

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Case No.: 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
_____)	

DECLARATION OF T. CHRIS STEWART

I, T. Chris Stewart, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney with the law firm of Anastasi Jellum, P.A., counsel for The Honor State Bank, now known as Honor Bank (“Honor”), in the above-referenced matter. I respectfully submit this Declaration in support of Honor Bank’s Objection to Motion of The Rescap Liquidating Trust for an Order Enforcing Plan Injunction and Confirmation Order.

2. Attached as **Exhibit 1** is a true and correct copy of the Client Contracts dated November 16, 2001, and April 29, 2002.

3. Attached as **Exhibit 2** is a true and correct copy of the Honor Bank-RFC Client Guides.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 31, 2015 in Stillwater, Minnesota.

/s/T. Chris Stewart
T. Chris Stewart



Exhibit 1

Client Contract

GMAC RFC

This Client Contract (as amended from time to time, the "Contract") between Residential Funding Corporation ("GMAC-RFC") and The Honor State Bank (the "Client") is dated as of April 29, 20 02.

Client desires to sell residential mortgage loans ("Loans") to, and/or service Loans for, GMAC-RFC, and GMAC-RFC desires to purchase Loans from, and/or have Client service Loans for, GMAC-RFC pursuant to the terms and conditions of this Contract and the applicable Guides (as Guides is defined below).

In consideration of the above premises, and of the mutual agreements set forth below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Client and GMAC-RFC agree as follows:

1. **Guides.** GMAC-RFC has approved Client to sell Loans to, and/or service Loans for GMAC-RFC, under the Guide(s) checked below, which Guide(s) are incorporated by reference into this Contract (as amended from time to time, the "Guides").

STATUS

- ☒ Client Only
☐ Servicer Only
☐ Client and Servicer

APPLICABLE GUIDES

- ☒ Client Guide
☐ Servicer Guide

Upon the execution by GMAC-RFC and Client and delivery of an addendum to this Contract, GMAC-RFC may in the exercise of its sole discretion approve Client to sell Loans to, and/or service Loans for, GMAC-RFC under other Guides than those checked above. All capitalized terms used in this Contract and not otherwise defined shall have the meanings set forth in the applicable Guides.

2. **Commitment Letters.** Pursuant to the applicable Guides' terms, GMAC-RFC may offer to enter into one or more Commitment Letters with Client. By executing a Commitment Letter and delivering it to GMAC-RFC, Client agrees to abide by its terms and conditions, which terms and conditions constitute a material part of this Contract, as if set forth expressly herein.

3. **Amendments and Governing Contract.** This Contract and any Commitment Letter may only be amended in writing signed by both parties. The Guides may be amended only as set forth in the applicable Guide. In the case of any inconsistency between this Contract and the applicable Guide, this Contract's terms and conditions shall control. In the case of any inconsistency between either: (i) this Contract and any Commitment Letter; or (ii) the applicable Guide and any Commitment Letter, the Commitment Letter's terms and conditions shall control.

4. **Representations and Warranties.** Client hereby makes to GMAC-RFC all of Client's representations and warranties set forth in the applicable Guides. Client also hereby covenants to GMAC-RFC that Client shall continue to comply with all of Client's covenants and obligations set forth in the applicable Guides, each Commitment Letter, and/or this Contract. Pursuant to the terms of the applicable Guides, GMAC-RFC's rights and remedies with respect to any breach of the above-referenced Client representations, warranties, and covenants will survive delivery and Funding of any Loan and the termination or suspension of this Contract, any Commitment Letter, any other program documents, or the applicable Guides.

5. **Board of Directors Resolution.** Along with the execution of this Contract, Client shall delivery to GMAC-RFC the certified resolution of its Board of Directors authorizing this Contract's execution and delivery.

6. **GMAC-RFC's Remedies.** If an event of default shall occur, GMAC-RFC may exercise, at its option, one or more of the remedies set forth in the applicable Guides.

7. **Suspension and Termination.** This Contract, other program documents, Commitment Letters, and any applicable

Guides may be suspended or terminated as set forth in the applicable Guides.

8. **Client's Status as Independent Contractor.** At no time shall Client represent that it is acting as GMAC-RFC's agent. Client shall act, at all times, as an independent contractor.

9. **Prior Agreements Superseded.** This Contract restates, amends and supersedes any and all prior Contracts or agreements between the parties except that any subservicing agreement executed by Client in connection with any loan-security exchange transaction shall not be affected.

10. **Assignment.** Client may not assign or transfer this Contract, in whole or in part, without GMAC-RFC's prior written consent. GMAC-RFC may sell, assign, convey, hypothecate, pledge, or in any other way transfer, in whole or in part, without restriction, its rights under this Contract and the applicable Guides with respect to any Commitment or Loan.

11. **Notices.** All notices, requests, demands or other communications that are to be given under this Contract shall, if to GMAC-RFC be as set forth in the applicable Guides and if to Client to the addresses and facsimile numbers specified in as set forth below.

The Honor State Bank

4349 National Road West

Richmond, Indiana 47374

Attention: Steve Wilson

Facsimile Number: 888-521-5626

12. **Jurisdiction and Venue.** The parties submit to the jurisdiction of any state or federal court located in Hennepin County, Minnesota, and the parties irrevocably agree that all claims may be heard or determined in such state or federal court. The parties waive the defense of an inconvenient forum and any other substantive or procedural rights or remedies it may have in any other forum. The parties agree that a final judgment in any action between the parties shall be conclusive and may be enforced in any other jurisdiction than that set forth above. The parties further agree not to institute any legal actions or proceedings against the other party, or any director, officer, employee, attorney, agent or property of the other party, arising out of or relating to this Contract in any court other than as specified in this paragraph.

