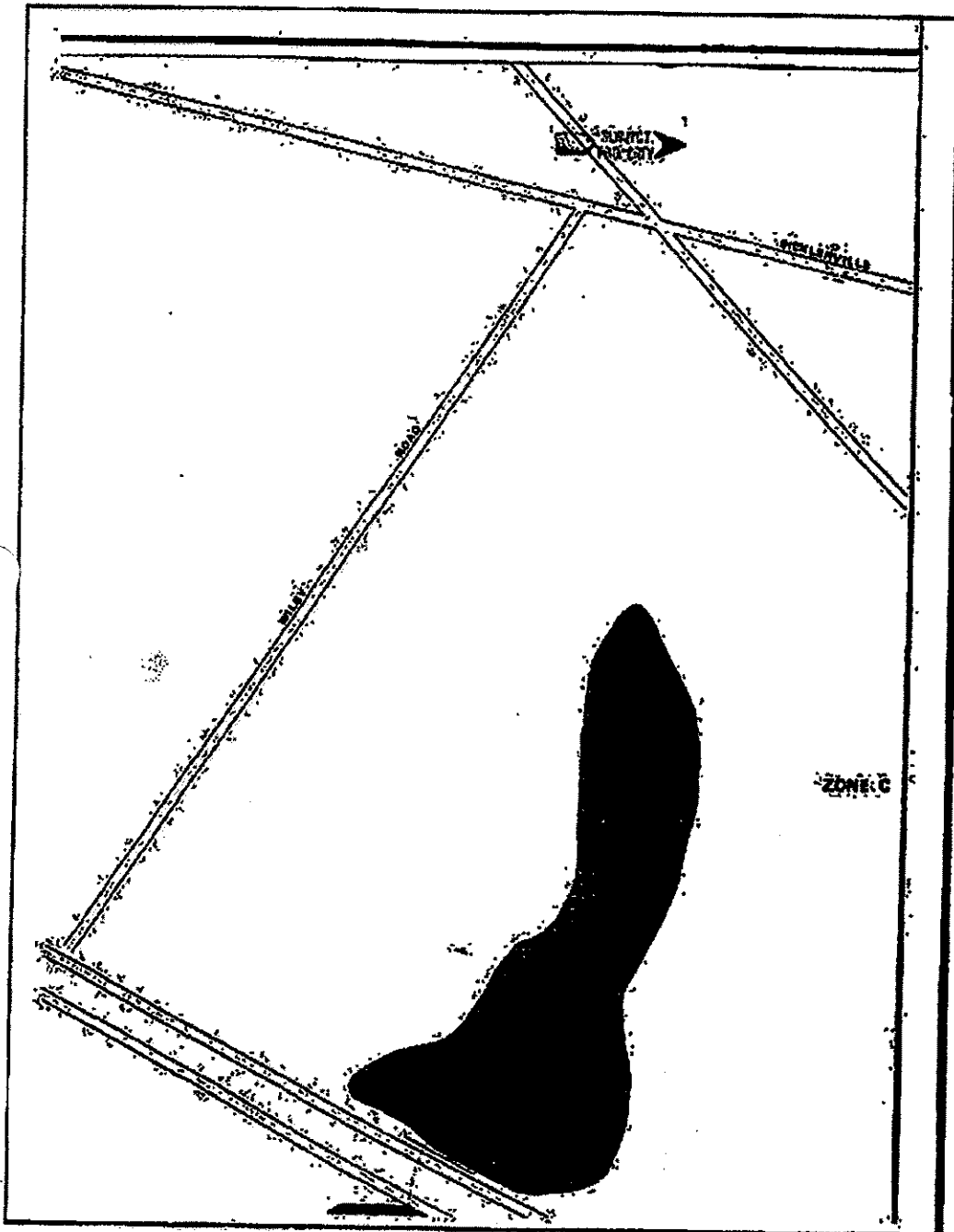
Flood Map

Borrower/Client	Reed, Frank & Tspice, Christine				
Property Address	52 Stone Hollow Drive				
City	Winslow Township	County	Camden	State	NJ
Zip Code	08081				
Lender	TD Bank, N.A.				



Flood Map

Borrower/Client	Reed, Frank & Teafos, Christine				
Property Address	52 Stone Hollow Drive				
City	Winslow Township	County	Camden	State	NJ
Lender	TD Bank, N.A.	Zip Code	08081		



Location Map

Borrower/Client	Reed, Frank & Tsafos, Christine			
Property Address	52 Stone Hollow Drive			
City	Winslow Township	County	Camden	State NJ Zip Code 08081
Lender	TD Bank, N.A.			

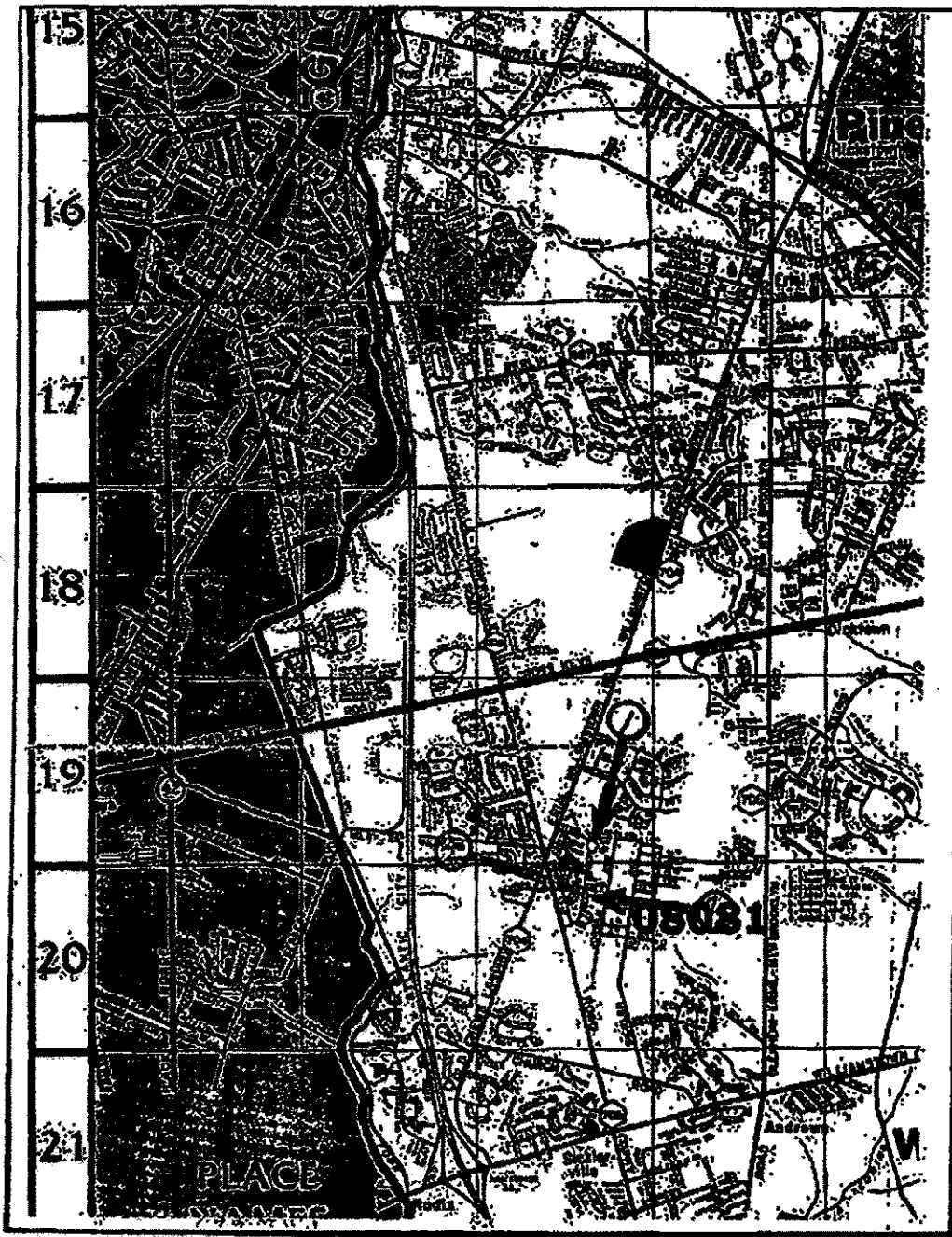


EXHIBIT 15

Appraisal Report
Pg 2 of 16
Loan # 20359219001 50

This appraisal has been performed for TD Bank, N.A. in connection with a loan request made by you. TD Bank, N.A. makes no representations regarding the accuracy of the information contained in the appraisal and assumes no liability in connection with this appraisal.



165000
Value

COMPLETE APPRAISAL SUMMARY REPORT

LOCATED AT:

318 Columbia Avenue
Block 20 Lot 14
Stratford Borough, NJ 08084

FOR:

TD Bank, N.A.
2059 Springdale Road
Cherry Hill, NJ 08003

AS OF:

11/5/2009

BY:

Peter McColney
Robert M. Sapio Real Estate Appraisal & Consulting, LLC

Fig No. 09101601

Robert M. Sapio
Real Estate Appraisal & Consulting, LLC
314 Cherry Avenue
Voorhees, NJ 08043

Telephone No.: (856) 429-2789
Fax No.: (856) 795-2297

November 6, 2009

Joseph Graves
TD Bank, N.A.
2059 Springdale Road
Cherry Hill, NJ 08003

RE: Reed
318 Columbia Avenue
Stratford Borough, NJ

Dear Mr. Graves:

In accordance with your request, enclosed are two copies of the appraisal report of the captioned property. The purpose of the appraisal was to estimate market value of the captioned property, as improved, in unencumbered fee simple title, subject to the Assumptions and Limiting Conditions contained in Fannie Mae Form 2055, the Certification and this report.

This report is prepared in compliance with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.

This is a complete appraisal in a summary report.

Respectfully submitted,

Peter McCaffrey

Robert M. Sapio, MAI, SRPA APPRAISERS & CONSULTANTS

Exterior-Only Inspection Residential Appraisal Report File # 09101601

The purpose of this summary appraisal report is to provide the lender/client with an accurate and adequately supported opinion of the market value of the subject property.

Property Address: 318 Columbia Avenue City: Stratford Borough State: NJ Zip Code: 08084
 Owner: Reed, Frank & Christina Owner of Public Record: Reed, Frank & Christina County: Camden
 Legal Description: Block 20 Lot 14
 Assessor's Parcel #: 32-00020-00014 Tax Year: 2008 R.E. Taxes: \$ 6,882
 Neighborhood Name: Map Reference: Census Tract: 8080.011
 Occupant: ☒ Owner ☐ Tenant ☐ Vacant Special Assessments: ☐ PUD ☐ HOA ☐ per year ☐ per month
 Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Other (describe):
 Assignment Type: ☐ Purchase Transaction ☐ Refinance Transaction ☒ Other (describe): Market Value
 Lender/Client: TD Bank, N.A. Address: 2050 Springdale Road, Cherry Hill, NJ 08003
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☐ Yes ☒ No
 Report data source(s) used, offering price(s), and date(s):

☐ I did ☐ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.

Contract Price: \$ N/A Date of Contract: Is the property seller the owner of public record? ☐ Yes ☐ No Data Source(s):
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☐ No
 If Yes, report the total dollar amount and describe the terms to be paid: N/A

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics				One-Unit Housing Trends		One-Unit Housing		Percent Land Use %	
Location	<input checked="" type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Property Values	<input type="checkbox"/> Increasing <input type="checkbox"/> Stable <input checked="" type="checkbox"/> Declining	PRICE	AGE	One-Unit	100 %		
Built-Up	<input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply	<input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	\$ (800)	(yrs)	2-4 Unit	%		
Growth	<input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time	<input type="checkbox"/> Under 3 mths <input checked="" type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths	145	Low	Multi-Family	%		
Neighborhood Boundaries: are White Horse Pike north, Warwick Road south, Laurel Road east and Somerdale Road west.				210	High	Commercial	%		
Neighborhood Description: The subject is located in a residential neighborhood of various style single family detached dwellings. Schools, parks and recreation facilities are scattered throughout the Township. Employment and shopping centers are located along White Horse Pike.				185	Prod.	Other	%		

Market Conditions (including support for the above conclusions): Market values are decreasing. Demand and supply are in balance. Marketing time is 3 to 6 months. Highest and Best Use is continued residential use.

Dimensions: 72 x 160 Area: 10,800 Sq. Ft. Shape: Rectangular View: Average

Specific Zoning Classification: R-3 Zoning Description: Residential

Zoning Compliance: ☒ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe):

Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe:

Is ☐ Public ☒ Other (describe): ☐ Public ☒ Other (describe): Off-site Improvements - Type: ☐ Public ☐ Private
 Utility: ☒ Public ☐ Other (describe): Water: ☐ Public ☐ Other (describe): Street: Asphalt
 Gas: ☒ Public ☐ Other (describe): Sanitary Sewer: ☒ Public ☐ Other (describe): Alley: ☐ Public ☐ Private

FEMA Special Flood Hazard Area: ☐ Yes ☒ No FEMA Flood Zone: C FEMA Map #: 340148 0001B FEMA Map Date: 8/7/1980

Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe:

Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe:

There are no known adverse site conditions or easements.

Sources Used for Physical Characteristics of Property: ☐ Appraisal Files ☐ MLS ☒ Assessment and Tax Records ☐ Prior Inspection ☐ Property Owner

Other (describe): Data Source for Gross Living Area: Tax Assessor

General Description	General Description	Heating/Cooling	Amenities	Car Storage
Units: <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	Concrete Slab <input checked="" type="checkbox"/> Crawl Space	<input checked="" type="checkbox"/> FWA <input type="checkbox"/> HWB	Fireplace(s) #	None
# of Stories: 2	Full Basement <input type="checkbox"/> Finished	<input type="checkbox"/> Radiant	Woodstove(s) #	<input checked="" type="checkbox"/> Driveway # of Cars: 2
Type: <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det/End Unit	Partial Basement <input type="checkbox"/> Finished	<input type="checkbox"/> Other	Patio/Deck	Driveway Surface: Concrete
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	Exterior Walls: Vinyl/Brick	Fuel: Gas	<input checked="" type="checkbox"/> Porch	<input checked="" type="checkbox"/> Garage # of Cars: 1
Design (Style): 2nd Colonial	Roof Surface: Asphalt	<input checked="" type="checkbox"/> Central Air Conditioning	Pool	<input type="checkbox"/> Carport # of Cars
Year Built: 1959	Gutters & Downspouts: Aluminum	<input type="checkbox"/> Individual	Fence	<input checked="" type="checkbox"/> Attached <input type="checkbox"/> Detached
Effective Age (Yrs): 15	Window Type: Vinyl	<input type="checkbox"/> Other	Other	<input type="checkbox"/> Built-in
Appliances: <input checked="" type="checkbox"/> Refrigerator <input checked="" type="checkbox"/> Range/Oven	<input type="checkbox"/> Dishwasher <input type="checkbox"/> Disposal <input type="checkbox"/> Microwave	<input checked="" type="checkbox"/> Washer/Dryer	Other (describe):	
Finished area above grade contains:	8 Rooms 4 Bedrooms	2.5 Bath(s)	1,825 Square Feet of Gross Living Area Above Grade	
Additional features (special energy efficient items, etc.): Porch in front.				

Describe the condition of the property and data source(s) (including apparent needed repairs, deterioration, renovations, remodeling, etc.): The siding needs to be power washed. The sidewalk and driveway concrete is in need of repair. The subject was inspected from the street and the front and two sides were visible.

Are there any apparent physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☒ No
 If Yes, describe:

There are no physical deficiencies or adverse conditions. The concrete driveway should be repaired.

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☒ Yes ☐ No If No, describe:

Exterior-Only Inspection Residential Appraisal Report File # 09101801

There are 8 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 145,900 to \$ 189,900				
There are 6 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 170,000 to \$ 193,900				
FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Address	318 Columbia Avenue Stratford Borough, NJ 08084	284 Winding Way Stratford Borough, NJ 08084	108 Evergreen Road Stratford Borough, NJ 08084	37 Longwood Drive Stratford Borough, NJ 08084
Proximity to Subject		1/2 mile	1/2 mile	1/2 mile
Sale Price	\$ N/A	\$ 182,000	\$ 182,000	\$ 194,900
Sale Price/Gross Liv. Area	\$ sq.ft.	\$ 77.45 sq.ft.	\$ 77.45 sq.ft.	\$ 82.84 sq.ft.
Data Source(s)	MLS	MLS	MLS	MLS
Verification Source(s)	Broker	Broker	Broker	Broker
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Sales or Financing Concessions	None	None	None	Seller Conc. -5,000
Date of Sale/Time	7/21/2009	8/12/2009	8/24/2009	
Location	Average	Average	Average	
Leasehold/Fee Simple	Fee Simple	Fee Simple	Fee Simple	
Size	72 x 150	50 x 175	75 x 110	75 x 115
View	Average	Average	Average	
Design (Style)	2st Colonial	2st Colonial	2st Colonial	2st Colonial
Quality of Construction	Average	Average	Average	
Actual Age	50	49	45	49
Condition	Average	Good	Good	Good
Above Grade	Total Bdrms. Baths	Total Bdrms. Baths	Total Bdrms. Baths	Total Bdrms. Baths
Room Count	8 4 2.5	8 4 1.5	8 4 1.5	8 4 2.5
Gross Living Area	1,625 sq.ft.	2,350 sq.ft.	2,350 sq.ft.	2,350 sq.ft.
Basement & Finished Rooms Below Grade	None	Full Finished	Full Finished	Full Finished
Functional Utility	Average	Average	Average	
Heating/Cooling	FHA/Central	FHA/Central	FHA/Central	FHA/Central
Energy Efficient Items	Standard	Standard	Standard	Standard
Garage/Carport	1 car	1 car	1 car	1 car
Porch/Patio/Deck	Porch	Deck	Deck	Deck
	None	Fireplace	None	None
Net Adjustment (Total)		\$ -18,000	\$ -16,000	\$ -25,000
Adjusted Sale Price of Comparables		Net Adj. 9.9 % Gross Adj. 14.3 %	Net Adj. 8.8 % Gross Adj. 13.2 %	Net Adj. 12.8 % Gross Adj. 12.8 %
I did not research the sale or transfer history of the subject property and comparable sales. If not, explain:				

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s) Public Record

My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sales.

Data Source(s) Public Record

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE #1	COMPARABLE SALE #2	COMPARABLE SALE #3
Date of Prior Sale/Transfer	N/A			
Price of Prior Sale/Transfer	N/A			
Data Source(s)	N/A			
Effective Date of Data Source(s)	11/15/2009			

Analysis of prior sale or transfer history of the subject property and comparable sales The subject has not been listed or sold in the previous three years.

Summary of Sales Comparison Approach All sales are from Laurel Mill Farms development. Sales are equal in quality of construction and age. Sales are all in superior condition with recent upgrades and modernization.

Indicated Value by Sales Comparison Approach \$ 165,000

Indicated Value by Sales Comparison Approach \$ 165,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$

All weight is placed on the Sales Comparison Approach to value.

This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair.

Based on a visual inspection of the exterior areas of the subject property from at least the street, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 165,000 as of 11/5/2009, which is the date of inspection and the effective date of this appraisal.

Exterior-Only Inspection Residential Appraisal Report File # 09101601

ADDITIONAL COMMENTS

COST APPROACH TO VALUE (not required by Fannie Mae)

Is adequate information for the lender/client to replicate the below cost figures and calculations?
Not for the opinion of site value (summary of comparable land sales or other methods for estimating site value)

ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW		OPINION OF SITE VALUE		= \$
Source of cost data		DWELLING	Sq. Ft. @ \$	= \$
Quality rating from cost service			Sq. Ft. @ \$	= \$
Effective date of cost data				= \$
Comments on Cost Approach (gross living area calculations, depreciation, etc.)		Garage/Carport	Sq. Ft. @ \$	= \$
		Total Estimate of Cost-New		= \$
		Less Physical		
		Depreciation		= \$
		Depreciated Cost of Improvements		= \$
		"As-Is" Value of Site Improvements		= \$
Estimated Remaining Economic Life (HUD and VA only)		Years		INDICATED VALUE BY COST APPROACH
				= \$

INCOME APPROACH TO VALUE (not required by Fannie Mae)		
Estimated Monthly Market Rent \$	X Gross Rent Multiplier	= \$
Summary of Income Approach (including support for market rent and GRM)		Indicated Value by Income Approach

PROJECT INFORMATION FOR PUDs (if applicable)	
Is the developer/builder in control of the Homeowners' Association (HOA)? <input type="checkbox"/> Yes <input type="checkbox"/> No Unit type(s) <input type="checkbox"/> Detached <input type="checkbox"/> Attached	
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.	
Legal Name of Project	
Total number of phases	Total number of units
Total number of units rented	Total number of units for sale
Data source(s)	
Was the project created by the conversion of existing building(s) into a PUD? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, date of conversion	
Does the project contain any multi-dwelling units? <input type="checkbox"/> Yes <input type="checkbox"/> No Data Source(s)	
Are the units, common elements, and recreation facilities complete? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe the status of completion.	
Are the common elements leased to or by the Homeowners' Association? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, describe the rental terms and options.	
Describe common elements and recreational facilities.	

Exterior-Only Inspection Residential Appraisal Report File # 09101601

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a visual inspection of the exterior areas of the subject property from at least the street, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

The appraiser must be able to obtain adequate information about the physical characteristics (including, but not limited to, condition, room count, gross living area, etc.) of the subject property from the exterior-only inspection and reliable public and/or private sources to perform this appraisal. The appraiser should use the same type of data sources that he or she uses for comparable sales such as, but not limited to, multiple listing services, tax and assessment records, prior inspections, appraisal files, information provided by the property owner, etc.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
3. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
4. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
5. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Exterior-Only Inspection Residential Appraisal Report File # 09101601

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a visual inspection of the exterior areas of the subject property from at least the street. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

Exterior-Only Inspection Residential Appraisal Report Form # 09101601

20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.
21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdiction; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).
22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.
23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.
24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.
25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature Pete M. Caffrey
Name Peter McCaffrey
Company Name Robert M. Sisco Real Estate Appraisals
Company Address 314 Cherry Avenue, Voorhees, NJ 08043
Telephone Number (856) 781-3008
Email Address pote@rmseap.com
Date of Signature and Report November 09, 2009
Effective Date of Appraisal 11/5/2009
State Certification # _____
or State License # 42RA00015400
or Other (describe) _____ State # _____
State NJ
Expiration Date of Certification or License 12/31/2009
ADDRESS OF PROPERTY APPRAISED
318 Columbia Avenue
Stratford Borough, NJ 08064

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

- ☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____

COMPARABLE SALES

- ☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

APPRAISED VALUE OF SUBJECT PROPERTY \$ 165,000
LENDER/CLIENT
Name _____
Company Name TD Bank, N.A.
Company Address 2050 Sordanielle Road, Cherry Hill, NJ 08003
Email Address _____

General Text Addendum

File No 08101601

Borrower/Client	Read, Frank & Christina				
Property Address	318 Columbia Avenue				
City	Stratford Borough	County	Camden	State	NJ Zip Code 08064
Lender	TD Bank, N.A.				

Strnt8-062701

Statement of Limiting Conditions:

USE, COPIES, PUBLICATION, DISTRIBUTION OF THIS REPORT:

This appraisal report is prepared for the sole and exclusive use of TD Bank, N.A., to assist in determining the collateral values for mortgage financing. It is not to be relied upon by third parties for any purpose, whatsoever.

The report may not be used for any purpose by any person or party other than the client or the party to whom it is addressed or copied without the written consent of an officer of the appraisal firm (Robert M. Sapio, Real Estate Appraisal & Consulting, LLC) and then only in its entirety.

Possession of this report or any copy thereof does not carry with it the right of publication, nor may it be used for other than its intended use; the physical report(s) remain the property of the appraiser for the use of the client, the fee being for the analytical services only.

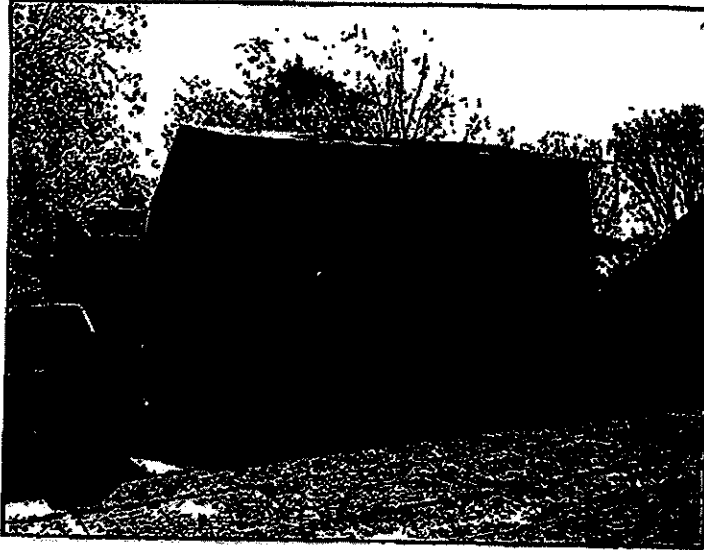
Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations efforts, news, sales, other media, without the written consent and approval of an officer of the Sapio firm, nor may any reference be made in such a public communication to the Appraisal Institute or the MAI or SRA designations.

This supersedes No. 10 on page 1 of the Statement of Limiting Condition

Signature <i>Peter McCallary</i>	Signature _____
Name Peter McCallary	Name _____
Date Signed November 09, 2009	Date Signed _____
State Certification # _____ State _____	State Certification # _____ State _____
State License # 42RA00015400 State NJ	Or State License # _____ State _____

Subject Photo Page

Borrower/Client	Reed, Frank & Christina				
Property Address	318 Columbia Avenue				
City	Stratford Borough	County	Camden	State	NJ
Lender	TD Bank, N.A.	Zip Code	08084		



Subject Front

318 Columbia Avenue
Sales Price N/A
GLA 1,825
Total Rooms 8
Total Bedrooms 4
Total Bathrooms 2.5
Location Average
View Average
Site 72 x 160
Quality Average
Age 50

Subject Rear



Subject Street

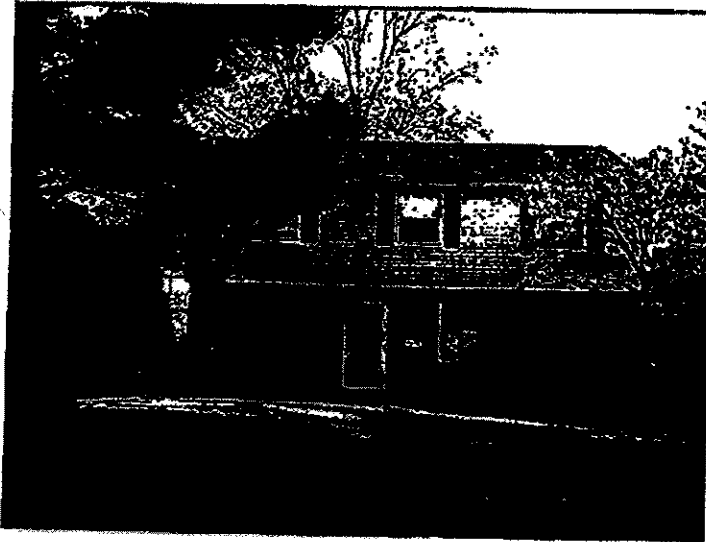
Comparable Photo Page

Borrower/Client	Reed, Frank & Christina				
Property Address	318 Columbia Avenue				
City	Stratford Borough	County	Camden	State	NJ
Zip Code	08084				
Lender	TD Bank, N.A.				



Comparable 1

264 Winding Way
Proximity 1/2 mile
Sale Price 182,000
GLA 2,350
Total Rooms 8
Total Bedrooms 4
Total Bathrooms 1.5
Location Average
View Average
Site 50 x 175
Quality Average
Age 48



Comparable 2

108 Evergreen Road
Proximity 1/2 mile
Sale Price 182,000
GLA 2,350
Total Rooms 8
Total Bedrooms 4
Total Bathrooms 1.5
Location Average
View Average
Site 75 x 110
Quality Average
Age 45

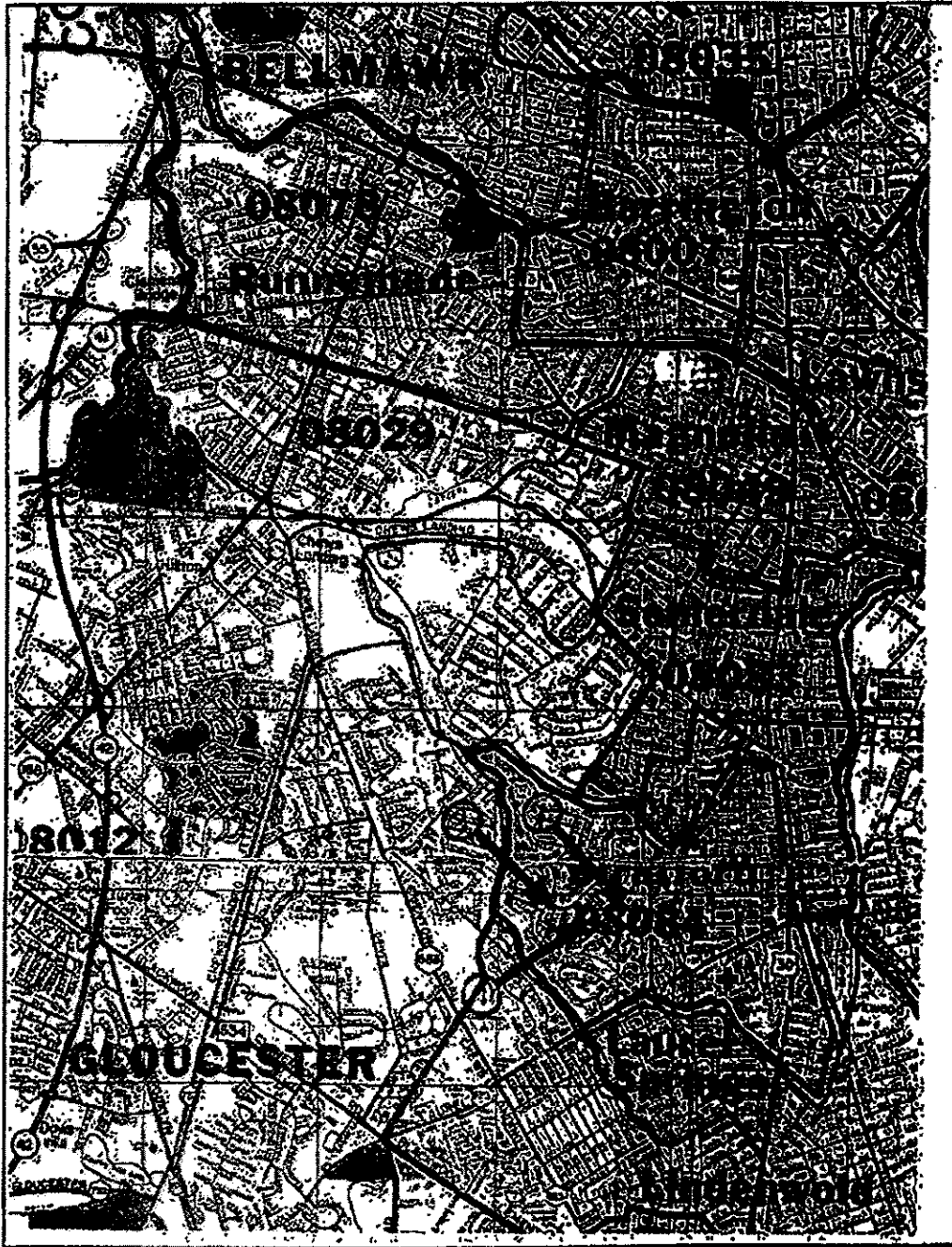


Comparable 3

37 Longwood Drive
Proximity 1/2 mile
Sale Price 184,900
GLA 2,350
Total Rooms 8
Total Bedrooms 4
Total Bathrooms 2.5
Location Average
View Average
Site 75 x 115
Quality Average
Age 49

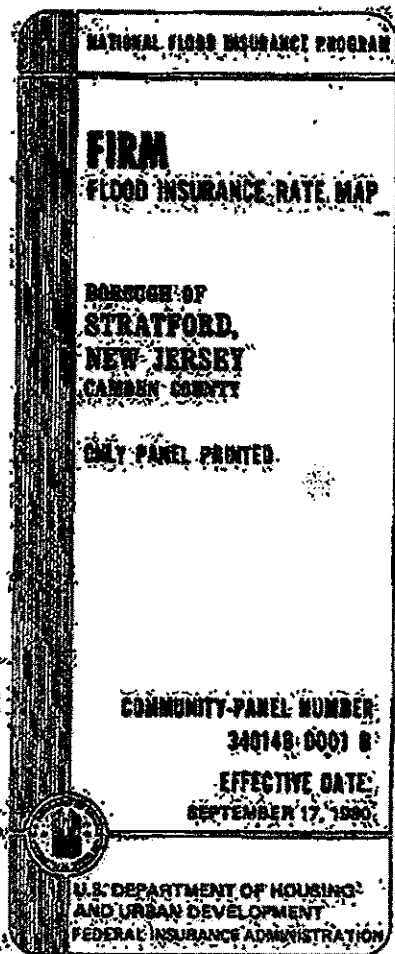
Comparable Sales Map

Borrower/Clerk	Reed, Frank & Christina			
Property Address	318 Columbia Avenue			
City	Strafford Borough	County	Camden	State NJ Zip Code 08084
Lender	TD Bank, N.A.			



Flood Map

Borrower/Clerk	Reed, Frank & Christina				
Property Address	318 Columbia Avenue				
City	Stratford Borough	County	Camden	State	NJ Zip Code 08084
Lender	TD Bank, N.A.				



Flood Map

Borrower/Client	Reed, Frank & Christina			
Property Address	318 Columbia Avenue			
City	Stratford Borough	County	Camden	State NJ Zip Code 08084
Lender	TD Bank, N.A.			

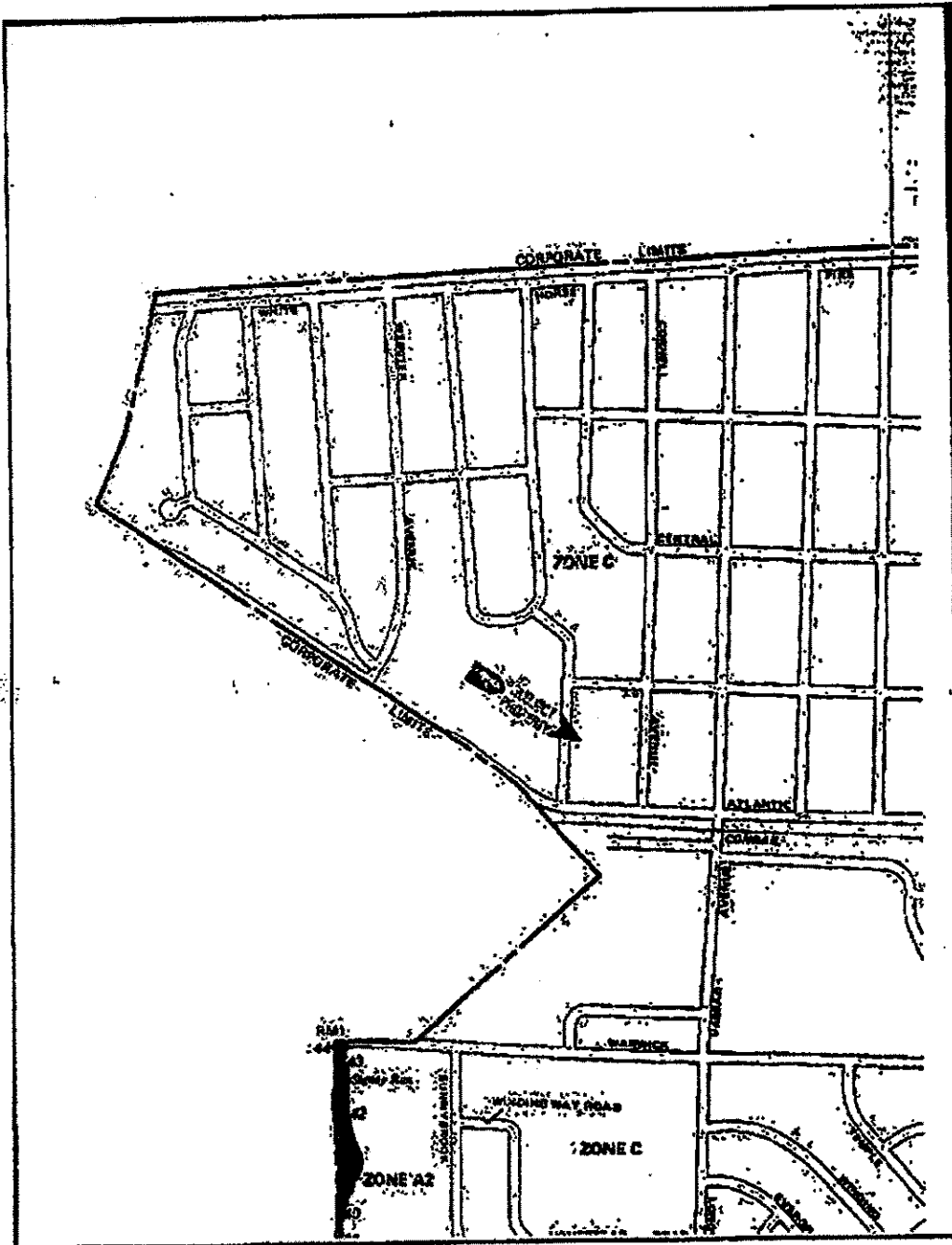


EXHIBIT 16

Reed

#350

Appraisal Report
Loan # 20359219001

This appraisal has been performed for TD Bank, N.A. in connection with a loan request made by you. TD Bank, N.A. makes no representations regarding the accuracy of the information contained in the appraisal and assumes no liability in connection with this appraisal.



*348,000
Value*

COMPLETE APPRAISAL SUMMARY REPORT

LOCATED AT:

21 Darlan Drive
Block 469.06 Lot 26
Cherry Hill Township, NJ 08003

FOR:

TD Bank, N.A.
2053 Springdale Road
Cherry Hill, NJ 08003

AS OF:

11/4/2009

BY:

Peter McCallray
Robert M. Sepio Real Estate Appraisal & Consulting, LLC

File No. 09101603

Robert M. Sapio
Real Estate Appraisal & Consulting, LLC
314 Cherry Avenue
Voorhees, NJ 08043

Telephone No.: (856) 429-2789
Fax No.: (856) 795-2297

November 6, 2009

Joseph Graves
TD Bank, N.A.
2059 Springdale Road
Cherry Hill, NJ 08003

RE: Reed
21 Darlen Street
Cherry Hill Twp., NJ

Dear Mr. Graves:

In accordance with your request, enclosed are two copies of the appraisal report of the captioned property. The purpose of the appraisal was to estimate market value of the captioned property, as improved, in unencumbered fee simple title, subject to the Assumptions and Limiting Conditions contained in Fannie Mae Form 2055, the Certification and this report.

This report is prepared in compliance with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.

This is a complete appraisal in a summary report.

Respectfully submitted,

Peter McCaffrey

File No. 08101603

This Appraisal conforms to one of the following definitions:

- ☒ **Limited Appraisal**
The act or process of estimating value, or an estimation of value, performed under and resulting from invoking the Departure Provision.

☐ **Self Contained Report**
A written report prepared under Standards Rule 2-2(A) of a complete or limited appraisal performed under Standard 1.

☒ **Summary Report**
A written report prepared under Standards Rule 2-2(B) of a complete or limited appraisal performed under Standard 1.

☐ **Restricted Report**
A written report prepared under Standards Rule 2-2(C) of a complete or limited appraisal performed under Standard 1.

Note any departures from Standards Rules 1-2, 1-3, 1-4, plus any USPAP-related issues requiring disclosure:

Robert M. Sapio, MAJ, SRPA APPRAISERS & CONSULTANTS

Exterior-Only Inspection Residential Appraisal Report File # 08101803

The purpose of this summary appraisal report is to provide the lender/borrower with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address: 21 Darien Drive City: Cherry Hill Township State: NJ Zip Code: 08003
Borrower: Reed, Frank & Christian Owner of Public Record: Reed, Frank & Christian County: Camden

Legal Description: Block 469.06 Lot 26
Assessor's Parcel #: 09-03469.06-00025 Tax Year: 2008 R.E. Taxes: \$ 8,609
Neighborhood Name: Point of Woods Map Reference: Census Tract

Occupant: ☒ Owner ☐ Tenant ☐ Vacant Special Assessments: ☐ PUD ☐ HOA \$ ☐ per year ☐ per month

Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Other (describe):
Assignment Type: ☐ Purchase Transaction ☐ Refinance Transaction ☒ Other (describe): Market Value

Lender/Clerk: TD Bank, N.A. Address: 2059 Springdale Road, Cherry Hill, NJ 08003
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☐ Yes ☒ No
Report data source(s) used, defining office(s), and date(s):

☐ I ☐ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.

Contract Price: \$ N/A Date of Contract: Is the property sold to the owner of public record? ☐ Yes ☐ No Data Source(s):
Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☐ No
If Yes, report the total dollar amount and describe the terms to be paid: N/A

Note: Race and the racial composition of the neighborhood are not appraised factors.

Neighborhood Characteristics				One-Unit Housing Trends				One-Unit Housing		Present Land Use %
Location	<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Property Value	<input type="checkbox"/> Increasing <input type="checkbox"/> Stable <input checked="" type="checkbox"/> Declining	PRICE	AGE	One-Unit	85 %			
Built-Up	<input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply	<input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	\$ (100)	(yrs)	2-4 Unit	%			
Growth	<input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time	<input type="checkbox"/> Under 3 mths <input checked="" type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths	285	Low	Multi-Family	%			
Neighborhood Boundaries	are Route 70 south, Church Road north, Springdale Road west and Cropwell			350	High	Commercial	5 %			
Road east				350	Pred.	Other	%			

Neighborhood Description: The subject is located in a residential neighborhood of various style single family detached dwellings. Schools, parks and recreational facilities are scattered throughout the Township. Employment and shopping centers are located along State Highway Route 70 and Springdale Road.

Market Conditions (including support for the above conclusions): Property values appear stable. Demand and supply are in balance. Marketing times for similar properties average 3-6 months. Most sales are conventional financing with some FHA. Conventional mortgages available at prevailing rates and discounts. No adverse effect on Market Value.

Dimensions: 80 x 127 Area: 11,430 Sq. Ft. Shape: Rectangular View: Average

Specific Zoning Classification: R40C Zoning Description: Residential

zoning Compliance: ☒ Legal ☐ Legal Nonconforming (grandfathered use) ☐ No Zoning ☐ Illegal (describe):
Highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe:

Utilities: Public Other (describe): Public Other (describe): Off-site Improvements - Type: Public Private
Electricity: ☒ ☐ Sewer: ☒ ☐ Street: Asphalt ☒ ☐
Gas: ☒ ☐ Sidewalk: ☒ ☐ Alley: ☐ ☐

FEMA Special Flood Hazard Area: ☐ Yes ☒ No FEMA Flood Zone: X FEMA Map #: 340128 0005C FEMA Map Date: 1/2/1992
Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe:
Are there any adverse site conditions (e.g., adverse factors, easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe:
There are no known adverse site conditions.

Sources Used for Physical Characteristics of Property: Appraisal File ☒ Assessment and Tax Records ☐ Prior Inspection ☐ Property Owner
☐ Other (describe): Data Source for Gross Living Area: Tax Assessor

General Description		Neighborhood		Amenities		Car Storage	
Units: <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Attached Unit	Complete Set: <input checked="" type="checkbox"/> Other: <input type="checkbox"/>	HWB	HWB	Fireplaces: #	None	Driveway: # of Cars	2
# of Stories: 2	Full Basement: <input checked="" type="checkbox"/> Finished: <input type="checkbox"/>	Basement	Basement	Woodstove(s): #	<input checked="" type="checkbox"/>	Driveway Surface	Asphalt
Type: <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> 9-Set/End Unit	Partial Basement: <input type="checkbox"/> Finished: <input type="checkbox"/>	Gar	Gar	Patio/Deck	<input type="checkbox"/>	Garage: # of Cars	2
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Construction	Special: <input type="checkbox"/> H/S	Gas	Gas	Porch	<input checked="" type="checkbox"/>	Garage: # of Cars	2
Design (Style): 2nd Colonial	Roof Surface: Asphalt	<input checked="" type="checkbox"/> Central Air Conditioning	<input type="checkbox"/>	Pool	<input type="checkbox"/>	Carport: # of Cars	
Year Built: 1977	Grades & Downspouts: <input type="checkbox"/> Normal <input type="checkbox"/>	Individual	Individual	Fence	<input checked="" type="checkbox"/>	Attached: <input type="checkbox"/> Detached	
Effective Age (Yrs): 10	Window Type: <input type="checkbox"/> Other	Other	Other	Other	<input type="checkbox"/>	Built-In	

Appliances: ☒ Refrigerator ☒ Range/Oven ☒ Dishwasher ☐ Disposal ☐ Microwave ☒ Washer/Dryer ☐ Other (describe):
Finished area above-grade contains: 2 Kitchens 2 Bath(s) 2,340 Square Feet of Gross Living Area Above Grade

Additional features (special energy efficiencies, etc.): Sun room, fenced rear yard and brick fireplace.

Describe the condition of the property and site including apparent related repairs, replacements, renovations, remodeling, etc. The subject was inspected from the street. The front and two sides were observed. There are no apparent repairs needed at time of inspection.

Are there any apparent physical deficiencies or adverse conditions that affect the usability, soundness, or structural integrity of the property? ☐ Yes ☒ No
If Yes, describe:
There are no apparent physical deficiencies or adverse conditions.

Does the property generally conform to the neighborhood functional utility, style, condition, use, construction, etc.? ☒ Yes ☐ No If No, describe:

Exterior-Only Inspection Residential Appraisal Report File # 09101603

There are 8 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 349,900 to \$ 377,990					
There are 6 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 233,000 to \$ 385,000					
FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3	
Address	21 Darien Drive Cherry Hill Township, NJ 08003	12 Westbury Drive Cherry Hill Township, NJ 08003	16 Tracey Terrace Cherry Hill Township, NJ 08003	28 West High Ridge Road Cherry Hill Township, NJ 08003	
Proximity to Subject		3 blocks	1 block	4 blocks	
Sale Price	\$ N/A	\$ 346,000	\$ 285,000	\$ 380,000	
Sale Price/Gross Liv. Area	\$ sq.ft. \$ 148.75 sq.ft.	\$ 121.79 sq.ft.	\$ 128.39 sq.ft.		
Data Source(s)	MLS	MLS	MLS	CNV	
Verification Source(s)	Broker	Broker	None		
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment
Sales or Financing Concessions	VA	Seller Conc.	-6,000	Seller Conc.	-5,700
Date of Sale/Time	7/31/2009	8/24/2009		5/22/2009	
Location	Average	Average		Average	
Leasehold/Free Simple	Fee Simple	Fee Simple		Fee Simple	
Site	20 Acres	30 Acres		18 Acres	
View	Average	Average		Average	
Design (Style)	2st Colonial	2st Colonial		2st Colonial	
Quality of Construction	Average	Average		Average	
Actual Age	32	32		40	
Condition	Average	Average		Average	
Above Grade	Total Rooms: 209	Total Rooms: 209		Total Rooms: 209	
Room Count	9 5 2.5	8 4 2.5		9 4 2.5	
Gross Living Area	2,340 sq.ft.	2,328 sq.ft.		2,804 sq.ft.	-13,900
Basement & Finished	Full	Full		Full	
Rooms Below Grade	Finished	Finished	+10,000	Finished	
Functional Utility	Average	Average		Average	
Heating/Cooling	FHA/Central	FHA/Central		FHA/Central	
Energy Efficient Items	Standard	Standard		Standard	
Garage/Carport	2 car	2 car		2 car	
Porch/Patio/Deck	Porch	Porch		Porch	
Fireplace	Fireplace	Fireplace		Fireplace	
P. Room	None	+10,000	None	+10,000	Fl. Room
Porch	Porch, Front	-10,000	None	+3,000	None
Net Adjustment (Total)	\$ 4,300	\$ 7,300		\$ -10,900	
Adjusted Sale Price	N/A Adj. 1.2 %	350,000	282,300	349,100	
Comparables	Gross Adj. 10.4 %	350,000	282,300	349,100	

I did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explain:

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s) Public Records

My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data Source(s) Public Records

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

Item	SUBJECT	COMPARABLE SALE #1	COMPARABLE SALE #2	COMPARABLE SALE #3
Date of Prior Sale/Transfer	8/24/2005	N/A	N/A	N/A
Price of Prior Sale/Transfer	385,000			
Data Source(s)	Public Records			
Effective Date of Data Source(s)				

Analysis of prior sale or transfer history of the subject property and comparable sales: The subject has not been listed or sold since purchase on 8/24/2005.

Summary of Sales Comparison Approach: All sales are similar two story colonial dwellings. Sales 1 and 2 are from within subject's Point of Woods development. Sale 3 is from Lakeview development. Sales are equal in location, quality of construction, age and overall condition.

Indicated Value by Sales Comparison Approach \$ 349,000

Indicated Value by Sales Comparison Approach \$ 349,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$ N/A

All weight is placed on the Sales Comparison Approach to value.

This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair:

on a visual inspection of the exterior of the subject property from at least the street, defined scope of work, statement of assumptions and limiting ones, and appraiser's certification, my best opinion of the market value, as defined, of the real property that is the subject of this report is \$48,000 as of 11/4/2009, which is the date of inspection and the effective date of this appraisal.

Exterior-Only Inspection Residential Appraisal Report File # 09101603

ADDITIONAL COMMENTS

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the cost approach and calculations.
Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value)

ESTIMATED	<input type="checkbox"/> REPRODUCTION OR	<input type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE	= \$
Source of cost data			CEILING	Sq. Ft. @ \$ = \$
Quality rating from cost service	Effective date of cost app			Sq. Ft. @ \$ = \$
Comments on Cost Approach (gross value, depreciation, etc.)				= \$
			Garage/Carport	Sq. Ft. @ \$ = \$
			Total Estimate of Cost-New	= \$
			Less: Physical	Functional
			Depreciation	External
			Depreciated Cost of Improvements	= \$()
			Basic Value of Site Improvements	= \$

Estimated Remaining Economic Life (in Yr) or (A/G)	Years	INDICATED VALUE BY COST APPROACH	= \$
Estimated Monthly Market Rent \$	X Gross Rent Multiplier	= \$	Indicated Value by Income Approach
Summary of Income Approach (including support for market rent and GRM)			

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? <input type="checkbox"/> Yes <input type="checkbox"/> No Unit type(s) <input type="checkbox"/> Detached <input type="checkbox"/> Attached			
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.			
Legal Name of Project			
Total number of phases	Total number of units	Total number of units sold	
Total number of units rented	Total number of units for sale	Data source(s)	
Was the project created by the conversion of existing a, b, c, d, e, f, g, h, i, j, k, l, m, n, o, p, q, r, s, t, u, v, w, x, y, z?			
Does the project contain any multi-family units?			
Are the units, common elements, and recreation facilities complete?			
Are the common elements leased to or by the Homeowners' Association?			

* common elements and recreational facilities

Exterior-Only Inspection Residential Appraisal Report Fm # 09101603

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a visual inspection of the exterior areas of the subject property from at least the street, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

The appraiser must be able to obtain adequate information about the physical characteristics (including, but not limited to, condition, room count, gross living area, etc.) of the subject property from the exterior-only inspection and reliable public and/or private sources to perform this appraisal. The appraiser should use the same type of data sources that he or she uses for comparable sales such as, but not limited to, multiple listing services, tax and assessment records, prior inspections, appraisal files, information provided by the property owner, etc.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays most costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
3. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
4. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
5. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Exterior-Only Inspection Residential Appraisal Report File # 09101603

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a visual inspection of the exterior areas of the subject property from at least the street. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.

I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.

13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named each individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

Exterior-Only Inspection Residential Appraisal Report File # 09101603

1. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.

This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature Peter M. Caffrey
Name Peter McCaffrey
Company Name Robert W. Sapp Real Estate Appraisers
Company Address 314 Cherry Avenue, Voorhees, NJ 08063

Telephone Number (856) 751-3008
Email Address peter@rwsapp.com
Date of Signature and Report November 09, 2008
Effective Date of Appraisal 11/9/2008
State Certification # _____
or State License # 42RA000164.00
or Other (describe) _____ State # _____
State NJ

Expiration Date of Certification or License 12/31/2009
ADDRESS OF PROPERTY APPRAISED
21 Darden Drive
Cherry Hill Township, NJ 08033

APPRAISED VALUE OF SUBJECT PROPERTY'S 348,000

LENDER/CLIENT

Name _____
Company Name TD Bank, N.A.
Company Address 2059 Springfield Road, Cherry Hill, NJ 08033

Address _____

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____

COMPARABLE SALES

☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

General Text Addendum

File No. 09101603

Borrower/Client	Reed, Frank & Christian				
Property Address	21 Darien Drive				
City	Cherry Hill Township	County	Camden	State	NJ Zip Code 08003
Lender	TD Bank, N.A.				

Stmt8-062701

Statement of Limiting Conditions

USE, COPIES, PUBLICATION, DISTRIBUTION OF THIS REPORT:

This appraisal report is prepared for the sole and exclusive use of TD Bank, N.A., to assist in determining the collateral values for mortgage financing. It is not to be relied upon by third parties for any purpose, whatsoever.

The report may not be used for any purpose by any person or party other than the client or the party to whom it is addressed or copied without the written consent of an officer of the appraisal firm (Robert M. Sapio, Real Estate Appraisal & Consulting, LLC) and then only in its entirety.

Possession of this report or any copy thereof does not carry with it the right of publication, nor may it be used for other than its intended use; the physical report(s) remain the property of the appraiser for the use of the client, the fee being for the analytical services only.

Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations efforts, news, sales, other media, without the written consent and approval of an officer of the Sapio firm, nor may any reference be made in such a public communication to the Appraisal Institute or the MAI or SRA designations.

This supersedes No. 10 on page 1 of the Statement of Limiting Condition

Signature *Peter McCaffrey*
by Peter McCaffrey
Signed November 06, 2009
State Certification # _____ State _____
Or State License # 42RA00015400 State NJ

Signature _____
Name _____
Date Signed _____
State Certification # _____ State _____
Or State License # _____ State _____

Subject Photo Page

Borrower/Client	Read, Frank & Christian				
Property Address	21 Darien Drive				
City	Cherry Hill Township	County	Camden	State	NJ
Lender	TD Bank, N.A.				
				Zip Code	08003

Subject Front

21 Darien Drive
Sales Price N/A
GLA 2,340
Total Rooms 9
Total Bedrooms 5
Total Bathrooms 2.5
Location Average
View Average
Site .28 Acres
Quality Average
Age 32

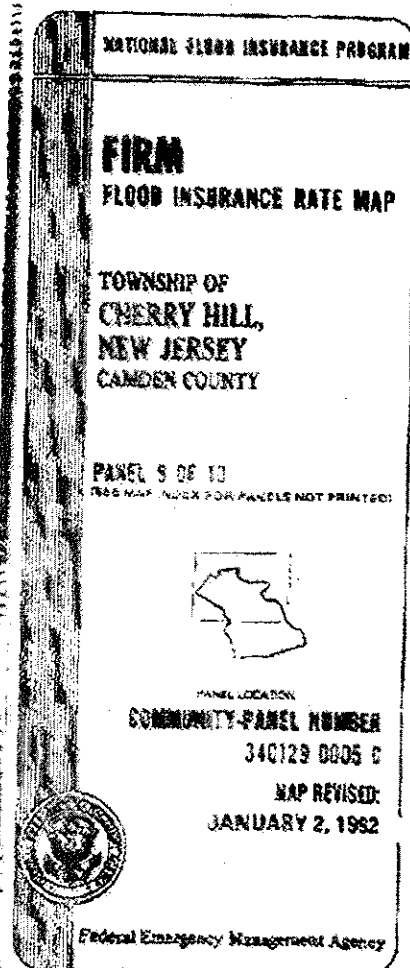
Subject Rear

Subject Street



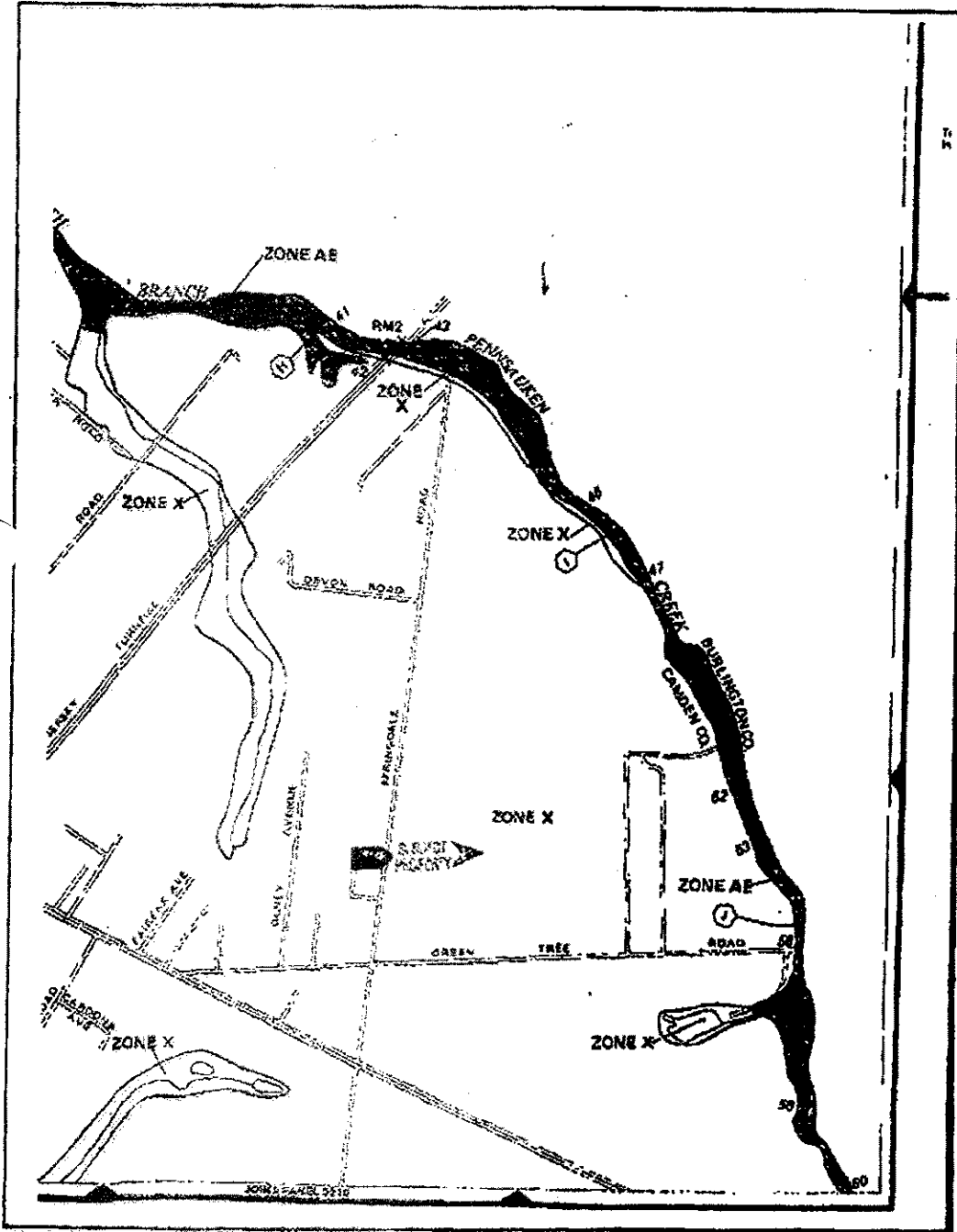
Flood Map

Borrower/Client	Reed, Frank & Christian				
Property Address	21 Darian Drive				
City	Cherry Hill Township	County	Camden	State	NJ Zip Code 08003
Lender	TD Bank, N.A.				



Flood Map

Borrower/Client	Reed, Frank & Chnetton			
Property Address	21 Darden Drive			
City	Cherry Hill Township	County	Camden	State
Lender	TD Bank, N.A.			Zip Code
				08003



Comparable Sales Map

Borrower/Grant	Reed, Frank & Christian			
Property Address	21 Darien Drive			
City	Cherry Hill Township	County	Camden	State NJ Zip Code 08003
Lender	TD Bank, N.A.			

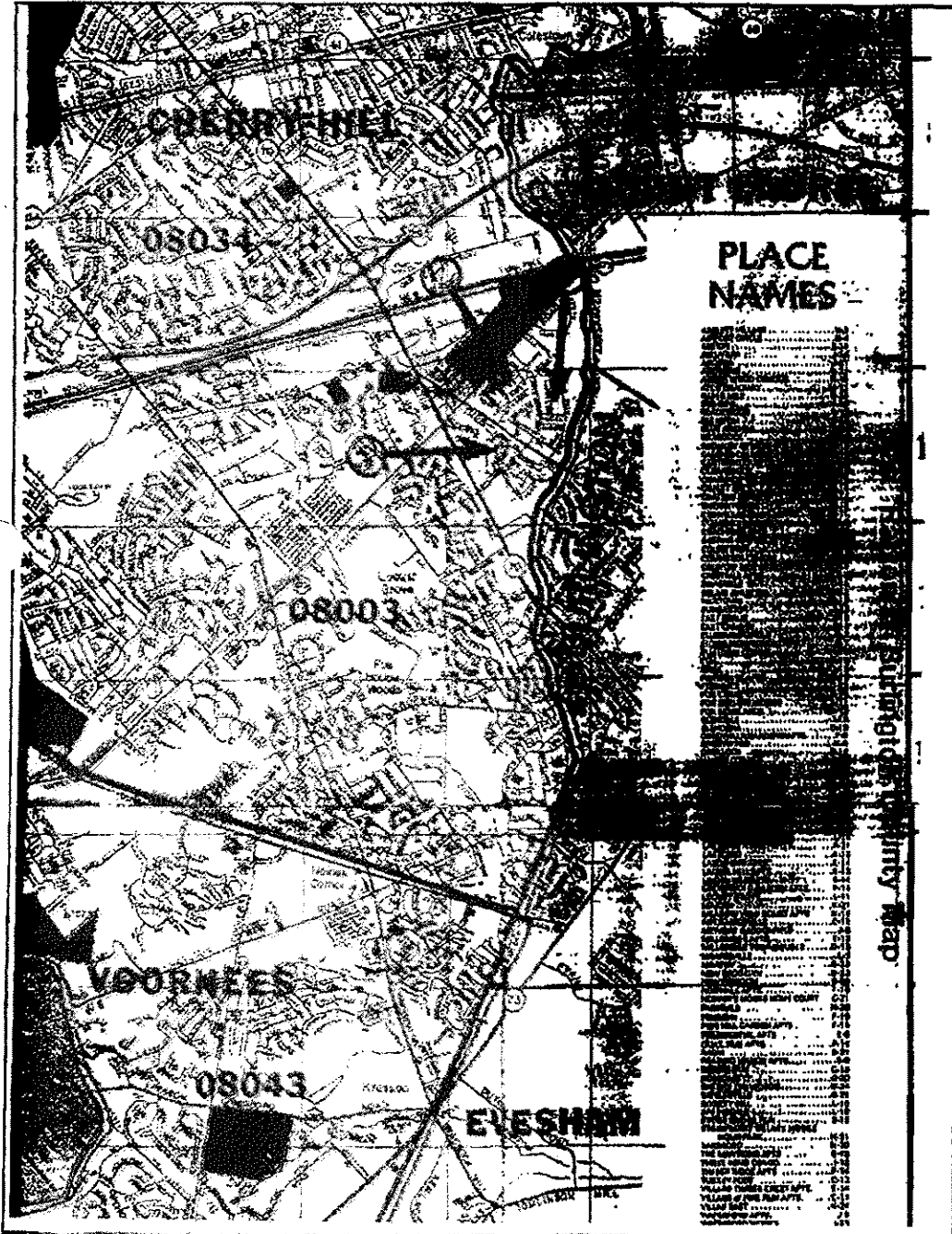


EXHIBIT 17

[Home](#) | [NJ Courts](#)

JUDGMENT SEARCH

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[Contact Us](#)

Judgment Search Result Details

Note: If you have pop-up blocker installed, you must disable it to view party details
Search for a Judgment by selecting one of the following tabs below.

Name Judgment # Docket #

Judgment Number: J 127413 10- TD BANK NA VS REED

Docket Number: L 003050 9

Venue-id: BUR

Filing Location: BURLINGTON

Court: LCV

Judgment Status: Open

Status Date: 05/12/2010

Judgment Amount: \$741976.77

Court Costs: \$0.00

Interest: \$0.00

Attorney Fee: \$5229.80

Other Amount: \$0.00

Processing Location:

Judgment Enter Date: 02/08/2010

Time: 2:30PM

Judgment Filing Date: 05/12/2010

Party/Debt Summary

Debt ID: 1 Debt Status: Open Debt Amount: \$741976.77 Attorney Fee: \$5229.80 Cost: \$0.00 Interest: \$0.00 Other Amount: \$0.00 Debt Enter Date: 05/12/2010

Name (Last, First MI)	Role	Alternate Names	Party Debt Status	Status Date
TD BANK NA	CREDITOR		Open	05/12/2010
REED, FRANK	DEBTOR		Open	05/12/2010
REED, CHRISTINA	DEBTOR		Open	05/12/2010

Document Summary

Documents Summary - 0 Found.

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BUILD:3.0.00.30_1

EXHIBIT 18

TD BANK, N.A.
PO BOX 746
KEENE NH 03431-0746



012137 06TX9B03 000000
FRANK REED
CHRISTINA REED
817 MALTACK DR
MOORESTOWN NJ 08057

AT

☐ CORRECTED (if checked)

LENDER'S name, street address, city, state, ZIP code, and telephone no. TD BANK, N.A. PO BOX 746 KEENE NH 03431-0746 1-888-751-9000		OMB No. 1545-0877 2011 Form 1099-A		Acquisition or Abandonment of Secured Property Copy B For Borrower This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.
LENDER'S federal identification number 01-0137770	BORROWER'S identification number 138-64-7464	1 Date of lender's acquisition or knowledge of abandonment 28/09/2011	2 Balance of principal outstanding \$659,073.00	
BORROWER'S name FRANK REED CHRISTINA REED		3	4 Fair market value of property \$507,000.00	
Street address (including apt. no.) 817 MALTACK DR City, state and ZIP code MOORESTOWN NJ 08057		5 If checked, the debtor was personally liable for repayment of the debt <input checked="" type="checkbox"/>		
Account number (see instructions) 20359219001		6 Description of property 21 DARIAN CHERRY HILL, 52 STONE H		
Form 1099-A 01/18/2012		(keep for your records)		Department of the Treasury - Internal Revenue Service

credit given

EXHIBIT 19

144HB5

Time of Request: Monday, November 26, 2012 07:31:23 EST
Client ID/Project Name: reed
Number of Lines: 305
Job Number: 1828:382257847

Research Information

Service: Terms and Connectors Search
Print Request: Current Document: 1
Source: NJ State Cases, Combined
Search Terms: name(v.a.l. floors and westminster communities)

Send to: McCrink, Krisden
MCCRINK, KEHLER & MCCRINK
475 N ROUTE 73 STE 1
WEST BERLIN, NJ 08091-2003



1 of 1 DOCUMENT

**V.A.L. FLOORS, INC. AND 3L COMPANY, INC., PLAINTIFFS-APPELLANTS,
v. WESTMINSTER COMMUNITIES, INC., DEFENDANT-RESPONDENT.**

DOCKET NO. A-6525-00T1

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

355 N.J. Super. 416; 810 A.2d 625; 2002 N.J. Super. LEXIS 470

**October 23, 2002, Argued
December 5, 2002, Decided**

SUBSEQUENT HISTORY: [***1] Approved for
Publication December 5, 2002.

PRIOR HISTORY: On appeal from Superior Court of
New Jersey, Law Division, Hudson County, L-4199-98.

COUNSEL: *Anthony J. Belkowski* argued the cause for
appellants (*Hedinger & Lawless*, attorneys; *Mr.*
Belkowski, on the brief).

Stephen M. Charme argued the cause for respondents
(*Witman, Stadtmauer & Michaels*, attorneys; *Mr.*
Charme, on the brief).

JUDGES: Before Judges KESTIN, FALL ¹ and
WEISSBARD. The opinion of the court was delivered by
WEISSBARD, J.A.D.

¹ Judge Fall did not participate in the argument
of this case. He has been added with consent of all
counsel.

OPINION BY: WEISSBARD

OPINION

[*418] [*626] The opinion of the court was
delivered by

[*419] WEISSBARD, J.A.D.

In this breach of contract case, plaintiffs, V.A.L.
Floors, Inc. (VAL) and 3L Company, Inc. (3L) appeal
from summary judgment granted in favor of defendant
Westminster Communities, Inc. We are required to
determine whether a contractor's [*627] profit estimate
based on its past experience is a sufficiently definite basis
upon which to submit a damage claim to the jury.
Because we conclude that such an estimate amounts to
more than just speculation, we reverse.

Westminster is the [***2] owner of the "Villas at
Harbor Island" (Villas) in West End, NJ. In July of 1997,
VAL, a flooring subcontractor, learned of a project at the
Villas to install and upgrade flooring materials in
individual units. VAL began to prepare a base bid for the
fifty-five units at the Villas. VAL employees solicited
bids from subcontractors and suppliers of materials over
the phone in order to obtain prices needed for the bid.
According to VAL, this type of price solicitation is
common among contractors in the construction business.
VAL took the prices that it obtained from the phone
solicitations and transferred them onto cost analysis
sheets. In her certification, Linda Luppino ² explained the
process:

Plaintiffs then obtained costs for the
labor to be utilized on the Project based
upon standard union rates at that time for

355 N.J. Super. 416, *419; 810 A.2d 625, **627;
2002 N.J. Super. LEXIS 470, ***2

each of the various disciplines who would be installing the different materials at the Project. These costs were translated, based on our experience, into units of work per man/hour in order to come up with the gross labor costs. In other words, we estimated not only the total labor cost for the base project, but also the per unit cost for each type of material to be [***3] installed in each type of unit. These costs were then also transferred to the cost analysis sheets.

2 Vito Luppino is the president of VAL. His daughter, Linda Luppino, worked for VAL before becoming president of 3L Company, Inc.

Based on these prices, VAL "determined what markup or profit it would seek in preparing its base bid of \$ 443,000," which it submitted in September 1997. Again, this method of arriving at the base bid price was that customarily followed by VAL in the past and by other subcontractors.

[*420] Up to this point in time, 3L had not been incorporated. Its incorporation, however, was in the process at the time and VAL intended that 3L would work with it on the project as a joint venture.

In September of 1997, shortly after the bid was submitted, Westminster contacted VAL and informed it that Westminster was accepting VAL's bid. The parties reached a verbal agreement that VAL would perform the work set out in its bid. Luppino's certification explained what happened next:

VAL and 3L then [***4] commenced discussion with representatives of Westminster concerning various upgrade programs which would be offered to prospective unit purchasers in lieu of the base materials. The costs for these upgrade programs were obtained and prepared in the same fashion as those for the base contract work. At that time it was our opinion, based upon past experience, that there would probably be approximately \$ 232,000 worth of upgrades for the Project bringing the total contract amount to at

least \$ 675,000. As upgrade work is highly profitable in comparison to base contract work, it was our feeling that we would make at least a 33% overall profit on the job, or \$ 235,000.

VAL and 3L were issued numerous construction work orders for various units by Westminster in February and March of 1998. According to the Luppino certification,

[a]dditionally, plaintiffs constructed on site a showroom containing samples of [**628] base grade items and the various upgrades of flooring materials which would be available to prospective purchasers of the units. Plaintiffs expended considerable time³ and effort in establishing the upgrade program as well as the showroom. Westminster clients would and did choose their [***5] selections from this showroom.

3 Luppino claimed to have spent more than half of her time working on this project over several months.

Plaintiffs asked Westminster for money in advance in order to purchase materials and store those materials at an off-site facility. Westminster denied the request, stating that such a payment was not their typical practice and that it normally paid a contractor after each unit was completed. In a letter dated April 21, 1998, VAL and 3L informed Westminster that it would accept Westminster's payment terms.

The next day, April 22, 1998, Joseph McGinley, a Westminster employee, wrote to plaintiffs informing them that Westminster was terminating its relationship with VAL and 3L and that [*421] Westminster had made "a decision to use another supplier." In its complaint, filed a month after the termination, plaintiffs claimed, in separate counts, both out of pocket expenses for "labor, services and materials," as well as lost profits.

As noted, plaintiffs estimated the total contract amount [***6] at \$ 675,000, as to which they expected to make 33% profit, or \$ 235,000. However, Luppino

355 N.J. Super. 416, *421; 810 A.2d 625, **628;
2002 N.J. Super. LEXIS 470, ***6

also estimated another, alternative profit based on discovery reflecting specification sheets for upgrades on nineteen units actually completed, reflecting a profit of 36% of costs. She explained:

Based upon the specification sheets for the number of units which were provided, and using the same methodology as used to prepare the bid estimate and upgrade program, I prepared an estimate based upon the upgrade program prices for materials and labor for each of these units. That estimate was based upon prices at the time the upgrade program was developed. A summary of my calculations is annexed to defendant's exhibits as Exhibit 12.

It was my feeling that the units for which we had specification sheets were fairly representative of the units in the Project. In fact, two larger units which had been combined into a single unit and undoubtedly had a tremendous amount of upgrade work done, did not have specification sheets. The percentage of upgrade work in those units would undoubtedly skew my calculation upward to a higher profit percentage than that which I arrived at.

By applying that [***7] profit margin to the total sales on the project ⁴ plaintiffs alleged that they would have reaped a total profit of approximately \$ 534,000.

4 Plaintiffs were replaced on the project by Commercial Flooring, which reported total sales of \$ 1,482,750.

Defendant moved for summary judgment on the grounds that plaintiffs had no enforceable oral contract and because plaintiffs' claim for lost profits was speculative as a matter of law. Following oral arguments, the motion judge granted the motion on the basis that plaintiffs' damages were too speculative but rejected the argument that no enforceable oral contract existed. Defendant does not cross-appeal the denial of summary judgment on the contract issue. ⁵

5 As noted, plaintiffs suit had advanced separate claims for lost profits and out of pocket expenses. However, the summary judgment argument only

dealt with the lost profits and plaintiffs do not assert as error the dismissal of its suit as to out of pocket expenses.

[***8] [*422] [**629] The trial judge found that the inherent problem of the price quotes upon which plaintiffs based their costs was that "even though [they] may serve the immediate business needs of the plaintiff . . ., it does not lock in the price for a particular period of time." ⁶

6 Although it is not essential to our holding, we note that a supplier may well be bound on an oral contract to supply materials to a contractor when the supplier knows that the quoted prices will be relied upon by the contractor in submitting a bid. *E.A. Coronis Assocs. v. M. Gordon Constr. Co.* 90 N.J. Super. 69, 216 A.2d 246 (App.Div.1966).

He further summarized his findings:

A trier of fact would be left to speculate because the market forces that would operate on the cost of these items [were] left unchecked. And in essence, the jury would be instructed to use as a measure of damages a fixed cost, when a fixed cost was not anticipated by the [plaintiffs], therefore creating a superior contract than the parties themselves [***9] arguably negotiated and anticipated. This is inherently unfair.

Without a fixed price, the jury would be free to speculate as to what would have been the market conditions, especially given the fact, the history of this project shows that even though the price quotes were given in May of 1998, the actual construction did not begin until two years thereafter. Therefore, the market forces that operated during those two years would have significantly affected the plaintiff's profit calculation.

Furthermore, since records are only available for the first 19 units, the plaintiff further speculates that its profit would have been consistent with [this] approach with the balance of the units, correctly and noted by the defense, compounding the

355 N.J. Super. 416, *422; 810 A.2d 625, **629;
2002 N.J. Super. LEXIS 470, ***9

speculative aspect of damages to begin with.

Both parties accept the governing rule to be that "where the plaintiff is a supplier, producer, or contractor who has been prevented by the defendant from completing his contract, the plaintiff is entitled to the profit that would have been realized if performance had been completed. This is generally measured by the difference between the contract price and the cost of performance or production." [***10] *J.L. Davis & Associates v. Heidler*, 263 N.J. Super. 264, 276, 622 A.2d 923 (App.Div.1993).

[*423] The motion judge noted that under the standard of law for recovering lost profits "the party must show that profits were lost as a result of the actionable conduct complained of" and, quoting *Cromartie v. Carteret Savings & Loan*, 277 N.J. Super. 88, 103, 649 A.2d 76 (App.Div.1994), "[l]ost profits' signif[y] the difference between gross income and the costs or expenses which had to be expended to produce the income."

Although stating the general rule, both *J.L. Davis* and *Cromartie* are quite different from the present case and do not, in our view, dictate the result reached by the motion judge. *J.L. Davis* involved a contractor hired to relocate a house. A contract price of \$ 12,500 was agreed upon. Eventually, after performing some work, the contractor abandoned the project due to the homeowner's failure to pay the installments due under the contract. The contractor sued for the value of work performed (\$ 9100), extra work (\$ 1200), costs of renting certain equipment (\$ 5400) and \$ 3000 in lost profits. We upheld a jury verdict awarding the contractor all the [***11] amounts claimed except for the lost profits. In that regard, we found insufficient the contractor's "bare assertion that he suffered \$ 3000 in lost profits." *Davis*, *supra*, 263 N.J. Super. at 277, 622 A.2d 923. [***630] We noted that "there was no evidence presented as to the costs that were or would have been incurred to complete the project or upon which to calculate such profits." *Ibid.* (emphasis supplied).

In *Cromartie*, plaintiffs' property burned down. They sued Carteret, the bank that acted as the servicing agent for the mortgagee bank. The jury found that Carteret had "breached its contractual obligation when it permitted the fire insurance on the Cromarties' property to lapse

without notifying them." *Cromartie*, *supra*, 277 N.J. Super. at 96, 649 A.2d 76. We remanded for a new trial on damages which had included a claim for lost rents on the property. We found the lost rent award unsustainable since "the Cromarties did not prove their expenses in operating the property and therefore did not prove their lost profits." *Id.* at 103, 649 A.2d 76. It was in that factual setting that we referred to [*424] the rule that lost profits is the "difference between gross income and the costs or expenses [***12] which had to be expended to produce the income." *Ibid.*

Unlike *Cromartie*, here plaintiffs did offer some proof that they had incurred expenses and costs, namely making the showroom models, creating various upgrade programs to be offered to unit purchasers, and foregoing other business opportunities to concentrate on the Villas project⁷, although the dollar value of those costs was not established at the summary judgment stage. Nevertheless, the trial judge concluded "that the party claiming damages for breach of contract has the burden of showing the breach caused loss [or] prevented gain. The burden here cannot be satisfied without the jury being allowed to speculate as to what that measure of damages would have been." We disagree.

7 Luppino estimated that plaintiffs "could have easily closed \$ 700,000 to \$ 800,000 in other business."

In fact, we do permit considerable speculation by the trier of fact as to damages. In *Tessmar v. Grosner*, 23 N.J. 193, 128 A.2d 467 (1957), the Court [***13] stated that "[t]he rule relating to the uncertainty of damages applies to the uncertainty as to the fact of damage and not as to its amount, and where it is certain that damage has resulted, mere uncertainty as to the amount will not preclude the right of recovery." *Id.* at 203, 128 A.2d 467 (citations omitted). Although we require a "reasonably accurate and fair basis for the computation of alleged lost profits," *J.L. Davis & Assocs*, *supra*, 263 N.J. Super. at 276, 622 A.2d 923 (quoting *Borbonus v. Daoud*, 34 N.J. Super. 54, 61, 111 A.2d 443 (Ch.Div.1955)), the "fact that a plaintiff may not be able to fix its damages with precision will not preclude recovery of damages." *Inter Medical Supplies v. EBI Medical Systems*, 181 F.3d 446, 463 (3rd Cir.1999) (citing *American Sanitary Sales Co. v. State, Dep't of Treasury*, 178 N.J. Super. 429, 435, 429 A.2d 403 (App. Div.), *certif. denied*, 87 N.J. 420, 434 A.2d 1094 (1981)). In *Stanley Co. of America v. Hercules*

355 N.J. Super. 416, *424; 810 A.2d 625, **630;
2002 N.J. Super. LEXIS 470, ***13

Powder Co., 16 N.J. 295, 314, [*425] 108 A.2d 616 (1954), the Court stated the rule as follows: "Loss of profits, where based on sound fact and not on mere opinion evidence [***14] without factual support, is recognized as a proper measure of damages if 'capable of being estimated with a reasonable degree of certainty'" (quoting *Rempfer v. Deerfield Packing Corp.*, 4 N.J. 135, 144, 72 A.2d 204 (1950)). Profits lost by reason of breach of contract may be recovered "if there are any criteria by which probable profits can be estimated with reasonable certainty." *Feldman v. [**631] Jacob Brantman & Son, Inc.*, 111 N.J.L. 37, 42, 166 A. 126 (E & A 1933); see also *Restatement (Second) of Contracts* § 352 (1981). (*Restatement*)

Past experience of an ongoing, successful business provides a reasonable basis for the computation of lost profits "with a satisfactory degree of definiteness." *Weiss v. Revenue Bldg. & Loan Ass'n*, 116 N.J.L. 208, 212, 182 A. 891 (E & A 1935).⁸ See also *Tull v. Gundersons, Inc.*, 709 P.2d 940, 945 (Colo.1985) (noting that "past profit experience on other projects . . . is widely accepted as relevant to a determination of damages based on lost profits"); *Restatement supra*, § 352 comment b ("Evidence of past performance will form the basis for a reasonable prediction as to the [***15] future").

⁸ In *Bell Atlantic v. P.M. Video Corp.*, 322 N.J. Super. 74, 97-100, 730 A.2d 406 (App.Div.), certif. denied, 162 N.J. 130, 741 A.2d 98 (1999), we adhered to the "new business rule" of *Weiss*, despite the three judge plurality opinion in *Perini Corp. v. Greate Bay Hotel & Casino, Inc.*, 129 N.J. 479, 509-10, 610 A.2d 364 (1992), which noted the recent trend to allow an award for lost profits even in the case of a new business "when they can be proved with reasonable certainty." *Bell Atlantic, supra*, 322 N.J. Super. at 98, 730 A.2d 406. See generally, 22 *Am.Jur.2d Damages* §§ 624-27, 962-64 (1988); and see *Drews Co. v. Ledwith-Wolfe Associates*, 296 S.C. 207, 371 S.E.2d 532, 334-35 (1988) (abandoning the new business rule as an absolute bar to recovery of lost profits and noting a multi-jurisdictional trend in favor of treating the distinction between new and established businesses as going to the weight of evidence, rather than being an absolute bar).

[***16] Judged by these criteria, we do not believe that plaintiffs were required to prove the dollar amount of

their projected [*426] expenses. In *Alaska Children's Services, Inc. v. Smart*, 677 P.2d 899, 902 (Alaska, 1984), the contractor's proof as to lost profits was his testimony as to his normal profit margin applied to the bid price. From these figures a jury could compute the costs of the project, that being the bid price less the profit percentage. In reaching that conclusion the court cited to a number of cases from other jurisdictions that "have accepted as sufficient evidence a profit estimate made by the contractor." *Ibid*. Such an opinion as to anticipated profit by one with sufficient background constitutes "prima facie proof of the loss." *Nelson v. Cail*, 120 Ariz. 64, 583 P.2d 1384, 1387 (App.1978). See also *Sir Speedy, Inc. v. L & P Graphics, Inc.*, 957 F.2d 1033, 1038 (2nd Cir.1992).

As the South Carolina Supreme Court stated:

To warrant such recovery, loss of profits must be established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative. "But it must be borne [***17] in mind that since profits are prospective they must, to some extent, be uncertain and problematical, and so on that account or on account of the difficulties in the way of proof, a person complaining of breach of contract cannot be deprived of all remedy, and uncertainty merely as to the amount of profits that would have been made does not prevent a recovery. The law does not require absolute certainty of data upon which lost profits are to be estimated, but all that is required is such reasonable certainty that damages may not be based wholly upon speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy."

[*South Carolina Fin. Corp. v. West Side Fin. Co.*, 236 S.C. 109, 113 S.E.2d 329, 336 (S.C.1960) (quoting 15 *Am.Jur. Damages* § 150)]

355 N.J. Super. 416, *426; 810 A.2d 625, **631;
2002 N.J. Super. LEXIS 470, ***17

[**632] We agree with that approach and do not find that such a position is contrary to our prior cases which are, as we have demonstrated, quite distinguishable. We reject defendant's suggestion that plaintiffs would be required to produce each of its suppliers to testify to the prices of [***18] the materials needed for the project at the time the materials were actually supplied. Obviously, a change in prices between the time of a bid and the time of supply could work either to plaintiffs' benefit or detriment, depending on "market forces." As the motion judge noted, "[t]he market could have been for him or against him." We do not, of course, foreclose defendant from seeking to establish that plaintiffs' [*427] expenses would have been greater than originally believed at the time of the bid.

While we recognize that there is a certain amount of uncertainty in the concept of lost profits, it is only fair to lay that uncertainty "at the door of the wrongdoer who altered the proper course of events, instead of at the door of the injured party." *U.S. Naval Institute v. Charter Communications*, 936 F.2d 692, 697 (2nd Cir.1991) "[W]here the defendant's wrongdoing created the risk of uncertainty, the defendant cannot complain about imprecision." *Jay Edwards, Inc. v. New England Toyota Distributor, Inc.*, 708 F.2d 814, 821 (1st Cir.), cert. denied, 464 U.S. 894, 104 S. Ct. 241, 78 L. Ed. 2d 231 (1983); *Restatement, supra* § 352 comment a [***19] ("Doubts [concerning calculation of damages] are generally resolved against the party in breach").

In this case, we conclude that plaintiffs did show a reasonably accurate and fair basis for the computation of lost profits. A jury could find that a contract existed between the parties and that Westminster canceled its contract with plaintiffs, thus breaching that contract. If the jury concludes that there was breach of contract, it is

certain that plaintiffs are entitled to some damages, although it is uncertain how much. That is a question that must ultimately be decided by the jury, acting, as in other cases, "upon reasonable inferences and estimates." *West Haven Sound Dev. Corp. v. West Haven*, 201 Conn. 305, 514 A.2d 734, 742 (1986) (quoting *Burr v. Lichtenheim*, 190 Conn. 351, 460 A.2d 1290, 1295 (1983)), appeal after remand, 207 Conn. 308, 541 A.2d 858 (1988). In the circumstances presented, we do not believe that the jury would be called upon to engage in "mere speculation." *American Sanitary Sales, supra*, 178 N.J. Super. at 436, 429 A.2d 403. As we said there,

The ideal of a judicial system is perfect justice. However, [***20] in a case where, as here, absolute precision in fixing damages may not be attainable, we should not hesitate to seek essential justice. It would be a travesty to deny a plaintiff essential justice because the absence of means for precision precludes perfect justice.

Id. at 435, 429 A.2d 403.

[*428] VAL and 3L provided enough evidence of damages to show that a "genuine issue of material fact" did exist. *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540, 666 A.2d 146 (1995). They are permitted to have a jury assess the veracity of their claim and award such damages, if any, as are warranted.⁹

9 To the extent that plaintiffs' lost profits claim does not include their out of pocket expenditures, they are free to prove those actual expenses at trial.

[**633] Reversed and remanded for trial.