13. **Miscellaneous.** This Contract, including all documents incorporated by reference, constitutes the entire understanding between the parties and supersedes all other agreements, covenants, representations, warranties, understandings and communications between the parties, whether written or oral, with respect to the transactions contemplated by this Contract. Any paragraph headings contained herein are for convenience only and shall not be construed as part of this Contract. Any Contract provision that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and, to this end, the provisions hereof are severable. This Contract shall be governed by, and construed and enforced in accordance with, applicable federal laws and the laws of the State of Minnesota. This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and either of the parties may execute this Contract by signing any such counterpart.

IN WITNESS WHEREOF, Client's and GMAC-RFC's duly authorized officers have executed this Contract as of the date first written above.

CLIENT: The Honor State Bank

By: [Signature]

(Signature)

Name: Stephen J. Wilson
(Typed or Printed)

RESIDENTIAL FUNDING CORPORATION

By: [Signature]

(Signature)

Name: Darrin George
(Typed or Printed)

Title: Vice President

Title: 

Confidentiality Agreement

This Confidentiality Agreement (this "Agreement") is by and between Residential Funding Corporation ("GMAC-RFC") and The Honor State Bank ("Client") and is dated as of the 26 day of January, 2005.

Whereas, from time to time Client may present Loans to GMAC-RFC for possible purchase;

Whereas, in connection with the possible purchase of Loans by GMAC-RFC from Client, Client may deliver to GMAC-RFC for review certain consumer files containing information received from Borrowers (the "Consumer Information");

Whereas, GMAC and Client intend comply with all applicable laws related to the privacy and security of the Consumer Information;

Now, therefore, the parties agree as follows:

1. Confidential Consumer Information. GMAC-RFC and Client (i) agree to comply with any applicable laws and regulations regarding the privacy and security of the Consumer Information, (ii) agree to not use Consumer Information in any manner inconsistent with any applicable laws and regulations regarding the privacy and security of Consumer Information, (iii) agree to maintain adequate physical, technical and administrative safeguards to protect Consumer Information from unauthorized access, and (iv) agree that Client may make reasonable requests for GMAC-RFC to provide assurances (which may be in the form of audit reports, summaries of test results, or other equivalent evaluations) that its security measures with respect to Consumer Information comply with the law applicable to GMAC-RFC.

2. Capitalized Terms. Any capitalized term used in this Amendment that is not otherwise defined herein shall have the meaning set forth in the GMAC-RFC Client Guide.

IN WITNESS WHEREOF, Client's and GMAC-RFC's duly authorized officers have executed this Agreement as of the date first written above.

CLIENT:

THE HONOR STATE BANK

By: [Signature]

Name: Stephen J. Wilson

(Typed or Printed)

Title: Vice President

RESIDENTIAL FUNDING CORPORATION

By: [Signature]

Name: Darrin George

(Typed or Printed)

Title: Director

Client Contract

GMAC RFC

This Client Contract (as amended from time to time, the "Contract") between Residential Funding Corporation ("GMAC-RFC") and The Honor State Bank (the "Client") is dated as of November 16, 2001.

Client desires to sell residential mortgage loans ("Loans") to, and/or service Loans for, GMAC-RFC, and GMAC-RFC desires to purchase Loans from, and/or have Client service Loans for, GMAC-RFC pursuant to the terms and conditions of this Contract and the applicable Guides (as Guides is defined below).

In consideration of the above premises, and of the mutual agreements set forth below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Client and GMAC-RFC agree as follows:

1. **Guides.** GMAC-RFC has approved Client to sell Loans to, and/or service Loans for GMAC-RFC, under the Guide(s) checked below, which Guide(s) are incorporated by reference into this Contract (as amended from time to time, the "Guides").

STATUS

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- ☐ Client and Servicer

APPLICABLE GUIDES

- ☒ Client Guide
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Upon the execution by GMAC-RFC and Client and delivery of an addendum to this Contract, GMAC-RFC may in the exercise of its sole discretion approve Client to sell Loans to, and/or service Loans for, GMAC-RFC under other Guides than those checked above. All capitalized terms used in this Contract and not otherwise defined shall have the meanings set forth in the applicable Guides.

2. **Commitment Letters.** Pursuant to the applicable Guides' terms, GMAC-RFC may offer to enter into one or more Commitment Letters with Client. By executing a Commitment Letter and delivering it to GMAC-RFC, Client agrees to abide by its terms and conditions, which terms and conditions constitute a material part of this Contract, as if set forth expressly herein.

3. **Amendments and Governing Contract.** This Contract and any Commitment Letter may only be amended in writing signed by both parties. The Guides may be amended only as set forth in the applicable Guide. In the case of any inconsistency between this Contract and the applicable Guide, this Contract's terms and conditions shall control. In the case of any inconsistency between either: (i) this Contract and any Commitment Letter; or (ii) the applicable Guide and any Commitment Letter, the Commitment Letter's terms and conditions shall control.