144HB5

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EXHIBIT 20



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Parcel Information

Parcel ID 756-730-4292

Parcel Address 133 BROOKSCHASE LN

Transfer History

Sale Date	Sale Price	Deed Book	Page	Owner	Validity of Sale	# of Parcels
06/02/2008	\$550,000	4521	1489	GRAVES BRENT L & S T L	Land Only Sale	1
03/03/2006	\$400,000	4077	922	REED FRANK J.III	Land Only Sale	1
01/01/1996	\$0	2627	1649	HUTCHENS WILLIS F & S L	Gift/Partial Int. Etc.	
09/01/1995	\$150,000	2608	586	HUTCHENS WILLIS F		
06/01/1991	\$152,000	2296	346	HARMON CUSTOM HOMES INC		

Assessment Information

Year	Date	Land	Land Use	Improvements	Total
2011	03/10/2011	\$300,000		\$0	\$300,000
2010	01/08/2010	\$325,000		\$0	\$325,000
2009	01/21/2009	\$325,000		\$0	\$325,000
2008	01/07/2008	\$325,000		\$0	\$325,000
2007	10/03/2006	\$325,000		\$0	\$325,000
2006	02/09/2006	\$275,000		\$0	\$275,000
2005	09/22/2004	\$275,000		\$0	\$275,000
2004	12/19/2003	\$180,000		\$0	\$180,000
2003	06/03/2002	\$180,000		\$0	\$180,000
2002	02/28/2002	\$180,000		\$0	\$180,000
2001	09/05/2000	\$180,000		\$0	\$180,000
2000	05/07/1999	\$180,000		\$0	\$180,000
1999	05/07/1999	\$180,000		\$0	\$180,000
1998	04/21/1997	\$150,000		\$0	\$150,000
1997	01/01/1997	\$150,000		\$0	\$150,000

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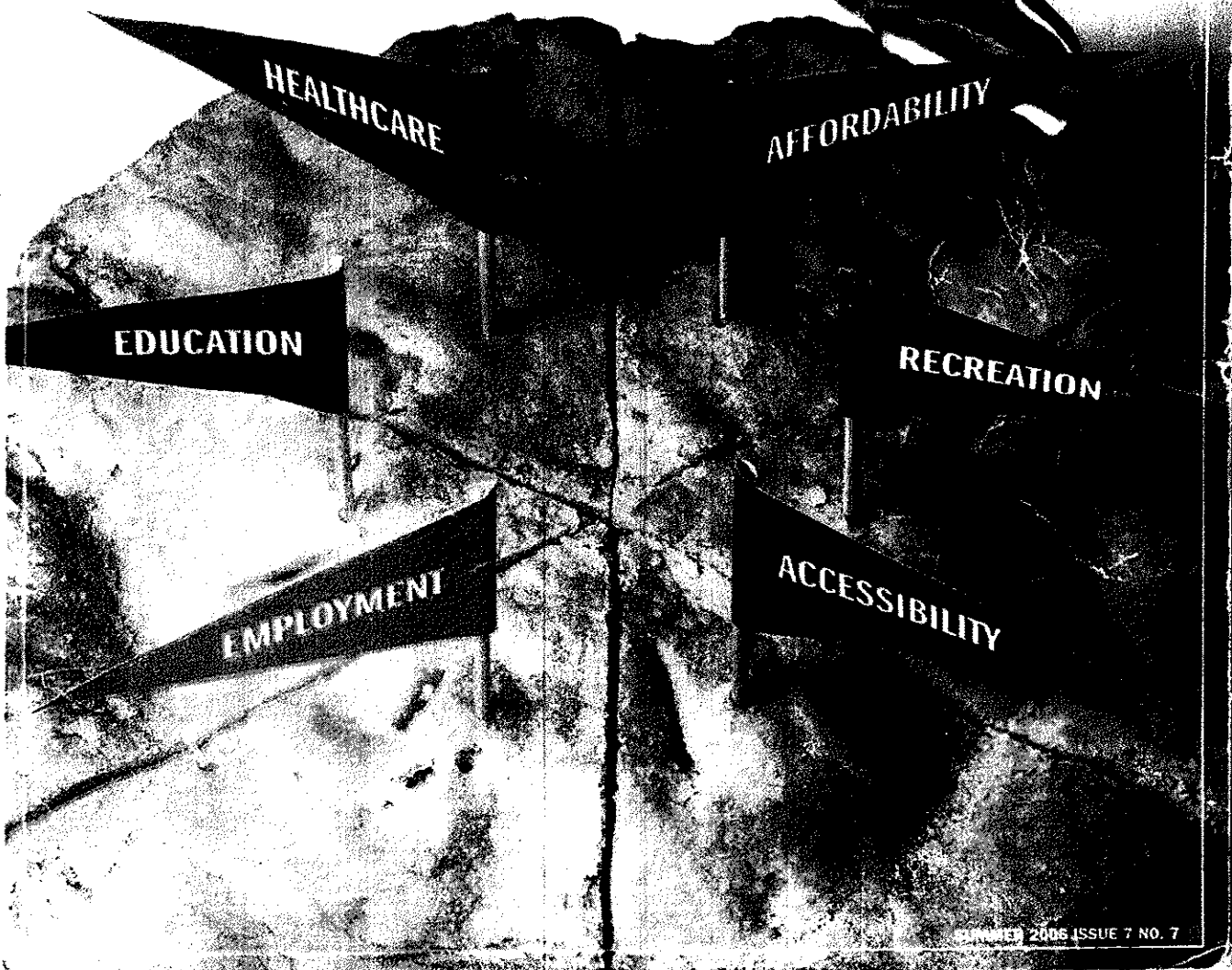
A Grand New Hospital
Henrico Doctors' Expansion p. 2

Batter Up!
Tuckahoe Little League p. 24

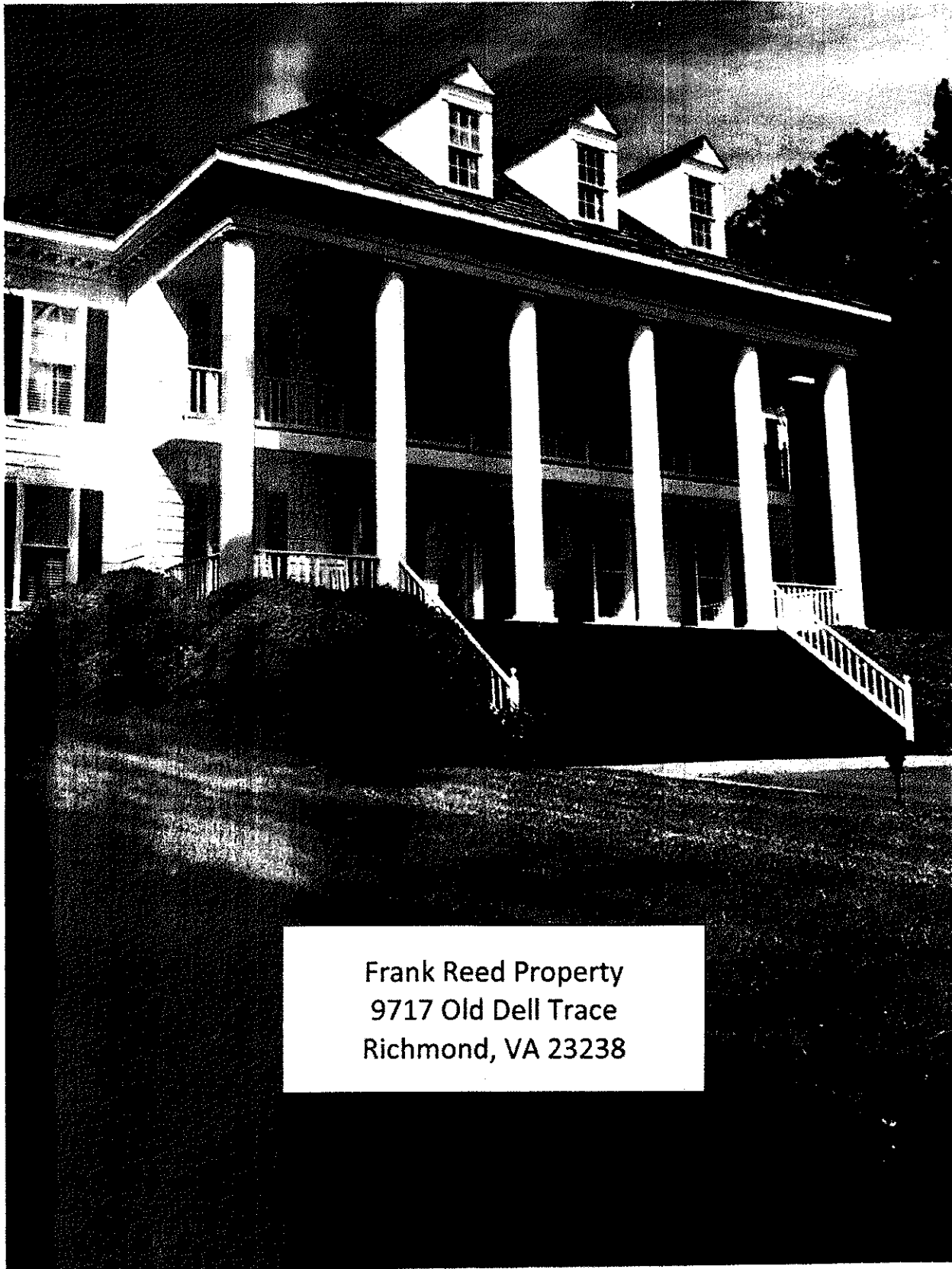
HENRICO

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SPRING 2006 ISSUE 7 NO. 7



Frank Reed Property
9717 Old Dell Trace
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NOTABLE NEIGHBORHOODS

*T*HE WORD "NEIGHBORHOOD" COMES FROM THE MIDDLE ENGLISH. NIGHBOER, a farmer (boer) who lived close (nigh), and hood, a suffix which denoted one's unique condition or character. Ultimately then, the first neighborhoods developed among people who felt a close affinity for one another, both in terms of shared responsibility and social class. Neighbors looked out for one another, lent a hand, swapped stories, offered solace. Neighborhoods reflected the aspirations of the residents and recreated the values of their social class in the children who grew up there.

How good it is to find a home that reflects your highest aspirations; how much better to find it in a neighborhood that embraces you, draws you in, makes you and your family better and more involved. In Henrico County, many such neighborhoods beckon.

RIVER ROAD

For many, Richmond, Virginia conjures up images of the Old South: stately homes situated on gracious, tree-lined streets; a slow pace of life where iced tea or a Mint Julep can be savored on a screened porch during a long sleepy afternoon; children playing on broad green lawns under a sultry summer sun. Remarkably, the image lives on in one of Henrico County's oldest neighborhoods.

The River Road corridor, stretching from the Richmond city line at its eastern terminus to Goochland County in the west, charts a course along the James River. Along the way, it encompasses many of Metropolitan Richmond's most prestigious addresses. Drive west on River Road into Henrico County and the first impression you get is "Old Money." These homes are not the cookie-cutter construction of new development, but uniquely personal creations, each situated on a spacious lot with long-established trees and gently manicured plantings. While a few are the definition of ostentatious display, most of the homes along this stretch of road are the model of understated elegance.



*Shake into cedar
and other blends
down the lake
path, never play
scotchball at the
end of the court-
house out-the-way.
new movies from
scotchball on the
waterfalls —
you can't help
but smile*

With homes starting at \$200,000 in Twin Hickory and spanning into millions for estates in Windsor on the James, newcomers to Henrico County have a range of options to fit their wallet.



As River Road passes the newly redesigned Tuckahoe Course of the Country Club of Virginia, town shops give way to the ivy-covered homes and stunning campus of the University of Richmond. As you pass Forest Avenue, take a left into the secluded Windsor on the James. The all-brick mansions in this small, exclusive neighborhood are meant to impress with vast, manicured lawns and Georgian grandeur.

More typical of the homes along River Road, however, is the well-established neighborhood of Mooreland Farms. Every lot is different and every home is unique. The architecture runs from '70s era tri-levels, Dutch Colonials, and traditional Cape Cods to energy-efficient homes with vast walls of windows, and multi-storied homes that seem to mold themselves to the terrain. With creative landscaping, homeowners have put to advantage the steeply rolling hills that rise up from the James River, creating shade gardens and terraced lawns. The mood here is gracious living. A long-established neighborhood, Mooreland Farms is an area in transition. Long time residents share the streets with young, well-to-do families. The result is a real neighborhood feel.

GRAYSON HILL

Don't want the hassle of a lawn? Prefer to spend your money on the inside of your home than the

outside? Condo living may be for you. In the past five years, the Richmond area has become crazy for luxury condos and townhomes, and Henrico County is helping to scratch that itch. Development has begun in the east end of the County at Rockett's Landing. In the west end, Gumenick Properties is meeting market demand with Grayson Hill.

Situated on 50 acres of prime real estate at the corner of Patterson Ave. and Gaskins Road, Grayson Hill offers five distinct floor plans in a wide range of prices, from the upper \$300s to the \$600s. The brick architecture is reminiscent of traditional 18th century colonial buildings with amenities that are typical of upscale, luxury living: hardwood floors throughout the common areas, granite countertops in the kitchen, and massive master suites.

Grayson Hill is trying hard to create ample open spaces to give the feel of a rambling English country garden to its layout. All of the homes feature 2-car garages, so the property will avoid the look of a parking lot. With a large lake bisecting the planned layout, and a concerted effort to maintain as many of the trees as possible, the developers have tried hard to match the elegance of the landscaping to the elegance of the homes.

The first homes went on sale a year ago and response was strong, with deposits on more than 40% of the homes offered in the first phase. Another 19 homes were offered for sale this spring with reservation agreements on another 18. Less than a quarter of the homes have yet been offered for sale. With shopping and dining nearby, easy access to all the major highways, and ample recreation just minutes away, demand is sure to be strong for the remaining homes.

TWIN HICKORY

When new businesses move to town, their employees are understandably concerned. Where will we live? How much will it cost? Are the schools good? Are there good restaurants, nice shops, friendly people? A drive to Henrico County's Twin Hickory development answers all of their questions.

In the far west end of Henrico County, Twin Hickory is a mixed, residential development of

Location of Lot

apartments, town homes, affordable single family homes, and upscale residences. This new development already has the feel of home. Drive down the streets and you know you are in a well-planned community. Most of the homes are brick front Transitionals, and family is the theme. Everywhere you look there are children. Basketball hoops dot the side of the road. Wood-towered playgrounds dominate many backyards. Frisbees are flying. Kids ride bikes and roller blade down the bike path, teens play stickball at the end of the countless cul-de-sacs, new moms push strollers on the sidewalks (a new development with sidewalks!) — you can't help but smile.

Students in the Twin Hickory zone attend Deep Run High School and its excellent feeder schools. Only in its fourth year, Deep Run has already made a name for itself. It is consistently one of the top scoring schools in Virginia on State Standards of Learning tests. In addition, the school has also already won multiple state championships in athletics.

For recreation, the location can't be beat. Movie theaters, soccer fields, an ice skating rink, bowling alleys, driving ranges, and a top-rated golf course are all just minutes away. Dining options are endless, with the upscale Short Pump Town Center and all its perimeter shops just down the street. At one end of the development, the Shady Grove YMCA draws hundreds of people every day; a new Recreation Center is under construction across the street. At the other end of the development, the Short Pump Community Center is also under construction.

The suburbs are about family: providing the best for your children and taking advantage of all the amenities at an affordable price. Twin Hickory has all of this and is an attractive option for people relocating to Richmond.

At its best, a home is an extension of a family's personality. For some the quest for precisely manicured boxwoods and razor sharp edges between their

perfect lawn is the highest aspiration, a form of genteel elegance that once was the purview of only the wealthiest country squire. For others, nothing more fully expresses filial bliss than an endless array of primary-colored toys strewn about a well-traveled yard: part playpen, part dog run. For others, an elegantly appointed home, maintenance free, in a close-knit urban community of like-minded souls is the ideal.

Henrico County has it all and prides itself on being a great place to live, work, and raise a family, with friendly people, an affordable cost of living, great schools, and an ideal location. In an era when neighborhoods have become geographical expressions only, it is nice to know that there are still places you can live and work where you feel connected, not cut off. Stuck within our McMansions, frozen to stone by the Medusan glare of cable TV, desperately seeking connection and solace in internet chatrooms with people we will never see, we may never even know the people next door. But it doesn't have to be that way. Open your door, meet your neighbors, share your dreams. ■

The luxurious feel of Grayson Hill (above) is helping to meet the demand for upscale condos and townhomes in Henrico County.

In an era when neighborhoods have become geographical expressions only, it is nice to know that there are still places you can live and work where you feel connected, not cut off.



This listing's listed price is an estimate only of total price, value of specific features, etc.

EXHIBIT 21

My name is the Skipper for some

from Jordan. Under

New York

From the past will pick up this fax

we have been contacted that it is working

Thank you

Bill

To Whom It May Concern:

My name is Nathan Sowder, and I am a draftsman.

In 2007 Frank Reed paid for, and I completed for him, a full set of construction plans for a 1 bedroom 10
bathroom house that he intended to build on his lot at 133 Brookchase Henrico (Richmond) VA 23229.

If you have any questions please feel free to contact me.

Sincerely,

Nathan Sowder

[Handwritten signature]

EXHIBIT 22

**Office of the Comptroller of the Currency
Board of Governors of the Federal Reserve System**

**JUNE 21, 2012
FINANCIAL REMEDIATION FRAMEWORK
FOR USE IN THE INDEPENDENT FORECLOSURE REVIEW**

In April 2011, federal banking regulators issued enforcement orders against 14 large mortgage servicers for deficient mortgage servicing and foreclosure practices. The orders required those servicers to retain independent consultants to conduct a comprehensive review of foreclosures that were in process or completed in 2009 or 2010 (the Independent Foreclosure Review) to identify financial injury to borrowers that resulted from errors, misrepresentations, and other deficiencies in the foreclosure process. The Independent Foreclosure Review also requires those servicers to provide compensation or other remediation for identified financial injury.

The OCC and FRB have developed a financial remediation framework (the Framework) that provides examples of situations where compensation or other remediation is required for financial injury due to servicer errors, misrepresentations, or other deficiencies. The independent consultants will use the Framework to recommend remediation for financial injury identified during the Independent Foreclosure Review. The servicers will prepare remediation plans based on the independent consultants' recommendations. The federal banking regulators must approve each servicer's remediation plan.

The categories included in the Framework are not intended to be exhaustive or to cover all possible situations or remediation options for borrowers who may require compensation or other remediation for financial injury. It is important to read the Frequently Asked Questions (FAQs) that accompany the Framework to understand how remediation will work.

OCC FRB Financial Regulation Framework
Independent Foreclosure Review

No.	CATEGORY	ERROR	DESCRIPTION	FORECLOSURE IN PROCESS (AT TIME OF REMEDIATION)		FORECLOSURE COMPLETE (AT TIME OF REMEDIATION)	
				Remedy	Dollar Payment	Remedy	Dollar Payment
1	Servicemembers Civil Relief Act (SCRA)	SCRA violation	Servicer foreclosed on a borrower in violation of the SCRA.	Suspend foreclosure.	N/A	Rescind foreclosure when possible; pay \$15,000, correct servicer record for any improper amounts, and correct credit reports.	\$15,000
						If rescission of foreclosure is not possible; pay \$125,000 plus equity, remedy deficiency, and correct credit reports.	\$125,000 plus equity
2	Borrower Not in Default	Borrower not in default when foreclosure occurred or in default as direct result of servicer error	Servicer initiated foreclosure or foreclosed on borrower who was not in default on mortgage or in default only directly due to servicer error.	Cancel foreclosure; pay \$5,000, correct servicer record for late fees, foreclosure fees, and/or any other improper amounts, and correct credit reports.	\$5,000	Rescind foreclosure when possible; pay \$15,000, correct servicer record for any improper amounts, and correct credit reports.	\$15,000
						If rescission of foreclosure is not possible; pay \$125,000 plus equity, remedy deficiency, and correct credit reports.	\$125,000 plus equity
3a	Error after Trial Loan Modification Completed	Failure to convert written trial-period plan to permanent modification	Servicer failed to convert borrower to permanent modification after successful completion of written trial-period plan.	Suspend foreclosure as required by program; pay \$5,000, provide permanent loan modification, correct servicer record for any improper amounts, and correct credit reports.	\$5,000	Rescind foreclosure when possible and provide permanent loan modification; pay \$15,000, correct servicer record for any improper amounts, and correct credit reports.	\$15,000
				If servicer cannot provide permanent loan modification; pay \$35,000, correct servicer record for any improper amounts, and correct credit reports.	\$35,000	If rescission of foreclosure is not possible; pay \$125,000 plus equity, remedy deficiency for any improper amounts, and correct credit reports. Servicer may offset missed and unpaid principal & interest payments and property taxes paid on behalf of the borrower, subject to certain limitations.	\$125,000 plus equity, less offset

OCC FRB Financial Reporting Framework
Independent Foreclosure Review

No.	CATEGORY	ERROR	DESCRIPTION	FORECLOSURE IN PROCESS (AT TIME OF REMEDIATION)		FORECLOSURE COMPLETE (AT TIME OF REMEDIATION)	
				Remedy	Dollar Payment	Remedy	Dollar Payment
3b	Error after Trial Loan Modification Approved	Foreclosure completed during written trial-period plan for a permanent modification	Servicer foreclosed on borrower prior to expiration of written trial-period plan while borrower was performing all requirements of the written trial-period plan.	N/A	N/A	Rescind foreclosure when possible and provide trial-period plan; pay \$15,000, correct servicer record for any improper amounts, and correct credit reports. If rescission of foreclosure is not possible; pay \$125,000 plus equity, remedy deficiency for any improper amounts, and correct credit reports. Servicer may offset missed and unpaid principal & interest payments and property taxes paid on behalf of the borrower, subject to certain limitations.	\$15,000 \$125,000 plus equity, less offset
4	Forbearance Plan	Foreclosure completed when borrower performing under documented forbearance plan	Servicer completed foreclosure on borrower before documented forbearance period expired while borrower was meeting all requirements of documented forbearance plan.	N/A	N/A	Rescind foreclosure when possible; pay \$15,000, correct servicer record for any improper amounts, and correct credit reports. If rescission of foreclosure is not possible; pay \$60,000 plus equity, remedy deficiency for any improper amounts, and correct credit reports. Servicer may offset missed and unpaid principal & interest payments and property taxes paid on behalf of the borrower, subject to certain limitations.	\$15,000 \$60,000 plus equity, less offset

OCC FRB Financial Remediation Framework
Independent Foreclosure Review

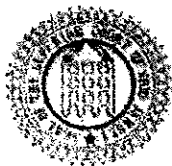
No.	CATEGORY	ERROR	DESCRIPTION	FORECLOSURE IN PROCESS (AT TIME OF REMEDIATION)		FORECLOSURE COMPLETE (AT TIME OF REMEDIATION)	
				Remedy	Dollar Payment	Remedy	Dollar Payment
5	Loan Modification Application	Loan modification denied in error, or complete loan modification application where borrower would have qualified was never decisioned	Servicer denied borrower application for loan modification that should have been approved, or servicer failed to decision complete loan modification application for which borrower would have qualified.	Suspend foreclosure as required by program and where loan modification permitted based on past documentation; pay \$2,500, provide loan modification for which borrower should have been approved, correct servicer record for excess interest, late fees, foreclosure fees, and/or any other improper amounts, and correct credit reports.	\$2,500	Rescind foreclosure and provide loan modification for which borrower should have been approved based on past documentation when possible; pay \$5,000, correct servicer record for excess interest, late fees, foreclosure fees, and/or any other improper amounts, and correct credit reports.	\$5,000
6	Loan Modification Application	No follow up on loan modification application	Servicer never followed up to obtain complete loan modification documents as required under HAMP or other program designated by regulator.	Suspend foreclosure as required by program and where loan modification not permitted based on past documentation; pay \$10,000, offer existing loan modification or other loss mitigation programs, correct servicer record for excess interest, late fees, foreclosure fees, and/or any other improper amounts, and correct credit reports.	\$10,000	If either rescission of foreclosure is not possible or where loan modification not permitted based on past documentation; pay \$15,000 plus equity, remedy deficiency for excess interest, late fees, foreclosure fees, and/or any other improper amounts, and correct credit reports.	\$15,000 plus equity
7	Loan Modification Application	Never solicited loan modification	Servicer never solicited borrower loan modification option as required under HAMP or other program designated by regulator.	Pay \$2,000 and offer existing loan modification or other loss mitigation programs.	\$2,000	Pay \$2,000.	\$2,000
8	Loan Modification Application	Failed to approve modification in prescribed timeframe	Servicer approved borrower loan modification under HAMP or other program designated by regulator, but did not make decision within required timeframe.	Pay \$1,000 and offer existing loan modification or other loss mitigation programs.	\$1,000	Pay \$1,000.	\$1,000
				Correct servicer record for excess interest accrued by borrower.	N/A	Remedy deficiency for excess interest.	N/A

**OCC FRB Financial Remediation Framework
Independent Foreclosure Review**

No.	CATEGORY	ERROR	DESCRIPTION	FORECLOSURE IN PROCESS (AT TIME OF REMEDIATION)		FORECLOSURE COMPLETE (AT TIME OF REMEDIATION)	
				Remedy	Dollar Payment	Remedy	Dollar Payment
9	Loan Modification	Used wrong interest rate in an approved modification	Servicer error resulted in loan modification with higher interest rate than borrower should have been charged under HAMP or other loan modification program designated by regulator.	Correct servicer record for excess interest accrued by borrower.	N/A	Remedy deficiency for excess interest.	N/A
10	Bankruptcy	Bankruptcy	Servicer initiated foreclosure or foreclosed on borrower who was protected by federal bankruptcy law.	Remediation determined on a case-by-case basis as bankruptcy law dictates.			
11	No Standing	Servicer did not have standing to foreclose	Servicer initiated foreclosure or foreclosed on borrower, but lacked standing to foreclose.	Remediation determined on a case-by-case basis as state law dictates.			
12	Notice	Servicer failed to provide legally sufficient notice	Servicer initiated foreclosure or foreclosed on borrower and either failed to provide any notice or legally sufficient notice as required under state law.	Remediation determined on a case-by-case basis as state law dictates.			
13	General	Error caused financial injury	Servicer error occurred that did not directly cause foreclosure, but did directly result in financial injury to borrower.	Suspend foreclosure where appropriate, correct servicer record for amounts in error and/or reimburse borrower for amounts paid in error, plus interest; correct credit reports and pay \$500 for credit reporting error.	Case-by-case basis	Remedy deficiency for amounts in error and/or reimburse borrower for amounts paid in error, plus interest; and where required, correct credit reports and pay \$500 for credit reporting error.	Case-by-case basis

EXHIBIT 23

Superior Court of New Jersey Civil Motion Calendar Case Detail



Civil Part, Special Civil Part and Chancery-General Equity

Available data from 6/30/2010 to 8/11/2010, Last Update as of 7/14/2010.

This is the expanded version of your query.
To refine your results, return to the main calendar page, click on the "Search" button.
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Venue BURLINGTON **Docket #** L-001526-10 **Court** LCV
Proceeding Date 7/9/2010 **Proceeding Time** 900 A M **Court Room** 4B
Proceeding Status COMPLETE **Case Filed Date** 5/10/2010
Calendar Type MOTION HEARING **Judge Name** MARC M BALDWIN
Caption REED VS GMAC MORTGAGE LLC
Motion Type MOTION FOR DISMISSAL
Motion Status DENIED **Scheduled Hearing Date** 7/9/2010
Oral Argument Requested N **Granted** N **Granted Date**
Motion Comment FAILURE TO STATE A CLAIM

Atty Name	Party Name	Party Type	Filing Party
JEFFREY S. WALTERS	FRANK J. REED	PF	
FLEISCHER & FLEISCHER	GMAC MORTGAGE LLC	DF	F
JEFFREY S. WALTERS	CHRISTINA A. REED	PF	
FLEISCHER & FLEISCHER	CORP RESIDENTIAL FUNDING	DF	F
(ATTORNEY REQUIRED)	DOES 1-30 JOHN	DF	

LAW OFFICES OF JEFFREY S. WALTERS, LLC

3000 Atrium Way Suite 2201

Mount Laurel, NJ 08054

Telephone: (856) 552-1045

Telecopier: (856) 974-8859

Attorneys for Plaintiffs

**FRANK J. REED III and CHRISTINA
A. REED,**

Plaintiff,

v.

**GMAC MORTGAGE LLC,
RESIDENTIAL FUNDING CORP.
and JOHN DOES 1-30, Individually,
Jointly, Severally and in the
alternative,**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION**

BURLINGTON COUNTY

Docket No: L-1526-10

CIVIL ACTION

**BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

STATEMENT OF FACTS

On or about May 19, 2008, Defendant filed a Complaint for Foreclosure in the Superior Court of New Jersey, Chancery Division, General Equity Part, Docket No. F-19177-08, seeking to foreclose Plaintiffs' equity of redemption in their home. On or about May 28, 2008, Defendant, through its agents, caused a Lis Pendens to be recorded with the Burlington County Clerk. Defendant failed to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act prior to filing its Complaint for Foreclosure on or about May 19, 2008. As a result, the Court dismissed the foreclosure case. Plaintiff has filed the instant case, which asserts a cause of action against Defendants for negligence and breach of contract. Defendants have moved to dismiss, contending that the Complaint fails to state a claim.

LEGAL ARGUMENT

POINT I: DEFENDANTS' ASSERTION THAT THE COMPLAINT FAILS TO STATE A CLAIM IS CLEARLY WITHOUT MERIT

Defendants' motion can be easily rejected. Plaintiffs' cause of action is for negligence. Specifically, Plaintiffs contend that Defendant had a legal duty to exercise care and to refrain from filing a foreclosure complaint prior to providing Plaintiffs with the Notice of Intent to Foreclose required by the Fair Foreclosure Act. The Fair Foreclosure Act requires that such Notice of Intent be served, by both regular and certified mail, before instituting such proceedings. N.J.S.A. 2A:50-56. Defendant failed to serve the Notice before filing its Complaint. Furthermore, Defendant filed a Lis Pendens after improperly filing the Complaint. Plaintiffs allege that Defendant deviated from the standard of care owed to them, and that Defendant's negligence proximately caused them economic injury. Defendant's assertion that negligence is not a viable claim simply lacks merit.

While the violation of a statute is not necessarily negligence per se, a statute creates standards of conduct, the "violation of which a jury in a negligence action should take into consideration in arriving at their ultimate determination of negligence." Horbal v. McNeil, 66 N.J. 99, 103 (1974). It has also been said that statutory violations are "evidence of negligence." Id. The question of whether Defendants were negligent, that is, whether they deviated from their standard of care, and whether such deviation was the proximate cause of Plaintiffs' economic damages, is one for a jury. There is simply no basis for Defendants to assert that the Complaint fails to state a claim. Notably, Defendants fail to cite any law for their proposition.

Furthermore, the Complaint asserts a cause of action in contract; that is, that Defendants had a contractual duty to first serve a Notice of Intent to Foreclose before proceeding with a foreclosure action.

Defendants observe that our courts have dismissed foreclosure actions when the lender could not demonstrate that a Notice of Intent to Foreclose was duly served on the borrower. See EMC Mortgage Corp. v. Chaudri, 400 N.J. Super. 126 (App. Div. 2008). While that is correct, it is patently irrelevant to the issue at hand, and certainly does not support Defendants assertion that Plaintiff has failed to state a claim. Defendant seems to be saying that the dismissal of the foreclosure action is sufficient relief for a borrower, and that a borrower should not be able to bring a civil action against the lender for negligence. Defendants apparently make the grand leap to that conclusion, with absolutely no support whatsoever. Defendants do not cite any law whatsoever for their conclusion.

In fact, the Fair Foreclosure Act on its face contradicts Defendants' argument. Specifically, it provides:

The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court ***and of any other right or remedy the debtor may have as a result of the failure to give such notice.*** N.J.S.A. 2A:50-56(e) (emphasis added).

Clearly, Plaintiffs are perfectly justified in prosecuting a civil action for negligence as a "right or remedy" for Defendant's failure to give notice.

Plaintiffs assert in their Complaint that Defendants failed to exercise the required standard of care, and negligently and/or recklessly filed a Complaint for Foreclosure and recorded a Lis Pendens against Plaintiffs' property without first discharging its statutory duty to provide a "notice of intention" as required by the Fair Foreclosure Act. Plaintiffs further assert that at the time of such improper filing, Plaintiffs were in the process of consummating financial transactions which, as a proximate result of Defendants' negligent and/or reckless conduct, were not consummated and which, but for Defendant's negligent and/or reckless conduct, would have been consummated. Plaintiffs further assert that at all relevant times, Defendants knew or should have known that a

foreclosure filing and Lis Pendens recording would severely compromise Plaintiffs' financial dealings, including but not limited to Plaintiffs' ability to obtain credit. Plaintiffs had a reasonable expectation that until such time as they would receive the proper statutory notice followed by the passage of the thirty (30) day period required by law, that they would have the ability to pursue their financial dealings in peace, free from the devastating effects that a foreclosure filing and Lis Pendens would inflict upon them. As further set forth in the Complaint, but for the negligent and reckless conduct of Defendants in prematurely filing a Complaint for Foreclosure and recording a Lis Pendens, Plaintiffs would have consummated a refinance transaction with another lender which would have paid off the mortgage and allowed them to cash out equity. Defendants' negligent and reckless actions made it impossible for Plaintiffs to consummate their financial transactions which had been pending, and destroyed Plaintiffs' credit and future ability to reinstate or pay off the mortgage loan as is permitted by the Fair Foreclosure Act. The fact that the foreclosure was ultimately dismissed nearly a year later did nothing to undo the catastrophic damage caused by Defendants' negligence. Clearly, these are triable issues of fact for a jury.

CONCLUSION

For all of the foregoing reasons, the Plaintiffs respectfully submit that Defendants' motion to dismiss for failure to state a claim should be denied.

Respectfully submitted,

LAW OFFICES OF JEFFREY S. WALTERS, LLC



Dated: June 30, 2010

By: _____
JEFFREY S. WALTERS

EXHIBIT 24

LAW OFFICES OF JEFFREY S. WALTERS, LLC
3000 Atrium Way Suite 2201
Mount Laurel, NJ 08054
Telephone: (856) 552-1045
Telecopier: (856) 974-8859
Attorneys for Plaintiffs

**FRANK J. REED III and CHRISTINA
A. REED,**

Plaintiff,

v.

**GMAC MORTGAGE LLC,
RESIDENTIAL FUNDING CORP.
and JOHN DOES 1-30, Individually,
Jointly, Severally and in the
alternative,**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION**

BURLINGTON COUNTY

Docket No: **BUR-L-1526-10**

CIVIL ACTION

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

Plaintiffs, whose post office address is 9717 Old Dell Trace, Richmond, VA 23238, by way
of Complaint against the Defendants say:

FIRST COUNT

1. At all times pertinent hereto, Defendant GMAC Mortgage LLC was a Limited Liability Company duly organized and existing under and by virtue of the laws of one of the fifty states, and authorized to do business in the State of New Jersey, having an address of 1100 Virginia Drive, Fort Washington, Pennsylvania 19034.

2. At all times pertinent hereto, Defendant Residential Funding Corp. was a corporation duly organized and existing under and by virtue of the laws of one of the fifty states, and authorized to do business in the State of New Jersey, having an address of 1 Meridian Crossings Suite 100, Minneapolis, Minnesota 55423.

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DEPUTY
SUPERIOR
COURT
BURLINGTON

3. At all times pertinent hereto, Defendants John Doe 1-30 were individuals or entities who were employees, agents or subcontractors of the non-John Doe Defendants, or employees, agents or subcontractors of such agents or subcontractors, and who, as employees, agents or in any other capacity, were responsible for insuring that the non-John Doe Defendants were in compliance with their statutory duties, including but not limited to their duty to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act and to refrain from failing to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act.

4. At all times pertinent hereto, Defendant GMAC Mortgage LLC was the owner of a mortgage executed by Plaintiffs which encumbered real property owned by Plaintiffs, said property being known as 817 Matlack Drive, Moorestown, New Jersey 08057 ("the Property").

5. At the time the causes of action stated herein arose, Plaintiffs resided at the Property.

6. On or about December 30, 2009, Defendant GMAC Mortgage LLC transferred ownership of said mortgage to Defendant Residential Funding Corp.

7. The mortgage which encumbered the Property was a "Residential Mortgage" as that term is defined in the Fair Foreclosure Act, NJSA 2A:50-53 et seq.

8. Under the Fair Foreclosure Act, Defendant GMAC Mortgage LLC was statutorily prohibited from commencing any foreclosure action to take possession of the Property until Defendant provided Plaintiffs with a "notice of intention" in form and content as provided in the Fair Foreclosure Act, and over 30 days in advance of commencing any foreclosure action.

9. On or about May 19, 2008, Defendant GMAC Mortgage LLC filed a Complaint for Foreclosure in the Superior Court of New Jersey, Chancery Division, General Equity Part, Docket No. F-19177-08, seeking to foreclose Plaintiffs' equity of redemption in the Property.

10. On or about May 28, 2008, Defendant GMAC Mortgage LLC, through its agents, caused a Lis Pendens to be recorded with the Burlington County Clerk.

11. Defendant GMAC Mortgage LLC failed to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act prior to filing its Complaint for Foreclosure on or about May 19, 2008.

12. At all times herein, Defendant GMAC Mortgage LLC had a statutory duty to refrain from filing a Complaint for Foreclosure against the Property and Plaintiffs until such time as Defendant properly served Plaintiffs with "notice of intention" required by the Fair Foreclosure Act.

13. At all times herein, Defendant GMAC Mortgage LLC had a duty to Plaintiffs to exercise care to refrain from violating Defendant's statutory duty as set forth above.

14. Defendant GMAC Mortgage LLC failed to exercise the required standard of care, and negligently and/or recklessly filed a Complaint for Foreclosure and recorded a Lis Pendens against the Property and Plaintiffs without first discharging its statutory duty to provide a "notice of intention" as required by the Fair Foreclosure Act.

15. At the time Defendant GMAC Mortgage LLC improperly and negligently filed its Complaint for Foreclosure and Lis Pendens, Plaintiffs were in the process of consummating financial transactions which, as a proximate result of Defendant's negligent and/or reckless conduct, were not consummated and which, but for Defendant's negligent and/or reckless conduct, would have been consummated.

16. At all relevant times herein, Defendant GMAC Mortgage LLC knew or should have known that a foreclosure filing and Lis Pendens recording would severely compromise Plaintiffs' financial dealings, including but not limited to Plaintiffs' ability to obtain credit in the future.

17. As a direct and proximate result of said Defendant's negligent and/or reckless conduct, Plaintiffs suffered damages and continue to suffer damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

SECOND COUNT

1. The prior Count is referred to herein and made a part of this Count, but for the sake of brevity is not repeated in its entirety.

2. The financial transaction secured by the mortgage on the Property was a contractual agreement between Defendant GMAC Mortgage LLC and Plaintiffs.

3. The statutory obligation to provide the "notice of intention" required by the Fair Foreclosure Act was a term of the contractual agreement between Defendant GMAC Mortgage LLC and Plaintiffs.

4. In failing to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act prior to filing its Complaint for Foreclosure on or about May 19, 2008, Defendant GMAC Mortgage LLC breached the aforesaid contractual agreement.

5. As a direct and proximate result of said Defendant's breach of the contractual agreement, Plaintiffs suffered damages and continue to suffer damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

THIRD COUNT

1. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

2. Defendant Residential Funding Corp., as the owner of the mortgage as of December 30, 2009, undertook liability for the actions of its predecessor-in-interest Defendant GMAC Mortgage LLC as described herein, or is otherwise liable for the actions thereof as described herein.

WHEREFORE, Plaintiffs demand judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

FOURTH COUNT

1. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

2. At all times pertinent hereto, Defendants John Doe 1-30 were individuals or entities who, as employees, agents or in any other capacity, were responsible for insuring that the non-John Doe Defendants were in compliance with their statutory duties, including but not limited to their duty to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act and to refrain from failing to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act.

3. At all times pertinent hereto, Defendants John Doe 1-30 committed certain actions and/or failed to take certain actions in a careless, negligent and reckless manner and thereby caused harm and injuries to the Plaintiffs.

4. As a direct and proximate result of the aforesaid negligence, carelessness and recklessness of Defendants John Doe 1-30, and/or their employees and/or agents, Plaintiffs suffered damages and continue to suffer damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

FIFTH COUNT

1. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

2. But for the negligent and reckless conduct of Defendants in prematurely filing a Complaint for Foreclosure and recording a Lis Pendens, Plaintiffs would have consummated a refinance transaction with another lender which would have paid off Defendant's mortgage.

3. Defendants, by its/their negligent and reckless actions in prematurely filing a Complaint for Foreclosure and recording of a Lis Pendens, made it impossible for Plaintiffs to procure the funds to pay off Defendant's mortgage, and furthermore, destroyed Plaintiffs' credit and future ability to reinstate or pay off the mortgage loan as is permitted by the Fair Foreclosure Act.

4. As a result of Defendants' actions in negligently and recklessly destroying Plaintiffs' credit and rendering Plaintiffs without the ability to take advantage of Plaintiffs' statutory rights, Defendant GMAC Mortgage LLC, its successor-in-interest Defendant Residential Funding Corp. and any other successor-in-interest should be estopped from instituting another foreclosure action against Plaintiffs and the Property.

WHEREFORE, Plaintiffs demand judgment against Defendants estopping them from instituting another foreclosure action against Plaintiffs and the Property, and for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorney for Plaintiffs

BY: 
JEFFREY S. WALTERS

DATED: May 7, 2010

DESIGNATION OF TRIAL COUNSEL

Pursuant to New Jersey Court Rule 4:25-4, Jeffrey S. Walters, Esq. is designated as trial counsel for the Plaintiffs in the above matter.

JURY DEMAND

Plaintiffs demand trial by a jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorneys for Plaintiffs

By: 
JEFFREY S. WALTERS

Dated: May 7, 2010

CERTIFICATION

Pursuant to New Jersey Court Rule 4:5-1, the plaintiffs hereby certify that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding, to the best of plaintiff's knowledge or belief. The plaintiffs further certify that plaintiffs have no knowledge of any contemplated action or arbitration proceeding regarding the subject matter of this action and that, other than the parties set forth in this pleading, the plaintiffs are not aware of any other parties who should be joined in this action. In addition, plaintiffs recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorneys for Plaintiffs

By: 
JEFFREY S. WALTERS

Dated: May 7, 2010

EXHIBIT 25

For release at 2:30 p.m. EST
December 13, 2011

Statement of

Scott G. Alvarez

General Counsel

Board of Governors of the Federal Reserve System

Submitted to the Senate Committee on Banking, Housing, and Urban Affairs Subcommittee

On

Housing, Transportation, and Community Development

U.S. Senate

Washington, D.C.

December 13, 2011

Introduction

Chairman Menendez, Ranking Member DeMint, and members of the Subcommittee, thank you for inviting me to submit a statement for the record for the hearing entitled "Helping Homeowners Harmed by Foreclosures: Ensuring Accountability and Transparency in Foreclosure Reviews." I welcome the opportunity to update the Subcommittee on the Federal Reserve's progress in implementing the foreclosure review process as well as its progress in implementing the requirements of the enforcement actions that the Board issued in April 2011 against 10 banking organizations. Those actions were taken in response to patterns of misconduct and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing. Those deficiencies were identified by examiners during reviews conducted from November 2010 to January 2011 and represented significant and pervasive failures as well as unsafe and unsound practices at those 10 institutions. Corrective actions and other measures were required by the formal enforcement actions.

This statement focuses on the most significant requirements of these orders and on the implementation and execution of those requirements. More specifically, this statement addresses the implementation of the requirements in the Federal Reserve's enforcement actions that each banking organization with servicing operations supervised by the Federal Reserve (a) retain one or more independent consultants acceptable to the Federal Reserve to conduct an independent review of residential mortgage foreclosure actions (the "Foreclosure Review") to determine whether borrowers suffered financial injury as a result of errors, misrepresentations, or other deficiencies in the foreclosure process; (b) submit an engagement letter acceptable to the Federal Reserve that describes how each independent consultant retained by the institution and approved

¹ The 10 banking organizations included four organizations with residential mortgage servicing operations supervised by the Federal Reserve, as well as the parent holding companies of banks with servicing operations supervised by the Office of the Comptroller of the Currency.

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by the Federal Reserve will conduct the Foreclosure Review; (c) establish, in connection with the Foreclosure Review, a process for the receipt and review of borrower claims and complaints (the "Borrower Outreach Program"); and (d) submit specific plans acceptable to the Federal Reserve designed to correct practices that resulted in servicer errors and to prevent future abuses in the loan modification and foreclosure processes. This statement also addresses the requirements in the Federal Reserve's enforcement actions that parent holding companies submit plans acceptable to the Federal Reserve to improve holding company oversight of residential mortgage loan servicing and foreclosure processing conducted by bank and nonbank subsidiaries.

The Foreclosure Review and Independent Consultants

The Federal Reserve's enforcement actions require the servicers to retain one or more independent consultants acceptable to the Federal Reserve to conduct the Foreclosure Review to determine whether borrowers suffered financial injury as a result of errors, misrepresentations, or other deficiencies in the foreclosure process. Where financial injury is found, the servicers must compensate the injured borrowers pursuant to a remediation plan that is acceptable to the Federal Reserve.

In determining the acceptability of consultants, the Federal Reserve closely scrutinized their independence. Importantly, the Federal Reserve reviewed whether the consultant currently provides or had previously provided advice to the banking organization regarding its foreclosure practices, opinions, or actions that may have contributed to the deficiencies identified by examiners during their reviews conducted from November 2010 to January 2011. This determination was made to ensure that the consultant would not review any action or opinion previously recommended by the consultant to the banking organization. We will continue to

oversee the Foreclosure Review process to make sure that the consultants who were accepted act independently.

The Federal Reserve orders require the servicers to review the files of borrowers whose primary residence was in the foreclosure process of the servicer in 2009 or 2010, whether or not the foreclosure was completed.

At this time, we are requiring the independent consultants to include in the review all files for particular categories of borrowers who we have determined present a significant risk of being financially injured in the foreclosure process. Any borrower who falls into any one of those categories must receive an independent foreclosure review. The categories for mandatory review include all mortgages in the mortgage foreclosure process in 2009 or 2010 involving members of the military who were covered by the Servicemembers Civil Relief Act. It also includes all borrowers who had previously filed complaints with the servicers about foreclosure actions that were pending during 2009 or 2010. High risk files involving borrowers in bankruptcy will also be reviewed. Other files outside of these categories must be reviewed on a sampling basis to detect if errors, misrepresentations, or deficiencies occurred. Going forward, we may determine that additional file reviews are appropriate.

The Borrower Outreach Program

The Federal Reserve's enforcement actions require that each banking organization with servicing operations supervised by the Federal Reserve implement, in connection with the Foreclosure Review, a process for the receipt and review of borrower claims and complaints. We view this Borrower Outreach Program and the submission by borrowers of requests for review as critical to ensuring that borrowers who suffered financial injury are identified and

appropriately compensated for financial injury they suffered as a result of errors, misrepresentations, or other deficiencies in the foreclosure process.

The Borrower Outreach Program was first announced on November 1, 2011, and is intended to make eligible borrowers aware of the opportunity they have to have their foreclosures independently reviewed as part of the Foreclosure Review. Borrowers are eligible to request that their files be reviewed if their primary residence was in the foreclosure process in 2009 or 2010, whether or not the foreclosure was completed. Borrowers are eligible to request a review even if they previously filed a complaint with their servicer about their foreclosure.

Information about the review process, including how to request a review as part of the Foreclosure Review, is being provided in mailings to borrowers who may be eligible for a review. The servicers initiated mailings on November 1 and have represented that they should be completed by the end of the year. In connection with those mailings, the servicers are required to take measures, such as skip tracing (collecting information about an individual from various sources to determine the individual's location), to identify borrowers who may have moved. The servicers also have established a toll-free number that borrowers can call and a website that borrowers can access to get more information about the review.² Additionally, servicers are required to conduct an advertising campaign to make borrowers aware of the opportunity to request reviews of their foreclosures as part of the Foreclosure Review. The Federal Reserve is overseeing the servicers it supervises to make sure they are effectively doing everything they can to find borrowers who are potentially eligible for the Foreclosure Review.

The Federal Reserve is working closely with the Office of the Comptroller of the Currency in overseeing the development and operation of the Borrower Outreach Program, and

² To apply for a review, individuals may call 888-952-9105, Monday through Friday from 8 a.m. to 10 p.m. (ET) and Saturday from 8 a.m. to 5 p.m. The servicers' website is www.IndependentForeclosureReview.com.

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with the independent consultants, servicers, and community groups to increase awareness of this program and promote participation by borrowers. We emphasize that any borrower whose primary residence was in the foreclosure process in 2009 or 2010, can have his or her file included in the Foreclosure Review simply by submitting a claim or complaint pursuant to that program.

The Engagement Letters

The Federal Reserve's enforcement actions require the servicers to each submit an engagement letter to the Federal Reserve for approval that describes how the independent consultants retained by the servicer and approved by the Federal Reserve will conduct the Foreclosure Review. The Federal Reserve is nearing completion of its review and finalization of those engagement letters. Because our review of the letters contemplates more extensive criteria for conducting the Foreclosure Review than those that apply to the national bank servicers, finalization of the engagement letters has required more time to complete.

We believe that the actions taken by the Federal Reserve and the banking organizations it supervises to implement the enforcement actions should be accessible by the public to the maximum extent possible. To that end, we expect to disclose significant portions of the final engagement letters, consistent with the need to protect proprietary financial information and personal privacy.

The Action Plans

The Federal Reserve's enforcement actions require that each banking organization with servicing operations supervised by the Federal Reserve submit specific plans acceptable to the Federal Reserve designed to correct practices that resulted in servicer errors and prevent future

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abuses in the loan modification and foreclosure process. Each servicer regulated by the Federal Reserve must, among other things, submit specific plans acceptable to the Federal Reserve that

- ensure there is adequate staff to carry out residential mortgage loan servicing, loss mitigation, and foreclosure activities, and conduct periodic reviews of the adequacy of staffing levels to ensure that levels remain adequate;
- improve training of staff involved in residential mortgage loan servicing, including by requiring that training be conducted at least annually;
- strengthen coordination of communications with borrowers throughout the loss mitigation and foreclosure processes by providing such borrowers the name of the person at the servicer who is their primary point of contact;
- require that the primary point of contact has access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower about loss mitigation and foreclosure activities;
- address dual tracking by ensuring that foreclosures are not pursued once a mortgage has been approved for modification, unless repayments under the modified loan are not made;
- consider loan modification or other loss mitigation activities with respect to junior-lien loans owned by the servicer, where the servicer services the associated first-lien mortgage and becomes aware that the first-lien mortgage is delinquent or has been modified;
- establish robust controls and oversight over the activities of third-party vendors that provide to the servicers various residential mortgage loan servicing, loss

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mitigation, or foreclosure-related support, including local counsel in foreclosure or bankruptcy proceedings; and

- strengthen programs to ensure compliance with state and federal laws regarding servicing, generally, and foreclosures, in particular.

In addition, the enforcement actions issued in April require the parent holding companies to submit plans acceptable to the Federal Reserve to improve holding company oversight of residential mortgage loan servicing and foreclosure processing conducted by bank and nonbank subsidiaries.

We continue to review and approve plans required by the Board's enforcement actions to ensure they meet the Federal Reserve's supervisory expectations, and we will be working to ensure that words are followed through with the required actions. Consistent with our approach with regard to the engagement letters, we expect to disclose significant portions of the documentation related to the final action plans, consistent with the need to protect proprietary financial information and personal privacy.

The Federal Reserve will continue to monitor, on an ongoing basis, the corrective measures that are being taken by the servicers and bank holding companies it supervises, as required by the orders. Additionally, each institution is required to submit quarterly reports to the Federal Reserve detailing the measures it has taken to comply with the enforcement action and the results and progress toward meeting those measures. The Federal Reserve will closely review the servicers' and bank holding companies' progress reports and will also conduct examinations to ensure that the plans are implemented as approved and that the changes are effective. The Federal Reserve will take appropriate supervisory action including a cease and

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desist order or monetary penalties to address any inadequacies or violations of the enforcement actions.

As we have previously stated, the Federal Reserve believes monetary sanctions in these cases are appropriate and plans to announce monetary penalties. These monetary penalties will be in addition to the compensation provided to borrowers in the independent review process. The Federal Reserve continues to work with other federal and state agencies to resolve these matters.

Conclusion

The Federal Reserve takes seriously its responsibility to oversee the implementation and execution of the requirements of its April 2011 enforcement actions, including the Foreclosure Review and other requirements described above. We understand that implementing and executing those requirements effectively is critical to ensuring that the deficiencies identified by examiners during reviews conducted from November 2010 to January 2011 are corrected; that future abuses in the loan modification and foreclosure process are prevented; and that borrowers are compensated for financial injury they suffered as a result of errors, misrepresentations, or other deficiencies in the foreclosure process.

Thank you for the opportunity to submit this statement on the status of the Foreclosure Review process and other progress made in implementing the enforcement actions that the Federal Reserve issued in April 2011.

EXHIBIT 26

FILED WITH THE COURT

JAN 06 2012

Susan L. Claypoole, J.S.C.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
3000 Atrium Way Suite 2201
Mount Laurel, NJ 08054
Telephone: (856) 552-1045
Telecopier: (856) 974-8859
Attorneys for Plaintiff

FRANK J. REED III,

Plaintiff,

v.

GMAC MORTGAGE LLC,
RESIDENTIAL FUNDING CORP. and
JOHN DOES 1-30, Individually, Jointly,
Severally and in the alternative,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

BURLINGTON COUNTY

Docket No: L-1526-10

CIVIL ACTION

ORDER

This matter having been opened to the Court by Law Offices of Jeffrey S. Walters, LLC, attorneys for the Plaintiff, Jeffrey S. Walters, Esq. appearing, for entry of an Order granting leave to amend complaint pursuant to Rule 4:9-1, and the Court having reviewed the moving papers and the Certification supporting the Motion, and any opposition, and good cause having been shown:

It is on this 6th day of January, 2012

ORDERED, that leave is hereby granted for Plaintiff to amend complaint pursuant to R. 4:9-1; and

IT IS FURTHER ORDERED, Plaintiff shall file the Amended Complaint within 7 days of the date hereof consistent with the proposed amended complaint which was attached to Plaintiff's motion, and if Defendants wish to file an Answer to same, Defendants shall file an Answer to said Amended Complaint within the time period contemplated by R. 4:9-1.

IT IS FURTHER ORDERED, that a copy of this Order be served upon all parties within 7 days of the date hereof.

 Opposed
 Unopposed

Susan L. Claypoole
Susan L. Claypoole, J.S.C.

LAW OFFICES OF JEFFREY S. WALTERS, LLC

3000 Atrium Way Suite 2201

Mount Laurel, NJ 08054

Telephone: (856) 552-1045

Telecopier: (856) 974-8859

Attorneys for Plaintiff

	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
FRANK J. REED III,	:	
	:	BURLINGTON COUNTY
Plaintiff,	:	
	:	Docket No: L-1526-10
v.	:	
	:	CIVIL ACTION
GMAC MORTGAGE LLC,	:	
RESIDENTIAL FUNDING CORP.	:	AMENDED COMPLAINT
and JOHN DOES 1-30, Individually,	:	
Jointly, Severally and in the	:	
alternative,	:	
	:	
Defendants.	:	
	:	

Plaintiff, whose post office address is 817 Matlack Drive, Moorestown, New Jersey 08057,
by way of Amended Complaint against the Defendants says:

FIRST COUNT THROUGH FIFTH COUNT

1. All paragraphs of the First Count through the Fifth Count of the Initial Complaint are repeated herein and made the First Count through Fifth Count of this Amended Complaint, but for the sake of brevity, same is not repeated in their entirety.

WHEREFORE, Plaintiff demands judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper, and as more fully set forth in the Initial Complaint.

SIXTH COUNT

2. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

3. Pursuant to the Fair Foreclosure Act, NJSA 2A:50-53 et seq., Defendant was obliged to inform Plaintiff, in a properly prepared and served "Notice of Intention to Foreclose" as defined in that Act, that Plaintiff had the right to cure any mortgage default at any time prior to the entry of a final foreclosure judgment.

4. Defendant failed to provide Plaintiff with the "Notice of Intention to Foreclose" required by the Fair Foreclosure Act prior to filing its Complaint for Foreclosure on or about May 19, 2008.

5. Instead, Defendant filed a Complaint for Foreclosure containing a provision that the mortgage was being accelerated and falsely leading Plaintiff to believe that Plaintiff's only option was to remit the entire principal balance and interest, which at that time was over \$1,000,000.

6. At that time, Plaintiff was approximately 3 months in arrears and could have easily cured the default if Defendant had not deceived Plaintiff into believing that he did not have this right.

7. By the time Defendant's Foreclosure Complaint was dismissed by the Court on February 9, 2009 for Defendant's failure to comply with the Fair Foreclosure Act, nine (9) months had elapsed during which the improper and illegal foreclosure action had subsisted.

8. During the nine (9) months that Defendant's improper and illegal foreclosure action subsisted, Plaintiff's credit was destroyed and Plaintiff was paralyzed of any ability to obtain any loans to preserve and conduct his real estate business and to earn an income from same as he had historically done.

9. Due to the financial paralysis caused by Plaintiff's improper and illegal foreclosure action, and its detrimental affect on Plaintiff's ability to obtain credit to earn an income from his real estate business, Plaintiff fell behind on his other financial obligations, further harming his credit and causing him to deplete all of his savings and cash reserves in order to live and support his household.

10. By the time Defendant's Foreclosure Complaint was dismissed by the Court on February 9, 2009 for Defendant's failure to comply with the Fair Foreclosure Act, Plaintiff's credit and income-producing ability was destroyed and his savings and cash reserves depleted, leaving no meaningful ability to: (1) cure the mortgage arrears which by then were substantial; and (2) resume his income-producing endeavors which had been ongoing up until the point of Defendant's filing of its improper and illegal foreclosure complaint.

11. As a direct and proximate result of Defendants' conduct as aforesaid, Plaintiff suffered economic injury, including but not limited to (1) economic injury stemming from Plaintiff's inability to consummate income-producing transactions which were in progress at the time Defendant filed its improper and illegal foreclosure action; (2) economic injury stemming from Plaintiff's inability to resume his income-producing endeavors which he had conducted for many years prior to Defendants' improper conduct; (3) economic injury from the loss of at least 3 income-producing rental properties to foreclosure due to Plaintiff's inability to service the mortgages as a result of his compromised income-producing ability; (4) economic injury stemming from the general destruction to Plaintiff's credit, and his compromised ability to obtain and use credit and/or the increase in cost of credit as a consequence of the direct and indirect damage done to his credit score; (5) economic injury stemming from the awareness by third-parties of the improper foreclosure and filed lis pendens as Plaintiff attempted to market his house, resulting in "lowball" offers from

potential buyers who otherwise would have made legitimate offers were it not for the perceived desperation caused by Defendant's actions; and (6) non-economic damages suffered by Plaintiff, including but not limited to the distress that goes with powerlessly watching his income-producing abilities being destroyed after many years of hard work, his inability to support his family in the manner they were accustomed to, the indignity of relying on others for financial assistance for basic needs, and the general destruction of his goals and aspirations for his family.

WHEREFORE, Plaintiff demands judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, including punitive damages, attorney's fees, costs, interest, and any other relief as the court may deem proper.

SEVENTH COUNT

1. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

2. The actions and conduct of the Defendants were actuated by actual malice, and/or accompanied by a wanton and willful disregard of the injuries which might be suffered by Plaintiff.

3. Defendants are liable for punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, including punitive damages, attorney's fees, costs, interest, and any other relief as the court may deem proper.

EIGHTH COUNT

4. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

5. At all times hereinafter mentioned, Plaintiff was a "Person" as defined in the New Jersey Consumer Fraud Act.

6. At all times pertinent hereto, Defendants were corporations and/or Limited Liability Companies duly organized and existing under and by virtue of the laws of the State of New Jersey or another State, and as such, were "Persons" as defined in the New Jersey Consumer Fraud Act.

7. Defendants in all ways engaged in the act, use and employment of an unconscionable commercial practice, deception, fraud, false promise, misrepresentation, and the knowing concealment of material facts with the intent that Plaintiff rely upon such concealment, suppression or omission, in contravention of N.J.S.A. 56:8-2 and the Consumer Fraud Act.

8. As a proximate result of Defendants' actions, Plaintiff has suffered an ascertainable loss under the Consumer Fraud Act.

WHEREFORE, Plaintiff demands judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, and in accordance with N.J.S.A. 56:8-1 et seq., treble damages, attorney's fees, costs, interest, and any other relief as the court may deem proper.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorney for Plaintiff



BY: _____
JEFFREY S. WALTERS

DATED: January 6, 2012

CERTIFICATION OF SERVICE

In accordance with N.J.S.A. 56:8-20, the Plaintiff mailed a copy of this complaint to the Attorney General at Office of the Attorney General, PO Box 080, Trenton, NJ 08625-0080 on the date of filing of this Complaint with the Court.

DESIGNATION OF TRIAL COUNSEL

Pursuant to New Jersey Court Rule 4:25-4, Jeffrey S. Walters, Esq. is designated as trial counsel for the Plaintiff in the above matter.

JURY DEMAND

Plaintiff demands trial by a jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorneys for Plaintiff



Dated: January 6, 2012

By: _____
JEFFREY S. WALTERS

CERTIFICATION

Pursuant to New Jersey Court Rule 4:5-1, the plaintiff hereby certifies that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding, to the best of plaintiff's knowledge or belief. The plaintiffs further certify that plaintiffs have no knowledge of any contemplated action or arbitration proceeding regarding the subject matter of this action and that, other than the parties set forth in this pleading, the plaintiffs are not aware of any other parties who should be joined in this action. In addition, plaintiffs recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorneys for Plaintiff



Dated: January 6, 2012

By: _____
JEFFREY S. WALTERS

EXHIBIT 27

CHARGE 8.60 — Page 1 of 6

8.60 PUNITIVE DAMAGES ACTIONS — GENERAL
(Approved 3/2000; Revised 12/2011)¹

NOTE TO JUDGE

This charge incorporates the statutory changes in Public Law 1995, ch. 142, *N.J.S.A. 2A:15-5.9 et seq.*, the *Punitive Damages Act*. That Act includes the following procedural requirements:

- (a) Punitive damages must be specifically prayed for in the complaint. *N.J.S.A. 2A:15-5.11.*
- (b) Consistent with *Herman v. Sunshine Chemical Specialties*, 133 N.J. 329, 342 (1993), the trial court must conduct a bifurcated trial on punitive damages. In other words, the punitive damages claim must be tried after the liability and damages phase of a compensatory damages trial. Evidence relevant only to punitive damages is not admissible in the liability and compensatory damages phase. *N.J.S.A. 2A:15-5.13.*
- (c) A punitive damage trial is conducted only if compensatory damages have been awarded. Nominal damages can not support an award of punitive damages. *N.J.S.A. 2A:15-5.13.*
- (d) When there are two or more defendants, an award of punitive damages must be specific as to each defendant and each defendant is liable only for the award made against him or her. *N.J.S.A. 2A:15-5.13 (e).*
- (e) There is a cap on punitive damages — five times the amount of compensatory damages or \$350,000, whichever is greater. The jury shall not be informed that there is a cap on punitive damages.²

¹ The Model Civil Jury Charge Committee suggests that the trial judge not explain to the jury at the outset of the trial that there is a request for punitive damages. Of course, the trial judge should take into account the additional time needed to complete the bifurcated hearing in a punitive damages action and should build that time into the schedule given to the jury at the outset.

² The Model Civil Jury Charge Committee has included separate punitive damage charges under the LAD charge (8.61) and CEPA charge (8.63) which are exempt from the punitive damage cap under *N.J.S.A. 2A:15-5.14*. Punitive damages awarded in LAD cases (8.61) and in CEPA cases (8.63) are exempt from the punitive damage cap under *N.J.S.A. 2A:15-5.14*.

CHARGE 8.60 — Page 2 of 6

- (f) Before entering judgment for punitive damages, the trial judge must ascertain whether the award is reasonable and justified in light of the purposes of punitive damages. The judge may reduce or eliminate the award if the judge considers that such action is necessary to satisfy the requirements of the statute. *N.J.S.A. 2A:15-5.14(a)*.

GENERAL CHARGE

If you find that defendant³ has *[insert a specific description of the intentional conduct giving rise to a claim for punitive damages]* you must consider whether or not to award punitive damages to (plaintiff). Punitive damages are awarded to punish (defendant). (Plaintiff) is not automatically entitled to punitive damages simply because you have found that the defendant has *[insert a specific description of the intentional conduct giving rise to a claim for punitive damages]* or because you have awarded damages to compensate (plaintiff) for his/her/its injury. You may award punitive damages only under certain circumstances.

1. INTENT OF PUNITIVE DAMAGES

The purposes of punitive damages are different from the purposes of compensatory damages. Compensatory damages are intended to compensate (plaintiff) for the actual injury or loss he/she/it suffered as a result of (defendant's) misconduct. In contrast, punitive damages are intended to punish a wrongdoer and to

³ Placing the words "plaintiff" and "defendant" in parentheses is intended to suggest that the trial judge may use the names of the parties, in lieu of their status in the lawsuit, if he or she wishes.

CHARGE 8.60 — Page 3 of 6

deter the wrongdoer from similar wrongful conduct in the future.⁴ Punitive damages are designed to require the wrongdoer to pay an amount of money that is sufficient to punish (defendant) for particular conduct and to deter that party from future misconduct. Punitive damages are not to be awarded as a routine matter in every case; they are to be awarded only in exceptional cases, to punish a party who/which has acted in an especially egregious or outrageous matter and to discourage that party from engaging in similar misconduct in the future. Therefore, (plaintiff) is not entitled to punitive damages simply because you have found that (defendant) engaged in specific conduct or because you have awarded damages to compensate (plaintiff) for his/her/its injury. You may award punitive damages to (plaintiff) only if you find that (plaintiff) has proved certain additional matters.

2. STANDARD OF PROOF FOR PUNITIVE DAMAGES

To support an award of punitive damages here, you must find that (plaintiff) has proved, by clear and convincing evidence, that the injury, loss, or harm suffered by (plaintiff) was the result of (defendant's) acts or omissions⁵ and that either (1) (defendant's) conduct was malicious or (2) (defendant) acted in wanton and willful

⁴ The Appellate Division in *Tarr v. Ciasulli*, 390 N.J. Super. 557 (App. Div. 2007), *aff'd*, 194 N.J. 212, 224 (2008) found that the *New Jersey Punitive Damages Act*, N.J.S.A. 2A:15-15-5.9, *et al.* does not permit counsel to urge the jury to increase a punitive damage award to enhance the general deterrence of others. Accordingly prior language in earlier Model Charge allowing punitive damages to be awarded as a "deterrence to others" was deleted.

⁵ N.J.S.A. 2A:15-5.12(a).

CHARGE 8.60 — Page 4 of 6

disregard of (plaintiff's) rights. Malicious conduct is intentional wrongdoing in the sense of an evil-minded act. Willful or wanton conduct is a deliberate act or omission with knowledge of a high degree of probability of harm to another who foreseeably might be harmed by that act or omission and reckless indifference to the consequence of the act or omission.

The standard of "clear and convincing evidence", which I mentioned above, means that evidence which leaves no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. This is different – and less – than proof beyond a reasonable doubt. This is also different – and more – than a preponderance of evidence to support an award of punitive damages.

In determining whether to award punitive damages, consider all relevant evidence, including but not limited to the following: (1) the likelihood, at the relevant time, that serious harm would arise from (defendant's) conduct; (2) (defendant's) awareness or reckless disregard of the likelihood that such serious harm would arise from (defendant's) conduct; (3) consider the conduct of (defendant) upon learning that his/her/its initial conduct would likely cause harm; and (4) consider the duration of the conduct or any concealment of that conduct by (defendant).⁶

⁶ See *N.J.S.A. 2A:15-5.12(b)*, providing that the trier of fact must consider these four factors in determining whether punitive damages should be awarded. Other factors may be considered as well; the four statutory factors are not intended to be exclusive.

CHARGE 8.60 — Page 5 of 6

3. AMOUNT OF PUNITIVE DAMAGES

If you decide that (defendant) has engaged in the type of wrongdoing that justifies punitive damages, you must decide the amount of punitive damages that should be awarded.

In doing so, you must consider all relevant evidence, including but not limited to, evidence of the four factors that I discussed in connection with your determination as to whether punitive damages should be awarded at all. These are: (1) the likelihood, at the relevant time, that serious harm would arise from (defendant's) conduct; (2) (defendant's) awareness or reckless disregard of the likelihood that such serious harm would arise from his/her/its conduct; (3) the conduct of (defendant) upon learning that his/her/its initial conduct would likely cause harm; and (4) the duration of the conduct or any concealment of it by (defendant).

Consider, also, the profitability, if any, of the misconduct to (defendant); when the misconduct was terminated; and the financial condition of (defendant) or his/her/its ability to pay the punitive damages award.⁷ You must also make certain

⁷ See *N.J.S.A. 2A:15-5.12(c)*. Sec. 5.12(c) provides that the trier of fact must consider these factors in determining whether punitive damages should be awarded. However, the trier of fact may consider additional factors, if appropriate, since the statutory factors are not intended to be exclusive. The trial judge should also instruct the jurors on any other aggravating or mitigating factors, if warranted by the evidence, that may justify an increase or reduction in the amount of punitive damages. With regard to the "financial condition" factor, see *Herman v. Sunshine Chemical Specialties, Inc.*, 133 N.J. 329, 345 (1993).

CHARGE 8.60 — Page 6 of 6

that there is a reasonable relationship between the actual injury and the punitive damages.⁸

4. CONCLUSION

After considering all these factors, you should exercise your judgment and determine (1) whether punitive damages should be awarded in this case; and (2) if you decide to award punitive damages, what the proper amount should be.⁹

⁸ *Fischer v. Johns-Manville Corp.*, 103 N.J. 643, 675 (1986).

⁹ Occasionally, as in *Rusak v. Ryan Automotive, L.L.C., at als.*, 418 N.J. 107 (A. D. 2011), one jury may award compensatory damages and a second jury must address a punitive damages claim. In that event, the second jury must be told that it was determined in a different forum that defendant(s) engaged in unlawful or improper conduct and that plaintiff was awarded compensatory damages resulting from that conduct in specific categories (e.g., back pay) and amounts. In *Rusak, supra*, the first jury declined to award damages for emotional distress; the Appellate Division ruled that the second jury must be told that no award was made for emotional distress.

EXHIBIT 28

874 F.2d 88

57 USLW 2648, Bankr. L. Rep. P 72,986, 8
UCC Rep.Serv.2d 344

In re HOWARD'S APPLIANCE CORP., Debtor.
SANYO ELECTRIC, INC., Plaintiff-Appellant,
v.
HOWARD'S APPLIANCE CORP., Defendant-Appellee.

No. 746, Docket 88-5037.

**United States Court of Appeals,
Second Circuit.**

Argued Feb. 15, 1989.

Decided April 25, 1989.

Jeffrey A. Oppenheim, New York City (Kane, Kessler, Proujansky, Preiss & Nurnberg, P.C., New York City, of counsel), for plaintiff-appellant.

Philip Irwin Aaron, Jericho, N.Y. (Andrew C. Morganstern, Allan B. Mendelsohn, Philip Irwin Aaron, P.C., Jericho, N.Y., of counsel), for defendant-appellee.

Before PIERCE and MINER, Circuit Judges, and POLLACK, District Judge.*

MINER, Circuit Judge:

1

Plaintiff-appellant Sanyo Electric, Inc. ("Sanyo") appeals from the portion of a judgment of the United States District Court for the Eastern District of New York (Wexler, J.) that reversed an order of the United States Bankruptcy Court for the Eastern District of New York (Holland, J.). Sanyo had entered into a security agreement with defendant-appellee Howard's Appliance Corp. ("Howard"), under the terms of which Howard gave Sanyo a security interest in all Sanyo air conditioners ("collateral") possessed or thereafter acquired by Howard. As the agreement required Howard to keep the air conditioners at its store in Nassau County, New York, Sanyo perfected its security interest in New York only. Howard later began to store the air conditioners at a warehouse in New Jersey without informing Sanyo. Approximately six months after it began to warehouse the air conditioners in New Jersey, Howard filed a voluntary Chapter 11 petition with the Bankruptcy Court in the Eastern District of New York; Howard continued thereafter in business as a debtor-in-possession, see 11 U.S.C. Sec. 1107 (1982 & Supp. III 1985).

2

Although it never filed any financing statements in New Jersey, Sanyo moved for relief from the automatic stay imposed by 11 U.S.C. Sec. 362 (1982 & Supp. III 1985) to enable it to proceed against Howard's inventory. Invoking the doctrine of equitable estoppel, the bankruptcy court determined, *inter alia*, that Sanyo possessed the rights of a holder of a validly perfected security interest in the air conditioners stored in New Jersey, and that Sanyo was entitled to an order vacating the automatic stay or to adequate protection of its interest. See 69 B.R. 1015 (Bankr.E.D.N.Y.1987). The district court reversed this part of the bankruptcy court's order, holding that equitable estoppel was ineffective against Howard's "strong-arm" powers under 11 U.S.C. Sec. 544 (1982 & Supp. III 1985) as a debtor-in-possession. See 91 B.R. 204 (E.D.N.Y.1988). Because we look to 11 U.S.C. Sec. 541 (1982 & Supp. III 1985) to impress a constructive trust in Sanyo's favor, we reverse the judgment of the district court and hold that Sanyo's interest in the collateral is superior to that of Howard.

BACKGROUND

3

Howard, a retailer of home appliances, began purchasing appliances from Sanyo in March 1984. The parties entered into a security agreement on March 12 of that year, giving Sanyo a security interest in all of the goods possessed or acquired by Howard that were manufactured or sold by, or acquired from, Sanyo. Sanyo was given also an interest in the proceeds from the sale of those goods. The agreement provided that "[t]he collateral will be kept at the debtor's place of business located at the address as shown at the beginning of this agreement; and that there are no other places of business of debtor." At that time, Howard operated only one store, located in Nassau County, New York, the address shown on the agreement. In order to perfect its security interest, Sanyo filed a UCC-1 Financing Statement with the Clerk of Nassau County and the Secretary of State of New York on March 30, 1984.

4

Howard opened a second store, in April 1984, and a third store, in November 1985, both in Suffolk County, New York. Howard then sold its Nassau County store in March 1986, and began operating exclusively in Suffolk County. The Nassau County store, however, continued to operate under the Howard logo; in fact, Howard continued to advertise the store, holding it out to the public as one of its own retail locations. Although Howard never sent Sanyo written notice of the sale, Joel Stern, an independent sales representative who sold Sanyo merchandise to Howard on a commission basis, "informally learned," either in March or April 1986, that the store had been sold; he apparently communicated this knowledge to Sanyo's credit department. Sanyo, however, never filed a financing statement with the Clerk of Suffolk County.

5

From 1981 to 1986, Howard stored all of its inventory at either its Nassau County store or at one of its retail locations in Suffolk County. Early in 1986, however, Howard began renting space in a public warehouse located in New Jersey (the "Donadio warehouse") to store its inventory. In addition, Howard had manufacturers deliver goods directly to the Donadio warehouse. Howard would not sell the

products out of the warehouse; instead, it would have items re-shipped from New Jersey to its New York locations on an "as needed" basis. Significantly, Howard never told Sanyo, either orally or in writing, that goods were being stored in New Jersey; nor did Sanyo file any financing statements in that state.

6

Sanyo's traffic department learned of the New Jersey location in February 1986, when it shipped, via common carrier, a large supply of air conditioners from its New Jersey factory to the Donadio warehouse. Apparently, the common carrier notified Theresa O'Brien, Sanyo's traffic manager, that Howard had instructed it to deliver the goods to New Jersey. Because it was normal procedure for a customer to change the location to which goods are shipped, O'Brien customarily would change the bill of lading to reflect the new destination, but never reported such changes to any other department at Sanyo, including the credit department. O'Brien followed the customary practice here.

7

Howard filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. Secs. 1101-1174 (1982 & Supp. III 1985), on August 6, 1986. As a result, an automatic stay attached under 11 U.S.C. Sec. 362, which prevented Sanyo from perfecting its security interest in the air conditioners located in New Jersey. By order to show cause dated August 14, 1986, Sanyo moved to lift the stay so that it could foreclose on certain of Howard's inventory, including property stored in Suffolk County and New Jersey, in which it claimed a security interest. Since the date of the filing, Howard has continued to run its business as a debtor-in-possession under 11 U.S.C. Sec. 1107.

8

At a hearing held on September 2, 1986 before the bankruptcy court, Michael Howard, the president of Howard, testified that the decision to warehouse in New Jersey was dictated by a shortage of space at his New York locations, and that storage in New Jersey was "advantageous" financially. He testified also that he never sent Sanyo formal written notice that Howard was storing Sanyo's goods in New Jersey and never gave Sanyo such notice by telephone. He testified, however, that he advised independent sales representative Joel Stern, perhaps as early as February 1986, that Howard "probably would be warehousing in New Jersey," and that Stern was advised that the goods actually were going to New Jersey "when the merchandise was ... shipped at a later date, two or three months later." Stern testified that he first became aware that Howard was storing Sanyo inventory in the New Jersey warehouse on approximately August 8, 1986, two days after the filing of the Chapter 11 petition. Ed Toomey, the National Home Credit Manager for Sanyo, testified that Howard never notified Sanyo's credit department. He testified further that he never was informed by Sanyo's traffic department that the goods had been shipped to the Donadio warehouse, and that he first learned of the New Jersey warehouse "two days after the filing of the [Chapter 11] petition when we sent our representatives to take an inventory."¹

9

The bankruptcy court issued its decision on February 26, 1987, concluding that "Sanyo has a validly perfected interest in the goods it supplied to" Howard that were stored both at Howard's retail locations in Suffolk County and at the Donadio warehouse in New Jersey. 69 B.R. at 1024. As to the Suffolk County merchandise, the court looked to U.C.C. Sec. 9-401(3)2 and determined that the financing statements filed with the Clerk of Nassau County and the Secretary of State survived the "consolidation" of Howard's operations in Suffolk County. Id. at 1019.

10

Regarding the merchandise stored at the Donadio warehouse, the court noted that, although Sanyo should have filed a financing statement in New Jersey to perfect its security interest in the collateral, see 12A N.J. Stat. Ann. Secs. 9-302, 9-401(1)(c) (West Supp.1986),3 principles of equity had to be considered to determine whether Sanyo has a perfected interest despite its failure to file, see id. Sec. 1-103. The court invoked the doctrine of equitable estoppel and, crediting the testimony of Stern and Toomey, found that: Howard "concealed the fact that it was storing the subject inventory in the Donadio warehouse in New Jersey," 69 B.R. at 1022-23; "no highly placed official from Sanyo was ever directly told by" Howard of this fact, id. at 1023; Howard "expected that its concealment ... would be relied upon by Sanyo in such a way as to dissuade [Sanyo] from filing a financing statement in New Jersey," id.; by concealing this information from Sanyo, Howard in fact "prevented Sanyo from protecting its security interest by filing in New Jersey," id.; and because "Sanyo did not become aware that its inventory was being stored in New Jersey until the time in which Howard [] filed its Chapter 11 petition, it had no opportunity to perfect its security interest," id. Accordingly, the court concluded that Howard was "estopped from denying the New Jersey perfection of Sanyo's security interest," id., and scheduled a hearing to determine whether Sanyo's interest was adequately protected and, if not, whether the section 362 stay should be vacated.

11

The district court, in a memorandum and order dated September 23, 1988, affirmed the bankruptcy court's determination regarding Sanyo's security interest in the merchandise stored in Suffolk County, but only as to the merchandise shipped to the Suffolk County locations while Howard also operated its store in Nassau County. Insofar as goods may have been shipped to Suffolk County after the closing of Howard's Nassau County store, the court held that, pursuant to U.C.C. Sec. 9-401(1)(c), Sanyo was required to file a financing statement with the Clerk of Suffolk County to perfect its interest. See *In re Knapp*, 575 F.2d 341, 344 (2d Cir.1978) (proper place for filing determined at time security interest attaches to collateral); *Marine Midland Bank-Eastern Nat'l Ass'n v. Conerty Pontiac-Buick, Inc.*, 77 Misc.2d 311, 317, 352 N.Y.S.2d 953, 961 (Sup.Ct.1974) (security interest attaches when debtor acquires collateral). Concluding that "Sanyo's sales and credit departments had actual knowledge that the Nassau County location had been sold," 91 B.R. at 206, the court rejected Sanyo's estoppel argument and remanded the matter to the bankruptcy court for a determination of which goods were shipped to Suffolk County prior to the sale of the Nassau County store.

12

Finally, the district court held that, as to the property in Suffolk County acquired after the sale and as to all Sanyo's merchandise stored in New Jersey, the application of equitable estoppel would contravene the "strong-arm" powers of Howard, in its capacity as a debtor-in-possession.⁴ Because a debtor-in-possession generally has the same rights, powers and duties as a trustee, see 11 U.S.C. Sec. 1107(a); *In re Vintero Corp.*, 735 F.2d 740, 741 (2d Cir.), cert. denied, 469 U.S. 1087, 105 S.Ct. 592, 83 L.Ed.2d 702 (1984), and because a trustee may avoid a lien under section 544(a) even where he possesses actual notice of the lien's existence, the court concluded that "Howard[] has the power, just as would a trustee, to avoid Sanyo's unperfected lien," 91 B.R. at 207. The court quoted *In re Brent Explorations, Inc.*, 31 B.R. 745, 749 (Bankr.D.Colo.1983), as authority for the proposition that one of the purposes of providing the debtor-in-possession with the status of an ideal creditor was "to prevent such defenses as estoppel from being raised." The court observed that this determination rests firmly with the "conscious decision by Congress to favor the trustee over unperfected creditors, regardless of the particular equities of the case." 91 B.R. at 208. Sanyo, the court continued, could have protected its interest by taking "precautionary measures" to ensure that the property in fact was delivered to Howard's locations in New York, where Sanyo filed its security interest. *Id.* The court thus concluded that "[t]he doctrine of estoppel cannot prevent Howard[] from avoiding Sanyo's interest under section 544(a)." *Id.*

13

After judgment was entered and Sanyo filed its notice of appeal, the parties, in an effort to resolve the issue remanded to the bankruptcy court, entered a stipulation providing that no merchandise was shipped to Howard in Suffolk County after the sale of the Nassau County store. Consequently, the only issue remaining for this Court to address is the extent of Sanyo's interest in the air conditioners located in New Jersey.

DISCUSSION

14

Under section 541 of the Bankruptcy Code, a debtor's legal and equitable interests in property, "as of the commencement of the case," constitute "[p]roperty of the estate," 11 U.S.C. Sec. 541(a)(1). Property in which the debtor holds only legal title and not an equitable interest, however, becomes property of the estate "only to the extent of a debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold," *id.* Sec. 541(d). That is, the bankruptcy estate does not include "property of others in which the debtor ha[s] some minor interest such as a lien or bare legal title," *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204 n. 8, 103 S.Ct. 2309, 2313 n. 8, 76 L.Ed.2d 515 (1983); see 4 *Collier on Bankruptcy* p 541.13, at 541-75 (15th ed.1989) (estate succeeds only to the title and rights that the debtor possessed); *In re Quality Holstein Leasing*, 752 F.2d 1009, 1012 (5th Cir.1985) (same).

15

Where the debtor's "conduct gives rise to the imposition of a constructive trust, so that the debtor holds only bare legal title to the property, subject to a duty to reconvey it to the rightful owner, the estate will

generally hold the property subject to the same restrictions," *In re Flight Transp. Corp. Securities Litigation*, 730 F.2d 1128, 1136 (8th Cir.1984); see *Georgia Pacific Corp. v. Sigma Service Corp.*, 712 F.2d 962, 968 (5th Cir.1983). Indeed, the Supreme Court has declared that, while the outer boundaries of the bankruptcy estate may be uncertain, "Congress plainly excluded property of others held by the debtor in trust at the time of the filing of the petition," *Whiting Pools*, 462 U.S. at 205 n. 10; see S.Rep. No. 989, 95th Cong., 2d Sess. 82 and H.R.Rep. No. 595, 95th Cong., 2d Sess. 368, reprinted in 1978 U.S.Code Cong. & Ad.News 5787, 5868, 6323-24; see also *In re Kennedy & Cohen, Inc.*, 612 F.2d 963, 965 (5th Cir.) (under previous bankruptcy statute, property held by debtor in constructive trust "belongs to the beneficiary and never becomes a part of the bankruptcy estate"), cert. denied, 449 U.S. 833, 101 S.Ct. 103, 66 L.Ed.2d 38 (1980).⁵ A constructive trust, therefore, "confers on the true owner of the property an equitable interest in the property superior to the trustee's," *Quality Holstein Leasing*, 752 F.2d at 1012; cf. *In re General Coffee Corp.*, 828 F.2d 699, 706 (11th Cir.1987) (constructive trust beneficiary has priority to trust assets over a judicial lienholder or execution creditor), cert. denied, --- U.S. ---, 108 S.Ct. 1470, 99 L.Ed.2d 699 (1988). The reason for this priority is clear: but for the debtor's misconduct, the trust beneficiary would have perfected his security interest in the rest of the trust and thus would have prevailed over the debtor as well as the debtor-in-possession.

16

The existence and nature of a debtor's interest, and correspondingly the estate's interest, in property is determined by state law. *In re FCX, Inc.*, 853 F.2d 1149, 1153 (4th Cir.1988), cert. denied, --- U.S. ---, 109 S.Ct. 1118, 103 L.Ed.2d 181 (1989); *In re N.S. Garrott & Sons*, 772 F.2d 462, 466 (8th Cir.1985); 4 *Collier on Bankruptcy* p 541.02, at 541-10 to -13. One must look to state law, therefore, to determine whether to impose a constructive trust on property within the debtor's possession. See, e.g., *N.S. Garrott & Sons*, 772 F.2d at 467; *Quality Holstein Leasing*, 752 F.2d at 1012. As a general rule, the law of the situs of the property, and therefore the trust, governs this determination. See, e.g., *In re O.P.M. Leasing Services, Inc.*, 40 B.R. 380, 398-99 (Bankr.S.D.N.Y.), aff'd, 44 B.R. 1023 (S.D.N.Y.1984); cf. *Collier on Bankr.* p 544.02, at 544-13 to -14 (under section 544, "the tendency of the courts is to treat the law of the situs of property at the commencement of the case as governing"); *In re Dennis Mitchell Indus., Inc.*, 419 F.2d 349, 352, 353 n. 10 (3d Cir.1969) (same). Here, there is no dispute that, as the bankruptcy court observed, the property at issue always has been located in New Jersey--the air conditioners were delivered from Sanyo's New Jersey factory to the Donadio warehouse, also in New Jersey, where they have remained as of the commencement of this action. Hence, the law of New Jersey applies.

17

Under New Jersey law, "a constructive trust should 'be impressed in any case where to fail to do so will result in an unjust enrichment.'" *Stewart v. Harris Structural Steel Co.*, 198 N.J.Super. 255, 486 A.2d 1265, 1271 (Super.Ct., App.Div.1984) (quoting *D'ippolito v. Castoro*, 51 N.J. 584, 588, 242 A.2d 617, 619, 38 A.L.R.3d 672, 677 (1968)). When property has been acquired or retained "in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee," *id.*, 486 A.2d at 1271 (quoting *Beatty v. Guggenheim Exploration Co.*, 225 N.Y. 380, 386, 122 N.E. 378, 380 (1919)); see *Hill v. Warner, Berman & Spitz, P.A.*, 197 N.J.Super. 152, 484 A.2d

344, 352 (Super.Ct., App.Div.1984). The Supreme Court of New Jersey has stated that, in general, "all that is required to impose a constructive trust is a finding that there was some wrongful act, usually, though not limited to, fraud, mistake, undue influence, or breach of a confidential relationship, which has resulted in a transfer of property." D'Ippolito, 242 A.2d at 619, 38 A.L.R.3d at 677. In fact, such a trust may arise "even though the acquisition of the property was not wrongful. It arises where the retention of the property would result in the unjust enrichment of the person retaining it." Id. (quoting Scott on Trusts Sec. 462.2, at 3417 (3d ed. 1967)); accord Stretch v. Watson, 5 N.J. 268, 74 A.2d 597, 602 (1950); Stewart, 486 A.2d at 1271-72.

18

In light of the foregoing, we hold that a constructive trust should be imposed in favor of Sanyo. The bankruptcy court's factual findings, which were neither challenged by Howard nor disputed by the district court, call for no less. See *Wien Air Alaska, Inc. v. Bachner*, 865 F.2d 1106, 1108 (9th Cir.1989) (court of appeals reviews bankruptcy court's findings of fact under clearly erroneous standard); *Forsdick v. Turgeon*, 812 F.2d 801, 802 (2d Cir.1987) (same); see also 11 U.S.C. Rule 8013 (Supp. V 1987) (findings of fact "shall not be set aside unless clearly erroneous"). It is noteworthy that until approximately six months prior to the filing of its Chapter 11 petition, Howard had always stored its inventory at its Nassau County location, as required by the security agreement, and its Suffolk County stores. While Howard's contentions that the decision to warehouse in New Jersey was "borne of necessity" and "not out of sinister motives" do not fall upon deaf ears, we agree with the bankruptcy court that Howard, in light of its conduct, "acted with the expectation that Sanyo would not perfect its security interest in this inventory by filing a financing statement in New Jersey," 69 B.R. at 1023. Certainly, Howard must have known that, under the terms of the security agreement, it was obligated to keep its Sanyo merchandise at its Nassau County location, and that by storing its inventory in New Jersey, it would frustrate Sanyo's interest in those goods.

19

We find it significant, too, that Howard never informed Sanyo of the Donadio warehouse, and that Sanyo only learned of the warehouse, through third parties, after the filing of the petition, when it was too late to file a financing statement in New Jersey. The direction to Sanyo's traffic department to ship the merchandise to New Jersey was not sufficient to place Sanyo on notice that its goods were being stored in New Jersey. The record establishes that it is common practice for buyers to change shipping destinations and that, as a result of this practice, the traffic department routinely approves such changes, as it did here, without notifying its "principals." Undoubtedly, Howard was aware of this practice. See *Corporacion de Mercadeo Agricola v. Mellon Bank Int'l*, 608 F.2d 43, 46 (2d Cir.1979) ("Notice to the agent ... is notice to the principal, unless the person giving notice has reason to know that the agent has no duty to or will not transmit the message to the principal.").

20

Our decision in *Vintero*, 735 F.2d 740, does not conflict with this conclusion. In *Vintero*, we were confronted with a creditor, *Corporacion Venezolana de Fomento* ("CVF"), that inadvertently had allowed

its perfected security interest in a ship to lapse. Significantly, the debtor, Vintero Corporation ("Vintero"), had not engaged in any misconduct that caused CVF to refrain from filing a financing statement. Nevertheless, we held that "although Vintero, as a debtor-in-possession, could exercise the rights of a lien creditor, it obviously was not one." *Id.* at 742. Thus, we stated that "[t]o the extent that other creditors of Vintero are not affected adversely by enforcement of CVF's security interest, there is no reason why such interest should not be enforced." *Id.* Here, however, Sanyo's failure to file is directly attributable to Howard's misconduct. Had Howard informed Sanyo that it was storing merchandise in New Jersey, Sanyo would have had the opportunity to perfect its interest there. Under these circumstances, we are authorized by the law of New Jersey to impress a constructive trust; as the beneficiary of the trust, Sanyo now enjoys a position superior to that of any lien creditor and to any of Howard's other creditors as well.

21

Finally, we need not concern ourselves with whether section 544 of the Bankruptcy Code would mandate a result contrary to the one we reach today, see *General Coffee*, 828 F.2d at 704-07, since the constructive trust imposed here attached prior to the filing of the Chapter 11 petition. See *Quality Holstein Leasing*, 752 F.2d at 1013-14 & n. 10 (property rights that attached before the petition date supercede the debtor-in-possession's lien creditor position under section 544). Indeed, the court in *General Coffee*, 828 F.2d at 706, in considering the interplay between sections 541 and 544, recognized that the rights of a beneficiary of a constructive trust "prevail over a hypothetical ideal lienholder." *Accord In re Storage Technology Corp.*, 55 B.R. 479, 484 (Bankr.D.Colo.1985).

22

Accordingly, we hold that, by virtue of a constructive trust imposed pursuant to New Jersey law, Sanyo's interest in the collateral stored by Howard in New Jersey is superior to Howard's interest in that property.

CONCLUSION

23

The portion of the district court's judgment from which Sanyo appeals is reversed.

*

Hon. Milton Pollack, United States District Judge, Southern District of New York, sitting by designation

1

The parties stipulated in the bankruptcy court that, as of the end of 1985, the amount of debt owed by Howard to Sanyo was \$419,825.64, and that, as of the date of filing, the total amount was \$879,986.83. The parties stipulated further that "no inventory has been transferred from New York to New Jersey since the date of the filing."

2

Section 9-401(3) of the Uniform Commercial Code, as adopted by New York, provides:

A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

N.Y.U.C.C. Law Sec. 9-401(3) (McKinney Supp.1989).

3

The bankruptcy court determined that, although Howard has its principal place of business in New York, the law of New Jersey governs the issue of perfection because the collateral is and always has been located in New Jersey. 69 B.R. at 1019-20. See 12A N.J.Stat.Ann. Sec. 9-103(1)(b) (West Supp.1986); N.Y.U.C.C. Law Sec. 9-103(1)(b) (McKinney Supp.1989); see also J. White & R. Summers, Uniform Commercial Code Sec. 23-18, at 966-67 (2d ed. 1980)

4

Section 544 of Title 11 U.S.C. provides in pertinent part:

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists....

11 U.S.C. Sec. 544(a)(1).

5

Although the Ninth Circuit has chosen not to accept "the proposition that the bankruptcy estate is automatically deprived of any funds that state law might find subject to a constructive trust," *In re Lewis W. Shurtleff, Inc.*, 778 F.2d 1416, 1419 (9th Cir.1985) (quoting *In re North American Coin & Currency, Ltd.*, 767 F.2d 1573, 1575 (9th Cir.1985), cert. denied, 475 U.S. 1083, 106 S.Ct. 1462, 89 L.Ed.2d 719 (1986)), its approach is not widely accepted, see, e.g., *N.S. Garrott & Sons*, 772 F.2d 462 (8th Cir.1985); *Quality Holstein Leasing*, 752 F.2d 1009 (5th Cir.1985); see also *In re General Coffee Corp.*, 828 F.2d 699 (11th Cir.1987). In fact, the Ninth Circuit's view tends to conflict with the Supreme Court's instruction in *Whiting Pools*, 462 U.S. at 205 n. 10, 103 S.Ct. at 2314 n. 10, that the bankruptcy estate "plainly" does not include "property of others held by the debtor in trust at the time of the filing of the petition."

EXHIBIT 29

LAW OFFICES OF
JEFFREY S. WALTERS
LLC

3000 ATRIUM WAY SUITE #2201
MOUNT LAUREL, N.J. 08054

TELEPHONE: (856) 552-1045
FACSIMILE: (856) 974-8859

EMAIL: jeffrey_walters@comcast.net

December 28, 2012

To Whom It May Concern

RE: Frank Reed v. GMAC Mortgage LLC and Residential Funding Corp.
Docket No. L-1526-10 (Burlington County)

Dear Sir or Madam:

I am an attorney licensed in the State of New Jersey. I write this letter at the request of Frank Reed. It is my understanding that Mr. Reed will be submitting a Request for Independent Foreclosure Review.

Mr. Reed retained my office for the purpose of asserting an action for financial damages as a result of a foreclosure action filed against him. Under New Jersey law, the Fair Foreclosure Act requires that mortgage lenders provide borrowers with a Notice of Intention to Foreclose at least 30 days prior to instituting foreclosure proceedings. The purpose of this law is to give borrowers the opportunity to cure their mortgage arrearage before a foreclosure action is filed against them, which would cause irreparable harm to their credit and their ability to obtain credit. A borrower who receives proper notice would then have the opportunity to cure the arrears (or contest the allegation of arrears) before this type of financial damage is done. Mr. Reed contended that he never received any notice from the lender prior to the institution of foreclosure proceedings, and that if he had received such notice, he would have easily cured the arrears before the foreclosure action was filed. The Court dismissed the lender's foreclosure action against Mr. Reed when the lender was unable to demonstrate that it had sent proper notice prior to instituting the foreclosure action. The lender also filed a Lis Pendens upon filing of their improper foreclosure complaint, which clouded title to Mr. Reed's residence, and which should never have been filed in the first place. After the foreclosure action was dismissed by the Court, the lender failed to release the Lis Pendens as they were required to do, and have failed to do so to this day. This failure continues to produce ongoing financial harm.

The improperly filed foreclosure action and Lis Pendens were particularly harmful to Mr. Reed, because he historically relied on credit in order to conduct his business and real estate ventures, and to earn money from these endeavors. In fact, he was on the verge of obtaining a routine business loan when the unexpected filing of the improper foreclosure action brought his financial life to a standstill, paralyzing his ability to conduct business endeavors already in progress and planned for the future. This one initiating event sent Mr. Reed's financial life into a tailspin from which he has not recovered and which has caused him significant economic damage.