4. **Representations and Warranties.** Client hereby makes to GMAC-RFC all of Client's representations and warranties set forth in the applicable Guides. Client also hereby covenants to GMAC-RFC that Client shall continue to comply with all of Client's covenants and obligations set forth in the applicable Guides, each Commitment Letter, and/or this Contract. Pursuant to the terms of the applicable Guides, GMAC-RFC's rights and remedies with respect to any breach of the above-referenced Client representations, warranties, and covenants will survive delivery and Funding of any Loan and the termination or suspension of this Contract, any Commitment Letter, any other program documents, or the applicable Guides.

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The Honor State Bank

4349 National Road West

Richmond, Indiana 47374

Attention: Steve Wilson

Facsimile Number: (888) 785-5626

12. **Jurisdiction and Venue.** The parties submit to the jurisdiction of any state or federal court located in Hennepin County, Minnesota, and the parties irrevocably agree that all claims may be heard or determined in such state or federal court. The parties waive the defense of an inconvenient forum and any other substantive or procedural rights or remedies it may have in any other forum. The parties agree that a final judgment in any action between the parties shall be conclusive and may be enforced in any other jurisdiction than that set forth above. The parties further agree not to institute any legal actions or proceedings against the other party, or any director, officer, employee, attorney, agent or property of the other party, arising out of or relating to this Contract in any court other than as specified in this paragraph.

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IN WITNESS WHEREOF, Client's and GMAC-RFC's duly authorized officers have executed this Contract as of the date first written above.

CLIENT: The Honor State Bank

By: [Signature]

(Signature)

Name: Stephen J. Wilson

(Typed or Printed)

Title: Vice President

RESIDENTIAL FUNDING CORPORATION

By: [Signature]

(Signature)

Name: Darrin George

(Typed or Printed)

Title: Director

Exhibit 2

Client Guide

GMAC RFC

Version 1-03-G04

GMAC-RFC

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Notice

All notices that are to be given under this Client Guide shall be in writing. Anything in the Client Contract to the contrary notwithstanding, if to the Client, notice must be sent by first class United States mail with postage prepaid, overnight courier or fax, to the appropriate address specified in the Client Contract or to any fax machine at that address. If to GMAC-RFC, notice must be sent by first class United States mail with postage prepaid, overnight courier or fax, to the appropriate address or fax number specified in this Client Guide. Either the Client or GMAC-RFC may change the address or fax number to which notices must be sent by providing notice of such change to the other.

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Hours of Operation and Holidays

GMAC-RFC business hours 8:00 a.m. to 5:00 p.m., Central time, 7:00 a.m. to 5:00 p.m., Pacific time, and 8:30 a.m. to 5:30 p.m., Eastern time, Monday through Friday. The offices of GMAC-RFC are closed on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.

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Client Guide Organization

The following describes the organization of this Client Guide. The Client Guide is divided into Chapters as follows:

Chapter 1	Introduction
Chapter 2	Client Eligibility
Chapter 2A	Representations, Warranties and Covenants
Chapter 2B	Discontinued Loans
Chapter 3	Loan Eligibility
Chapter 4	Underwriting
Chapter 4A	Assetwise SM
Chapter 5	Loan Products
Chapter 6	Loan Programs
Chapter 6A	Jumbo "A" Program
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Chapter 7	At-A-Glance
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The Chapters are made up of Sections. Each Section in a Chapter is designated by a 3-digit number.

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Representations, Warranties and Covenants

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Client Representations Warranties and Covenants

The Client acknowledges that GMAC-RFC purchases Loans in reliance upon the accuracy and truth of the Client's warranties and representations and upon the Client's compliance with the agreements, requirements, terms and conditions set forth in the Client Contract and this Client Guide.

All such representations and warranties are absolute, and the Client is fully liable for any misrepresentation or breach of warranty regardless of whether it or GMAC-RFC actually had, or reasonably could have been expected to obtain, knowledge of the facts giving rise to such misrepresentation or breach of warranty.

The representations and warranties pertaining to each Loan purchased by GMAC-RFC survive the **Funding Date**, any simultaneous or post-purchase sale of servicing with respect to the Loan and any termination of the Client Contract, and are not affected by any investigation or review made by, or on behalf of, GMAC-RFC except when expressly waived in writing by GMAC-RFC.

The representations and warranties contained herein are made as of each **Funding Date** (and each **Substitution Date**, if applicable), unless the specific representation or warranty provides to the contrary. Making these representations and warranties does not release the Client from its obligations under the representations and warranties contained in other Sections of this Client Guide.

GMAC-RFC reserves the right to require the Client as a condition of GMAC-RFC's purchase of a given Loan or group of Loans to make additional warranties in writing.

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Specific Representations, Warranties and Covenants Concerning Client

(A) Due Organization; Good Standing; Licensing

Client and, to Client's knowledge, Client's Guarantor, if applicable, is and shall continue to be duly organized, validly existing, and in good standing under the laws of the United States or under the laws of the jurisdiction in which it was incorporated or organized, as applicable, and has and shall continue to maintain all licenses, registrations, and certifications necessary to carry on its business as now being conducted, and is and will continue to be licensed, qualified, and in good standing in each State where a Mortgaged Property is located if the laws of such State require licensing or qualification in order to conduct business of the type conducted by Client and, in any event, Client is and will remain in compliance with the laws of any such State, and is and will remain in good standing with federal authorities, to the extent necessary to ensure the enforceability of the related Loan. Client has disclosed the final written reports, actions and/or sanctions of any and all reviews, investigation, examinations, audits, actions and/or sanctions that have been undertaken and/or imposed, within two years prior to the date of the Client Contract, by any federal or State agency or instrumentality with respect to either the lending or related financial operations of Client, or the ability of Client to perform in accordance with the Program Documents terms. Each of the representations and warranties made by Client in its Client Application is true, accurate, and complete, and is deemed to be remade in its entirety, as of the date of the Client Contract, and as of each [Funding Date](#).