LAW OFFICES OF
JEFFREY S. WALTERS
LLC

While the case was pending in the Court, Mr. Reed received a notice informing him of his right to Independent Foreclosure Review. As a result of this, Mr. Reed voluntarily sought dismissal of his legal action, so that he could participate in Independent Foreclosure Review and avoid the continued financial expense of litigation. Mr. Reed is free to reinstate his legal action in the future if he should desire to do so.

Mr. Reed incurred a substantial bill for my services in this litigation. Attached are true copies of invoices detailing these services and the amount of legal fees.

If you have any questions about these invoices or the nature of the services provided, please do not hesitate to contact me.

Very truly yours,



Jeffrey S. Walters

JSW/jtg

cc: Mr. Frank Reed

856-552-1045

Invoice submitted to:

Mr. Frank J. Reed III
817 Matlack Dr.
Moorestown NJ 08057

frankreedva@aol.com

Invoice Date	Invoice Number	Last Bill Date
December 28, 2012	11177	10/28/2012

In Reference To: GMAC Mortgage Litigation

	Amount
Interest on overdue balance	\$1,310.23
Total amount of this bill	\$1,310.23
Previous balance	\$43,554.90

Please Pay This Amount:

\$44,865.13

Kindly note that payments are due upon receipt of invoice. Prompt payments are appreciated.

Please note that interest at the annual rate of 18% shall begin to accrue on balances not received within 30 days.

Thank you very much for being our client and entrusting your legal matter to us.

If you would like to pay by credit card, we accept credit card payments with VISA, MASTERCARD and DISCOVER.
Please call the office if you would like to pay by credit card.

Current	30 Days	60 Days	90 Days	120 Days
1,310.23	0.00	1,433.29	0.00	42,121.61

RESCAP

MORRISON | FOERSTER

Claim Information

Claim Number	3708
Basis of Claim Explanation that states the legal and factual reasons why you believe you are owed money or are entitled to other relief from one of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases) and, you must provide copies of any and all documentation that you believe supports the basis for your claim.	<i>Please see the attached statement and approximately 30 additional e-mails with attached exhibits</i>

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the following loan information, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Loan Number: <i>060 161 3576</i>		
Address of property related to the above loan number: <i>817 Matlock Drive Moorestown NJ 08057</i>		
City: <i>Moorestown</i>	State: <i>NJ</i>	ZIP Code: <i>08057</i>

Additional resources may be found at - <http://www.kccllc.net/rescap>

Residential Capital, LLC P.O. Box 385220 Bloomington, MN 55438

Claim Number: 3708
Frank Reed
Type: POC

Claimant: Frank Reed
817 Matlack Drive Moorestown, NJ 08057
P: 856.956.6950
E: FrankReedNJ@aol.com

Loan Number: 0601613576
Claim Number: 3708

Caveat: The following information is being provided under the color of Federal Rule of Civil Procedure # 408 if the application of such does not violate the Order of the Bankruptcy Court Docket # 3294, filed March 21, 2013)

BASIS OF CLAIM

SYNOPSIS

In 2009 GMAC was found to have violated their duty to me under New Jersey State foreclosure law by the New Jersey Superior Court, in Mount Holly, Burlington County, NJ, (the proper court of jurisdiction) and as a result of its violation of its duty to me, GMAC caused me direct financial harm.

Specifically, GMAC's acts destroyed the liquidity and market value of my home, resulting in the immediate interruption and loss of vital cash flow which wrought direct, deep and irreversible catastrophic damage to a lifetime of work and accumulated net worth. The result of this damage, if not remediated, will be the homelessness of me, my wife and our 6 children.

This scenario is recognized as remediable pursuant to, but not limited to, New Jersey State Law.

DETAILED EXPLANATION

(NOTE: The following provides a reasonably sufficient basis in both law and fact for my claims, but I expressly reserve the right to add delete or supplement specific claims and / or proofs).

- 1) I, Frank Reed, had continuously bought, built, renovated, rented and sold houses for personal use and for taxable and non-taxable gain since 1990; and I always relied on my ability to borrow money to fund my projects and my cash flow. Without such borrowing ability, I would not be able to pursue this course of making a living as it would cease immediately.

See:

- a) Exhibit 1 - Letter from CPA Stan Woodworth confirming this to be true.
 - b) Exhibit 2 – Letter from attorney Jeffrey Walters confirming this to be true.
-
- 2) In 2009, the New Jersey Superior Court, in Mount Holly, Burlington County, NJ, (the proper court of jurisdiction), determined that GMAC had filed an illegal foreclosure action against me, in violation of its duty to me under New Jersey State foreclosure law.

See: Exhibit 3 - Court order with judicial finding and opinion.

- 3) **GMAC's illegal foreclosure action annihilated the liquid value of my primary residence, instantly destroying my cash flow.**

Both cash out refinance loans that were ready to go on my home AND the salability of my home, were completely destroyed.

See:

- a) Exhibit 4 - Lis Pendens GMAC filed declaring its foreclosure on my home.
- b) Exhibit 2 – Letter from attorney Jeffrey Walters confirming financial effect.
- c) Exhibit 5 - Article describing value gutting EFFECT of a Lis Pendens.
- d) Exhibit 6 - Report from Federally recognized Credit Expert on effect of foreclosure filing.
- e) Exhibit 7 – New Jersey Practices Legal Treatise citing the liquidity destroying effect of filing a foreclosure and why notice is required by law. (see: page 3 of treatise).
- f) Exhibit 8 - Loan denial letter from long term lending partner citing GMAC foreclosure as the ONLY reason for the denial of a cash out refinance on my home.
- g) Exhibit 9 - Loan denial letter from mortgage broker citing GMAC foreclosure as the ONLY reason for the denial of a cash out refinance on my home.
- h) Exhibit 10 – Expert opinion and factual statement from realtor, Louise Carter, with supporting documents, opining to the lost value and ability to sell my home.
- i) Exhibit 11 - Letter from realtor, Naoji Moriuchi, opining to the fact that my home was not salable at market value.

- 4) **GMAC's illegal foreclosure activity on my home directly caused me to lose sale value on my home. That direct financial harm has been independently determined to be \$940,000. This value is the difference between my home's then appraised market value and the under market offers generated due to the house being listed as in foreclosure vis-à-vis GMAC's improper lis pendens.**

Note: I could not accept even below market offers, as they would have resulted in our immediate homelessness.

See: Exhibit 10 - Expert opinion and factual statement from realtor, Louise Carter, with supporting documents, opining to the lost value and ability to sell my home.

- 5) **The lost cash flow described in number 3 above, caused by GMAC's illegal foreclosure, directly caused the loss of my Virginia home. This home was already owned by me and my wife and a major 3,500 square foot expansion to it was in process.**

As described in number 1 above, I relied on loans to fund my home projects and cash flow. The unexpected interruption of our cash flow, again, caused by GMAC's illegal foreclosure, as described in number 3 above, directly prevented me from completing the home's expansion and caused its loss. Therefore, GMAC's illegal act directly caused me an additional financial loss of \$1,116,600.

See: Exhibit 12 - Letter from realtor, Stevie Watson, with supporting appraisal and documents.

- 6) The sudden and catastrophic loss of my cash flow, again, caused by GMAC's illegal foreclosure, as described in number 3 above, caused me to divert rental income from properties that I long owned and which were rented by a national organization since 1993. I did not pay the mortgages because I had to feed my family instead of paying the mortgages on these properties.

The rental properties would have otherwise paid themselves off from the rental income as the national organization would have continued to rent them from me ad infinitum, but for the foreclosure. Instead, I have lost the properties.

Again, these three rental properties would have been paid off and I would have owned them free and clear. Their value has been lost by GMAC's acts. The additional financial harm caused by GMAC in this regard is \$718,000.

See:

- a) Exhibit 13 - Letter from national organization president confirming rental history and long term intent to continue renting, but for foreclosure.
- b) Exhibit 14 - Appraisal on rental property at 52 Stone Hollow Drive Sicklerville, NJ 08081.
- c) Exhibit 15 - Appraisal on rental property at 318 Columbia Avenue Stratford, NJ 08084.
- d) Exhibit 16 - Appraisal on rental property at 21 Darien Drive Cherry Hill, NJ 08003.

- 7) As stated above in Number 6, I lost my rental properties due to the sudden and catastrophic loss of my cash flow, again, caused by GMAC's illegal foreclosure, as described in number 3 above. However, I not only lost their future value as expressed in number 6 above, but I am now left with a deficiency judgment by the foreclosing bank in the amount of \$240,206.57 (the difference between the total judgment on the note and the setoff from the value of the property taken back by the bank, as determined by the bank.)

See:

- a) Exhibit 17 - Recorded judgment amount with the bank's attorney's fees.
- b) Exhibit 18 - 1098 from foreclosing bank displaying offset credit for the property taken.

- 8) Pursuant to New Jersey Law, GMAC is responsible for the lost gain on a project in process.

I owned a lot in a prominent subdivision and I had plans completed for the construction of a home similar in size and quality as those I historically had success with, (7 bedrooms and 10 baths - the same as the home GMAC illegally tried to foreclose on). This project was up next for completion and would have resulted in either an approximate gain of \$500,000 or if we lived in it as a family, it would have been a mortgage free home.

Therefore, I am requesting that GMAC be directed to pay either the \$500,000 in financial remediation for this loss, or that GMAC release its liens on my home at 817 Matlack Drive Moorestown, NJ 08057, the home on which they illegally tried to foreclose, providing me with a replacement mortgage free home. Either of these options would remediate this particular loss.

See:

- a) Exhibit 19 - New Jersey Case Law V.A.L. FLOORS, INC. AND 3L COMPANY, INC., PLAINTIFFS-APPELLANTS, v. WESTMINSTER COMMUNITIES, INC., DEFENDANT-RESPONDENT. DOCKET NO. A-6525-00T1 SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION 355 N.J. Super. 416; 810 A.2d 625; 2002 N.J. Super. LEXIS 470

*"Past experience of an ongoing, successful business provides a reasonable basis for the computation of lost profits "with a satisfactory degree of definiteness." Weiss v. Revenue Bldg. & Loan Ass'n, 116 N.J.L. 208, 212, 182 A. 891 (E & A 1935). 8 See also Tull v. Gundersons, Inc., 709 P.2d 940, 945 (Colo.1985) (noting that "past profit experience on other projects . . . is widely accepted as relevant to a determination of damages based on lost profits"); Restatement supra, § 352 comment b ("Evidence of past performance will form the basis for a reasonable prediction as to the [***15] future")."*

- b) Exhibit 20 - County Tax card showing ownership of the lot described in number 8 that I had to "fire sell" under financial duress instead of building on it as planned, and Article on "Notable Neighborhoods" featuring both my house that was lost (as described in number 5 above), and the neighborhood in which my lot (referred to herein) was located. The lot neighborhood is named: Windsor on the James.
 - c) Exhibit 21 - Letter from draftsman confirming that plans were already paid for and complete for use on the lot described in number 8.
- 9) The remediation of the financial damages I seek are appropriate under New Jersey state law as GMAC's acts were negligent, as defined by its regulator The Federal Reserve and authorized by New Jersey state law.

Now, if there are any questions that the remediation of my financial damages are appropriate, or the damages I seek are appropriate under New Jersey Law, let me be clear: This question has been settled by a court of law, and is not reviewable as a matter of law vis-à-vis collateral estoppel.

In 2010, the New Jersey Superior Court, in Mount Holly, Burlington County, NJ, (the proper court of jurisdiction), found that the financial damages I am seeking against GMAC for its illegal foreclosure action against me are legally cognizable and appropriate under New Jersey State Law.

See:

- a) Exhibit 22 - The Office of the Comptroller of the Currency - Board of Governors of the Federal Reserve System - JUNE 21, 2012 - FINANCIAL REMEDIATION FRAMEWORK - FOR USE IN THE INDEPENDENT FORECLOSURE REVIEW.
- b) Exhibit 23 - New Jersey Court Order declaring that the financial and equitable damages I now seek are appropriate remedies under New Jersey Law for the illegal foreclosure action GMAC filed against me; and our legal brief supporting that order.
- c) Exhibit 24 – Our Complaint filed against GMAC, (the subject of Court Order Referenced herein statement number 9).
- d) Exhibit 25 - Statement of Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve System: Submitted to the Senate Committee on Banking, Housing, and Urban Affairs Subcommittee On Housing, Transportation, and Community Development - U.S. Senate, Washington, D.C. - December 13, 2011.

- 10) GMAC is also liable under New Jersey law for punitive damages for its behavior, which is in conformity with the opinion of the Federal Reserve:

"the Federal Reserve believes monetary sanctions in these cases are appropriate...in response to patterns of misconduct and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing."

Statement of Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve System: Submitted to the Senate Committee on Banking, Housing, and Urban Affairs Subcommittee On Housing, Transportation, and Community Development - U.S. Senate, Washington, D.C. - December 13, 2011

Also, the New Jersey Superior Court, in Mount Holly, Burlington County, NJ, (the proper court of jurisdiction), found that GMAC could be liable for punitive damages under New Jersey Law based on its illegal foreclosure action against me. (Note: Punitive damages under New Jersey Law shall not exceed \$350,000).

See:

- e) Exhibit 25 - Statement of Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve System: Submitted to the Senate Committee on Banking, Housing, and Urban Affairs Subcommittee On Housing, Transportation, and Community Development - U.S. Senate, Washington, D.C. - December 13, 2011 and Punitive damages amended complaint.
- f) Exhibit 26 – Amended complaint against GMAC seeking punitive damages, approved by the New Jersey Superior Court.
- g) Exhibit 27 – New Jersey Annotated Punitive Damages Jury Charge citing maximum award allowable by law is \$350,000. (see: page 1, paragraph e).

- 11) GMAC is NOT entitled to collect a setoff and my claim is secured.

GMAC's illegal foreclosure against me interfered with several possible cash out refinance loans that were ready on my home. These loans would have eliminated GMAC as a lien holder on my property and provided me with cash flow and subsequent value. Notably, this value would have been above the value of the GMAC note on my home (this is detailed in numbers 4, 5, 6, 7 and 8).

Therefore, by operation of law, a "constructive trust" over my home should be recognized as being in existence as of the date of GMAC's wrongdoing eliminating its ill-gotten rights; to do otherwise would result in GMAC being "unjustly enriched" for its bad act by allowing it to reap the benefits that would be due to a properly situated lien holder, (i.e. a lien holder who possessed both legal and equitable rights to the lien as opposed to GMAC who has "unclean hands").

So, GMAC should not be able to claim that payments due beyond their bad act as valid payments due and payable to them and/or used as a setoff. This should be barred by an equitable order indicating so.

See: Exhibit 28 - Case citing current New Jersey law, which is:

The Supreme Court of New Jersey has stated that, in general, "all that is required to impose a constructive trust is a finding that there was some wrongful act, usually, though not limited to, fraud, mistake, undue influence, or breach of a confidential

relationship, which has resulted in a transfer of property." D'Ippolito, 242 A.2d at 619, 38 A.L.R.3d at 677. In fact, such a trust may arise "even though the acquisition of the property was not wrongful. It arises where the retention of the property would result in the unjust enrichment of the person retaining it." Id. (quoting Scott on Trusts Sec. 462.2, at 3417 (3d ed. 1967)); accord Stretch v. Watson, 5 N.J. 268, 74 A.2d 597, 602 (1950); Stewart, 486 A.2d at 1271-72.

Exhibit 29 – current Federal 2nd Circuit law citing exhibit 28 above.

- 12) I have incurred a great deal of legal bills that I would not have, but for GMAC's illegal foreclosure and the direct financial harm it caused. The legal fees I wish to be remediated are those fees incurred in my direct legal battles with GMAC as they are a direct financial harm to me caused by GMAC's bad act. These total: \$44,865.13

See: Exhibit 30 - Cover letter and legal bills from my counsel.

- 13) Additional financial experts may be called, including but not limited to Marty Abo, a forensic Accountant.
- 14) I have also suffered a serious heart ailment directly a proximately caused by the continued crushing stress caused by GMAC's bad acts. Expert medical opinions and testimony will be offered into evidence.

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CONCLUSION

(SPECIFIC REMEDIATION OPTIONS REQUESTED)

Based on the above detailed 14 point factual explanation and the volume of supporting independent proofs, there are two (2) remediation plans that are appropriate, and they are listed and described below as Remediation Plan A and Remediation Plan B.

Plan A is primarily financial whereas plan B is a mixture of financial and equitable. Either plan provides appropriate remediation and would be acceptable.

REMEDICATION PLAN A

Damages from Item Number 4: \$940,000
Damages from Item Number 5: \$1,160,000
Damages from Item Number 6: \$718,000
Damages from Item Number 7: \$240,206
Damages from Item Number 8: \$500,000
Damages from Item Number 10: \$350,000
Damages from Item Number 12: \$44,865

**TOTAL FINANCIAL REMEDIATION REQUESTED: \$3,953,071
AND
WE CONVEY TITLE OF OUR HOME TO GMAC**

OR

REMEDICATION PLAN B

Damages from Item Number 5: \$1,160,000
Damages from Item Number 6: \$718,000
Damages from Item Number 7: \$240,206
Damages from Item Number 10: \$350,000
Damages from Item Number 12: \$44,865

**TOTAL FINANCIAL REMEDIATION REQUESTED: \$2,513,071
PLUS
THE RELEASE OF GMAC LIEN ON MY HOME AS DETAILED IN DAMAGES ITEM NUMER 8**

Respectfully Submitted By,


Frank Reed
Financially Injured Homeowner / Borrower

7 21 13
Date

FLEISCHER, FLEISCHER & SUGLIA
BRIAN M. FLEISCHER, ESQUIRE
AHMED M. SOLIMAN, ESQUIRE
Plaza 1000 at Main Street
Suite 208
Voorhees, NJ 08043

Attorneys for Defendant GMAC Mortgage, LLC

Frank J. Reed, III,

Plaintiff,

vs.

GMAC Mortgage, LLC; Residential Funding
Corp.; and John Does 1-30,

Defendants.

NEW JERSEY SUPERIOR COURT
BURLINGTON COUNTY
LAW DIVISION

CIVIL ACTION


DOCKET NO: BUR- L-1526-10

**NOTICE OF MOTION TO BAR
EXPERT REPORT**

TO: Motions Clerk
Superior Court of New Jersey
Burlington County – Law Division
49 Rancocas Road
Mount Holly, NJ 08060

Law Offices of Jeffrey S. Walters, LLC
3000 Atrium Way Suite 2201
Mount Laurel, NJ 08054
Attn: Jeffrey S. Walters, Esq.

PLEASE TAKE NOTICE that the undersigned will apply to the above named Court, at the Burlington County Courthouse, 49 Rancocas Road, Mount Holly, NJ 08060, on January 6, 2012, at 9:00 A.M., or soon thereafter, for the entry of an Order Barring Plaintiff's Expert Report. Please be advised that Defendant will rely on the attached brief. Defendant requests oral argument if opposition is filed.



Brian M. Fleischer, Esquire
Fleischer, Fleischer & Suglia
Attorneys for Defendant

Dated:

PROOF OF MAILING

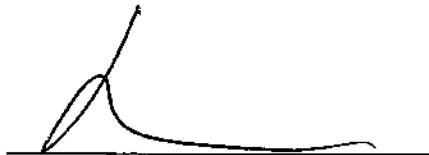
In compliance with Rule 1:6, et seq., the original of the within Notice of Motion has been filed with the Motion's Clerk of Burlington County and copies have been served upon Plaintiff's counsel via Legal Courier and Regular Mail pursuant to Rule 1:5, et seq.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Pursuant to Rule 1:6-2(e), the undersigned:

- ☐ waives oral argument and consents to disposition on the papers;
- ☒ does not request oral argument unless opposition is filed;
- ☐ requests oral argument.

A proposed form of Order is attached.



Brian M. Fleischer, Esquire
Fleischer, Fleischer & Suglia
Attorneys for Defendant

Dated:

FLEISCHER, FLEISCHER & SUGLIA
BRIAN M. FLEISCHER, ESQUIRE
AHMED M. SOLIMAN, ESQUIRE
Plaza 1000 at Main Street
Suite 208
Voorhees, NJ 08043
Attorneys for Defendant GMAC Mortgage, LLC

Frank J. Reed, III,

Plaintiff,

vs.

GMAC Mortgage, LLC; Residential Funding
Corp.; and John Does 1-30,

Defendants.

NEW JERSEY SUPERIOR COURT
BURLINGTON COUNTY
LAW DIVISION

CIVIL ACTION

DOCKET NO: BUR- L-1526-10

ORDER

THE ABOVE MATTER being opened to the Court upon the motion of Ahmed M. Soliman, Esq., of Fleischer, Fleischer & Suglia, attorney for Defendant GMAC Mortgage, LLC, to Bar Plaintiff's Expert Reports, and the Court having considered the argument presented on the papers and any opposition presented by Plaintiff, and for good cause shown;

IT IS on this _____ day of _____, 2012;

ORDERED that Plaintiff's expert report of Mr. Evan Hendricks is hereby barred as a net opinion; and

IT IS FURTHER ORDERED that a copy of this Order be served upon all counsel, within _____ days from the date of the receipt of the same.

J.S.C.

The within Notice of Motion was:

() Opposed

() Unopposed

FLEISCHER, FLEISCHER & SUGLIA
BRIAN M. FLEISCHER, ESQUIRE
AHMED M. SOLIMAN, ESQUIRE
Plaza 1000 at Main Street
Suite 208
Voorhees, NJ 08043

Attorneys for Defendant GMACM Mortgage, LLC

Frank J. Reed, III,

Plaintiff,

vs.

GMACM Mortgage, LLC; Residential Funding
Corp.; and John Does 1-30,

Defendants.

NEW JERSEY SUPERIOR COURT
BURLINGTON COUNTY
LAW DIVISION

CIVIL ACTION

DOCKET NO: BUR- L-1526-10

BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO BAR EXPERT REPORT

Defendant GMACM Mortgage, LLC ("GMACM") submits this brief in support of its Motion to Bar Plaintiff's Expert Report of Mr. Evan Hendricks on the grounds that said report is a "net opinion."

I. Factual Background

1. Frank J. Reed, III and Christina A. Reed ("Plaintiffs") executed a Note in favor of Defendant GMACM (hereinafter "the Note") securing the sum of \$1,000,000.00. See a true and correct copy of the Note attached hereto as Exhibit "A" and incorporated herein by reference.

2. To secure the payment of the Note, Plaintiffs executed a Mortgage in favor of GMACM (hereinafter the "Mortgage"), which Mortgage was filed against Plaintiffs' property at 817 Matlack Drive, Moorestown, NJ (the "Property"). See a true and correct copy of the Mortgage attached hereto as Exhibit "B" and incorporated herein by reference.

3. As a result of Plaintiffs' failing to remit the mortgage payments when due,

Defendants commenced a Mortgage Foreclosure Action (the "Foreclosure Action") and filed a Lis Pendis on the Property. See a true and correct copy of the Foreclosure Complaint attached hereto as Exhibit "C" and incorporated herein by reference.

4. Plaintiffs claim that GMACM failed to send them a "Notice of Intent to Foreclose" (the "Notice"), prior to filing the Foreclosure Action and filing the Lis Pendis. See a true and correct copy of the Complaint attached hereto as Exhibit "D" and incorporated herein by reference.

5. As a result of such alleged failure, Plaintiffs claim that they were injured. See Complaint attached hereto as Exhibit "D."

6. Specifically, Plaintiffs claim that, had the Defendants sent them the Notice, they would have had time to refinance the Property and payoff the Defendants. See Exhibit "D," paragraph 15 and 16 of the First Count. *or to Chris*

7. Plaintiffs also claim that their credit was negatively affected by Defendants failure to send the Notice. See Exhibit "D," paragraph 4 of the Fifth Count.

8. Plaintiffs have been living on the Property for over three (3) years without making a single Mortgage payment since April of 2008. See a true and correct copy of the Deposition of Frank Reed, p. 23:6-17 attached hereto as Exhibit "E" and incorporated herein by reference. *Spec done*

9. The Foreclosure Action was dismissed without prejudice. See a true and correct copy of the Honorable Michael J. Hogan's Order dated February 9, 2009 and attached written decision dismissing the Foreclosure Action attached hereto as Exhibit "F" and incorporated herein by reference.

10. Plaintiff, Christina A. Reed voluntarily withdrew as a Plaintiff in this lawsuit.

11. Plaintiff, Frank J. Reed, III claims he has bought and sold properties for many years. See Exhibit "E" at page 11 attached hereto.

12. Discovery was exchanged in this matter, including the "expert report" of Mr. Evan Hendricks with regard to the alleged damages to Plaintiff's credit, which Plaintiff provided to GMACM on November 28, 2011. See a true and correct copy of Plaintiff's Expert Witness Report of Evan Hendricks attached hereto as Exhibit "G" and incorporated herein by reference.

13. Plaintiff's expert report is deficient in many respects and is a "net opinion."

14. Among other things, the report of Mr. Hendricks fails to provide a comparative analysis of Plaintiff's credit report before GMACM allegedly failed to provide proper foreclosure notification, and Plaintiff's credit report after.

15. In addition, the report fails to demonstrate any causal link between GMACM's actions and Plaintiff's alleged damages. This is especially true given that Plaintiff has numerous other delinquencies, foreclosures, unpaid judgments, tax liens and other negative credit issues. See Exhibit "E" at page 22 - 23, 37 - 38, 49 -50 attached hereto.

16. The report makes sweeping assumptions of facts not in evidence, including the notion that Plaintiff has suffered from "mental anguish" and "stress" in the amount of \$350,000.00, despite the fact that Mr. Hendricks is not a psychologist, and therefore not qualified to report the existence of such conditions on the part of Plaintiff, much less set an amount of money with which Plaintiff could become whole again. See Exhibit "G" at pages 4-5 attached hereto.

17. In light of the above listed facts, Defendant now moves to bar the expert report of Mr. Evan Hendricks on the grounds that it is a "net opinion."

See
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II. Legal Argument

A. Plaintiff's expert report is inadmissible under New Jersey law because it is a "net opinion."

Plaintiff's expert report is inadmissible under New Jersey law and, as such, the "expert testimony" of Mr. Hendricks must be barred. Under New Jersey law, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise. N.J.R.E. 702. The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. N.J.R.E. 703. The admission or exclusion of expert testimony is within the discretion of the trial court. State v. Torres, 183 N.J. 554, 567 (2005).

However, in order to be admitted, an expert's opinion testimony *must have a factual and scientific basis*. Jimenez v. GNOC Corp., 286 N.J. Super. 533, 540 (App. Div. 1996) (emphasis added). An opinion lacking a foundation is worthless. Stanley Co. of America v. Hercules Power Co., 16 N.J. 295, 305 (1954). When an expert's opinion is merely a bare conclusion unsupported by factual evidence, i.e. a "net opinion," it is inadmissible. Bucklew v. Grossbard, 87 N.J. 512, 524 (1981). The same is true of opinions based on unfounded speculation or mere possibilities. Koruba v. American Honda Motor Co., 396 N.J. Super. 517, 526 (App. Div. 2007).

In the case at hand, the expert report submitted by Mr. Evan Hendricks on behalf of Plaintiff lacks the requisite factual basis and technical analysis to qualify as an admissible and reliable expert report under New Jersey Law. See Expert Report of Mr. Evan Hendricks attached hereto as Exhibit "G." In fact, the report is little more than a general treatise on the credit reporting industry. Specifically, Mr. Hendricks has failed to cite specific credit reports of

Plaintiff that were examined, what date those reports were generated, or how GMACM's actions may have effected said reports. Such an analysis is critical to proving Plaintiff's allegations, especially since Plaintiff himself admits that he does not know what the status of his credit was in 2008, immediately prior to foreclosure action filed by GMACM, and is uncertain whether or not he was past due on any of his mortgages at that time. See Deposition of Frank Reed at pages 35 - 36 attached hereto as Exhibit "E." Plaintiff also stated that he is not sure how the foreclosure action affected his credit -- if at all. See Deposition of Frank Reed at page 66 attached hereto as Exhibit "E."

Moreover, the report of Mr. Hendricks also fails to provide a comparison of Plaintiff's credit report before GMACM allegedly failed to provide proper foreclosure notification, and Plaintiff's credit report after. Rather than provide a numerical analysis based on documentation of Plaintiff's credit history, Mr. Hendricks merely states that "It's logical that a foreclosure is devastating to a consumer's creditworthiness." See Exhibit "G" at page 2 attached hereto. However, Mr. Hendricks' personal opinion as to what is logical or not is an insufficient basis

upon which to formulate an "expert opinion" under the law. It must be supported by a factual analysis, which is missing from this report.

Mr. Hendricks follows up his unsupported conclusion about the effect of the foreclosure action upon Plaintiff's credit with another unfounded statement that "GMACM's Foreclosure doomed Mr. Reed's Refinance" and that the refinance "would have enabled Mr. Reed to catch up on his debts, including the GMAC mortgage..." See Exhibit "G" at page 3 attached hereto. However, such a statement is not only unsupported by any factual documentation, it is also purely speculative as there is no way of knowing whether or not Plaintiff would have fulfilled his obligation to GMAC. To the contrary, his prior failure to make timely payments on the loan indicated that he had no intention to fulfill his admitted obligation to GMACM.

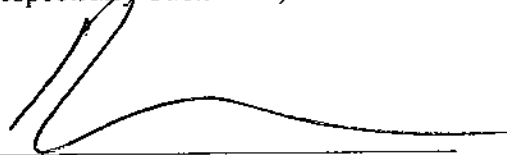
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Furthermore, even if Plaintiff could provide documentation to demonstrate that his credit score had been lowered and/or that, as a result, he had been denied credit, Plaintiff has failed to demonstrate any type of causal link between GMACM's actions and his alleged damages related to the current status of his credit. This is especially true given that Plaintiff has numerous other delinquencies and credit issues. For example, TD Bank has initiated Foreclosure proceedings on three of Plaintiff's other properties from the property at issue in this matter. See Deposition of Frank Reed at pages 22 – 23 attached hereto as Exhibit "E." Plaintiff also has unpaid judicial judgments against him. See Exhibit "E" at pages 37 – 38. And Plaintiff has had a tax lien against him for \$34,000.00. See Exhibit "E" at pages 49 – 50. All of these delinquencies would have a negative effect on Plaintiff's credit score, yet the "expert opinion" of Mr. Hendricks fails to even mention them, much less analyze their impact.

Amazingly, Mr. Hendricks also places a monetary amount for damages that he believes Plaintiff is owed for such conditions as "mental anguish" and "stress." See Exhibit "G" at pages 4 – 5 attached hereto. Specifically, Mr. Hendricks states that "Mr. Reed's non-economic damages relate to the stress, humiliation, mental anguish and frustration stemming from being blindsided by GMAC's non-compliant foreclosure..." Id. However, Mr. Hendricks is not a licensed psychologist, and is not qualified to comment on the existence of such conditions – much less opine on the amount of money required to make Plaintiff whole again. Furthermore, Plaintiff has not produced any medical records. In short, Mr. Hendrick's "expert report" is the quintessential "net opinion," and should be barred accordingly.

III. Conclusion

For the foregoing reasons, Defendant GMACM requests that the Court grant its Motion to Bar the Expert Testimony of Mr. Evan Hendricks.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Brian M. Fleischer', written over a horizontal line.

Brian M. Fleischer, Esquire
Ahmed M. Soliman, Esquire
Attorneys for Defendant

Dated: _____

EXHIBIT “A”

HN: 10003420057200556

Loan Number: 21063843

FIXED/ADJUSTABLE RATE NOTE

(LIBOR One - Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

MAY 31, 2006
(Date)

SHERMAN OAKS
(City)

CALIFORNIA
(State)

817 MATLACK DRIVE, MOORESTOWN, NEW JERSEY 08057
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$1,000,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is METROCITIES MORTGAGE, LLC, A LIMITED LIABILITY COMPANY. 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 6.375%. 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 principal and interest by making a payment every month.

I will make my monthly payments on the 1st day of each month beginning on JULY 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 JUNE 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 monthly payments at 15301 VENTURA BLVD., STE 10300, SHERMAN OAKS, CALIFORNIA 91403

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments ** See attached Interest Only Note Addendum.

Each of my initial monthly payments will be in the amount of U.S. \$6,238.70. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the 1st day of JUNE, 2011, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year 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 date 45 days before each Change Date 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 TWO AND 250/1000 percentage points (2.250%) 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.

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 11.375% or less than 2.250%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000 percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.375%.

(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

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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.

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 this Note.

I may make a full Prepayment or partial Prepayments without paying any 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 this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial

CERTIFIED TRUE AND
ORIGINAL

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 5.000 % of my overdue payment of principal and interest. 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.

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.

CESTRAED TO THE END
OF THE INSTRUMENT

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:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall 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 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.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead 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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired

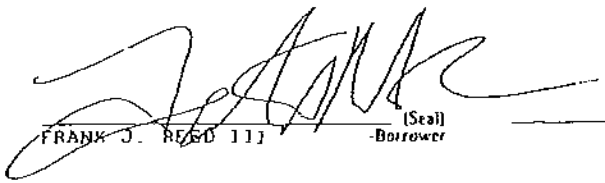
[Handwritten signature]
JUL 1 2014
JUL 1 2014

by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

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.

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


FRANK J. REED 111 (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

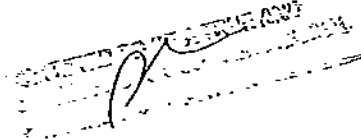


EXHIBIT "B"

motion to bar expert report Pg 18 of 75

GMAC

601613576

SCANNED

INFINITY TITLE AGENCY, INC.
33 EAST MAIN STREET, UNIT 2
MOORESTOWN, NJ 08057
856-727-0818 - FAX 856-727-5173 JUN 19 A 10 02

RECEIVED

NOV 10 2006

INFINITY TITLE
AGENCY, INC.

ARRIVED

After Recording Return To:

METROCITY MORTGAGE LLC
15301 VENTURA BLVD., STE D300
SHERMAN OAKS, CALIFORNIA 91403
Loan Number: 21063843

This Instrument Prepared By:

[Space Above This Line For Recording Data]

MORTGAGE

MIN: 100034200057200556

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 MAY 31, 2006, together with all Riders to this document.
- (B) "Borrower" is FRANK J. REED III AND CHRISTINA A. REED, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

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

(D) "Lender" is METROCITIES MORTGAGE, LLC

Lender is a LIMITED LIABILITY COMPANY organized and existing under the laws of DELAWARE
Lender's address is 15301 VENTURA BLVD., STE D300, SHERMAN OAKS, CALIFORNIA 91403

- (E) "Note" means the promissory note signed by Borrower and dated MAY 31, 2006. The Note states that Borrower owes Lender ONE MILLION AND 00/100 Dollars (U.S. \$ 1,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 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]:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Planned Unit Development Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Condominium Rider | <input checked="" type="checkbox"/> Other(s) [specify] |
- INTEREST ONLY ADDENDUM TO 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 3580), 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.

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 these purposes, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the

COUNTY of BURLINGTON
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".
A.P.N.: 22-03803-00002

which currently has the address of

817 MATLACK DRIVE

[Suret]

MOORESTOWN
[City]

New Jersey

08057
[Zip Code]

["Property Address"]:

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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS has nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, 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, instrumentally, 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. If Lender accepts such payments, it shall apply such payments at the time such payments are accepted. 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 in, 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.

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 30 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.

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 3 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.

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.

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.

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 for 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.

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.

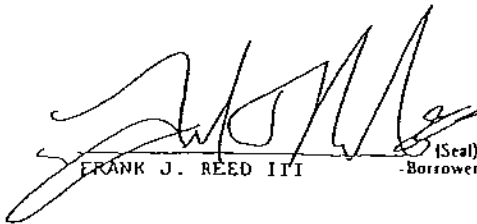
NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

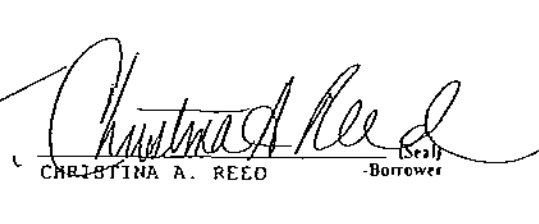
22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (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; (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, foreclosure by judicial proceeding and sale of the Property; (e) the Borrower's right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure; and (f) any other disclosure required under the Fair Foreclosure Act, codified at §§ 2A:50-53 et seq. of the New Jersey Statutes, or other 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 foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, attorneys' fees and costs of title evidence permitted by Rules of Court.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall cancel this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. No Claim of Credit for Taxes. Borrower will not make deduction from or claim credit on the principal or interest secured by this Security Instrument by reason of any governmental taxes, assessments or charges. Borrower will not claim any deduction from the taxable value of the Property by reason of this Security Instrument.

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.

 (Seal)
FRANK J. REED III -Borrower

 (Seal)
CHRISTINA A. REED -Borrower


____ (Seal)
-Borrower

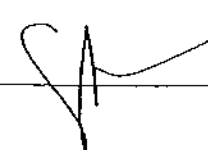
____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

Signed, sealed and delivered in the presence of:





[Space Below This Line for Acknowledgment]

State of New Jersey.
County of CAMDEN

I CERTIFY that on
CHRISTINA A. REED

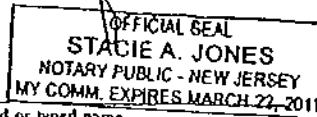
5/31/06 ss

FRANK J. REED III.

personally came before me and stated to my satisfaction that this person (or if more than one, each person):
(a) was the maker of the attached instrument; and
(b) executed this instrument as his or her own act.

Notary's Signature

Date



Notary's printed or typed name

My commission expires:

HB 1124 PG 422

EXHIBIT "C"

EXHIBIT "D"

CIVIL CASE INFORMATION STATEMENT
(CIS)

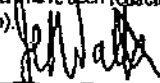
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Use for initial Law Division - Civil Part pleadings (not motions) under Rule 4:5-1.
Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

PAYMENT TYPE:	CK CG CA
CHG/CK NO.	
AMOUNT:	
OVERPAYMENT:	
BATCH NUMBER	

1. ATTORNEY/PRO SE NAME Jeffrey S. Walters, Esq.	2. TELEPHONE NUMBER (856) 552-1045	3. COUNTY OF VENUE Burlington
4. FIRM NAME (If Applicable) LAW OFFICES OF JEFFREY S. WALTERS, LLC	5. DOCKET NUMBER (When Available) BUR-L-1526-10	
6. OFFICE ADDRESS 3000 Atrium Way Suite 2201 Mount Laurel, NJ 08054	7. DOCUMENT TYPE (e.g. Complaint, Answer with counterclaim) Answer	
9. NAME AND STATUS OF PARTY (e.g., John Doe, Plaintiff) Frank J. Reed III and Christina A. Reed, Plaintiffs	8. JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
11. CASE TYPE NUMBER (See reverse side for listing): 699	10. CAPTION Frank J. Reed III and Christina A. Reed v. GMAC Mortgage LLC, Residential Funding Corp. and John Does 1-30, V/s/a	
13. RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	12. IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE NJSA 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT	
15. DO YOU ANTICIPATE ADDING ANY PARTIES (wishing out of same transaction or occurrence) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	14. IF YES, LIST DOCKET NUMBERS: NA	
16. NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN None <input checked="" type="checkbox"/> Unknown		
THE INFORMATION PROVIDED BELOW CANNOT BE INTRODUCED INTO EVIDENCE		

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

17. DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP	<input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FAMILIAL	<input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> BUSINESS	<input type="checkbox"/> OTHER (explain)
18. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? YES <input checked="" type="checkbox"/> NO				
19. USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
20. DO YOU OR YOUR CLIENT HAVE ANY NEEDS UNDER THE AMERICANS WITH DISABILITIES ACT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO. IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:				
21. WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO. IF YES, FOR WHAT LANGUAGE?				
22. I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).				
23. ATTORNEY SIGNATURE: 				

LAW OFFICES OF JEFFREY S. WALTERS, LLC

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Attorneys for Plaintiffs

**FRANK J. REED III and CHRISTINA
A. REED,**

Plaintiff,

v.

**GMAC MORTGAGE LLC,
RESIDENTIAL FUNDING CORP.
and JOHN DOES 1-30, Individually,
Jointly, Severally and in the
alternative,**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION**

BURLINGTON COUNTY

Docket No: BUR-L-1526-10

CIVIL ACTION

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

Plaintiffs, whose post office address is 9717 Old Dell Trace, Richmond, VA 23238, by way
of Complaint against the Defendants say:

FIRST COUNT

1. At all times pertinent hereto, Defendant GMAC Mortgage LLC was a Limited Liability Company duly organized and existing under and by virtue of the laws of one of the fifty states, and authorized to do business in the State of New Jersey, having an address of 1100 Virginia Drive, Fort Washington, Pennsylvania 19034.

2. At all times pertinent hereto, Defendant Residential Funding Corp. was a corporation duly organized and existing under and by virtue of the laws of one of the fifty states, and authorized to do business in the State of New Jersey, having an address of 1 Meridian Crossings Suite 100, Minneapolis, Minnesota 55423.

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SUPERIOR COURT
BURLINGTON COUNTY

3. At all times pertinent hereto, Defendants John Doe 1-30 were individuals or entities who were employees, agents or subcontractors of the non-John Doe Defendants, or employees, agents or subcontractors of such agents or subcontractors, and who, as employees, agents or in any other capacity, were responsible for insuring that the non-John Doe Defendants were in compliance with their statutory duties, including but not limited to their duty to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act and to refrain from failing to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act.

4. At all times pertinent hereto, Defendant GMAC Mortgage LLC was the owner of a mortgage executed by Plaintiffs which encumbered real property owned by Plaintiffs, said property being known as 817 Matlack Drive, Moorestown, New Jersey 08057 ("the Property").

5. At the time the causes of action stated herein arose, Plaintiffs resided at the Property.

6. On or about December 30, 2009, Defendant GMAC Mortgage LLC transferred ownership of said mortgage to Defendant Residential Funding Corp.

7. The mortgage which encumbered the Property was a "Residential Mortgage" as that term is defined in the Fair Foreclosure Act, NJSA 2A:50-53 et seq.

8. Under the Fair Foreclosure Act, Defendant GMAC Mortgage LLC was statutorily prohibited from commencing any foreclosure action to take possession of the Property until Defendant provided Plaintiffs with a "notice of intention" in form and content as provided in the Fair Foreclosure Act, and over 30 days in advance of commencing any foreclosure action.

9. On or about May 19, 2008, Defendant GMAC Mortgage LLC filed a Complaint for Foreclosure in the Superior Court of New Jersey, Chancery Division, General Equity Part, Docket No. F-19177-08, seeking to foreclose Plaintiffs' equity of redemption in the Property.

10. On or about May 28, 2008, Defendant GMAC Mortgage LLC, through its agents, caused a Lis Pendens to be recorded with the Burlington County Clerk.

11. Defendant GMAC Mortgage LLC failed to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act prior to filing its Complaint for Foreclosure on or about May 19, 2008.

12. At all times herein, Defendant GMAC Mortgage LLC had a statutory duty to refrain from filing a Complaint for Foreclosure against the Property and Plaintiffs until such time as Defendant properly served Plaintiffs with "notice of intention" required by the Fair Foreclosure Act.

13. At all times herein, Defendant GMAC Mortgage LLC had a duty to Plaintiffs to exercise care to refrain from violating Defendant's statutory duty as set forth above.

14. Defendant GMAC Mortgage LLC failed to exercise the required standard of care, and negligently and/or recklessly filed a Complaint for Foreclosure and recorded a Lis Pendens against the Property and Plaintiffs without first discharging its statutory duty to provide a "notice of intention" as required by the Fair Foreclosure Act.

15. At the time Defendant GMAC Mortgage LLC improperly and negligently filed its Complaint for Foreclosure and Lis Pendens, Plaintiffs were in the process of consummating financial transactions which, as a proximate result of Defendant's negligent and/or reckless conduct, were not consummated and which, but for Defendant's negligent and/or reckless conduct, would have been consummated.

16. At all relevant times herein, Defendant GMAC Mortgage LLC knew or should have known that a foreclosure filing and Lis Pendens recording would severely compromise Plaintiffs' financial dealings, including but not limited to Plaintiffs' ability to obtain credit in the future.

17. As a direct and proximate result of said Defendant's negligent and/or reckless conduct, Plaintiffs suffered damages and continue to suffer damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

SECOND COUNT

1. The prior Count is referred to herein and made a part of this Count, but for the sake of brevity is not repeated in its entirety.

2. The financial transaction secured by the mortgage on the Property was a contractual agreement between Defendant GMAC Mortgage LLC and Plaintiffs.

3. The statutory obligation to provide the "notice of intention" required by the Fair Foreclosure Act was a term of the contractual agreement between Defendant GMAC Mortgage LLC and Plaintiffs.

4. In failing to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act prior to filing its Complaint for Foreclosure on or about May 19, 2008, Defendant GMAC Mortgage LLC breached the aforesaid contractual agreement.

5. As a direct and proximate result of said Defendant's breach of the contractual agreement, Plaintiffs suffered damages and continue to suffer damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

THIRD COUNT

1. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

2. Defendant Residential Funding Corp., as the owner of the mortgage as of December 30, 2009, undertook liability for the actions of its predecessor-in-interest Defendant GMAC Mortgage LLC as described herein, or is otherwise liable for the actions thereof as described herein.

WHEREFORE, Plaintiffs demand judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

FOURTH COUNT

1. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

2. At all times pertinent hereto, Defendants John Doe 1-30 were individuals or entities who, as employees, agents or in any other capacity, were responsible for insuring that the non-John Doe Defendants were in compliance with their statutory duties, including but not limited to their duty to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act and to refrain from failing to provide Plaintiffs with the "notice of intention" required by the Fair Foreclosure Act.

3. At all times pertinent hereto, Defendants John Doe 1-30 committed certain actions and/or failed to take certain actions in a careless, negligent and reckless manner and thereby caused harm and injuries to the Plaintiffs.

4. As a direct and proximate result of the aforesaid negligence, carelessness and recklessness of Defendants John Doe I-30, and/or their employees and/or agents, Plaintiffs suffered damages and continue to suffer damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

FIFTH COUNT

1. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

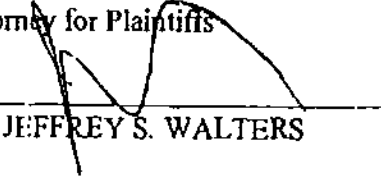
2. But for the negligent and reckless conduct of Defendants in prematurely filing a Complaint for Foreclosure and recording a Lis Pendens, Plaintiffs would have consummated a refinance transaction with another lender which would have paid off Defendant's mortgage.

3. Defendants, by its/their negligent and reckless actions in prematurely filing a Complaint for Foreclosure and recording of a Lis Pendens, made it impossible for Plaintiffs to procure the funds to pay off Defendant's mortgage, and furthermore, destroyed Plaintiffs' credit and future ability to reinstate or pay off the mortgage loan as is permitted by the Fair Foreclosure Act.

4. As a result of Defendants' actions in negligently and recklessly destroying Plaintiffs' credit and rendering Plaintiffs without the ability to take advantage of Plaintiffs' statutory rights, Defendant GMAC Mortgage LLC, its successor-in-interest Defendant Residential Funding Corp. and any other successor-in-interest should be estopped from instituting another foreclosure action against Plaintiffs and the Property.

WHEREFORE, Plaintiffs demand judgment against Defendants estopping them from instituting another foreclosure action against Plaintiffs and the Property, and for such sum of money as would reasonably and properly compensate Plaintiffs in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorney for Plaintiffs

BY: 
JEFFREY S. WALTERS

DATED: May 7, 2010

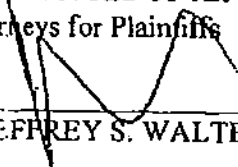
DESIGNATION OF TRIAL COUNSEL

Pursuant to New Jersey Court Rule 4:25-4, Jeffrey S. Walters, Esq. is designated as trial counsel for the Plaintiffs in the above matter.

JURY DEMAND

Plaintiffs demand trial by a jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorneys for Plaintiffs

By: 
JEFFREY S. WALTERS

Dated: May 7, 2010

CERTIFICATION

Pursuant to New Jersey Court Rule 4:5-1, the plaintiffs hereby certify that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding, to the best of plaintiff's knowledge or belief. The plaintiffs further certify that plaintiffs have no knowledge of any contemplated action or arbitration proceeding regarding the subject matter of this action and that, other than the parties set forth in this pleading, the plaintiffs are not aware of any other parties who should be joined in this action. In addition, plaintiffs recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorneys for Plaintiffs

By: 
JEFFREY S. WALTERS

Dated: May 7, 2010

EXHIBIT "E"

FRANK REED

April 26, 2011

<p>1 Q. And where did you go to law school?</p> <p>2 A. Widener.</p> <p>3 Q. What year did you start law school</p> <p>4 at Widener?</p> <p>5 A. I think it was '07.</p> <p>6 Q. How long did you attend law school?</p> <p>7 A. Oh, it was just for one semester.</p> <p>8 Q. How come you left?</p> <p>9 A. The career counselor painted a</p> <p>10 bleak picture for lawyers. It was pretty</p> <p>11 scary sounding.</p> <p>12 Q. Did you pay for law school?</p> <p>13 A. Yes.</p> <p>14 Q. Were you working while you attended</p> <p>15 law school?</p> <p>16 A. I don't think that semester I was.</p> <p>17 Q. Are you currently working?</p> <p>18 A. No.</p> <p>19 Q. What was the last job that you held?</p> <p>20 A. A position with Smith Barney.</p> <p>21 Q. And for what time period did you</p> <p>22 hold that position?</p> <p>23 A. Just a couple of months in '08.</p> <p>24 Q. Why did you leave that position?</p> <p>25 A. I was injured; and I'm disabled.</p>	<p>9</p>	<p>1 Q. How long were you self-employed for?</p> <p>2 A. Since 1992.</p> <p>3 Q. And from 1992 to sometime when you</p> <p>4 joined Smith Barney, your business was</p> <p>5 buying and selling real estate?</p> <p>6 A. It was a combination of -- I had</p> <p>7 restaurants in theme parks, buying, reno-</p> <p>8 vating and selling houses, renting houses</p> <p>9 and then buying and renovating my own</p> <p>10 home; would sell it every two years for the</p> <p>11 nontax capital gain, you know, whenever you</p> <p>12 improved the property that you lived in</p> <p>13 for two years. So, it was a combination</p> <p>14 of those things.</p> <p>15 Q. You had mentioned that you owned a</p> <p>16 couple of LLC's, is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. What were the LLC's that you owned?</p> <p>19 A. Quick Serve Concepts LLC, Theme</p> <p>20 Park Foods LLC. I also had royalty payments</p> <p>21 from a patent at that time, too.</p> <p>22 Q. Through one of the LLC's?</p> <p>23 A. No.</p> <p>24 Q. Any other LLC's?</p> <p>25 A. Not at that time, no.</p>	<p>11</p>
<p>1 Q. Tell me, what was the cause of the</p> <p>2 disability?</p> <p>3 A. I slipped and fell; embarrassing to</p> <p>4 say, but it's true.</p> <p>5 Q. And when was that?</p> <p>6 A. April '08.</p> <p>7 Q. Did you file a lawsuit with regard</p> <p>8 to the slip and fall?</p> <p>9 A. We recently have.</p> <p>10 Q. Who is your attorney that's handling</p> <p>11 the slip and fall?</p> <p>12 A. McCrink. Matthew McCrink.</p> <p>13 Q. When you were working at Smith</p> <p>14 Barney, were you a salaried or commissioned</p> <p>15 employee?</p> <p>16 A. Combination.</p> <p>17 Q. You indicated that while you were</p> <p>18 at Smith Barney you only worked a couple</p> <p>19 of months. Less than three?</p> <p>20 A. Yes.</p> <p>21 Q. Prior to Smith Barney, where were</p> <p>22 you working?</p> <p>23 A. I was self-employed; had investments</p> <p>24 in real estate and a couple of LLC's, plus</p> <p>25 I bought and sold houses.</p>	<p>10</p>	<p>1 Q. Any other corporations?</p> <p>2 A. Not at that time, no.</p> <p>3 Q. When you say not at that time, what</p> <p>4 do you mean not at that time? From the</p> <p>5 time, during the time that you were self-</p> <p>6 employed.</p> <p>7 A. And there was an original -- there</p> <p>8 was a "C" Corp for awhile in the '90s</p> <p>9 called Specialty Concessions.</p> <p>10 Q. And when you bought and sold real</p> <p>11 estate during this time that you were self-</p> <p>12 employed, would you do that in your</p> <p>13 individual name?</p> <p>14 A. Yes.</p> <p>15 Q. Do you still own Quick Serve Con-</p> <p>16 cepts?</p> <p>17 A. It's not active.</p> <p>18 Q. When did it cease to be active?</p> <p>19 A. 2007.</p> <p>20 Q. Why was that?</p> <p>21 A. Contract dispute over legal pro-</p> <p>22 visions.</p> <p>23 Q. Contract dispute with whom?</p> <p>24 A. Paramount/Kings Dominion.</p> <p>25 Q. Kings Dominion Amusement Park in</p>	<p>12</p>



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<p>21</p> <p>1 Q. How are you currently paying the 2 taxes and carrying costs for all the five 3 properties that you mentioned? 4 A. We are not currently doing that. 5 Q. Do you have a mortgage on the 6 Stratford property? 7 A. Yes. 8 Q. Tell me, are you current on that 9 mortgage? 10 A. I am not. 11 Q. And how past due are you on that 12 Stratford mortgage? 13 A. Ten months, I think. 14 Q. How about the Sicklerville property, 15 does it have a mortgage on it? 16 A. Yes. 17 Q. Are you past due on that? 18 A. May I clarify? 19 Q. Please. 20 A. 318, 52 and 21 are on a blanket 21 mortgage. It's one mortgage. 22 Q. Just so I'm clear on the recording, 23 the three properties, 318 Columbia, 52 24 Stone Hollow and the 21 Darien Drive are 25 all under one mortgage?</p>	<p>23</p> <p>1 mean it has a mortgage, I believe, but, 2 yes, it has a mortgage that I'm aware of. 3 Q. That property is only in her name? 4 A. I'm on the deed, but I'm not in- 5 volved with her mortgage. 6 Q. And do you have a mortgage on the 7 817 Maltack property? 8 A. Yes. 9 Q. What is the principal amount of 10 that mortgage? 11 A. 950, I think. 12 Q. Are you current on that mortgage? 13 A. No. 14 Q. About how past due are you on that 15 mortgage? 16 A. I don't remember. I think the last 17 payment that was made is, maybe, April '08. 18 Q. How come you haven't paid since 19 April of '08? 20 A. We sold the house to someone to, 21 Bret Cooper, who was supposed to close in, 22 I think, it was February or March of '08. 23 When he didn't, it had ramifications, 24 ripple effects. 25 Q. What happened to that deal?</p>
<p>22</p> <p>1 A. Correct. 2 Q. Who is that mortgage with? 3 A. TD Bank. 4 Q. What was the original amount of 5 that mortgage? 6 A. 660. 7 Q. And on that mortgage, you estimate 8 that you're about ten months behind, is 9 that correct? 10 A. Could be more than a year, but I'm 11 not sure. I don't know. 12 Q. Has foreclosure started against any 13 of those properties? 14 A. Yes, it has. 15 Q. Has foreclosure started against all 16 three of those mortgages? 17 A. It's one mortgage, though. I think 18 it's -- I don't know the legal, whether 19 you foreclose on one or you foreclose on 20 all. I don't know. It's called a blanket 21 mortgage. 22 Q. Fair enough. How about the property 23 in Virginia, 9717 Old Dell Trace, does 24 that have a mortgage on it? 25 A. That's my wife's. I don't know. I</p>	<p>24</p> <p>1 A. The house was under contract for 2 two million forty and there was a provision 3 in the contract if it didn't appraise or, 4 no, if they couldn't get eighty percent of 5 a mortgage on it, then they would be able 6 to terminate or modify the mortgage, I 7 mean the contract. 8 Q. Is that what happened? 9 A. And there was a dispute over the 10 appraised value -- 11 Q. A dispute? 12 A. -- that caused the mortgage 13 application to not be approved. 14 Q. The buyer's appraiser didn't 15 appraise the property enough for them to 16 get the loan, is that my understanding? 17 A. Yes. 18 Q. Was there another appraisal done at 19 the time which contradicted the buyer's 20 appraiser? 21 A. Two. 22 Q. Who did those two other appraisals? 23 A. One was -- I can't remember. 24 Q. If you don't recall, that's an 25 acceptable answer. I'm not looking for you</p>



FRANK REED

April 26, 2011

<p>1 A. That was Commerce Bank. I think it 2 was Commerce at the time. 3 Q. When you previously mentioned 4 Commerce in 2008, is it now your testimony 5 that it was actually in 2009? 6 A. Different transactions. 7 Q. What was the transaction or the 8 reason you were applying to Commerce in 9 2009? 10 A. 2009, you said? 11 Q. Correct. 12 A. That was for refinancing on the 13 three rental properties. They were rentals 14 at the time. 15 Q. And were you able to refinance? 16 A. Oh, yes. May I take a break? 17 Q. Yes. 18 (Recess taken, 11:02 a.m.) 19 --- 20 (Back on the record, 11:20 21 a.m.) 22 BY MR. FLEISCHER: 23 Q. Before we took a break, we were 24 talking about some past incidents where 25 you applied for credit or a loan. We had</p>	33	<p>1 talking about Allied? 2 A. Yes, I think that was the name of 3 it. 4 Q. Were you ever accepted or declined 5 by Commerce Bank? 6 A. I understood that I was accepted, 7 but I told them, I think, I'm going -- I 8 never formally declined, but I told them I 9 think I'm going to use this other company. 10 I had done business with Commerce for many 11 years. 12 Q. Back in 2006 when you were working 13 with Commerce and Allied Mortgage, would 14 you say that you had good credit or did you 15 have issues with your credit? 16 A. That was in 2008. 17 Q. I'm sorry, in 2008, yes. I meant 18 to discuss 2008. 19 When you were discussing with 20 them the refinance at that point in time, 21 did you consider that you had good credit 22 or you had issues with credit? 23 A. I did not know. I thought I was 24 fine because I had been told I would be able 25 to obtain the financing.</p>	35
<p>1 talked about the 2009 Commerce refinancing, 2 but before, you mentioned a 2008 trans- 3 action with Commerce Bank. What was that 4 with respect to? 5 A. We were looking or started down the 6 path of a cashout re-fi on 817, a potential 7 cashout re-fi on 817. 8 Q. And what happened to that? 9 A. This other company, Allied Mortgage, 10 beat them in both readiness, I think, and 11 interest. I can't remember the interest 12 rate or something like that. 13 Q. How far along in the process did you 14 get with Commerce Bank in the 2008 re- 15 finance? 16 A. I believe they had mentioned, they 17 told me that they were going to do the 18 re-fi and they had already appraised the 19 house. They had done, I guess, whatever 20 work they do internally because they had 21 talked to me about the, that they were 22 going to be able to do it, but that was -- 23 I believe that was -- they came after this 24 other company said I had different choices. 25 Q. When you say this other company,</p>	34	<p>1 Q. At the time you were looking to 2 refinance, were you past due on any of your 3 mortgages in 2008? 4 A. No, I don't think I was. I don't 5 believe I was at all. 6 Q. When you were applying for these, 7 for the refinance with Commerce and Allied, 8 what was your source of income? 9 A. That was rental income and cash on- 10 hand and revenue from properties that we 11 were selling, we had sold in the process 12 of selling and working on. 13 Q. Did you file a tax return for 2008? 14 A. Yes, I believe we did. Yes. 15 Q. And do you recall filing a tax 16 return for 2009? 17 A. Yes. 18 Q. And did you file a tax return for 19 2010? 20 A. No. 21 Q. Are you on extension? 22 A. Yes. 23 Q. Have you ever had a judgment against 24 you? 25 A. I do now.</p>	36



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<p>37</p> <p>1 Q. Who is that with?</p> <p>2 A. I cannot identify. I have probably</p> <p>3 several.</p> <p>4 Q. How do you know you have judgments</p> <p>5 against you?</p> <p>6 A. I was served actions that I didn't</p> <p>7 respond to. So, I assume, they have gone</p> <p>8 to default.</p> <p>9 Q. And when you say you were served</p> <p>10 actions, was that in 2010?</p> <p>11 A. 2010. Or was it late 2009?</p> <p>12 Q. Were you ever past due on any of</p> <p>13 your taxes?</p> <p>14 A. Yes.</p> <p>15 Q. What taxes were you past due on?</p> <p>16 A. Some rental property real estate</p> <p>17 taxes.</p> <p>18 Q. And for what time period were you</p> <p>19 past due?</p> <p>20 A. I cannot remember.</p> <p>21 Q. Were you past due in 2009?</p> <p>22 A. I don't think in 2009. In 2010, I</p> <p>23 know we are.</p> <p>24 Q. What happened to your application</p> <p>25 with Allied Mortgage?</p>	<p>39</p> <p>1 you living in 817?</p> <p>2 A. Yes.</p> <p>3 Q. Did you ever get served with a</p> <p>4 Foreclosure Complaint?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall when that was?</p> <p>7 A. Spring of '08.</p> <p>8 Q. How many months past due were you</p> <p>9 when you applied for the loan with Allied</p> <p>10 Mortgage?</p> <p>11 A. I don't know if I was at that</p> <p>12 moment.</p> <p>13 Q. Did you ever get letters from GMAC</p> <p>14 indicating that you were past due on your</p> <p>15 mortgage?</p> <p>16 A. I don't remember getting any.</p> <p>17 Q. After you got served with the</p> <p>18 Complaint, did you contact GMAC?</p> <p>19 A. I think I contacted a lawyer and, I</p> <p>20 think, I called their lawyer, the one that</p> <p>21 was on the Complaint and they told me to</p> <p>22 contact a lawyer for myself, they can't</p> <p>23 answer questions. They recommended that I</p> <p>24 speak to an attorney.</p> <p>25 Q. When you spoke to that lawyer, did</p>
<p>38</p> <p>1 A. I was told that I had several or I</p> <p>2 was approved for several options and I</p> <p>3 needed to, you know, to look at them and</p> <p>4 analyze which ones I would take.</p> <p>5 Q. And did you look at the options?</p> <p>6 A. I don't remember if I actually got</p> <p>7 to that point because the financing was</p> <p>8 withdrawn.</p> <p>9 Q. And why was that?</p> <p>10 A. I was told because the 817 Matlack</p> <p>11 had gone into foreclosure.</p> <p>12 Q. Who told you that?</p> <p>13 A. It was the mortgage officer, the</p> <p>14 loan officer.</p> <p>15 Q. The loan officer at where?</p> <p>16 A. Allied.</p> <p>17 Q. Do you remember his name?</p> <p>18 A. Tardamosa.</p> <p>19 Q. When he told you the property was</p> <p>20 in foreclosure, you did not know about it?</p> <p>21 A. I think he actually told me that</p> <p>22 there was -- I think there was -- I don't</p> <p>23 remember. I don't believe that I knew. I</p> <p>24 think they knew before I knew.</p> <p>25 Q. And at that period of time, were</p>	<p>40</p> <p>1 you tell him that you didn't think you were</p> <p>2 past due?</p> <p>3 A. Which lawyer?</p> <p>4 Q. The lawyer, I assume, on the</p> <p>5 Foreclosure Complaint.</p> <p>6 A. I don't remember. I was just in a</p> <p>7 state of shock. I was like what is this?</p> <p>8 Why is this going on?</p> <p>9 Q. Who pays the bills in your house,</p> <p>10 you or your wife?</p> <p>11 A. My wife had primarily been doing</p> <p>12 that.</p> <p>13 Q. So, she would regularly be the</p> <p>14 person responsible for paying the mortgage</p> <p>15 payment?</p> <p>16 A. Up to when our world fell apart,</p> <p>17 yes.</p> <p>18 Q. And at what time did your world fall</p> <p>19 apart?</p> <p>20 A. That was in the spring of '08 when</p> <p>21 the sale didn't go through and then the</p> <p>22 refinance.</p> <p>23 Q. Did your wife tell you that you were</p> <p>24 past due on the mortgage?</p> <p>25 A. I don't know when we discussed it.</p>

FRANK REED

April 26, 2011

<p>49</p> <p>1 A. Yes. Restate that question.</p> <p>2 Q. You mentioned the property at 72</p> <p>3 Broad Hollow. Was that the location where</p> <p>4 you lived prior to purchasing Matlack?</p> <p>5 A. I had property in Virginia that we</p> <p>6 stayed at for awhile, a summer property,</p> <p>7 which you asked about, two properties in</p> <p>8 Virginia.</p> <p>9 Q. Did you ever miss a credit card</p> <p>10 payment?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall if you missed any</p> <p>13 payments on your credit cards in 2008?</p> <p>14 A. After the foreclosure, probably,</p> <p>15 yes.</p> <p>16 Q. What about before the foreclosure?</p> <p>17 A. I don't recall. I don't believe so.</p> <p>18 Q. Would that be something your wife</p> <p>19 might know?</p> <p>20 A. She might. But, she was pretty</p> <p>21 adamant about paying everything.</p> <p>22 Q. At one point in time, did you have</p> <p>23 a state tax lien by the State of New</p> <p>24 Jersey for \$34,000?</p> <p>25 A. I did.</p>	<p>51</p> <p>1 Q. Did you bring a copy with you today?</p> <p>2 A. No.</p> <p>3 (Exhibit D-3, a document</p> <p>4 filed May 10, 2010, indicating Mr.</p> <p>5 Reed resided at the Old Dell Trace</p> <p>6 address in Richmond, Virginia, marked</p> <p>7 for identification.)</p> <p>8 BY MR. FLEISCHER:</p> <p>9 Q. I'm showing you what's been marked</p> <p>10 as Defendant's Exhibit 3 and ask that you</p> <p>11 take a look at that.</p> <p>12 A. Okay.</p> <p>13 Q. Do you recognize this?</p> <p>14 A. I don't believe I physically</p> <p>15 recognize this document. But, I believe,</p> <p>16 I understand what it is.</p> <p>17 Q. Did you review this document before</p> <p>18 it was filed?</p> <p>19 A. I remember reviewing something, but</p> <p>20 I don't know if it's this exact document.</p> <p>21 Q. This document indicates that when</p> <p>22 it was filed, you resided at the Old Dell</p> <p>23 Trace address in Richmond, Virginia, is</p> <p>24 that correct? This was filed on May 10,</p> <p>25 2010.</p>
<p>50</p> <p>1 Q. What was that for?</p> <p>2 A. That was for some taxes for</p> <p>3 Specialty Concessions.</p> <p>4 Q. Was that ever paid off?</p> <p>5 A. Yes.</p> <p>6 Q. And do you recall when that was paid</p> <p>7 off?</p> <p>8 A. Not long afterwards.</p> <p>9 Q. Not long afterwards after it was</p> <p>10 filed?</p> <p>11 A. Yes.</p> <p>12 Q. Did you ever own a property at 306</p> <p>13 Magnolia Avenue in New Jersey?</p> <p>14 A. I did.</p> <p>15 Q. What happened to that property?</p> <p>16 A. I sold it.</p> <p>17 Q. Did you ever work at Trump Plaza?</p> <p>18 A. Yes.</p> <p>19 Q. When did you work there? Prior to</p> <p>20 2000, was it?</p> <p>21 A. Oh, 1991.</p> <p>22 Q. What was the last time you saw your</p> <p>23 credit report?</p> <p>24 A. I think 1993, maybe '94. Something</p> <p>25 like that.</p>	<p>52</p> <p>1 A. Yes.</p> <p>2 Q. And when did you move out of that</p> <p>3 property?</p> <p>4 A. It was this past fall. I think it</p> <p>5 was November.</p> <p>6 Q. When you moved out of the Dell Trace</p> <p>7 property, where did you move to?</p> <p>8 A. 817 Matlack.</p> <p>9 Q. Were your kids enrolled in school</p> <p>10 in Moorestown?</p> <p>11 A. They are.</p> <p>12 Q. What school are they enrolled in?</p> <p>13 A. Is that an appropriate question?</p> <p>14 William Allen Middle School;</p> <p>15 Upper Elementary School and Baker School.</p> <p>16 Sorry, just seems odd for you to ask that.</p> <p>17 Q. The Complaint indicates that when</p> <p>18 the foreclosure action was filed, that you</p> <p>19 were in the process of consummating a</p> <p>20 financial transaction. Which financial</p> <p>21 transaction was that?</p> <p>22 A. That was the pending re-fi.</p> <p>23 Q. With Allied Mortgage?</p> <p>24 A. I had one from Commerce that they</p> <p>25 said that I was, had been approved for,</p>



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FRANK REED

April 26, 2011

<p>65</p> <p>1 A. I believe I made a half dozen calls 2 to hard money lenders. 3 Q. Do you have any documents regarding 4 those calls? 5 A. I think Jeff asked me to look for 6 stuff like that, and I didn't... 7 Q. What did you expect the proceeds 8 from the refinance with Allied to be? 9 A. I thought it was, like, 550 or 600 10 or something like that. 11 Q. Do you have any documents that would 12 show what you might have gotten out of the 13 refinancing? 14 A. No. I think we might be able to 15 reconstruct based on the appraisals and 16 how that was a percentage of what the 17 value was. 18 Q. What I'm really looking for is 19 documents from Allied or Commerce indicating 20 what they were willing to lend you and the 21 amount of the proceeds that you would have 22 been able to walk away with from that 23 closing? 24 A. I understood it to be 90 per cent. 25 I don't have, I did not discover any</p>	<p>67</p> <p>1 It's my general understanding 2 that currently I cannot go back to those 3 careers at all and others because of this 4 situation. I don't know if this is 5 something -- I can't pass judgment on the 6 legal veracity of something, but we entered 7 into an arrangement, contract with Mr. 8 Cooper/Mark Weaver, at a reduced price to 9 what we were then, the appraised value of 10 a quarter million dollars because we felt 11 that we were under duress. Houses in our 12 neighborhood sold for over two million 13 dollars during the time we were entangled 14 with Mr. Cooper. In back of my house, one 15 sold, the very house behind us, sold for 16 that. The realtor believed ours could not 17 because ours was not available. 18 Another issue that we 19 encountered not long ago, the lis pendens, 20 I understand, is still on record. I don't 21 know how those things work, but a realtor 22 from Edgar & Son had a customer shopping 23 in Moorestown for houses in the million 24 eight, million nine price range, where our 25 house was last year assessed at a million</p>
<p>66</p> <p>1 documents in writing, looking for them at 2 this time. 3 Q. We were just discussing that you 4 believe you suffered damages as a result 5 of not being able to fix up the Virginia 6 property. Are you claiming any other 7 damages as a result of GMAC's foreclosure 8 action or the lis pendens that you suffered? 9 A. Well, I would say, and I'm not sure 10 how to quantify a number for you as of 11 yet, but if I had done the re-fi, we would 12 have had cash in hand; we would have had 13 cash in hand to live. Our bills would not 14 have eventually gone into arrears. I assume 15 my credit report, from all the commercials 16 on TV and what I understand, has been 17 harmed greatly by this. 18 I know that, for example, 19 when I worked in the casino's and when I 20 worked for Smith Barney, my credit scores 21 and my credit history had to be of a 22 certain caliber, I cannot say what they 23 are at the moment, but they had to be of a 24 certain caliber or I would not be licensed 25 or hired for those positions.</p>	<p>68</p> <p>1 nine, and we had reduced it now. We had a 2 tax appeal and gotten it down to a million 3 seven. The buyer instructed the realtor, 4 based on the buyer's knowledge, I don't 5 know how he gets this knowledge, of a lis 6 pendens regarding our property, to offer 7 us a substantially reduced offer of a 8 million four fifty for the property. It 9 was originally a million four or a million 10 three-eighty. He then settled on a million 11 four-fifty. He said he wanted to buy the 12 property or he wanted to be in before 13 school, which was in August of '10 or July 14 of '10. We said okay. 15 The contract comes and the 16 guy wants to rent it for eighteen months 17 with a closing on or before eighteen months. 18 Why? According to what I heard from the 19 realtor, it's because he's expecting us to 20 get foreclosed on. That's why he offered 21 a lower price; and he then, at the last 22 minute, converted it to a rent, then 23 purchase later, hoping that we were going 24 to be foreclosed on before we can fulfill 25 our delivery of the property based on the</p>

EXHIBIT "F"

EXHIBIT "G"

PLAINTIFF'S EXPERT WITNESS REPORT OF EVAN HENDRICKS

I, Evan Hendricks, provide the following Expert Report in connection with the action entitled Frank J. Reed III v. GMAC Mortgage LLC, et al., Superior Court of New Jersey, Burlington County (Docket No. L-1526-10). **Part 1** of this report addresses issues that are specific to this case, including a context and history that robustly put Defendants on notice of the problems in this case and why Defendants should have prevented them. **Part 2** includes my qualifications, list of prior cases in which I have testified, my fee, and more general opinions, such as the nature and purpose of credit scores and credit reports, and damages. It is likely that Defendants will disclose additional evidence after I have completed this expert report. If appropriate, and if justified by the production of additional evidence in discovery, I reserve the right to supplement this report at a future date.

Summary of Opinions

- This case is the result of Defendant GMAC ("GMAC") abusing both the foreclosure process and the credit reporting system to block the ability of Plaintiff Frank Reed ("Plaintiff" or "Mr. Reed") to avoid foreclosure by ruining his credit.
- GMAC abused the foreclosure process by failing to adhere to the all-important notice provisions in the Fair Foreclosure Act. It abused the credit reporting system by filing the foreclosure action, and instructing the credit reporting agencies (CRAs) to portray Mr. Reed as being in foreclosure, when the foreclosure action should never have been filed prior to providing a Notice of Intent to Mr. Reed.
- This set off a highly damaging chain reaction. The foreclosure on Mr. Reed's credit stood out as a "scarlet letter" and scuttled his soon-to-be-completed efforts to refinance his mortgage and avoid foreclosure. That in turn further worsened Mr. Reed's credit, making it impossible for him to obtain any meaningful credit, either to avoid foreclosure, extract equity from his home, or to continue Mr. Reed's real estate business.
- All of this caused Mr. Reed both economic and non-economic damages. The economic damages stemmed from the ruined credit that ended Mr. Reed's ability to continue his real estate business.
- Mr. Reed's economic damages include, but likely are not limited to, the losses from being unable to refinance his home mortgage, the losses stemming from his inability to sell his Moorestown property at the peak of the market, the losses and foreseeable losses stemming from Mr. Reed's inability to continue his real estate business and the loss of time and opportunity stemming from dealing with the unfair and incomplete/inaccurate credit reporting.

- The non-economic damages related to the stress, humiliation, mental anguish and frustration stemming from being blindsided by GMAC's non-compliant foreclosure, from watching his credit being ruined and knowing the consequences for his and his family's economic plans and aspirations, and from the consequential loss of reasonable control over such crucial personal information, making him a victim of chronic credit report inaccuracy.
- Given that this occurred during a period in which wrongful foreclosures were a growing, foreseeable problem, and that the damages stemming from wrongful foreclosures were potentially devastating, GMAC's actions in regard to Mr. Reed were reckless.
- From 1996 to the present, GMAC was put on notice by a variety of events of the importance of credit report accuracy.
- It is well known in our field that victims of chronic credit report inaccuracy endure a common pattern of harms. The damages suffered by Mr. Reed was consistent with those experienced by other victims. As mentioned above, Mr. Reed suffered damages that were peculiar to his situation.

Impact of 'Foreclosure' On Creditworthiness

It's logical that a foreclosure is devastating to a consumer's creditworthiness. After all, a home mortgage is often the most important credit obligation of an American consumer, and a foreclosure typically means that the consumer has defaulted on the mortgage to the point that the bank has to foreclose on the home and take possession of it.

Most lenders, like TD Bank in the case of Mr. Reed, have a policy of not approving (or even reviewing) credit applications from consumers who are in foreclosure. In addition, most lenders run automated scans of applicants' credit reports for key derogatory terms, and "foreclosure" is one of them. This is because underwriters typically will not give final approval to a credit application for someone who is in foreclosure.

The State of New Jersey has recognized foreclosure's devastating impact on the consumer through enactment of the Fair Foreclosure Act, which seeks to ensure that proper and timely notice is given to potential targets of foreclosure so they will have adequate opportunity to make things right and avoid losing their home. ("Institution of foreclosure is traumatic to the debtor-mortgagor and creates a permanent court record which can be injurious to the debtor's credit. The notice of intention is meant to give the debtor a chance to prevent acceleration and institution of foreclosure." See Myron C. Weinstein, "Law of Mortgages: Chapter 24: New Jersey's Fair Foreclosure Act. B. Notice of Intention." New Jersey Practice Series TM.)

GMAC knew or should have known all of this. GMAC's rushed and allegedly improper foreclosure action against Mr. Reed came during a period in which GMAC

allegedly was falsifying documents in order to foreclose on other properties. (See Paul Kiel, "Internal Doc Reveals GMAC Filed False Document in Bid to Foreclose," ProPublica, July 27, 2011. (www.foreclosuredefenseblog.com/2011/08/firm-commentary-readers-should.html))

Thus, GMAC's reckless and highly damaging improper foreclosure against Mr. Reed coincided with other reckless and presumably highly damaging improper foreclosures against other Americans, and appeared to be part of a pattern and practice of a declining mortgage lender desperate to salvage itself by trampling on its customers' rights.

GMAC's Foreclosure Doomed Mr. Reed's Re-finance, His Path To Normalcy, & Doomed Him To 'Credit Jail'

Mr. Reed had a long-standing relationship with the TD Bank President, who had been involved with numerous loans over a period of many years as part of Mr. Reed's ongoing business of buying, improving and selling real estate. In the Spring of 2008, the TD Bank President had visited one of Mr. Reed's properties and had ordered and received an appraisal.

The approval of this loan, and the consummation of this transaction, would have enabled Mr. Reed to catch up on his debts, including the GMAC mortgage, and extract equity from his home in order to conduct his business ventures.

That is when the key moment occurred. GMAC improperly moved to foreclose on Mr. Reed's home, figuratively hanging a "scarlet letter" around his creditworthiness, and scuttling the ability to consummate a loan transaction.

This in turn set off a horrific chain reaction that resulted in Mr. Reed, figuratively, being thrown into "credit jail." Unable to complete the planned transaction and obtain the necessary funds to become current on his credit obligations (and to continue his ongoing real estate endeavors), Mr. Reed suddenly could not meet his other credit obligations and quickly fell behind. Within months, his credit report was marred with a plethora of derogatory credit accounts which further doomed any hope he had of restoring his creditworthiness and returning to a normal economic life.¹ This chain reaction was caused directly by GMAC's improper foreclosure, and it devastated Mr. Reed's life.

This caused profound economic and non-economic damages to Mr. Reed. His other expert will opine on his economic damages.

¹ According to one of Mr. Reed's credit reports, a quick review indicated that eight accounts were rendered derogatory in 2008 alone.

Mr. Reed's non-economic damages relate to the stress, humiliation, mental anguish and frustration stemming from being blindsided by GMAC's non-compliant foreclosure, from watching his credit being ruined and knowing the consequences for his and his family's economic plans and aspirations, and from the consequential loss of reasonable control over such crucial personal, financial information, making him the victim of chronic credit report inaccuracy.

I have served as an expert in several cases in which consumers/plaintiffs have been victims of chronic credit report inaccuracy. In these cases, the juries recognized the profound damage to the plaintiffs. In some of the earlier cases in which I was involved, the minimum damage award was \$200,000. In more recent cases, the jury awards for actual damages have been closer to \$350,000.²

Because the chronic inaccuracy caused by GMAC cut right to the heart of Mr. Reed's ability to continue earning a living, it heightened the stress, humiliation, mental anguish and frustration he experienced from being blindsided by GMAC's non-compliant foreclosure, and from watching his credit being ruined.

² Eric Robert Drew vs. Equifax Information Services, LLC, et al., U.S. District Court for the Northern District of California, Case No. CV 07-00726-SI. \$700,000 in punitive damages, \$315,000 in emotional distress damages, and \$6,326.60 in economic damages, for a total of \$1,021,326.60; July 20, 2010

Suzanne Sloane vs. Equifax Information Services, LLC, et al., U.S. District Court for the Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. \$351,000 – \$106,000 in economic damages and \$245,000 in mental anguish, humiliation, and emotional distress damages. (August 2006)

Angela Williams v. Equifax Information Solutions, LLC: Circuit Ct. or 9th Judicial Circuit, Orange County, Florida – No. 48-2003-CA-9035-O; jury verdict, Nov. 30, 2007; (\$219,000 in actual damages and \$2.7 million in punitive damages).

Rebecca L. Valentine v. Equifax Information Services, LLC: U.S. District Court for the District of Oregon – No. 05-cv-0801; jury verdict Oct. 12, 2007; (\$200,000 in actual damages.)

Nicole M. Robinson v. Equifax Information Services, LLC: USDC-Eastern Dist. Of Virginia – No. 06-CV-1336; jury award Aug. 17, 2007; (\$200,000 in actual damages.)

Sandra Cortez vs. Trans Union, LLC., U.S. District Court for the Eastern District of Pennsylvania: No. 2:05-cv-05684-JF. (jury verdict April 26, 2007; \$50,000 actual damages, \$750,000 in punitive damages.)

Matthew Kirkpatrick v. Equifax, U.S. District Court for District of Oregon, (Slip. Op. CV-02-1197-MO; 2005 \$210,000 in actual damages.

Thomas v. Trans Union, U.S. District Court for the District of Oregon. \$5million punitive, \$300,000 actual damages for emotional distress. (2001)

Soghomonian v. TransUnion, (U.S. District Court for the Northern District of California, 2004) \$330,000 actual damages and \$660,000 punitive damages.

Cortez v. TransUnion, LLC, U.S. District Court for the Eastern District of Pennsylvania, Case Number: 2:05-cv-5684 (April 2007); \$50,000 actual damages, and \$750,000.00 in punitive damages.

Therefore, in accordance with my experience as an expert in the field of chronic credit report inaccuracy, I would value his non-economic damages, at a minimum, at \$350,000.³

Underlying Incentive For Furnishing

Many people do not realize that creditors' furnishing of their customers' data to credit reporting agencies (CRAs) is entirely voluntary. A fundamental incentive for large creditors such as GMAC in this case is that credit reporting is a cost-effective means of enhancing debt collection.

GMAC is keenly aware that credit reporting is a "powerful tool designed, in part, to wrench compliance with payment terms." (*Rivera v. Bank One*, 145 F.R.D. 64, 623 (D.P.R. 1993)). Creditors' collection letters and debt-collecting operators often advise customer-debtors that if they don't pay their debt it will result in highly derogatory data being entered on that customer's credit report which may remain for up to seven years. Creditors' collection letters often advise customer-debtors that, "Any potential employer, mortgage company, car dealership or creditor is likely to see this remark. Such a condition is far more damaging than the delinquent status you now maintain."

When a consumer applies for a mortgage, or other major form of credit, the mortgage or credit often is not granted until all outstanding unpaid debts listed on the credit report are resolved. Thus, a creditor that is owed money, or that still hopes to collect money whether or not it is actually owed by the consumer, enhances its ability to garner payment by reporting the debt to that consumer's credit report. This practice is highly problematic and damaging to the consumer when the consumer in fact does not actually owe the amount being reported to her credit report. However, it is conceivable that such practices would cause consumers, particularly those who did not know their rights, to consider paying off debts that they did not owe in order to remove serious derogatory data from their credit reports.

As I wrote in my book, "Credit Scores and Credit Reports,"

... Creditors view credit reporting as an arm of debt collection – a sort of last resort that will catch up with non-paying consumers sooner or later. This practice "crosses the line" when creditors and collectors threaten to report debts – or actually report debts – that they know or should know are not the responsibility of the consumer. [Page 31 – Second Edition]

³ I am sometimes reluctant to place a dollar value on non-economic damages for fear of "low-balling" what a future jury would decide. But I believe this initial estimate provides a reasonable basis for understanding Mr. Reed's minimum non-economic damages.

**Potential Areas of Testimony: Damages Known & Common To Victims of
Chronic Credit Report Inaccuracy**

It is important that the trier of fact understands that victims of chronic credit report inaccuracy often experience a series of several known and common types of negative impacts.

Some Categories of Typical Negative Impacts of ID Theft & Chronic Inaccuracy

- (1) Inaccurately described as not creditworthy and/or less creditworthy to third parties
- (2) Improperly denied credit because of inaccurate data, or only able to obtain credit at less favorable rates
- (3) Expended time and energy to correct errors not of one's making; in addition to loss of time and energy, loss of opportunity
- (4) Wrongfully received debt collection calls
- (5) Chilled from applying for credit
- (6) Sleeplessness, physical symptoms
- (7) Sense of helplessness, loss of control over personal data
- (8) The emotional distress stemming from, and associated, with all of the above

The following factors could be used to gauge the severity of damage within each category.

Key Factors To Consider When Assessing Severity of Negative Impact

The nature and substance of the category of damage
Time & energy to solve the immediate problem
The expectation that the problem was solved
The number of recurrences
The period of time over which the problem persist

**Mr. Reed's Damages Were Consistent with Other Victims
of Chronic Credit Report Inaccuracy**

Mr. Reed's damages were consistent with other victims of chronic credit report inaccuracy. His experiences touched on many of the eight categories cited above. In addition to the categories above, it is important for the trier of fact to understand that it can be very stressful not knowing everyone who may have associated you with highly derogatory credit data. Moreover, in my opinion, it can be difficult to maintain constructive personal relationships under stress.⁴ It can be difficult to perform adequately at one's job.

Defendant Knew or Should Have Known Its Actions Would Have Negative Impact

The history of credit reporting cited below, which includes years of Congressional testimony and legislative actions, Federal and State enforcement actions, abundant media coverage and targeted books, such as mine, should have made it abundantly clear to GMAC

⁴ In fact, the insurance industry says that stress, stemming from financial problems, can cause auto accidents, and therefore justifying its use of credit reports in setting insurance rates.

that failing to prevent Mr. Reed from becoming a victim of chronic inaccuracy would have a highly negative impact on him.

Context

Context is extremely important in this type of case, in part because credit reporting, along with inaccuracies stemming from identity theft, is a long-standing and well-known problem. An important role of experts in FCRA cases is to help the trier of fact understand the relevant context.⁵ Accordingly, I provide a brief history. An important theme emerging from this history is that a furnisher like GMAC was consistently provided notice in one form or another of the importance of ensuring the accuracy of information it reports and promptly restoring accuracy when the consumer disputes inaccuracies. This history also notified GMAC of the potential damage to consumers of both reporting erroneous information and then failing to correct it.

History of Significant Inaccuracy Problems

It is essential that the trier of fact understand that there is a long-standing problem of significant inaccuracy rates in credit reporting data. Since 1990, several non-industry studies have concluded that credit report inaccuracy is a problem of significant proportions that can have a major negative impact on the victims of inaccuracy, and that can potentially be detrimental to the credit system as well.⁶ This history is covered in Chapter 10 of my book, "Credit Scores and

⁵ *Kirkpatrick v. Equifax*, U.S. District Court for District of Oregon, (Slip. Op. CV-02-1197-MO; In rejecting Defendant Equifax's motion to exclude Mr. Hendricks' testimony, Judge Michael W. Mosman, ruling from the bench, stated: "As a general statement, what I'm allowing and the reason I'm allowing it is testimony that puts the particular actions of the defendant in particular here in context, in the context of the nationwide problem of identity theft, in the context of the congressional reaction to that and other issues in the credit-reporting industry, when he can by virtue of his study and his prior testimony, both in court and to Congress, make comparisons, then that's something that's helpful to the jury." (January 18, 2005; Transcript available upon request.)

⁶ Williams, James (CIS), "Credit File Errors, A Report," August 7, 1989 -- The first survey of 1,500 consumer reports and found serious error rate of 42% to 47%;

Consumers Union, "What Are They Saying About Me? The Results of A review of 161 Credit Reports From The Three Major Credit Bureaus, April 29, 1991 -- 48% contained "serious errors," defined as meaning those that could, or did, cause the denial of credit, employment or insurance.

U.S. Public Interest Research Group (US PIRG), "Nightmare On Credit Street (Or How The Credit Bureau Ruined My Life): Case Studies Documenting Consumer Complaints and Recommendation For Amending the FCRA," June 12, 1990

U.S. Public Interest Research Group (US PIRG), "Don't Call; Don't Write; We Don't Care." 1991 -- Review of 156 consumer report complaints on file at the FTC revealed that the average duration of complaints against a CRA was 22.5 weeks, or almost 6 months

U.S. Public Interest Research Group (US PIRG), "Public Enemy #1 At The FTC " October 1993, Based upon a Freedom of Information Act request, the 1993 report found that between 1990-93, problems with credit bureaus was the leading cause of complaints to the FTC (30,901, 20.6%). The 1993 PIRG

Credit Reports.” As that Chapter notes, in the early 1990s, problems with inaccuracy and “mixed files,” CRA non-responsiveness and inadequate reinvestigations became the cause of complaints to the FTC.

Of particular note was the 1993 study done by the U.S. Public Interest Research Group (US PIRG), “Public Enemy #1 At The FTC.” Based upon a Freedom of Information Act request, the 1993 report found that between 1990-93, problems with credit bureaus was the leading cause of complaints to the FTC (30,901, 20.6%). The 1993 PIRG found that 44% of complaints concerned mixed files, and that among those, 64% involved the mixing of data with total strangers.

These and other complaints prompted the FCRA’s oversight authorities – the FTC and State Attorneys General – to launch investigations and take enforcement actions. These actions resulted in a series of separate consent decrees involving Equifax, Experian and Trans Union in which each pledged to do a better job of maintaining accuracy, avoiding mixed files and the reappearance of previously deleted data, being more responsive and conducting adequate reinvestigations.

History: Increased Attention on Role of Furnisher

This Consent Agreements are also relevant because (1) they created widespread publicity about the problems of credit report inaccuracy, (2) they articulated (an agreed upon) higher and more specific standard of care to ensure accuracy and fairness, and (3) they formed the foundation for the 1996 Amendments to the FCRA. However, Congress knew that to ensure accuracy, it needed to go beyond the Consent Agreements by placing duties on furnishers to report information accurately.

The April 1994 House Banking Committee Report on the proposed amendments explained why, despite the consent agreements, and subsequent industry guidelines, legislation was necessary: “Moreover, because the industry guidelines are simply voluntary, they are unenforceable and may be changed or revoked at any time. Many of the provisions in the

found that 44% of complaints concerned mixed files, and that among those, 64% involved the mixing of data with total strangers.

U.S. Public Interest Research Group (US PIRG), “Mistakes Do Happen: Credit Report Errors Mean Consumers Lose,” March 1998

“Credit Reports: How Do Potential Lenders See You?” *ConsumerReports.org*, July 2000.

Consumer Federation of America and National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers*, December 2002.

Robert Avery, Paul Calem, Glenn Canner, and Raphael Bostic, “An Overview of Consumer Data and Credit Reporting,” *Federal Reserve Bulletin*, February 2003.

U.S. Public Interest Research Group (US PIRG), “Mistakes Do Happen: A Look at Credit Report Errors,” June 2004

consent agreements expire after a short period of time, are not enforceable by consumers, and do not apply in every state. *Additionally, these agreements do not impose any reinvestigation obligations on furnishers of information or on credit bureaus other than the three largest. Because of these limitations, federal legislation is necessary to improve accuracy-related protections for consumers. Consequently, the bill contains new reinvestigation procedures which are intended to cut down on the number of errors in consumer reports and to reduce the delay in correcting those errors.*" [Emphasis Added]

Importantly, the Consent Agreements' language on preventing reinsertion was incorporated and expanded upon in the 1996 Amendments to the FCRA. Under Sect. 1681 (a)(5)(B), information cannot be reinserted unless it is "certified" as complete and accurate by the furnisher. Moreover, a CRA, five business days prior to any reinsertion, must notify the consumer, and also provide the name and address of the furnisher and inform him or her of his right to add a statement.

Despite these Consent Decrees, the problems of mixed files, inadequate reinvestigations and reappearance did not go away. Throughout the early 1990s, Congress held a series of hearings in which numerous consumers and consumer advocates described problems with inaccuracy, mixed files, CRA non-responsiveness, and inadequate reinvestigations. This resulted in the 1996 legislative amendments to the FCRA.

I cite this brief history because it makes clear that for many years, a furnisher like GMAC has been on notice from Congress, the FTC, State AGs, the media and the public that it is important to ensure accuracy, and to reasonably investigate consumer disputes, and that it can be highly damaging when inaccurate information is not removed.