(B) Authority

Client has and will maintain the full corporate, partnership or limited liability company power and authority to execute and deliver the Program Documents and to perform the terms of this Client Guide. The execution, delivery, and performance of the Program Documents and the performance of the terms of this Client Guide by Client, and the consummation of the transactions contemplated, have been duly and validly authorized. The Program Documents and this Client Guide evidence Client's legal valid, binding, and enforceable obligations. All requisite corporate, partnership or limited liability company action has been taken by Client to make the Program Documents and the terms of this Client Guide valid and binding upon Client and enforceable in accordance with their respective terms.

(C) Ordinary Course of Business

The consummation of the transactions contemplated by the Program Documents and the Client Guide terms are in Client's ordinary course of business, and the transfer, assignment, and conveyance of the Mortgage Notes and the Mortgages by Client, pursuant to the Program Documents and the Client Guide terms are not subject to the bulk transfer laws or any similar statutory provisions in effect in any applicable jurisdiction.

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(D) No Conflicts

Neither the execution and delivery of the Program Documents, the acquisition and/or making of the Loans by Client, the sale of the Loans to GMAC-RFC or the transactions contemplated thereby or pursuant to this Client Guide, nor the fulfillment of or compliance with the Program Documents terms and conditions, will conflict with or result in a breach of any of the terms, conditions, or provisions of Client's articles of incorporation, charter, by-laws, partnership agreement, or other organizational document, or of any legal restriction or regulatory directive or any agreement or instrument to which Client is now a party or by which it is bound, or constitute a default or result in an acceleration under any of the foregoing, or result in the violation of any law, rule, regulation, order, judgment, or decree to which Client, or any of its property is subject, or impair the ability of GMAC-RFC to realize on any of the Loans, or impair the Value of any of the Loans.

(E) Ability to Perform

Client has the ability to perform each and every obligation of and/or satisfy each and every requirement imposed on, Client pursuant to the Program Documents and this Client Guide, and no offset, counterclaim, or defense exists to the full performance by Client of the requirements of Program Documents and this Client Guide.

(F) No Litigation Pending

There is no action, suit, proceeding, inquiry, review, audit, or investigation pending or threatened against Client that, either in any one instance or in the aggregate, may result in any material adverse change in the business, operations, financial condition, properties, or assets of Client, or in any material liability on the part of Client, or which would draw into question the validity or enforceability of any of the Program Documents, this Client Guide, or the Loans or of any action taken or to be taken in connection with Client's obligations contemplated in any of the Program Documents or this Client Guide, or which would be likely to impair materially Client's ability to perform under the terms of the Program Documents or this Client Guide.

(G) No Consent Required

No consent, approval, authority, or order of any court or governmental agency or body is required for the execution and performance by Client of, or compliance by Client with, any of the Program Documents or this Client Guide, the sale of any of the Loans, or the consummation of any of the transactions contemplated by any of the Purchase Documents, or, if required, such unconditional approval has been obtained prior to the related [Funding Date](#).

(H) No Untrue Information

Neither the Program Documents, the Client Application, this Client Guide, nor any statement, report, or other document furnished or to be furnished by Client pursuant to the Program Documents or this Client Guide, contains any untrue statement of material fact or omits to state a material fact necessary to make the statements contained therein not misleading. Client meets GMAC-RFC's Eligibility Standards, and shall take all steps necessary to continue to meet such Eligibility Standards.

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(I) Securities Law

The Client represents that the Loans are not "securities" under any federal or State securities laws or any rules or regulations thereunder and that the transactions contemplated by this Client Guide do not require registration under, and are not subject to, any federal or State securities laws or any rules or regulations thereunder.

(J) No Accrued Liabilities

Except as may be otherwise disclosed by Client to GMAC-RFC and acknowledged by GMAC-RFC in writing prior to the date of the Client Contract, there are no accrued liabilities of Client, with respect to any of the Loans, or circumstances under which any such accrued liabilities will arise against GMAC-RFC, as successor to Client's interests in and to the Loans, with respect to any action or failure to act by Client occurring on or prior to the Funding Date.

(K) Origination, Servicing

Client's origination and servicing of the Loans have been legal, proper, prudent, and customary and have conformed to the highest standards of the residential mortgage origination and servicing business.

(L) Compliance With Laws

Client has complied with, and has not violated any law, ordinance, requirement, regulation, rule, or order applicable to its business or properties, the violation of which might adversely affect the operations or financial conditions of Client, or the ability of Client to consummate the transactions contemplated by the Program Documents and this Client Guide.

(M) Compliance With Program Documents and Client Guide

Client will comply with all provisions of this Client Guide and the Program Documents, and will promptly notify GMAC-RFC of any occurrence, act, or omission regarding Client, the Loan, the Mortgaged Property or the Mortgagor of which Client has knowledge, which occurrence, act, or omission may materially affect Client, the Loan, the Mortgaged Property, or the Mortgagor.

(N) No Defenses Against GMAC-RFC

The Client has no judgment, court order, claim, counterclaim, defense, right of set-off or similar right against GMAC-RFC.

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Specific Representations, Warranties and Covenants Concerning Individual Loans

For all Loans, the Client represents, warrants and covenants to GMAC-RFC as follows:

(A) Loans Are Eligible; Accuracy Of Information

Each of the Loans delivered and sold to GMAC-RFC meets the applicable program terms and criteria set forth in this Client Guide. All information relating to each Loan delivered and sold to GMAC-RFC is true, complete and accurate and there are no omissions of material facts. All data provided by the Client to GMAC-RFC relating to any Loan, whether in electronic format, or otherwise, is true and complete and accurately reflects the information in the related Loan file.

(B) Compliance With Warranties

The Client is in compliance with, and has taken all necessary action to ensure that each Loan is in compliance with all representations, warranties and requirements contained in this Client Guide.

(C) Loan Provisions

The provisions of the Loan have not been impaired, waived, altered or modified in any respect, unless approved in writing by GMAC-RFC. The issuer of any related PMI Policy and the title insurer have approved the substance of any such waiver, alteration, or modification to the extent required by the respective policies. No Mortgagor has been released, in whole or in part.

(D) Documents

All **Loan Documents**, **Funding Documents** and **Final Documents** are genuine, have been completed, duly and properly executed, are in recordable form and delivered in the form and manner specified in this Client Guide, and each Loan is the Mortgagor's legal, valid and binding obligation enforceable in accordance with its terms. All originals and copies of such documents and all other documents, materials, and other information required to be submitted to GMAC-RFC have been so submitted, and are complete and accurate. All Loan Documents, **Funding Documents**, Final Documents and all other documents describing or otherwise relating thereto are in compliance with all applicable local and State laws, regulations and orders.

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(E) Ownership; Transfer

The Client has good title to and is the sole owner of, each Loan delivered and sold to GMAC-RFC. Except for the security interest of a warehouse lender, which security interest Client has disclosed to GMAC-RFC in writing, the assignment of the Loan by the Client validly transfers such Loan to GMAC-RFC free and clear of any pledge, lien or security interest or other encumbrance.

For each Loan registered with MERS, the Client represents that (a) if the Security Instrument relating to such Loan identifies MERS as the original mortgagee of record, such Security Instrument provides that the Security Instrument is given to MERS solely as nominee for the Client and its successors and assigns and that such Security Instrument has been properly executed, acknowledged, delivered and recorded in all places necessary to perfect the security interest on the Mortgaged Premises in favor of MERS, solely as nominee for the Client and its successors and assigns; or (b) if the Loan is registered with MERS, and MERS is not the original mortgagee of record, an assignment to MERS has been prepared, duly executed and recorded and the chain of assignments is complete and recorded from the original mortgagee to MERS. Client further represents that it has complied with all rules and procedures of MERS for its assignment of the Security Instrument to GMAC-RFC, including, among other things, that the Client has confirmed the transfer on MERS to GMAC-RFC.

(F) Disbursements; No Payoffs or Future Advancements

Each Loan has been closed and fully disbursed, except as permitted in the Escrow Account for Postponed Improvements/Repairs Section of this Client Guide. There are no payoffs, assumptions or insurance claims pending on any Loan or pertaining to the Mortgaged Premises and the Borrower may not exercise any option under any of the Loan Documents to borrow additional funds secured thereby from the Client or any other person or entity without the Noteholder's consent.

Additionally, the Client warrants that the Client has not made arrangements with any Borrower for any payment forbearance or future refinancing with respect to any Loan.

(G) No Default

There is no default, breach, violation or event of acceleration existing under any Note or Security Instrument transferred to GMAC-RFC, and no event exists which, with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and no such default, breach, violation or event of acceleration has been waived by the Client or by any other entity involved in originating or servicing the Loan.

(H) No Defenses

Except as provided in a buydown or subsidy agreement, if any, meeting the requirements set forth in this Client Guide, the Borrower (including any party secondarily liable under the Loan Documents) has no right of set-off, defense, counterclaim or right of rescission to any Loan Document.

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(I) Compliance with Law

The sale and transfer of each Loan to GMAC-RFC does not violate any applicable State laws. To the extent that any applicable State law places any restrictions on the transfer of any Loan, the Client has notified GMAC-RFC in writing of that restriction and any related State licensing or registration requirements.

The [Security Instrument](#) has been properly executed, acknowledged, delivered and recorded in all places necessary to perfect the security interest in the [Mortgaged Premises](#) in favor of the Client and its successors and assigns. If a Loan is registered with [MERS](#), and MERS is identified on the Security Instrument as the original mortgagee of record, Client represents that such Security Instrument provides that the Security Instrument is given to MERS solely as nominee for the Client and its successors and assigns. If the Loan is registered with MERS, and MERS is not the original mortgagee of record, Client represents that an assignment to MERS has been prepared, duly executed and recorded and the chain of assignments is complete and recorded from the original mortgagee to MERS and Client further represents that it has complied with all rules and procedures of MERS for its assignment of the Security Instrument to GMAC-RFC, including, among other things, that Client has confirmed the transfer on MERS to GMAC-RFC.