Part 2

Potential Areas of Testimony: General Issues, Context

- A. The Nature and Purpose of Credit Scores**
- B. The Nature and Purpose of Credit Reports**

Nature & Purpose of Credit Scores

It is possible that the trier of fact is not intimately familiar with either the credit reporting or credit scoring systems. If this is the case, I can provide expert testimony on the nature of both systems, how to read and understand credit reports and how to dispute errors, the parameters of credit scoring, the general impact that derogatory data have on a credit score, the interplay between identify theft, credit scoring and credit reporting, and other related matters.

A credit score is a number that reflects a consumer's creditworthiness at a given point in time. The FICO model credit score, which is used by 75 percent of lenders, is based entirely on information in a consumer's credit report. The model was developed by Fair, Isaac & Co., which

licenses it to Equifax, Experian and Trans Union and others. The scoring range for the FICO "classic" model is 300-850. The various types of "Beacon" scores sold by Equifax, and "Classic FICO" sold by Trans Union,⁷ are based upon the FICO model. The higher the credit score, the less risky the consumer is viewed by creditors. Consequently, consumers with higher-end credit scores (720 and above) often can obtain the most favorable rates for mortgages, refinancing, personal and auto loans and auto and homeowners insurance, and also often receive solicitations for the best quality credit cards. Conversely, the lower the score, the less favorable the rate. A credit score of 620 and below is widely regarded as "sub-prime."

Maintaining a good credit score is important because of a fundamental rule: the lower one's score, the more one pays for credit, including higher interest on mortgages, auto loans, installment loans and credit cards.

For example, the Web site of Fair Isaac Corp., www.myfico.com,⁸ gives this example of the difference that credit scores make in terms of interest and monthly payments, on a \$300,000 30-year, fixed-rate mortgage:

Your FICO® Score	Your Interest Rate	Your Monthly Payment
760 - 850	6.148%	\$1,827
700 - 759	6.370%	\$1,871
680 - 699	6.654%	\$1,927
660 - 679	7.464%	\$2,090
640 - 659	8.816%	\$2,374
620 - 639	9.782%	\$2,584

A similar chart exists for auto loans. Moreover, about half of the major credit card companies practice "Universal Default," meaning that these companies will raise their cardholders' interest rates if those cardholders' credit scores drop below certain levels – even if the cardholder never had a late payment with the company.⁹

- I. The precise workings of the FICO score are highly proprietary and therefore closely guarded. However, the general parameters are publicly available.¹⁰

35% -- Payment history. Late payments, particularly major or serious derogatories, like 90-days late or worse, and particularly on important accounts like mortgages, are very damaging to one's credit score.

⁷ In previous years, the Trans Union FICO Score was called "Empirica"

⁸ Visited September 21, 2005

⁹ Universal default is described in detail in Chapter 22 of the 2nd Edition of "Credit Scores and Credit Reports," op. cit.

¹⁰ These parameters are published in Chpr 1 of both Editions of "Credit Scores and Credit Reports," op. cit.

30% -- Credit Utilization. The ratio between available “revolving” credit and how much is actually used (credit card balances vs. credit card limits).

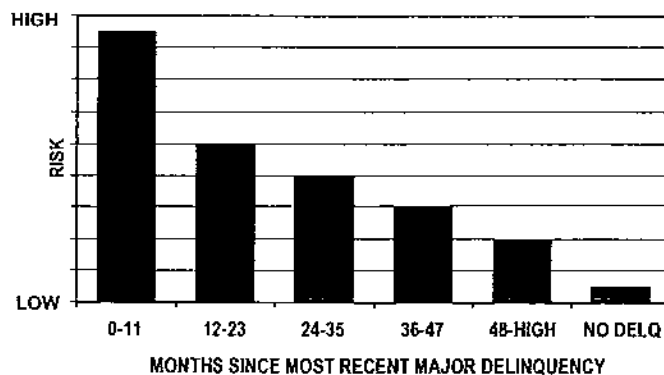
15% -- Length of Credit History. The longer you maintain a positive credit history, the better it is for your credit score.

10% -- How Much New Credit?. This relates to “inquiries” that creditors make when you apply for credit.

5% -- Healthy Mix of Credit? The scoring model prefers to see a “healthy mix” of mortgage, credit cards and perhaps other kinds of credit.

2. It is important to understand that consumers are most severely penalized when they have a serious derogatory within the past eleven months. The “importance of being recent” is illustrated by the following Fair Isaac chart, which shows, in a proportional sense, that a major delinquency in the past year has a 93% negative impact, while a major delinquency between 1-2 years-old has about a 60% negative impact; a major delinquency between 2-3 years-old has a 44% negative impact; a 3-4 year old delinquency has a 33% impact; any delinquency older than 4 years has only a 22% negative impact.

Previous credit performance



There is growing public awareness about credit scoring, but it is by no means complete. A September 2004 survey by Opinion Research Corporation Intl. sponsored by the Consumer Federation of America (CFA) and Provident Financial, a major credit card issuer, found that:

Few consumers know what constitutes a good score. Only 12% correctly identified the low 600s as the level below which they would be denied credit or have to pay a higher, sub-prime rate. (One-third thought this level was the low

500s, and 30% said they didn't know.) And, only 13% correctly understand that scores above the low 700s usually qualify them for the lowest rates.

<http://www.consumerfed.org/092104creditscores.PDF>

A March 2005 General Accounting Office study found that about one-third of respondents had obtained their credit scores. While 70 percent of respondents correctly identified the definition of a credit score and understood many of the factors that could impact credit scores, only 28 percent could provide a number within a range of possible credit scores. In addition, consumers were more familiar with some of the factors that affected credit scores than with others. For example, while most consumers knew that skipping loan payments or making late credit card payments had a negative effect on credit scores, about half did not know that using all the credit available to them, such as reaching the maximum limit on a credit card or home equity loan, had a negative effect. Also, when asked about information that had no effect on credit scores (such as a low checking account balance), about half of consumers answered the questions incorrectly or said that they did not know, the GAO found.¹¹

Nature & Purpose Of Credit Reports

Similar to credit scoring, there is growing public awareness about the credit reporting system, but it is not universal.

According to a July 2003 survey by the Consumer Federation of America, "Only 25 percent of Americans – and less than 20 percent of those with incomes below \$35,000 – said they knew what their credit score was. But only three percent of Americans could, unprompted, name the three main credit bureaus-Experian, Equifax, and Trans Union-that provide both lenders and consumers with information from credit reports. Forty-three percent of Americans (35 percent of those with incomes below \$35,000) said they had obtained a copy of their credit report from the three credit bureaus in the past two years."

A March 2005 General Accounting office report concluded that the public's understanding of credit reports and credit scores was improving, but that a federal education campaign was needed to better inform those segments of the population that remain unfamiliar with the systems. The report found that 60 percent of respondents had seen their credit reports, most often because they were making a large purchase or refinancing a loan. Most of these consumers said that they understood their reports. However, about half (53 percent) did not know that information could stay on their report for 7 or 10 years.¹²

It is important that the trier of fact have an accurate understanding of the nature and purpose of credit reports. Accordingly, a brief description of the consumer report is fundamental to my opinions in this case.

¹¹ General Accounting Office, "Credit Reporting Literacy: Consumers Understood the Basics but Could Benefit from Targeted Educational Efforts" (GAO-05-223). www.gao.gov/new.items/d05223.pdf

¹² *Ibid.*

A consumer report, sometimes referred to as a credit report, consists of highly sensitive and personal information, containing a compilation of a consumer's current credit relationships, their credit history, their employment history, estimated income and identifying information, such as name, address, phone number and Social Security Number (SSN). There are three major repositories known as credit bureaus or consumer reporting agencies (CRAs) -- Equifax, Trans Union and Experian. The CRAs regularly receive updates on a consumer's credit relationships from credit grantors -- banks, mortgage companies, credit card issuers, department stores and others. The consumer report typically contains highly sensitive details about a consumer's finances, including account numbers, loan amounts, credit limits and payment history. It also can contain information on the consumer's interaction with the judicial system, including paid or unpaid civil judgments or bankruptcies.

The Credit Report consists of three (or four) basic sections:

- (1) A section with the consumer's *identifying information*—name, address, Social Security number, date of birth, previous address, employer, and sometimes phone number.
- (2) A section with the consumer's *payment history*, including mortgage, auto and installment loans, credit cards and department store cards, collections, and public records like bankruptcy and court judgments.
- (3) If applicable, a section showing *public record* information, like bankruptcies, court judgments and tax liens.
- (4) A section showing *inquiries*, in other words, those companies which accessed the report and for what purposes.

In addition, attached to the credit report is

- (1) A form for disputing errors, and
- (2) A statement of your rights under the FCRA

Each of the Big Three CRAs uses a slightly different format. A fundamental purpose of the credit report is to describe a consumer's creditworthiness. For example, the Equifax report lists the codes showing how consumers are classified when they don't pay their bills on time. Along with these numeric codes, a credit report can have a letter showing the type of credit, i.e., "R" for revolving (credit card) and "I" for installment (personal loan). The code for someone who always paid her credit card on time would be "R1." Here are the numeric codes:

- 2 : 30-59 Days Past Due
- 3 : 60-89 Days Past Due
- 4 : 90-119 Days Past Due
- 5 : Over 120 Days Past Due
- 7 : Included in Wage Earner Plan
- 8 : Repossession
- 9 : Charge Off
- Blank : No Data available for that month
- 0 : Too new to rate, or unrated
- 1 : On Time

The Trans Union and Experian credit reports describe similar categories with a text narrative, rather than with an alpha-numeric code.

It is important to note that public record information like bankruptcy, judgments and tax liens, and charge-offs (R-9) and collections, are considered some of the most negative entries. It is also important to note that when a creditor reports a negative tradeline as disputed, that tradeline typically is not scored and therefore does not negatively impact the credit score.

Credit grantors typically review a consumer's report and/or credit score when deciding to grant that consumer some form of credit, whether it is a loan or a credit card. Credit grantors also review consumer reports and/or credit scores on current customers to periodically check on their customers' creditworthiness. This is known as an "Account Review." Credit card issuers regularly use consumer reports and/or credit scores to screen consumers for "pre-approved" credit offers. Some employers use consumer reports to evaluate job applicants. Insurers use credit reports for underwriting purposes, and also use credit scores, but presumably only where not prohibited by State law.

Credit grantors typically review a consumer's report and/or credit score when deciding to grant that consumer some form of credit. Credit grantors also review consumer reports and/or credit scores on current customers to periodically check on their customers' creditworthiness. This is known as an "Account Review." Credit card issuers regularly use consumer reports and/or credit scores to screen consumers for "pre-approved" credit offers. Some employers use consumer reports to evaluate job applicants. Insurers also can use credit reports for underwriting purposes. Landlords also use credit reports for tenant screening.

Background & Qualifications (Curriculum Vitae Attached)

My expertise in credit reporting stems from several of my professional activities, including:

- (1) Editor/Publisher of a specialty news reporting service that covers credit reporting, Fair Information practices and related matters;
- (2) Author of the book Credit Scores and Credit Reports: How The System Really Works, What You Can Do, 3rd Edition, (Privacy Times 2005), and co-author of a book with a chapter on credit reporting;
- (3) An expert witness qualified by Federal and State courts in Fair Credit Reporting Act (FCRA) litigation;
- (4) an expert on credit reporting who has testified before Congress on numerous occasions, including four hearings in 2003, and who has testified twice before the California legislature in regards to legislation on the use of financial data, and who regularly presents at Continuing Legal Education and other professional events; and
- (5) an expert consultant to government agencies and private corporations, a member of the Consumer Advisory Council of Experian (one of the three national Credit Reporting Agencies (CRAs), and as one who has earned FCRA Certification from the National Credit Reporting Association (NCRA).

Since 1981, I have been Editor/Publisher of *Privacy Times*, a biweekly, Washington-based newsletter that reports on privacy and information law, including the Fair Credit Reporting Act (FCRA). The newsletter ranges from 8-12 pages, 23 issues per year. Thus, I have researched, written, edited and published many articles on Congressional and State legislative actions, judicial opinions, industry trends and actions, executive branch policies and consumer news as they related to the FCRA.

I am author of the book, Credit Scores and Credit Reports: How The System Really Works, What You Can Do (3rd Edition, Privacy Times 2007). The book has 23 Chapters, 399 pages and 415 footnotes. As the title indicates, it describes how the credit scoring and credit reporting systems work and what consumers can do to obtain their reports, read and understand them, correct errors in them and enforce their rights. I also am co-author of Your Right To Privacy: A Basic Guide To Legal Rights In An Information Society (2nd Edition, Southern Illinois University Press, 1990), which has a chapter on credit reporting.

Since the early 1990s, I have served as an expert witness in numerous FCRA cases and have been qualified by the federal courts. As an expert witness, I have had the opportunity to read thousands of pages of deposition testimony by consumer reporting agency officials and by credit grantor personnel responsible for reporting data to CRAs. This is significant because CRAs and credit grantors do not openly discuss or publish information on their procedures and

practices for handling personal data. In fact, CRAs typically consider such procedures and practices to be proprietary and/or trade secrets. To my knowledge, the best (and possibly only) sources for finding candid descriptions of CRAs' and credit grantors' procedures and practices in relation to credit reporting data are the depositions of CRA and credit grantor employees in FCRA litigation. Due to my access to this information, I have augmented my specialized body of knowledge on practices and procedures related to credit scoring and credit reporting.

I have testified numerous times before Congress – always by invitation – on issues related to the collection, maintenance, security, use and disclosure of sensitive personal data, including credit reports and other financial information. (Consult CV for list of hearings and Web links to testimony.)

In 2003, the year in which Congress was dedicated to a major upgrade of the FCRA, I testified twice before the Senate and twice before the House, and presented once before the FTC. The hearings covered a wide range of credit reporting issues, accuracy, fairness, privacy, CRA procedures and security:

"The Accuracy of Credit Report Information and the Fair Credit Reporting Act," Senate Banking Committee, July 10, 2003¹³

"The Role of FCRA in the Credit Granting Process," House Financial Services Subcommittee on Financial Institutions & Consumer Credit, June 12, 2003¹⁴

"Database Security: Finding Out When Your Information Has Been Compromised," Senate Judiciary Subcommittee on Technology, Terrorism and Government Information, Nov. 4, 2003¹⁵

"Fighting Fraud: Improving Information Security," House Financial Services Subcommittee on Financial Institutions & Consumer Credit, and Oversight, April 3, 2003¹⁶

"Information Flows: The Costs and Benefits to Consumers and Businesses of The Collection and Use of Consumer Information," Federal Trade Commission, National Workshop, June 18, 2003

Some of my recommendations were reflected in the final FCRA Amendments approved by Congress and signed by President Bush in December 2003.

On December 3, 2002, I testified before the California State Senate Insurance Committee. On January 29, 2003, I testified before the California State Assembly Insurance Committee. Both Committees were considering financial privacy legislation (SB 1), which ultimately was enacted by the legislature and signed into law in September 2003.

¹³ http://banking.senate.gov/03_07hrp/071003/index.htm

¹⁴ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=229>

¹⁵ http://judiciary.senate.gov/testimony.cfm?id=983&wit_id=2790

¹⁶ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=202>

I regularly present at Continuing Legal Education or professional seminars related to the FCRA. (Consult CV.)

Two of the three major CRAs have acknowledged that I am an expert on credit reporting as it relates to "Fair Information Practices." First developed in the United States in the late 1960s, Fair Information Practices (FIPs) standards are at the core of the FCRA and most other U.S. and European privacy and data protection laws, and serve as an internationally accepted standard for gauging privacy policy and practices.

In 1990, Equifax published "The Equifax Report on Consumers In the Information Age," a nationwide opinion survey and analysis by Louis Harris and Associates and Prof. Alan F. Westin. The report listed me as a privacy expert to whom the authors expressed appreciation for my advice on survey coverage.

In April 2002, I accepted Experian's invitation to serve on the Experian Consumer Advisory Council of Experian (formerly TRW), a national CRA and vendor of other information services. Before being disbanded in 2004, the Council met twice a year to offer non-binding advice and to discuss a host of credit reporting, marketing and other privacy-related topics.

In 2004, I passed an industry examination, thereby earning "FCRA Certification" from the National Credit Reporting Association.

Since August 1998, I have served under contract as a member of the Social Security Administration's Panel Of Privacy Experts advising the agency on a host of issues.

(Please consult the attached CV for additional information.)

Testimony & Expert Reports

Within recent years, I have testified at trial, or been deposed as an expert, in the following cases:

Andrews v. Trans Union Corp. et al., Case No. 96-7369, (USDC-C.D. Calif.), concerning theft-of-identity and consumer report inaccuracies. Expert report, deposition, trial testimony. Judge Lourdes Baird presiding. The U.S. Court of Appeals for the Ninth Circuit specifically found that my opinion on the prevalence of identity theft was relevant to the reasonableness of CRA procedures. (see 225 F.3d 1063 (2000)).

Angela P. Williams vs. Equifax Information Services, LLC, et al., Circuit Court for the Ninth Judicial Circuit, Orange County Florida. Credit Reporting. Expert disclosure and report. Deposition. Trial Testimony. Judge George A. Sprinkel IV presiding.

Eric Robert Drew vs. Equifax Information Services, LLC, et al., U.S. District Court for the Northern District of California, Case No. CV 07-00726-SI. Expert report, deposition. Trial testimony. Judge Susan Illston presiding.

Direct Data Solutions, Inc., v. Bailey & Associates Advertising, Inc.: Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida; Case No.: 07-9322 CA 09. Judge Jerald Bagley presiding.

Brenda F. Campbell v. Experian: U.S. District Court for the Western District of Missouri (No. 07-2514). FCRA. Expert report, deposition. Trial Testimony. Judge Nanette K. Laughrey presiding.

Harold & Beryllin Gamby v. Equifax Information Services, et al.: U.S. District Court for the Eastern District of Michigan [Southern Div.] (CV-06-11020-MO). FCRA, identity theft. Expert report. Deposition. Trial Testimony. Judge Marianne O. Battani presiding.

Deborah Adams v. National Engineering Service Corp./Verifications Inc.: U.S. District Court for the District of Connecticut. 3:07-cv-01035-JCH. FCRA. Expert report, deposition. Trial Testimony. Judge Warren W. Eginton presiding.

Patricia Holmes vs. TeleCheck Intl., Inc., U.S. District Court for the Middle District of Tennessee (Nashville Div.). FCRA. Expert report. Deposition. Trial Testimony. Chief District Judge Todd J. Campbell presiding.

Rebecca L. Valentine. v. Equifax Credit Information Services, et al.: U.S. District Court for the District of Oregon; No. CV 05-801-JO. FCRA, identity theft. Expert report. Deposition. Trial Testimony. Judge Robert E. Jones presiding.

Nicole Robinson vs. Equifax Information Services, LLC, et al., U.S. District Court for the Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. Expert reports. Deposition. Trial Testimony Judge Walter H. Rice presiding.

Suzanne Sloane vs. Equifax Information Services, LLC, et al., U.S. District Court for the Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. Expert reports. Deposition. Trial Testimony Judge Leonie M. Brinkema presiding.

Matthew Kirkpatrick v. Equifax, LLC, U.S. District Court for District of Oregon, (Slip. Op. CV-02-1197-MO. FCRA Expert report. Trial Testimony. Judge Michael W. Mosman presiding.

Sandra Cortez vs. Trans Union, LLC., U.S. District Court for the Eastern District of Pennsylvania: No. 2:05 -cv-05684-JF. FCRA. Expert Report. Daubert Hearing. Trial Testimony. Senior Judge John P. Fullam qualified me to testify at trial.

Federal Trade Commission vs. Accusearch, Inc., et al., U.S. District Court for the District of Wyoming, Case No. 06CV0105-D. FTC Section 5. Expert Report. U.S. Magistrate Judge William C. Beaman rejected Defendant's motion to exclude my testimony.

Eddie Silva, et al. v. Haynes Furniture Co., Inc.: U.S. District Court for the Eastern District of Virginia: No. 4:04CV82. FCRA. Fairness hearing testimony. Judge Walter D. Kelley, Jr. presiding.

Joi Helmes v. Wachovia Bank N.A.: U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria), Case No: 01-81277-RGM, Chapter 7. Post-bankruptcy credit reporting. Expert report. Deposition. Trial Testimony. Judge Robert G. Mayer presiding.

Alex Campos and Michael York v. ChoicePoint Services, Inc.: U.S. District Court for the District of Georgia (Atlanta), Civ. Action No. 1-03-CV-3577-WSD. FCRA. Expert Declaration. Fairness hearing testimony. Judge William S. Duffey, Jr. presiding.

Denis W. Stasulis v. Suntrust: U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria), Case No: 04-12542-RGM, Chapter 7. Post-bankruptcy credit reporting. Expert report. Deposition. Trial Testimony. Judge Robert G. Mayer presiding.

Dwayne Perry, et al. v. FleetBoston Financial Corp.: U.S. District Court for the Eastern District of Pennsylvania: No. 04-507. FCRA. Expert Report. Fairness hearing testimony. Judge Berle M. Schiller presiding.

Tammy Cochran v. C&M Motors, LLC, dba I-10 Toyota, et al.: U.S. District Court for the Central District of California, No. CV-03-3568FMC. FCRA. Expert Report. Trial Testimony Judge Florence-Marie Cooper presiding.

Myra Coleman v. Trans Union LLC, CA4: 98-CV-169B-B (USDC-Mississippi) FCRA. Expert report, deposition, trial testimony. Judge Neal B. Biggers presiding.

Arthur Spengler v. Sears Roebuck & Co., Case No. C-03-0557. (Circuit Court, Wicomico County, Maryland). Tort, Interference with Business Relationships. Trial Testimony. Judge D. Davis qualified me as expert on credit scoring, credit reporting and FCRA-related issues.

Judy C. Thomas v. Trans Union LLC, U.S. District Court for the District of Oregon; Case No. 00-1150-JE. FCRA. Expert report, deposition, trial testimony. Magistrate Judge John Jelderks presiding.

Scott E. Campbell v. G.E. Capital Auto Lease, Circuit Court For St. Mary's County, Maryland, Case No. 99-522. FCRA, invasion of privacy. Expert report, deposition. Judge Karen Abrams qualified me to testify, but the case settled one week before trial.

Franklin F. Grizzard, Jr. v. Trans Union, L.L.C., & Equifax Information Services L.L.C., et al.: U.S. District Court for the District of Virginia (Richmond Div.); Nos. 04-CV-625 & 04-CV-626, respectively. Expert report. Affidavit. Deposition. On the eve of trial, Judge Richard Williams rejected Defendant's motion to disqualify me. The case settled shortly thereafter.

Catherine Smith, et al. v. Progressive Corporation, et al.: U.S. District Court for the Middle District of Florida (Gainesville), Case No.1:00-CV-210-MMP. Expert Report, Declaration of Value, Fairness Hearing testimony. Judge Maurice M. Paul presiding.

Franklin E. Clark, et al. v. Experian, et al.: U.S. District Court for the District of South Carolina, Case Nos. 8:00-1217-22, 8:00-1218-22, 8:00-1219-22. Affidavit, Supplemental Affidavit (both affidavits were admitted into evidence without objection). Judge Cameron McGowan Currie presiding.

Alana Valerie Sheldon v. Trans Union, LLC., LVNV Funding, LLC, & Resurgent Capital Services L.P.: U.S. District Court for the District of Maryland; 8:08-cv-00057-PJM. Expert report, deposition.

In Re: Cellphone Termination Fee Cases, Superior Court of the State of California, Alameda County, JCCP No. 4332. Deposition.

Karl Benedikt v. ChoicePoint, Inc.: U.S. District Court for the District of New Jersey [Newark Vicinage]; 07-2569. Expert report, deposition.

Abdirizak Gayre v. CSC Credit Services, Inc., Equifax Information Services, LLC, and Afni, Inc.: U.S. District Court for the District of Minnesota (C.A. No. 07-CV-0622 [JRT/FLN]). FCRA. Expert report, deposition.

Erin Ayles v. Experian Information Solutions, Inc.: U.S. District Court for the Eastern District of Virginia (Alexandria Division); 1:07cv 662. Expert report, deposition.

Maria D. v. Comcast Corp., Sacramento Superior Court, Case No. 03AS05745. Deposition.

In Re: Farmers Insurance Co., Inc., FCRA Litigation, U.S. District Court for the Western District of Oklahoma, Case No. CIV 03-158-F. FCRA. Expert report, deposition.

Steven E. Beck v. Equifax Information Services, et al.: U.S. District Court for the Eastern District of Virginia: No. 1-05cv347. FCRA. Expert report, deposition.

Ford Motor Credit Co. v. Sudesh Agrawal, Court of Common Pleas, Cuyahoga Country, Ohio; Case No. CV04536588. Credit reporting and credit scoring. Deposition.

Larry Alabran v. Capital One Services, Inc.: U.S. District Court for the Eastern District of Virginia (Richmond Division); Case No. 3:04-CV-935. Expert report, deposition.

Gail Cope v. MBNA American Bank NA: U.S. District Court for the District of Oregon; No. 04-CV-493-JE. Expert report, deposition.

Robert Gordon Peoples v. Experian Services Corp., et al.: U.S. District Court for the Central District of California: No. CV-04-1378 CAS (Ex). Expert report. Deposition.

Lottie Robertson v. Experian Information Services, Inc. & Capital One Bank: U.S. District Court for the Eastern District of Michigan (Southern Div.) No. 04-72308. Expert report. Deposition.

Barbara A. Harris v. Experian Information Solutions, Inc., and Equifax Credit Information Services, Inc.: U.S. District Court for the District of Oregon, Civil No. 01-1728-JE. FCRA. Expert reports. Deposition

Bruce Danielson v. Experian Information Solutions: U.S. District Court for the Northern District of Texas, Case No: 3-04CV-1722N. FCRA. Expert report. Deposition.

Stacy Lawton Guin, et al. v. Brazos Higher Education Service Corporation, Inc.: USDC-Minnesota -- No. CV 05-668 RHK/JSM. Negligence. Security Breach. Affidavit. Deposition.

Anthony Chin v. State Dept. Federal Credit Union: Circ. Ct. Prince George's County (Maryland); Civ. Act. No. CAL04-12778; Tort. Deposition. Trial testimony.

James M. McKeown v. Sears Roebuck & Co., et al.: U.S. District Court for the Western District of Wisconsin, Civil No. Case No. 03-CV-0528 C. Expert Report, deposition.

Paulette Field v. Trans Union LLC, et al., Case No. 01 C 6390 (USDC-N.D. Illinois - Eastern Div. FCRA. Expert report. Deposition.

Earle E. Ausherman, et al. v. Bank of America Corporation et al.: U.S. District Court for the District of Maryland, Civil Action No. MJG-01-438. FCRA. Expert report. Deposition.

Jesse Kico v. Elmhurst Dodge, U.S. District Court for the Northern District of Illinois (Eastern Division) Civil Action No. 01 C 0433. FCRA. Expert report, deposition.

(David & Ruthie Keefner v. Webb Ford, Inc. & Deon L. Willis: U.S. District Court for the Northern District of Illinois (Eastern Division), Civil Action No. 02C-4643. FCRA. Expert report. Deposition.

Anthony & Alethea Preston v. MGIC, U.S. District Court for the Middle District of Florida (Ocala), Case No. 5:03-cv-111-Oc-10GRJ. FCRA. Expert report, deposition.

Bruce Butcher and Pam Butcher v. Chase Manhattan Bank, U.S.A., Inc., U.S. District Court for District of South Carolina, Case No. 8:03-3184-26. FCRA. Expert report, deposition.

FEE

My fee is \$300 per hour for consulting and for the expert report; \$300 per hour, or a minimum of \$1,200 per day, for deposition or trial testimony, plus reasonable travel time, plus travel costs and expenses.

Evan D. Hendricks

CURRICULUM VITAE

Professional Activities

1981- Present Editor/Publisher of *Privacy Times*

Since 1981, I have been Editor/Publisher of *Privacy Times*, a biweekly, Washington-based newsletter that reports on privacy and information law, including the Fair Credit Reporting Act (FCRA). The newsletter ranges from 8-12 pages, 23 issues per year. Thus, I have researched, written, edited and published many articles on Congressional and State legislative actions, judicial opinions, industry trends and actions, executive branch policies and consumer news as they related to the FCRA.

1992 – Present Expert Witness

Qualified by the federal courts in FCRA and identity theft cases. (Complete list attached). I have read extensive deposition testimony by credit bureau and credit grantor personnel. This is significant because CRAs and credit grantors do not openly discuss or publish information on their procedures and practices for handling personal data, and the best (and possibly only) sources for finding candid descriptions of CRAs' and credit grantors' procedures and practices in relation to credit reporting data are the depositions of CRA and credit grantor employees in FCRA litigation.

1998 – Present Privacy Expert Consultant, U.S. Social Security Administration

Regularly review policies and practices in relation to the collection, use and disclosure of personal data and Social Security numbers and provide feedback and recommendations.

2002 – 2004 Member, Experian Consumer Advisory Council

Along with other Council members, I provide an outsider's view on credit reporting, marketing and other privacy issues.

July – October 2002 Consultant to U.S. Postal Service

Working with the USPS's Chief Privacy Officer, I assisted in reviewing and editing the re-write of the USPS's Privacy Act notices, with an emphasis on "Plain English."

Evan Hendricks P.O. Box 302 Cabin John, MD 20818
(301) 229 7002 (301) 229 8011 [fax] evan@privacytimes.com

Recent Testimony Before Congress & The FTC

"Credit Reports: Consumers' Ability to Dispute and Change Information," House Financial Services Committee, June 19, 2007.¹⁷

"Privacy in the Commercial World II," House Energy & Commerce Subcommittee On Commerce, Trade, and Consumer Protection, June 20, 2006¹⁸

"Financial Data Protection Act of 2005," House Financial Services Subcommittee on Financial Institutions and Consumer Credit, November 9, 2005¹⁹

"Credit Card Data Processing: How Secure Is It?" House Financial Services Subcommittee on Oversight and Investigations, July 21, 2005²⁰

"Identity Theft: Recent Developments Involving the Security of Sensitive Consumer Information,"²¹ Senate Banking Committee, March 15, 2005

"The Accuracy of Credit Report Information and the Fair Credit Reporting Act," Senate Banking Committee, July 10, 2003²²

"The Role of FCRA in the Credit Granting Process," House Financial Services Subcommittee on Financial Institutions & Consumer Credit, June 12, 2003²³

"Database Security: Finding Out When Your Information Has Been Compromised," Senate Judiciary Subcommittee on Technology, Terrorism and Government Information, Nov. 4, 2003²⁴

"Fighting Fraud: Improving Information Security," House Financial Services Subcommittee on Financial Institutions & Consumer Credit, and Oversight, April 3, 2003²⁵

"Information Flows: The Costs and Benefits to Consumers and Businesses of The Collection and Use of Consumer Information," Federal Trade Commission, National Workshop, June 18, 2003

Books

Credit Scores and Credit Reports: How The System Really Works, What You Can Do
[3rd Edition] (Privacy Times, 2007)

Your Right To Privacy: A Basic Guide To Legal Rights In An Information Society (2nd Edition, Southern Illinois University Press, 1990), (Includes a chapter on credit reporting)

Former Secrets: Government Records Made Public Through The Freedom of Information Act
(Campaign For Political Rights, 1982)

¹⁷ www.house.gov/apps/list/hearing/financialsvcs_dem/ht061907.shtml

¹⁸ <http://energycommerce.house.gov/108/Hearings/06202006hearing1938/Hendricks.pdf>

¹⁹ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=425>

²⁰ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=407>

²¹ <http://banking.senate.gov/index.cfm?Fuseaction=Hearings.Detail&HearingID=144>

²² http://banking.senate.gov/03_07hrg/071003/index.htm

²³ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=229>

²⁴ http://judiciary.senate.gov/testimony.cfm?id=983&wit_id=2790

²⁵ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=202>

International Lectures

24th International Conference of Data Protection & Privacy Commissioners (Cardiff, Wales – Presentation published in conference proceedings, 2002)

The 23rd International Conference of Data Protection Commissioners (Paris, La Sorbonne – Presentation published in conference proceedings, 2001)

The 22nd Annual Conference on Data Protection (Venice, Italy -- 2000)

The 16th Annual Conference on Data Protection (The Hague, The Netherlands -- 1994).

In the 1980s, served as an expert consultant to both the Privacy Commissioner of Canada and Privacy Commissioner of Australia.

Presentations/Instruction At Recent CLE & Professional Seminars

"Second Law and Information Society Symposium: Enforcement, Compliance and Remedies in the Information Society," Presenter, "Credit Report Cases – Effective Remedies?" Center on Law and Information Policy (CLIP), Fordham Law School, New York, May 29-30, 2008.)²⁶

"The 1st Annual Privacy Law Scholars Conference," Presenter, "Assessing Privacy Harm: How can victims of privacy violations prove that they have been harmed? The George Washington University Law School, Washington, DC, June 12-13, 2008."²⁷

"11th Annual Consumer Financial Services Litigation," Practicing Law Institute, March 20-21, 2006 (New York City)

"Bankruptcy Roundtable," and, "Fair Credit Reporting Act Roundtable," National Consumer Law Center, October 27, 2005

"Advanced Consumer Litigation," Texas Bar CLE, Feb. 10-11, 2005

"Financial Privacy Litigation," (Impact of FACT Act), Practicing Law Institute, February 28- March 1, 2005 (New York City)

"The New FACT Act: Challenge & Oppty.," Privacy & American Business, Feb. 9-10, 2004

"Understanding the FACT Act And The Impact of Multi-Agency Rulewriting Process," Glasser LegalWorks, Sept. 28-29, 2004

"12th Annual National Conference," National Credit Reporting Association, Nov. 10-12, 2004

Professional Societies

Past President & Board Member, American Society of Access Professionals www.accesspro.org

Industry Certification

FCRA Certification, National Credit Reporting Association (www.ncrainc.org).

Media

In addition to being a paid consultant and special guest on CNN's IMPACT news in 1996, I am quoted regularly by major and small newspapers (including The Washington Post, New York Times, Wall Street Journal, Chicago Tribune, Los Angeles Times, Newsweek and Money Magazine), regarding issues of privacy generally and the privacy implications of consumer reporting specifically. I have appeared on National Public Radio, PBS NewsHour with Jim Lehrer, ABC Nightline and World News Tonight, NBC Nightly News, CBS Evening News, CNN News Watch, CNBC, MSNBC, Fox News, various local affiliates, and the Oprah Winfrey Show and Geraldo, regarding these issues as well.

Education

Bachelor of Arts, Columbia College, Columbia University, New York, N.Y. (1979)

²⁶ <http://law.fordham.edu/ihtml/eventitemPP.ihtml?id=37&idc=8943&template=clip>

²⁷ <http://privacyscholars.com>

MATERIALS CONSIDERED

In specific preparation for this case, I have reviewed the following:

Plaintiffs' Complaint & Attached Exhibits
Plaintiffs' credit reports
Plaintiff's deposition
Documents cited in this report

I also generally rely upon:

The Fair Credit Reporting Act & Consumer Credit Reporting Reform Act of 1996
Fair Credit Reporting Act (w/ Companion Disk & 2000 Cumulative Supplement,
National Consumer Law Center, 1998 (Boston)
Credit Scores and Credit Reports: How The System Really Works, What You Can
Do (3rd Edition, Privacy Times 2007),

My opinions in this case are also based on my 31-year profession of following privacy developments including those relating to the consumer reporting and information broker industry and the criminal justice system as a journalist, editor, publisher and privacy expert. My experience includes listening to and participating in dozens of hours of Congressional testimony, hearings before the Federal Trade Commission, media coverage, studies by independent groups, my own personal observations and numerous contacts, and my previous work preparing to be an expert witness in other FCRA cases.

Executed This The 9th Day of November 2011 in Bethesda, Maryland

/s/ Evan D. Hendricks

Evan D. Hendricks

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Cabin John, MD 20818

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Attorneys for Plaintiffs

	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
FRANK J. REED III and CHRISTINA	:	
A. REED,	:	BURLINGTON COUNTY
	:	
Plaintiff,	:	Docket No: L-1526-10
	:	
v.	:	CIVIL ACTION
	:	
GMAC MORTGAGE LLC,	:	BRIEF IN OPPOSITION TO
RESIDENTIAL FUNDING CORP.	:	DEFENDANTS' MOTION TO BAR
and JOHN DOES 1-30, Individually,	:	EXPERT'S REPORT
Jointly, Severally and in the	:	
alternative,	:	
	:	
Defendants.	:	

STATEMENT OF FACTS

On or about May 19, 2008, Defendant filed a Complaint for Foreclosure in the Superior Court of New Jersey, Chancery Division, General Equity Part, Docket No. F-19177-08, seeking to foreclose Mr. Reed's equity of redemption in his home. Prior to filing its Complaint, Defendant failed to provide Mr. Reed with the "notice of intention to foreclose" required by the Fair Foreclosure Act. As a result, the Court granted summary judgment for Mr. Reed and dismissed the foreclosure action.

Mr. Reed has filed the instant case, which asserts a cause of action against Defendant for its negligence and breach of contract in filing the improper and illegal foreclosure action prior to providing him with the Notice of Intent required by statute.

Mr. Reed contends that pursuant to the Fair Foreclosure Act, he had a right to be free from a foreclosure action until such time as he was provided with a Notice of Intent to Foreclose which

would have given him the opportunity to cure any arrearage before the matter escalated into a foreclosure filing. Mr. Reed further contends that if he had been provided with the Notice of Intent as he should have been, he could have easily cured the arrearage (which was only 3 months) and avoided becoming a defendant in a foreclosure action. Specifically, the 3 missed payments did not signify general money problems, but were simply the result of his wife's oversight or prioritizing of funds for business reasons. Indeed, it is not unusual for individuals to prioritize one debt at the expense of another, knowing they can easily make it up before any harm is done.

Furthermore, Defendant's Foreclosure Complaint stated that the mortgage was being accelerated and falsely lead Mr. Reed to believe that he did not have the right to cure, and that his only option at that point was to remit the entire principal balance and interest, which at that time was over \$1,000,000. Notably, Defendant failed to inform Mr. Reed, in a properly prepared and served "Notice of Intention to Foreclose," that notwithstanding the foreclosure complaint, Mr. Reed had the right to cure any mortgage default at any time prior to the entry of a final foreclosure judgment. NJSA 2A:50-53 et seq.

By the time Defendant's Foreclosure Complaint was dismissed by the Court on February 9, 2009 for Defendant's failure to comply with the Fair Foreclosure Act, nine (9) months had elapsed during which the improper and illegal foreclosure action had subsisted. During the nine (9) months that Defendant's improper and illegal foreclosure action subsisted, Mr. Reed's real estate business was destroyed since he was paralyzed of any ability to obtain any loans to preserve and conduct his real estate business and to earn an income from same as he historically had done.

Due to the financial paralysis caused by Defendant's improper and illegal foreclosure action, and its detrimental affect on Mr. Reed's ability to obtain credit to earn an income from his real estate business, Mr. Reed fell behind on his other financial obligations, further harming his credit and causing him to deplete all of his savings and cash reserves in order to live and support his household,

consisting of his spouse and 5 children. The depletion of his savings and cash reserves in order to live made him all the more incapable of conducting his business.

Furthermore, by the time Defendant's Foreclosure Complaint was dismissed by the Court on February 9, 2009 for Defendant's failure to comply with the Fair Foreclosure Act, Mr. Reed's credit and income-producing ability was destroyed and his savings and cash reserves depleted, leaving no meaningful ability to: (1) cure the mortgage arrears which by then were substantial; and (2) resume his income-producing endeavors which had been ongoing up until the point of Defendant's filing of its improper and illegal foreclosure complaint.

As a result of Defendant's negligent conduct, Mr. Reed suffered economic injury, including but not limited to:

(1) economic injury stemming from Mr. Reed's inability to consummate income-producing transactions which were in progress at the time Defendant filed its improper and illegal foreclosure action;

(2) economic injury stemming from Mr. Reed's inability to resume his income-producing endeavors which he had conducted for many years prior to Defendants' improper conduct;

(3) economic injury from the loss of at least 3 income-producing rental properties to foreclosure due to Mr. Reed's inability to service the mortgages as a result of his compromised income-producing ability;

(4) economic injury stemming from the general destruction to Mr. Reed's credit, and his compromised ability to obtain and use credit and/or the increase in cost of credit as a consequence of the direct and indirect damage done to his credit score;

(5) economic injury stemming from the awareness by third-parties of the improper foreclosure and filed lis pendens as Mr. Reed attempted to market his house, resulting in "lowball"

offers from potential buyers who otherwise would have made legitimate offers were it not for the perceived desperation caused by Defendant's actions; and

(6) non-economic damages, including but not limited to the distress that goes with powerlessly watching his income-producing abilities being destroyed after many years of hard work, his inability to support his family in the manner they were accustomed to, the indignity of relying on others for financial assistance for basic needs, and the general destruction of his goals and aspirations for his family.

LEGAL ARGUMENT

POINT I: THE EXPERT'S REPORT OF EVAN HENDRICKS WILL ASSIST THE TRIER OF FACT TO UNDERSTAND EVIDENCE, AND IS NOT A NET OPINION

Mr. Reed asserts that Defendant had a legal duty to exercise care and to refrain from filing a foreclosure complaint prior to providing Mr. Reed with the Notice of Intent to Foreclose required by the Fair Foreclosure Act. The Fair Foreclosure Act requires that such Notice of Intent be served, by both regular and certified mail, before instituting such proceedings. N.J.S.A. 2A:50-56. Defendant failed to serve the Notice before filing its Complaint. Furthermore, Defendant filed a Lis Pendens after improperly filing the Complaint, which broadcast to the world that the mortgage was in foreclosure when it never should have been filed without the service of a Notice of Intent. Mr. Reed alleges that Defendant deviated from the standard of care owed to him, and that Defendant's negligence proximately caused him economic injury.

Notably, the Fair Foreclosure Act provides:

The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court *and of any other right or remedy the debtor may have as a result of the failure to give such notice.* N.J.S.A. 2A:50-56(e) (emphasis added).

Accordingly, Mr. Reed asserts a cause of action for negligence and breach of contract, and seeks damages as a result of Defendant's failure to give such notice in outright violation of its statutory duty under the Fair Foreclosure Act.

Defendant's quest to bar the expert's report consists of nothing more than the baseless contention that it is a net opinion, and cites excerpts from the report and from deposition testimony taken out of context or omitting relevant sentences that come after the cited portions.

N.J.R.E. 702 provides for expert testimony to assist the trier of fact to understand the evidence or to determine a fact in issue. Mr. Hendricks shall assist the trier of fact in understanding the evidence by opining on the following issues: What is credit? Why does someone need credit? Why is it important? What is good credit? What is bad credit? How does credit get to be bad? What are the consequences of bad credit? What is a credit report and what is its purpose? How do lenders perceive a foreclosure when evaluating credit applications? How will a foreclosure affect one's ability to obtain credit in the future? Mr. Hendricks opines on these issues, and nothing he says is a "net opinion" or a bare conclusion lacking in basis.

Notably, Mr. Hendricks, in discussing the importance of the Notice of Intent prior to the institution of foreclosure proceedings, cites to Myron Weinstein's treatise contained in the New Jersey Practice Series. As the court may be aware, Mr. Weinstein is the former chief of the Superior Court's Office of Foreclosure. In his treatise, Mr. Weinstein observed that "[i]nstitution of foreclosure is traumatic to the debtor-mortgagor and creates a permanent court record which can be injurious to the debtor's credit. The notice of intention is meant to give the debtor a chance to prevent acceleration and institution of foreclosure."

Moreover, Mr. Hendricks opines on the standard of care, based on his experience and qualifications. He opines that inaccurate credit reporting is a longstanding and well known problem,

and that as a mortgage lender, GMAC should have known that care was required not to file an improper foreclosure against someone because of the negative impact that it would cause on the victim. Hendricks report at 6-7.

Unfortunately for Defendant, they take their victim as they find him. If Mr. Reed's source of income was simply a job where he received a paycheck every two weeks, his damages would have been less severe. However, *Mr. Reed earned his living by purchasing, improving, and then selling real estate.* Cash flow, and the ability to obtain the necessary cash when he needed it, was vital to his income-earning ability. Defendant's improper and illegal foreclosure, brought without warning, was particularly destructive to Mr. Reed. Mr. Hendricks explains this in his report.

Defendant seems to completely misunderstand the basis of Mr. Reed's damages. While Mr. Reed does claim that part of his injury consists of general credit damage, the bulk of Mr. Reed's claim is that a specific transaction was in progress and that the improper filing of the foreclosure by Defendant prevented this specific transaction from being consummated. This particular transaction would have allowed Mr. Reed to extract hundreds of thousands of dollars of equity from his home, since at the time of these events, his home was worth approximately \$2,000,000 and the mortgage balance was approximately \$1,400,000. Defendant's illegal foreclosure filing prevented the consummation of this transaction, thereby depriving Mr. Reed of funds which he was about to use to complete improvements to another property and sell that property at a substantial profit, thereby generating income for himself and his family. In Mr. Reed's business, income which was generated was also utilized to purchase additional properties, thereby starting the process over again with another property. Such was Mr. Reed's business. By the time the illegal foreclosure was dismissed 9 months after it was unjustly filed, Mr. Reed had suffered severe economic damage and lost income

and his cash reserves were depleted. Therefore, Defendant's fixation on a comparison of Mr. Reed's pre-tort versus post-tort general credit history is specious, and misses the point entirely.

That being said, discovery is still ongoing and Mr. Reed is endeavoring to obtain historical credit reports for review by his expert. Same are not readily available from credit reporting agencies in the manner that current reports are available, and require special effort to obtain a "snapshot" for a prior point in time. Subpoenas have been served in an effort to acquire them if they can be generated.

N.J.R.E 703 provides that the facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before hearing. In the section of his report reciting what he reviewed, the expert refers to his review of discovery. Plaintiff's amended interrogatory answers set forth the identity of a witness named Robert Curley. **Exhibit "A" at #2.** At this time, Defendant has chosen not to depose Mr. Curley. As disclosed in the amended answers to interrogatories, the scope of Mr. Curley's testimony will be as follows:

1. He had a long history of working together with Mr. Reed on many loans.
2. He recalls communicating with Mr. Reed toward the end of 2007 or the beginning of 2008 with regard to a loan whereby Mr. Reed would extract equity from his residence at 817 Matlack Drive, Moorestown, New Jersey.
3. Over the years, he had funded many loans for Mr. Reed in his capacity as Market President for Commerce Bank, N.A. which later became known as TD Bank, N.A. He was aware that Mr. Reed was in the business of buying, improving and selling real estate. In the past, he would approve loans for Mr. Reed which would enable him to purchase real estate, make improvements which increased its value, and sell it at a profit.