Each GMAC-RFC Loan Application ([Fannie Mae](#) 1003/[Freddie Mac](#) Form 65) was taken from the Borrower and processed for each Loan, and each Loan has been originated, closed, and transferred in compliance with all applicable local, State and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Truth-in-Lending Act, the Fair Housing Act, and the National Flood Insurance Act. This warranty is made by the Client with respect to each GMAC-RFC Loan Application taken and processed for each Loan and with respect to each Loan made by the Client or any other entity.

(J) Responsible Lending Representations, Warranties and Covenants

Client makes the responsible lending representations, warranties and covenants set out below. These representations, warranties and covenants are in addition to, and not in substitution for, Client's representations, warranties and covenants, made elsewhere in this Client Guide. All Loans must comply with all applicable federal, State, and local laws. All Loans must be originated and serviced according to GMAC-RFC standards contained in this Client Guide.

(1) Certain "High Cost" Loans Prohibited

No Loan is a [Discontinued Loan](#). In general, a Discontinued Loan is:

- A Loan subject to HOEPA/Section 32;
- A purchase money Loan on a consumer's principal residence that exceeds the "points and fees" or APR triggers of HOEPA and Section 32;
- An open-end line of credit on a consumer's principal residence that exceeds the "points and fees" or APR triggers of HOEPA and Section 32; or
- A Loan with terms that trigger high-cost mortgage laws or regulations in certain States, counties or cities regardless of whether the originator qualifies for an exemption.

See [Chapter 2B](#), Discontinued Loans, for the complete definition of [Discontinued Loans](#).

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(2) Prohibited Terms and Practices on all Loans sold to GMAC-RFC

A Loan may not violate any of the following prohibited terms and practices:

- (a) No financing of pre-paid insurance products. No Loan finances single premium credit life, credit disability, credit unemployment, or any other pre-paid life or health insurance, directly or indirectly.
- (b) Prepayment penalties. A Loan may not provide for a penalty for paying all or part of the principal before the date on which the principal is due except as set forth in this paragraph and otherwise allowed by applicable federal, State, and local law.
 - The penalty may be enforced for only the first five years following consummation;
 - The penalty does not exceed 6 months of interest on the amount prepaid or 6% of the amount prepaid; and
 - The prepayment penalty does not become due upon default
- (c) Reporting to credit bureaus. Client or its **Servicer** must report to a nationally recognized consumer credit reporting agency at least quarterly the favorable and unfavorable payment history information of Borrower on payments due to Client on a Loan for the period during which Client holds or services the Loan. This paragraph shall not prevent Client or its Servicer from not reporting specific payment history information in the event of a resolved or unresolved dispute with Borrower and shall not apply to Loans held or serviced by Client for less than 90 days.
- (d) Increased interest rate. A Loan may not provide for an increase in the interest rate after default.

(K) Title Insurance

A policy of title insurance, in the form and amount required by this Client Guide, is effective as of the day the **Security Instrument** is recorded, is valid and binding, is in conformance with all agency guidelines and remains in full force and effect, unless the **Mortgaged Premises** are located in the State of Iowa and a Title Guaranty Certificate issued by the Iowa Title Guaranty Division of the Iowa Finance Authority has been provided as described in Title Guaranty Certificate In Iowa below.

(L) Title Guaranty Certificate In Iowa

As to each Loan secured by **Mortgaged Premises** located in the State of Iowa, and if an American Land Title Association (**ALTA**) Loan policy of title insurance has not been provided, a Title Guaranty Certificate issued by the Iowa Title Guaranty Division of the Iowa Finance Authority, in the form and amount required by this Client Guide, duly delivered and effective as of the closing of each such Loan, is valid and binding, and remains in full force and effect.

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(M) Valid First Liens

Each [Security Instrument](#) transferred to GMAC-RFC, unless provided for otherwise in a given [Loan Program](#), constitutes a valid first lien on the [Mortgaged Premises](#) subject only to the minor impediments described in the [Title Insurance](#) Section of this Client Guide, and such impediments do not adversely affect the Value, use, enjoyment or marketability of the Mortgaged Premises. Each Security Instrument and all related documents (including, without limitation, releases of prior Security Instruments, assumption agreements, assignments, amendments, powers of attorney, and modification, extension and consolidation agreements) that are required to be recorded or filed under applicable law in order to preserve in favor of GMAC-RFC the validity and enforceability of the Security Instrument and the liens created thereby, have been duly recorded in all appropriate recording offices, and all associated recording fees or taxes must be paid.

(N) No Encroachments By Adjoining Properties; Improvements

No improvements by adjoining properties encroach upon the [Mortgaged Premises](#) in any respect so as to affect the Value or marketability of the Mortgaged Premises. No improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning law or regulation.

(O) Survey

All improvements which were considered in determining the appraised Value of the [Mortgaged Premises](#) lie wholly within its boundaries and the building restriction lines of the Mortgaged Premises, or the policy of title insurance insures against loss or damage by reason of any violation, variation, encroachment or adverse circumstance that either is disclosed or would have been disclosed by an accurate survey.

(P) No Liens

There are no delinquent tax or delinquent assessment liens against the [Mortgaged Premises](#), and there are no mechanic's liens or claims for work, labor or material or any other liens affecting the Mortgaged Premises, which are or may be a lien prior to, or equal with, the lien of the [Security Instrument](#) assigned to GMAC-RFC, except those liens that are insured against by the policy of title insurance or Title Guaranty Certificate issued by the Iowa Title Guaranty Division.

(Q) No Adverse Circumstances

The [Mortgaged Premises](#) are free of damage and in good repair, and no notice of condemnation has been given with respect thereto, and no circumstances exist involving the [Loan Documents](#), the [Mortgaged Premises](#) or the Borrower's credit standing that could: (i) cause private institutional investors to regard the Loan as an unacceptable investment, (ii) cause the Loan to become delinquent, or (iii) adversely affect the Value or marketability of the Mortgaged Premises or the Loan. The Client warrants that it neither has actual knowledge of the presence of, nor reasonable grounds to suspect the presence of, any toxic materials or other environmental hazards on, in or that could affect any of the [Mortgaged Premises](#). The Client warrants compliance with local, State or federal law or regulation designed to protect the health and safety of the occupants of the property.

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(R) Casualty Insurance

The improvements upon the **Mortgaged Premises** are insured against loss by fire and other hazards as required by this Client Guide, including flood insurance if required under the National Flood Insurance Act of 1968, as amended. The **Security Instrument** requires the Borrower to maintain such casualty insurance at the Borrower's expense, or on the Borrower's failure to do so, authorizes the holder of the Security Instrument to obtain and maintain such insurance at the Borrower's expense and to seek reimbursement from the Borrower. Each casualty policy is the insurer's valid and binding obligation, is in full force and effect, and will be in full force and effect, to GMAC-RFC's benefit upon the consummation of the transactions contemplated by the Program Documents and this Client Guide. The Loan terms permit the maintenance of an escrow account to pay the premiums for the above mentioned insurance, and the Client has not waived the requirement of such escrow account unless permitted by GMAC-RFC or required by applicable law.

(S) Primary Mortgage Insurance

If required by this Client Guide, primary mortgage insurance has been obtained, the premium has been paid, and the mortgage insurance coverage is in full force and effect meeting the requirements of this Client Guide.

(T) Underwriting; Appraisal; Appraiser

The Loan is of investment quality, has been prudently originated and has been underwritten in compliance with all requirements of this Client Guide.

The appraisal was made by an appraiser who meets the minimum qualifications for appraisers as specified in this Client Guide. As of the **Funding Date**, the market Value of the **Mortgaged Premises** is at least equal to the appraised Value stated on the Loan appraisal except to the extent that the market Value of the Mortgaged Premises is lower than the appraised Value due to the effect of any toxic materials or other environmental hazards of which neither the appraiser nor the Client has actual knowledge or reasonable grounds to suspect.

(U) Enforceability; Enforcement Provisions

Each Note and **Security Instrument** constitutes a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms except as limited by bankruptcy, insolvency or other similar laws affecting generally the enforcement of creditors' rights.

Each Security Instrument contains customary and enforceable provisions which render the rights and remedies of the holder adequate to realize the benefits of the security against the **Mortgaged Premises**, including: (i) in the case of a Security Instrument designated as a deed of trust, by trustee's sale, (ii) by summary foreclosure, if available under applicable law; and (iii) otherwise by foreclosure, and there are no homestead or other exemptions or dower, courtesy or other rights or interests available to the Borrower or the Borrower's spouse, survivors or estate or any other person or entity that would, or could, interfere with such right to sell at a trustee's sale or to foreclose. The Security Instrument and any riders to the Security Instrument must be signed by any person with an actual or potential interest in the property. Title holders have an actual interest in the property and must sign the Security Instrument and riders. Non-Borrowing spouses who are not in title may have an actual or potential interest in the property under State law and may be required to sign the Security Instrument and rider in some States in order for the holder of the Security Instrument to obtain, protect and enforce its lien. The Client will obtain the signature of the non-Borrowing spouse on the **Security Instrument** and riders or other documentation, as allowed by law, if such signature is necessary to protect the interest of the holder of the Security Instrument.

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(V) Holder-In-Due-Course

The Client is the owner and holder-in-due-course of each Note and is named as mortgagee/beneficiary or assignee under each [Security Instrument](#), and all [Loan Documents](#) requiring execution have been appropriately executed, witnessed or notarized by the persons whose names appear as signatories and witnesses, or, as appropriate, notaries who constitute the valid and binding legal obligation of the Borrower, enforceable in accordance with their respective terms. Notwithstanding the foregoing, with respect to adjustable-rate mortgage Loans (ARMs), the Client represents and warrants that there are no claims to the Note on the part of any person or defenses of any party to the Note other than those that validly could be raised against a holder-in-due-course.

(W) Trustee Designated

With respect to each [Security Instrument](#) that is a deed of trust, a trustee duly qualified under applicable law to serve as such is properly named, designated and serving.

(X) No Fees Due Trustee

Except in connection with a trustee's sale after default by the Borrower, no fees or expenses are payable by the Client or GMAC-RFC to the trustee under any [Security Instrument](#) that is a deed of trust.

(Y) Execution Of Documents

All agreements, contracts, assignments, endorsements and issuances of checks or drafts, reports, [Loan Documents](#) or other papers related to a Loan that are required by this Client Guide to be executed by the Client have been properly executed by an officer on behalf of the Client pursuant to a duly adopted Resolution of Board of Directors.

(Z) Leaseholds

Where permitted by the applicable [Loan Program](#), each [Mortgaged Premises](#) involving a [Leasehold](#) estate complies with the applicable Leasehold warranties set forth in this Client Guide.