4. In early 2008, he ordered and received an appraisal of 817 Matlack Drive pursuant to his conversations with him about a new refinance loan. Attached hereto as **Exhibit "B."**

5. He was aware that the loan was to be utilized to make improvements to Mr. Reed's property located at 9717 Old Dell Trace in Virginia, and he received and reviewed a "subject to" appraisal for 9717 Old Dell Trace as a result of my conversations with Mr. Reed about the loan.

6. After he became aware of the foreclosure complaint filed by Defendant, he could no longer approve the loan. Essentially, the filed foreclosure complaint was a deal killer.

Under N.J.R.E. 703, Mr. Hendricks may certainly base his opinion and inference on these facts which were made known to him. Defendants are free to explore these facts on cross-examination; however, their suggestion that the expert's report does not have a factual basis is simply incorrect.

Defendant criticizes Mr. Hendricks for stating: "It's logical that a foreclosure is devastating to a consumer's creditworthiness." Defendant argues that this is a "personal opinion" which is not "supported by a factual analysis." This argument is simply absurd. First, in today's economic climate, Defendant cannot seriously argue that this is a "personal opinion" as if there is any debate that a foreclosure is damaging to one's ability to obtain credit. Second, Defendant ignores the fact that in the very next sentence, Mr. Hendricks explains his observation by observing that "a foreclosure typically means that the consumer has defaulted on the mortgage to a point that the bank has to foreclose on the home and take possession of it." He goes on to state that most lenders have a policy of not approving or even reviewing credit applications from consumers who are in foreclosure. He further refers to Myron Weinstein's observation, in his "Law of Mortgages" treatise in the New Jersey Practice Series, that "[i]nstitution of foreclosure is traumatic to the debtor-mortgagor and creates a permanent court record which can be injurious to the debtor's credit. The

notice of intention is meant to give the debtor a chance to prevent acceleration and institution of foreclosure.” Finally, Defendant ignores the fact that the representative of the mortgage lender himself will testify that the loan would have been consummated but for the foreclosure filing. Defendant’s empty characterization of Mr. Hendricks’ report as being a “net opinion” is simply without merit.

Defendant argues that Mr. Hendricks’ report does not demonstrate a “causal link” between the Defendant’s actions and Mr. Reed’s damages. That makes no sense. It is not Mr. Hendricks’ role to provide such a causal link. The causal link is established by way of Mr. Reed’s testimony and the expected testimony of Mr. Curley. Specifically, Mr. Curley shall testify that the foreclosure filing was the only reason why he could not complete the loan which was in progress. Mr. Reed shall testify as to the chain of events which occurred by reason of not getting this loan.

As for Defendant’s observation that Mr. Reed has other negative credit issues, this is a completely specious argument. Defendant apparently wants the court to infer that Mr. Reed had pre-existing credit issues which prevented him from obtaining the loan, and that therefore Mr. Hendricks needs to discuss a causal link. This is simply disingenuous. The credit issues which Defendant refers to were testified to by Mr. Reed himself at his deposition, and Defendant cites to same. As is clearly seen by the deposition testimony which Defendant cites to, these “credit issues” were all a result of Defendant’s tortious conduct. They were not pre-existing. Mr. Reed clearly testified that these came about after the illegal foreclosure complaint was filed. As for Defendant’s argument that the report lacks a comparative analysis of Mr. Reed’s “before” and “after” credit, Defendant ignores Mr. Hendricks’ observation that “eight accounts were rendered derogatory in 2008 alone.” Hendricks report at 3. Defendant also twists Mr. Reed’s words, claiming that he testified at his deposition that he “was uncertain whether or not he was past due on any of his other mortgages at

that time [in 2008]. Mr. Reed's actual testimony was "No, I don't think I was. I don't believe I was at all." Reed deposition at 36:5. And again, Defendant's fixation on a "before" and "after" comparison ignores the fact that the inability to obtain the loan was due strictly to the improper foreclosure filing, and not due to any general problem with Mr. Reed's credit. Attached hereto is evidence obtained from the proposed lender. **Exhibit "C."** As the Court will see, it is a credit memorandum completed on April 11, 2008 for a related loan, a mere month prior to the improper foreclosure filing. The loan was approved by Commerce Bank's vice president and regional vice president, as evidenced by their signatures. Obviously, whatever the status of Mr. Reed's credit at the time, it was certainly satisfactory to induce this lender to provide him with a loan at the time of Defendant's illegal foreclosure filing.

Moreover, "[t]he rule relating to the uncertainty of damages applies to the uncertainty as to the fact of damage and not as to its amount, and where it is certain that damage has resulted, mere uncertainty as to the amount will not preclude the right of recovery." Tessmar v. Grosner, 23 N.J. 193, 203 (1957); Kozlowski v. Kozlowski, 80 N.J. 378, 388 (1979) ("While the damages flowing from defendant's breach of contract are not ascertainable with exactitude, such is not a bar to relief. Where a wrong has been committed, and it is certain that damages have resulted, mere uncertainty as to the amount will not preclude recovery -- courts will fashion a remedy even though the proof on damages is inexact.")

Next, Defendant seeks to bar Mr. Hendricks' report because Mr. Hendricks is not a psychologist and allegedly has no basis to report that Mr. Reed experienced mental anguish and stress. Defendant completely misreads the report. Obviously, it is up to a finder of fact to put a value on Mr. Reed's non-economic damages after listening to Mr. Reed testify about the damages he suffered as a result of Defendant's illegal foreclosure filing. This includes the distress that goes

with powerlessly watching his income-producing abilities being destroyed after many years of hard work, his inability to support his family in the manner they were accustomed to, the indignity of relying on others for financial assistance for basic needs and having one's utilities shut off, and the general destruction of his goals and aspirations for his family. Mr. Hendricks simply cited *actual cases* along with a factual recitation of the jury verdicts in those cases. Based on those cases, and a review of the facts as presented to him, Mr. Hendricks' valued Mr. Reed's non-economic damages at \$350,000. See Rosenberg v. Tavorath, 352 N.J. Super. 385 (App. Div. 2002) (evidential support for an expert opinion is not limited to treatises or any type of documentary support, but may include what the witness has learned from personal experience). Nevertheless, there is no basis for Defendant to use this as an argument to bar the report, since this is a question for the finder of fact. Camaraza v. Bellavia Buick Corp., 216 N.J. Super. 263, 266 (A.D. 1987) (a jury or other trier of fact is frequently asked to place a monetary value on non-monetary consequences of a tort, such as a victim's disability, pain and suffering, personal humiliation, or emotional anguish).

CONCLUSION

Defendants arguments are misplaced, and do not present any basis to bar the expert report of Evan Hendricks.

Respectfully submitted,

LAW OFFICES OF JEFFREY S. WALTERS, LLC

Dated: December 29, 2011

By: 
JEFFREY S. WALTERS

To the extent this brief contains factual assertions:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: December 29, 2011

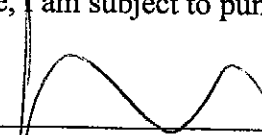

Jeffrey S. Walters
Attorney for Plaintiff

EXHIBIT "A"

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Attorneys for Plaintiff

	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
FRANK J. REED III,	:	
	:	BURLINGTON COUNTY
Plaintiff,	:	
	:	Docket No: L-1526-10
v.	:	
	:	CIVIL ACTION
GMAC MORTGAGE LLC,	:	
RESIDENTIAL FUNDING CORP.	:	PLAINTIFF'S AMENDED AND
and JOHN DOES 1-30, Individually,	:	SUPPLEMENTAL ANSWERS TO
Jointly, Severally and in the	:	INTERROGATORIES PROPOUNDED
alternative,	:	BY DEFENDANTS
	:	
Defendants.	:	
	:	

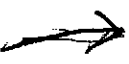
Plaintiff, Frank J. Reed III, by way of amended and supplemental Answers to Interrogatories,
says:

1. Frank J. Reed III, 817 Matlack Dr., Moorestown, New Jersey 08057
2. Plaintiff Frank J. Reed III has knowledge of the fact that he was never served with a Notice of Intent to Foreclose, as described in the Complaint. He also has knowledge of the economic damage caused to him that resulted from Defendants' filing of the foreclosure complaint without Defendant first providing notice of its intention to foreclose. Plaintiff's spouse Christina A. Reed has knowledge of the fact that she was never served with a Notice of Intent to Foreclose, as described in the Complaint. Any and all representatives and/or agents of GMAC Mortgage LLC have knowledge of the fact that they neglected to mail a Notice of Intent to Foreclose, as do any attorneys who worked on the foreclosure action on behalf of Defendant. Any individuals named in any documents provided by either party in discovery have knowledge as might be set forth in those documents. Thomas Tartamosa, former mortgage loan officer of Allied Mortgage Group in Cherry Hill, NJ (no longer in business), has knowledge of my loan application and the fact that I would have received the loan that I was pursuing were it not for the foreclosure complaint and Lis Pendens prematurely filed by Defendant. Peter R. McCaffrey of Robert M. Sappio Appraising and Consulting 314 Cherry Avenue Voorhees, NJ 08043, has knowledge of the value of my property at 817 Matlack Drive, Moorestown, New Jersey, at the time I was attempting to refinance, as he performed an appraisal of the property. Alex Uminski of MG Miller and Assoc., 5316 Patterson Ave., Richmond, VA 23226, has knowledge of the value of my property at 9717 Old Dell Trace, Richmond, Virginia 23238, as he performed an appraisal.

As per February 14, 2011 informal supplemental responses, Mr. Tartamosa's address is 253 Jackson Road, Berlin, New Jersey 08009.

As per February 14, 2011 informal supplemental responses: Real estate broker Naoji Moriuchi, BT Edgar & Son, 27 East Main St., Moorestown, New Jersey 08057. Naoji Moriuchi has knowledge of the effect that the improperly filed foreclosure complaint and lis pendens had on the quality of offers to purchase the property at 817 Matlack Drive, Moorestown. Specifically, at least one prospective purchaser commented that he made a lowball offer, much lower than would normally have been made, because he saw that a lis pendens was filed which encumbered the property. The prospective purchaser indicated to Naoji Moriuchi that the lis pendens and foreclosure implied desperation to sell, accounting for the low offer.

As per February 14, 2011 informal supplemental responses: Frank and Gina Roccisano. They were the prospective purchasers who made the low offer to Naoji Moriuchi, referred to above. Unsigned Contract for Sale and Lease relating to Frank and Gina Roccisano was previously produced.



Robert Curley, Market President, TD Bank, N.A., 1701 Route 70 East, Cherry Hill, NJ 08034. Mr. Curley has knowledge that he and I had a long history of working together on many loans. Mr. Curley has knowledge that he specifically remembers communicating with me about a refinance loan on 817 Matlack Drive, Moorestown, New Jersey in the time leading up to May 19, 2008. Mr. Curley has knowledge that he was prepared to fund such a loan upon my indication that I wished to proceed. Mr. Curley specifically recalls discussing with me that I was deciding whether to proceed with the loan depending upon whether or not I was able to sell 817 Matlack Drive. Mr. Curley has knowledge that he discussed with me that the loan proceeds were going to be utilized by me to complete renovations to my real estate at 9717 Old Dell Trace, Richmond, Virginia. Mr. Curley has knowledge that I was in the business of buying, improving and selling real estate. Mr. Curley has knowledge that Mr. Curley and Commerce Bank (nka TD Bank) had funded this type of venture for me before. Mr. Curley has knowledge about the fact that Commerce Bank provided a loan to me to make improvements to 817 Matlack Drive, Moorestown, New Jersey which significantly increased its value. Mr. Curley has knowledge that he physically visited the Matlack Drive property to inspect it. Mr. Curley has knowledge that he ordered and received an appraisal of 817 Matlack Drive pursuant to my conversations with him about the refinance loan, a copy of which has been provided in response to Defendant's document request. Mr. Curley has knowledge that he received and reviewed a "subject to" appraisal for 9717 Old Dell Trace as a prelude to the project which was to be undertaken with proceeds from the refinance of 817 Matlack. Mr. Curley has knowledge that part of my intent with the refinance loan was to do the same thing that I had done many times in the past, which was to improve the Virginia property, increase its value, and sell it at a substantial profit. Mr. Curley has knowledge that after Defendant filed its foreclosure complaint, Commerce Bank could no longer fund the refinance which I had been discussing with Mr. Curley. Mr. Curley has knowledge that Commerce Bank could not refinance a property that was the subject of a filed foreclosure complaint. Mr. Curley has knowledge that Commerce Bank would have refinanced the property at 817 Matlack were it not for the foreclosure complaint filed by Defendant. Mr. Curley has knowledge that I was a long-term relationship customer in commercial banking. Mr. Curley has knowledge that, due to my relationship with Commerce Bank, Mr. Curley did not require me to submit a loan application. Mr. Curley has knowledge that Mr. Curley did not ask me to submit a loan application for other financing which Commerce Bank had extended to me prior to that time. Mr. Curley has knowledge that Commerce Bank had previously financed multiple loans for me over the years without asking me to complete an application. Mr. Curley has knowledge that credit was not the controlling factor in the commercial lending that I had been receiving, but rather, history with the customer and specifics of the deal were the important factors. Mr. Curley has knowledge of the strength of my relationship with Commerce Bank (nka TD Bank) from our past dealings.

3. Objection. This interrogatory calls for trial strategy. Without waiving this objection, any persons with knowledge as set forth in the previous interrogatory answer may potentially be called as witnesses. See also interrogatory #18.

4. Christopher G. Ford, Esq., ZUCKER GOLDBERG & ACKERMAN LLC, 200 Sheffield St. Ste 301, PO Box 1024, Mountainside, NJ 07092-0024.

5. Objection. The term "default" is not defined. Without waiving said objection, I acknowledge that I was not current with my mortgage payments at the time I received the foreclosure complaint.

6. I do not know the date of the default. Defendant agreed to a forbearance while I made effort to refinance my mortgage.

7. I never received a Notice of Intent to Foreclose prior to being served with a foreclosure complaint. I know this because if it was mailed to me, I would have seen it when reviewing my mail. In addition, I made a motion for Summary Judgment in the foreclosure action. The basis of my motion was the failure to provide a Notice of Intent to Foreclose as provided for under the Fair Foreclosure Act. Defendant never came forward with any evidence to refute my contention, and my motion was granted by the Honorable Michael Hogan.

8. The governing statute speaks for itself.

9. I applied for a loan that was for 90% of what the appraised value of my property was at that time, the appraised value being \$2,040,000. A copy of the appraisal is included in documents which I have produced. I had satisfied all of the lender requirements for this cash out refinance. The lender halted the refinance when they learned that I was a defendant in a foreclosure action. A copy of the Lis Pendens filed by Defendant is attached to the documents which I have produced. See also the response to Interrogatory #2. See also the transcript of my deposition.

10. The governing documents speak for themselves. It is my understanding that any reference to Defendant's ability to foreclose which is set forth in the governing documents implies that any such foreclosure pursuant to such documents would comply with all relevant law.

11. See answer to interrogatory #9. If Defendant would have provided the proper Notice of Intent to Foreclose before filing the Complaint, as was required by statute, it would have informed me of the time I had before a Complaint was to be filed, and I would have made sure to consummate the loan prior to the foreclosure complaint and Lis Pendens being filed.

12. See answers to interrogatories #2, #9 and #11.

13. Thomas Tartamosa, former Mortgage Loan Officer of Allied Mortgage Group in Cherry Hill, NJ (no longer in business). I currently do not possess documentation of my refinance efforts which were aborted by Defendant's improper filing of the foreclosure complaint and Lis Pendens. Such documents would be in the possession of the aforementioned entity. See also appraisals included in documents which I have produced. In addition, Robert Curley, Market President, TD Bank, N.A., 1701 Route 70 East, Cherry Hill, NJ 08034. Mr. Curley has knowledge that, due to my relationship with Commerce Bank (nka TD Bank, N.A.), he did not ask me to submit a loan application. Mr. Curley has knowledge that I was not asked to submit a loan application for

other financing which Commerce Bank had extended prior to that time. Also see answer to interrogatory #2. See appraisals of 817 Matlack and 9717 Old Dell Trace, previously provided pursuant to Defendant's document request. See permits and plans for contemplated improvements to 9717 Old Dell Trace, attached hereto.

14. Great Lakes Financial, 800 Pine Street, Ambridge, PA 15003. Commerce Bank, Route 70 East, Cherry Hill, NJ 08034. See also answer to the previous interrogatory.

15. The damages have not yet been quantified. Damages suffered include:

- a. I was rendered unable to pay off my GMAC mortgage loan. This tainted my credit and had a domino affect on my finances.
- b. I lost the use of the cash out funds which I would have acquired from the refinance and which would have allowed me to conduct business endeavors.
- c. The cash out was going to be used to complete my house at 9717 Old Dell Trace, Richmond, Virginia so that I could sell it for a profit and pay off my refinance. See appraisal provided with produced documents as to completion value. I was unable to do so. The property value has plummeted since that time. See #16.
- d. With a loss of cash flow from the refinance which would have allowed for the renovation and sale of property, it ruined my credit and my livelihood has been destroyed.
- e. I would have been able to sell 817 Matlack Drive in Moorestown for \$1,800,000 to Mark Weaver, which I was not able to do because of the cloud of the Lis Pendens. The property value has plummeted since that time. See copy of contract provided with produced documents.
- f. The foreclosure filing and the blight on my credit have compromised my ability to obtain a securities license and obtain employment as a financial adviser.
- g. See #16.
- h. Lost future wages due to my inability to obtain employment as a financial adviser as a result of having had a foreclosure complaint filed against me.
- i. I described my damages in further detail during my deposition.
- j. Plaintiffs reserve the right to supplement these interrogatory answers as additional damages are identified and quantified.

16. The damages have not yet been quantified. However, damages include:

- a. The lost value of my aforementioned properties both in New Jersey and in Virginia. Specifically, the difference between my equity in the New Jersey property at the time I would have consummated a cash-out refinance were it not for Defendant's improper foreclosure complaint, versus the value today. Furthermore, the diminution in value of my Virginia property from the time I would have been able to complete improvements to today.
- b. The lost profits from selling the properties, as they are not complete. Appraisals are provided with the produced documents which show value at the relevant time, as compared to current market values (to be determined).
- c. The lost future revenue of my ongoing real estate investing.
- d. The higher costs of insurances and future borrowing costs due to my ruined credit which would not have been ruined but for the actions of Defendants.
- e. The lost sale of 817 Matlack for \$1,800,000 to Mark Weaver because of the Lis Pendens.
- f. Plaintiffs reserve the right to supplement these interrogatory answers as additional damages are identified and quantified.

17. See all documents produced, which I have used and referred to in preparing these answers. Plaintiffs reserve the right to supplement these interrogatory answers and produced documents as additional damages are identified and quantified.

18. Dr. Avner Haya, F.S.A., E.A. (lost wages due to inability to obtain employment as a financial adviser). Evan D. Hendricks (financial effect of foreclosure filing, including but not limited to effect on credit). See Curriculum Vitae attached. See also any individuals who have prepared or are identified in the produced documents who can be characterized as experts. Plaintiff reserves the right to consult or retain additional experts in due course and to amend/supplement these interrogatory answers accordingly.

EXHIBIT "B"

This appraisal has been performed for Commerce Bank in connection with a loan request made by you. Commerce Bank makes no representations regarding the accuracy of the information contained in the appraisal and assumes no liability in connection with this appraisal.



COMPLETE APPRAISAL SUMMARY REPORT

LOCATED AT:
817 Matlack Drive
Block 3803 Lot 2
Moorestown, NJ 08057

FOR:
Commerce Bank
2059 Springdale Road
Cherry Hill, NJ 08003

AS OF:
1/21/2008

An Administrative Compliance Review has been completed on this report.
This report has been deemed acceptable by Commerce Bank.

(Reviewed by)

1/30/08
(Date)

BY:
Peter R. McCaffrey
Robert M. Sapio Real Estate Appraisal & Consulting, LLC

Robert M. Saplo
Real Estate Appraisal & Consulting, LLC
314 Cherry Avenue
Voorhees, NJ 08043

Telephone No.: (856) 429-2789
Fax No.: (856) 795-2297

January 25, 2008

Joseph Graves
Commerce Bank
2059 Springdale Road
Cherry Hill, NJ 08003

RE: Reed
817 Matlack Drive
Moorestown, NJ

Dear Mr. Graves:

In accordance with your request, enclosed is one copy of the appraisal report of the captioned property. The purpose of the appraisal was to estimate market value of the captioned property, as improved, in unencumbered fee simple title, subject to the Assumptions and Limiting Conditions contained in the URAR form 439, the Certification and this report.

This report is prepared in compliance with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.

This is a complete appraisal in a summary report.

Respectfully submitted,

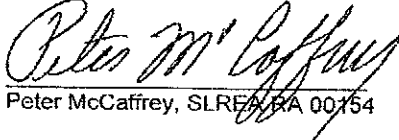

Peter McCaffrey, SLREA, PA 00154

EXHIBIT "C "

*Policy
Exception
Checklist*



Commerce Bank, N.A.

Date:

April 11, 2008

Relationship Name:

Frank Reed

Relationship #:

1915

WRITE-UP WILL SERVE AS UAM: Y [X] N []

Frank & Christina Reed
817 Matlack Drive
Moorestown, N.J. 08057

Account Officer: Gregory B. Cieslik, VP
Lending Area: Camden Region
R/E Loan Type: Inv. Dev. Apt. Fixed
Borrower Risk Rating: 8
Facility Risk Rating: 8
LIED: 20%
Agency Rating: N/A
Last Write-up: 12/24/2007

Phone #: 856-979-3035

Date of Birth: 10/31/1966

1967 - YOB

Tax ID #: ~~12345~~ 7464

~~12345~~ 5095

NAICS Code: 531110

Industry: Lessors of Res. Prop.

AGI: \$264M - FY 2007

Company: Individuals

Asset Based: No

Change in Terms: No

Participant: None

Agent: None

CRA Credit: No

Customer Since: 2003

Director Related: No

Exceptions: Yes - DSCR

Commerce Ins Svcs.: No

Enterprise Value Loan: No

Leveraged Trans.: No

Analyst: Dan Olsen

Website: N/A

Position: N/A

Email: N/A

PUBLIC OFFICIAL: No

RELATED PARTY OF

PUBLIC OFFICIAL: No

RELATIONSHIP/NAME

OF PUBLIC OFFICIAL: N/A

CURRENT DIRECT EXPOSURE: \$616,819

Action Taken

	<u>Amount</u>	<u>Facility</u>	<u>Maturity</u>
New Loan:	\$645,000	Commercial Mortgage	20 Year

Proposed Direct Exposure:	\$645,000	Direct Avg. Bal.:	\$1,946
Indirect Exposure:	\$0	Indirect Avg. Bal.:	\$0
Total Proposed Exposure:	\$645,000	Total Avg. Bal.:	\$1,946

Approval Recommended & Signed Off By:

Name	Initials	Date	Comments
Gregory B. Cieslik Vice President	<i>[Signature]</i>	4/18/08	
Robert E. Curley, III Regional Vice President	<i>[Signature]</i>	4/21/08	

CREDIT MEMORANDUM

Summary:

Who:

- On August 24, 2005 CBNA approved a \$365,500 Time Note (BL # 1361520234) to Frank & Christina Reed to provide interim financing for four (4) months for the purchase of the residential property at 21 Darien St., Cherry Hill, NJ. The subject Note was extended 90 days as of February 21, 2006 to provide additional time for Frank to explore refinance options.
- As of September 1, 2005 the Borrower signed a lease with the Oxford House, a recovery house program to lease the property through August, 2010 from which the Borrower receives \$2,400 / month. The Oxford House is a self-run, self-supported recovery house program for individuals recovering from alcoholism and drug addiction.
- On August 7, 2006 CBNA approved the modification of the aforementioned Time Note to a 15 year term loan with a one (1) year call (current balance is \$337,951). **This loan will be refinanced with the subject request.**
- Frank Reed also maintains ownership of two (2) residential properties located at 318 Columbia Ave, Stratford, NJ and 52 Stone Hollow Dr., Sicklerville, NJ. These properties serve as part of the collateral pool and have been rented to the Oxford House for the past eleven (11) and thirteen (13) years, respectively.
- Frank Reed also maintains a \$140M HELOC (CL # 980344600 with a balance of \$138M) and a \$140M HELOC (CL # 980344618 with a balance of \$139M). **These loans will be refinanced with the subject request.**
- Mr. Reed is currently seeking approximately \$350M in funds from Jeffrey S. Krum Financial Consultants, Inc. which he will use for an addition to an investment property in Richmond, Virginia. Subsequent to the addition, Mr. Reed plans on listing the property for sale.
- Additionally the Reed's primary residence in Moorestown, NJ is listed for sale i/a/o \$2,100M. Should the property not sell in the next three (3) months, the Reeds have an offer to rent the home for approximately \$12M a month. In either scenario, the Reeds will be moving to a smaller home in the area.
- Frank Reed has recently accepted a job with Smith Barney financial advisors that will pay him an annual salary of \$65M in addition to his income received from his real estate investments.

What:

- This credit memorandum shall serve to approve the consolidation of the following three (3) outstanding CBNA loans:
 - CL # 980344600 i/a/o \$138,868
 - CL # 980344618 i/a/o \$138,683
 - BL # 1361520234 i/a/o \$337,951
- Additionally, the proposed request will provide \$24M in cash out to the Reed's to alleviate their tight cash flow.
- The Loan will consist of interest only payments for six (6) months at 7.50%, followed by principal and interest payments based on a 20 year amortization at the same rate. The Loan will have a call option one (1) year from the contract date.
- The Loan will be secured by the following:
 - First mortgage on the residential property located at 21 Darien St., Cherry Hill, NJ with an appraised value of \$365M.

- First mortgage on the residential property located at 52 Stone Hollow Dr., Sicklerville, NJ with an appraised value of \$239M.
- LTV is 77%

Why:

- The proposed consolidation will save the Borrowers approximately \$6M in annual debt service as well as provide \$24M in cash out. The interest only period of six (6) months will allow time for one of the following avenues of revenue to come to fruition. Mr. & Mrs. Reed currently have three different pieces of property on the market. Their Moorestown, N.J. residence is listed for sale for \$2,040,000. with existing debt of \$1,420,000. leaving an equity position of \$620,000. A buyer made an offer on this property in December 07 at full listing price however the appraisal came in below listing price. Upgrades on the property had been over looked and a new appraisal was ordered and received showing the value of the property at the listing price. Unfortunately the prospective buyer had backed out of the deal by that point in time. These issues resulted in the Reed's. The property continues to be listed on the market.
- The second property is a residential property in Richmond, Va. Mr. Reed believes that its market appeal will improve substantially by adding about 3000 sq. ft. to the rear of the house. With the addition, the property will better match in size the other properties in that area, thus creating a more marketable property. The value of the property with the addition is \$1,725,000., with \$800,000. in existing debt and \$350,000. proposed for the addition. The equity being \$575,000. The last property is raw ground in Richmond in a very desirable area. It is listed at \$654,000, with debt of \$340,000. leaving an equity position of \$314,000. The sale of any of the three properties will greatly improve their existing cash flow, purely by debt reduction, including TD Commerce .

How:

- Repayment is based on income received from the Oxford House.
- The Reeds demonstrate a DSCR of 1.16:1 with \$39M in cash flow. This analysis includes proforma income to be received from Mr. Reed's position at Smith Barney which has been verified.
- The Facility is secured by a first mortgages on the three (3) properties resulting in a 77% LTV with \$192M in net equity.

Reward:

- A fee of \$6,000 in addition to a fee of \$1,500 related to the 12/2007 request to renew the call option on BL # 1361520234 to total \$7,500.
- As per the attached CPS report dated 4/10/2008, the relationship has produced a profit of \$42M with a 7.43% Return-on-Assets through 2/29/2008.

Credit Issues & Mitigants:

- The Bank is not in receipt of an updated PFS for Frank Reed and the Reeds have FICO scores of 511 and 551, respectively. The proposed refinance will provide the Reeds \$24M in cash out which will allow them to make loan payments on their outstanding debt.

Frank J. Reed, III	SSN:	1234-7464
FICO: 511		
Christina Reed	SSN:	1234-5095
FICO: 551		
817 Matlack Drive	Financial Statement Date:	N/A
Moorestown, N.J. 08 057	Last Tax Return Year:	2007
	Total 1040 Income:	\$263,551
	Personal DSCR:	1.16:1

The Reeds currently have two (2) delinquent accounts related to the mortgage on the Moorestown, NJ property and CBNA CL # 980344600. Additionally, the Reeds report a released \$34M tax lien from Mercer County, a \$1,381 judgment for Medical Payment Data, and a released \$31M tax lien from Burlington County.

DSCR is 1.16:1 with \$39M in cash flow, as proposed. This analysis reflects proforma income to be received from Smith Barney.

JEFFREY S. WALTERS
LLC

3000 ATRIUM WAY SUITE #2201
MOUNT LAUREL, N.J. 08054

TELEPHONE: (856) 552-1045
FACSIMILE: (856) 974-8859

EMAIL: jeffrey_walters@comcast.net

December 29, 2011

Clerk
Law Division
Superior Court of New Jersey
49 Rancocas Rd.
Mount Holly, NJ 08060

RE: Reed v. GMAC Mortgage et al
Docket No. L-1526-10

Dear Sir or Madam:

I enclose opposition to Defendant's Motion to Bar Expert Report. Same is returnable on January 6, 2012. Kindly forward to the Judge who will be hearing the motion.

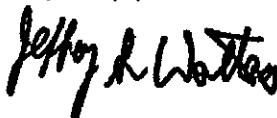
Also enclosed is Cross-Motion to Amend Complaint pursuant to R. 4:9-1. This consists of Notice of Cross-Motion, along with Certification in support thereof, form of order, and proof of service. The proposed amended Complaint is annexed to the motion, pursuant to R. 4:9-1.

Kindly file and list for January 6, 2012.

Please charge the filing fee of \$30 to my firm's collateral account #142448.

If you have any questions, please feel free to contact me.

Very truly yours,



Jeffrey S. Walters

JSW/jtg
Enclosures

cc: Brian M. Fleischer, Esq. (w/ encls.)
Frank Reed (w/ encls.)

LAW OFFICES OF JEFFREY S. WALTERS, LLC

3000 Atrium Way Suite 2201

Mount Laurel, NJ 08054

Telephone: (856) 552-1045

Telecopier: (856) 974-8859

Attorneys for Plaintiff

FRANK J. REED III,

Plaintiff,

v.

**GMAC MORTGAGE LLC,
RESIDENTIAL FUNDING CORP. and
JOHN DOES 1-30, Individually, Jointly,
Severally and in the alternative,**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION**

BURLINGTON COUNTY

Docket No: L-1526-10

CIVIL ACTION

**NOTICE OF CROSS-MOTION FOR
LEAVE TO AMEND COMPLAINT,
PURSUANT TO R. 4:9-1**

TO:

Brian M. Fleischer, Esq.

FLEISCHER, FLEISCHER & SUGLIA

Plaza 100 at Main St., Ste 208

Voorhees, NJ 08043

Attorneys for Defendants

PLEASE TAKE NOTICE that on **January 6, 2012, at 9:00 A.M.** or as soon thereafter as counsel may be heard, the undersigned attorneys for Plaintiff shall move this Honorable Court for an Order granting leave to amend complaint, pursuant to R. 4:9-1.

In support of this Motion, moving party will rely upon the Certification of Jeffrey S. Walters, Esq., attorney for Plaintiff.

Moving party does not request oral argument at this time, but reserves the right to request same if opposition is filed.

Pursuant to R. 4:9-1: A copy of the proposed Amended Complaint is annexed hereto.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorneys for Plaintiff



Dated: December 29, 2011

By: _____
Jeffrey S. Walters

LAW OFFICES OF JEFFREY S. WALTERS, LLC

3000 Atrium Way Suite 2201

Mount Laurel, NJ 08054

Telephone: (856) 552-1045

Telecopier: (856) 974-8859

Attorneys for Plaintiff

	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
FRANK J. REED III,	:	
	:	BURLINGTON COUNTY
Plaintiff,	:	
	:	Docket No: L-1526-10
v.	:	
	:	CIVIL ACTION
GMAC MORTGAGE LLC,	:	
RESIDENTIAL FUNDING CORP.	:	CERTIFICATION IN SUPPORT OF
and JOHN DOES 1-30, Individually,	:	MOTION FOR LEAVE TO AMEND
Jointly, Severally and in the	:	COMPLAINT PURSUANT TO R. 4:9-1
alternative,	:	
	:	
Defendants.	:	
	:	

I, being of full age, hereby certify and say:

1. I am Jeffrey S. Walters, Esq., an attorney with the law firm of Law Offices of Jeffrey S. Walters, LLC, attorneys for the Plaintiff in the above-captioned matter.
2. I make this Certification in support of Plaintiff's motion for leave to amend complaint, pursuant to Rule 4:9-1.
3. Rule 4:9-1 provides that "a party may amend a pleading only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice."
4. The proposed Amended Complaint is attached to the Notice of Motion, pursuant to R. 4:9-1.
5. The Amended Complaint is sought for the following reasons:
 - i. Count 6: To more fully set forth the damages flowing from the failure to provide a Notice of Intent to Foreclose.

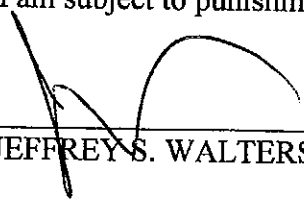
ii. Count 7: To add a count for punitive damages.

iii. Count 8: To add a count for violation of the Consumer Fraud Act.

6. The discovery end date is February 15. It is asserted that the amendment will not cause any delay in this matter, and that the discovery heretofore conducted would not have been conducted any differently had the amended counts been included in the original complaint.

I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: December 29, 2011



JEFFREY S. WALTERS

LAW OFFICES OF JEFFREY S. WALTERS, LLC
3000 Atrium Way Suite 2201
Mount Laurel, NJ 08054
Telephone: (856) 552-1045
Telecopier: (856) 974-8859
Attorneys for Plaintiff

FRANK J. REED III,

Plaintiff,

v.

GMAC MORTGAGE LLC,
RESIDENTIAL FUNDING CORP. and
JOHN DOES 1-30, Individually, Jointly,
Severally and in the alternative,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

BURLINGTON COUNTY

Docket No: L-1526-10

CIVIL ACTION

ORDER

This matter having been opened to the Court by Law Offices of Jeffrey S. Walters, LLC, attorneys for the Plaintiff, Jeffrey S. Walters, Esq. appearing, for entry of an Order granting leave to amend complaint pursuant to Rule 4:9-1, and the Court having reviewed the moving papers and the Certification supporting the Motion, and any opposition, and good cause having been shown:

It is on this _____ day of January, 2012

ORDERED, that leave is hereby granted for Plaintiff to amend complaint pursuant to R. 4:9-1; and

IT IS FURTHER ORDERED, Plaintiff shall file the Amended Complaint within 7 days of the date hereof consistent with the proposed amended complaint which was attached to Plaintiff's motion, and if Defendants wish to file an Answer to same, Defendants shall file an Answer to said Amended Complaint within the time period contemplated by R. 4:9-1.

IT IS FURTHER ORDERED, that a copy of this Order be served upon all parties within 7 days of the date hereof.

____ Opposed
____ Unopposed

LAW OFFICES OF JEFFREY S. WALTERS, LLC

3000 Atrium Way Suite 2201

Mount Laurel, NJ 08054

Telephone: (856) 552-1045

Telecopier: (856) 974-8859

Attorneys for Plaintiff

<hr/>	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
FRANK J. REED III,	:	
	:	BURLINGTON COUNTY
Plaintiff,	:	
	:	Docket No: L-1526-10
v.	:	
	:	CIVIL ACTION
GMAC MORTGAGE LLC,	:	
RESIDENTIAL FUNDING CORP.	:	PROOF OF SERVICE
and JOHN DOES 1-30, Individually,	:	
Jointly, Severally and in the	:	
alternative,	:	
	:	
Defendants.	:	
<hr/>	:	

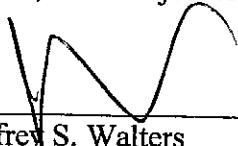
On December 29, 2011, I, the undersigned, mailed to Brian M. Fleischer, Esq., FLEISCHER, FLEISCHER & SUGLIA, Plaza 100 at Main St., Ste 208, Voorhees, NJ 08043 by regular mail, the following:

Notice of Motion For Order Granting Leave to Amend Complaint pursuant to R. 4:9-1, Certification in Support of Plaintiff's Motion and a proposed form of Order

I, the undersigned, also faxed to said attorney at 856-489-6439.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: December 29, 2011



Jeffrey S. Walters
Attorney for Plaintiff

LAW OFFICES OF JEFFREY S. WALTERS, LLC
3000 Atrium Way Suite 2201
Mount Laurel, NJ 08054
Telephone: (856) 552-1045
Telecopier: (856) 974-8859
Attorneys for Plaintiff

FRANK J. REED III,

Plaintiff,

v.

GMAC MORTGAGE LLC,
RESIDENTIAL FUNDING CORP.
and JOHN DOES 1-30, Individually,
Jointly, Severally and in the
alternative,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION

: BURLINGTON COUNTY

: Docket No: L-1526-10

: CIVIL ACTION

: AMENDED COMPLAINT

Plaintiff, whose post office address is 817 Matlack Drive, Moorestown, New Jersey 08057,
by way of Amended Complaint against the Defendants says:

FIRST COUNT THROUGH FIFTH COUNT

1. All paragraphs of the First Count through the Fifth Count of the Initial Complaint are repeated herein and made the First Count through Fifth Count of this Amended Complaint, but for the sake of brevity, same is not repeated in their entirety.

WHEREFORE, Plaintiff demands judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, attorney's fees, costs, interest, and any other relief as the court may deem proper, and as more fully set forth in the Initial Complaint.

SIXTH COUNT

2. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

3. Pursuant to the Fair Foreclosure Act, NJSA 2A:50-53 et seq., Defendant was obliged to inform Plaintiff, in a properly prepared and served "Notice of Intention to Foreclose" as defined in that Act, that Plaintiff had the right to cure any mortgage default at any time prior to the entry of a final foreclosure judgment.

4. Defendant failed to provide Plaintiff with the "Notice of Intention to Foreclose" required by the Fair Foreclosure Act prior to filing its Complaint for Foreclosure on or about May 19, 2008.

5. Instead, Defendant filed a Complaint for Foreclosure containing a provision that the mortgage was being accelerated and falsely leading Plaintiff to believe that Plaintiff's only option was to remit the entire principal balance and interest, which at that time was over \$1,000,000.

6. At that time, Plaintiff was approximately 3 months in arrears and could have easily cured the default if Defendant had not deceived Plaintiff into believing that he did not have this right.

7. By the time Defendant's Foreclosure Complaint was dismissed by the Court on February 9, 2009 for Defendant's failure to comply with the Fair Foreclosure Act, nine (9) months had elapsed during which the improper and illegal foreclosure action had subsisted.

8. During the nine (9) months that Defendant's improper and illegal foreclosure action subsisted, Plaintiff's credit was destroyed and Plaintiff was paralyzed of any ability to obtain any loans to preserve and conduct his real estate business and to earn an income from same as he had historically done.

9. Due to the financial paralysis caused by Plaintiff's improper and illegal foreclosure action, and its detrimental affect on Plaintiff's ability to obtain credit to earn an income from his real estate business, Plaintiff fell behind on his other financial obligations, further harming his credit and causing him to deplete all of his savings and cash reserves in order to live and support his household.

10. By the time Defendant's Foreclosure Complaint was dismissed by the Court on February 9, 2009 for Defendant's failure to comply with the Fair Foreclosure Act, Plaintiff's credit and income-producing ability was destroyed and his savings and cash reserves depleted, leaving no meaningful ability to: (1) cure the mortgage arrears which by then were substantial; and (2) resume his income-producing endeavors which had been ongoing up until the point of Defendant's filing of its improper and illegal foreclosure complaint.

11. As a direct and proximate result of Defendants' conduct as aforesaid, Plaintiff suffered economic injury, including but not limited to (1) economic injury stemming from Plaintiff's inability to consummate income-producing transactions which were in progress at the time Defendant filed its improper and illegal foreclosure action; (2) economic injury stemming from Plaintiff's inability to resume his income-producing endeavors which he had conducted for many years prior to Defendants' improper conduct; (3) economic injury from the loss of at least 3 income-producing rental properties to foreclosure due to Plaintiff's inability to service the mortgages as a result of his compromised income-producing ability; (4) economic injury stemming from the general destruction to Plaintiff's credit, and his compromised ability to obtain and use credit and/or the increase in cost of credit as a consequence of the direct and indirect damage done to his credit score; (5) economic injury stemming from the awareness by third-parties of the improper foreclosure and filed lis pendens as Plaintiff attempted to market his house, resulting in "lowball" offers from

potential buyers who otherwise would have made legitimate offers were it not for the perceived desperation caused by Defendant's actions; and (6) non-economic damages suffered by Plaintiff, including but not limited to the distress that goes with powerlessly watching his income-producing abilities being destroyed after many years of hard work, his inability to support his family in the manner they were accustomed to, the indignity of relying on others for financial assistance for basic needs, and the general destruction of his goals and aspirations for his family.

WHEREFORE, Plaintiff demands judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, including punitive damages, attorney's fees, costs, interest, and any other relief as the court may deem proper.

SEVENTH COUNT

1. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

2. The actions and conduct of the Defendants were actuated by actual malice, and/or accompanied by a wanton and willful disregard of the injuries which might be suffered by Plaintiff.

3. Defendants are liable for punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, including punitive damages, attorney's fees, costs, interest, and any other relief as the court may deem proper.

EIGHTH COUNT

4. The prior Counts are referred to herein and made a part of this Count, but for the sake of brevity are not repeated in their entirety.

5. At all times hereinafter mentioned, Plaintiff was a "Person" as defined in the New Jersey Consumer Fraud Act.

6. At all times pertinent hereto, Defendants were corporations and/or Limited Liability Companies duly organized and existing under and by virtue of the laws of the State of New Jersey or another State, and as such, were "Persons" as defined in the New Jersey Consumer Fraud Act.

7. Defendants in all ways engaged in the act, use and employment of an unconscionable commercial practice, deception, fraud, false promise, misrepresentation, and the knowing concealment of material facts with the intent that Plaintiff rely upon such concealment, suppression or omission, in contravention of N.J.S.A. 56:8-2 and the Consumer Fraud Act.

8. As a proximate result of Defendants' actions, Plaintiff has suffered an ascertainable loss under the Consumer Fraud Act.

WHEREFORE, Plaintiff demands judgment against Defendants for such sum of money as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, and in accordance with N.J.S.A. 56:8-1 et seq., treble damages, attorney's fees, costs, interest, and any other relief as the court may deem proper.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorney for Plaintiff



BY: _____
JEFFREY S. WALTERS

DATED: December 29, 2011

CERTIFICATION OF SERVICE

In accordance with N.J.S.A. 56:8-20, the Plaintiff mailed a copy of this complaint to the Attorney General at Office of the Attorney General, PO Box 080, Trenton, NJ 08625-0080 on the date of filing of this Complaint with the Court.

DESIGNATION OF TRIAL COUNSEL

Pursuant to New Jersey Court Rule 4:25-4, Jeffrey S. Walters, Esq. is designated as trial counsel for the Plaintiff in the above matter.

JURY DEMAND

Plaintiff demands trial by a jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorneys for Plaintiff



Dated: December 29, 2011

By: _____
JEFFREY S. WALTERS

CERTIFICATION

Pursuant to New Jersey Court Rule 4:5-1, the plaintiff hereby certifies that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding, to the best of plaintiff's knowledge or belief. The plaintiffs further certify that plaintiffs have no knowledge of any contemplated action or arbitration proceeding regarding the subject matter of this action and that, other than the parties set forth in this pleading, the plaintiffs are not aware of any other parties who should be joined in this action. In addition, plaintiffs recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

LAW OFFICES OF JEFFREY S. WALTERS, LLC
Attorneys for Plaintiff



Dated: December 29, 2011

By: _____
JEFFREY S. WALTERS

Hearing Date and Time: July 9, 2014 at 10:00 a.m. (Prevailing Eastern Time)

Response Deadline: June 19, 2014 at 4:00 p.m. (Prevailing Eastern Time)

Frank Reed
817 Matlack Drive
Moorestown, NJ 08057
Telephone: (856) 956-6950

Creditor, Pro Se

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In re:

RESIDENTIAL CAPITAL LLC et al.,
Debtors.

)
) Case No. 12-12020 (MG)

)
) Chapter 11

)
) Jointly Administered
)
)
)

**DECLARATION OF FRANK REED, CREDITOR, PRO SE IN OPPOSITION TO THE
RESCAP BORROWER'S CLAIMS TRUST OBJECTION TO CLAIMS**

I, Frank Reed, under penalty of perjury, declare as follows:

1. In 2009 GMAC was found to have violated my rights under New Jersey State foreclosure law by the New Jersey Superior Court, in Mount Holly, Burlington County, NJ, (the proper court of jurisdiction) and as a result of its violation of New Jersey State foreclosure law, GMAC caused me harm, and CONTINUES TO CAUSE me direct harm by CONTINUING to violate relevant foreclosure law. Specifically, GMAC's acts have destroyed and continues to destroy the liquidity and market value of my home and my long held banking relationships.

2. GMAC's continued actions have interrupted vital cash flow which has and continues to cause direct, deep and irreversible catastrophic damage to a lifetime of work and accumulated

net worth. The result of this damage, if not halted and remediated, will be the homelessness of me, my wife and our 6 children.

3. Due to this harm, I and my wife submitted proofs of claim in these bankruptcy cases. Subsequent to filing such proofs of claim, the debtors requested more information about the facts and law which we believed supported our claims, and we prepared and submitted hundreds of pages of factual proofs and law in the form of supplementary statements and 29 multi document exhibits.

4. It is clear to me that the Objection to our claims is ONLY based on the initial limited filing NOT the expansive supplemental filing requested and allowed by the debtors.

Respectfully submitted, this 18th day of June 2014.

Frank Reed
Creditor, Pro Se