(AA) Condominiums; [Planned Unit Developments](#) (PUDs)

Each [Mortgaged Premises](#) that is a unit in a condominium or PUD complies with the applicable condominium or PUD warranties set forth in this Client Guide.

(BB) Compliance By Others

When a person or entity: (i) originates a Loan on behalf of a Client, (ii) originates a Loan on its own behalf and sells it to a Client, or (iii) performs any act for a Client which the Client is required to perform under this Client Guide, the Client warrants that such person or entity has complied with all requirements of this Client Guide with respect to all such Loans and acts.

(CC) Client Contract Warranties

The representations and warranties made at the time of the Client's execution of the Client Contract must remain true, correct and complete.

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(DD) Client And Originators

The Client either is an institution insured by [FDIC](#) which is supervised and examined by a federal or State authority, or is a [HUD](#) approved mortgagee, and was so at the time the Loan was originated. The Loan either was: (i) closed in the name of the Client, (ii) closed in the name of another entity that either is an institution insured by FDIC and supervised and examined by a federal or State authority, or is a [HUD](#) approved mortgagee, and was so at the time the Loan was originated (the Client or such other entity shall be called the "originator"), or (iii) closed in the name of a Loan broker under the circumstances described in the following sentence: If the Loan was originated through a Loan broker, the originator approved the Loan prior to funding by the Loan broker and the originator acquired the Loan from the Loan broker contemporaneously with the origination thereof.

If the Client sells Loans to GMAC-RFC which are registered with [MERS](#) or as to which MERS is the mortgagee on the [Security Instrument](#), the Client is a member of MERS, in good standing and current in payment of all fees and assessments imposed by MERS.

(EE) No Impairment Of Insurance

No action, error, omission, misrepresentation, negligence, fraud or similar occurrence in respect of a Loan has taken place on the part of any person, including, without limitation, the Borrower, any appraiser, any builder or developer or any party involved in the origination of the Loan or in the application of any insurance in relation to such Loan that might result in a denial, contesting, failure or impairment of full and timely coverage under any insurance policies required to be obtained or any pool insurance policy covering such Loan.

(FF) Temporary Buydowns

Where permitted by the applicable [Loan Program](#), each [Temporary Buydown](#) Loan delivered to GMAC-RFC was entered into pursuant to a buydown agreement which complies with the [Temporary Buydowns](#) Section of this Client Guide.

(GG) Primary Mortgage Insurance Cancellation

The Client has disclosed in writing to the Borrower the terms and conditions that must be met prior to the primary mortgage insurance being eligible for cancellation. A copy of this disclosure has been retained in the Loan file as a permanent record.

(HH) No Deficiency In Escrow Deposits or Payments

The Loan has been serviced by the Client and any predecessor [Servicer](#) in accordance with the terms of the mortgage Note and all applicable law. With respect to escrow deposits and escrow payments, if any, all such payments are in the possession of, or under the control of, the Client, and there exists no deficiency in connection therewith for which customary arrangements for repayment thereof have not been made. No escrow deposits, escrow payments or other charges or payments due the Client have been capitalized under any mortgage or related mortgage Note.

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(II) Loan Securitization

The Client recognizes that it is GMAC-RFC's intent to securitize some or all of the Loans sold to GMAC-RFC by the Client. The Client agrees to provide GMAC-RFC with all such information concerning the Client generally and, if applicable, the Client's servicing experience, as may be reasonably requested by GMAC-RFC for inclusion in a prospectus or private placement memorandum published in connection with such securitization.

In addition, the Client will cooperate in a similar manner with GMAC-RFC in connection with any whole Loan sale or other disposition of any Loan sold to GMAC-RFC by the Client. The Client agrees to indemnify and hold GMAC-RFC harmless from and against any loss, damage, penalty, fine, forfeiture, court cost, reasonable attorneys' fees, judgment, cost, fee, expense or liability incurred by GMAC-RFC as a result of any material misstatement in or omission from any information provided by the Client to GMAC-RFC; or from any claim, demand, defense or assertion against or involving GMAC-RFC based on or grounded upon, or resulting from such misstatement or omission or a breach of any representation, warranty or obligation made by GMAC-RFC in reliance upon such misstatement or omission.

The Client further agrees to cooperate fully with GMAC-RFC, rating agencies, attorneys, bond insurers, purchasers of Loans or any other parties that may be involved in the sale or securitization of any Loan, including, without limitation, all cooperation as may be necessary in order to accommodate due diligence activity.

(JJ) Non-Solicitation

The Client has not solicited or provided information to another party for the purpose of soliciting, and covenants and agrees that it will not solicit or provide information to another party for the purpose of soliciting, the refinance of any Loan. The term "solicit" as used herein shall mean a direct request or offer to refinance a servicing released Loan, and shall not include general solicitations, advertisements or promotions directed to the public at large.

(KK) No Fraud Or Misrepresentation

No fraud or misrepresentation by the Borrower or by the Client, broker, correspondent, appraiser or any independent contractor retained by the Client, broker, correspondent, appraiser or any employee of any of the foregoing occurred with respect to or in connection with the origination or underwriting of any Loan and all information and documents provided to GMAC-RFC in connection with the Loan are complete and accurate.

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Integrity of Information

The Client is responsible for credit and property underwriting regardless of whether the information was provided by the Client, an entity related to the Client or designated by the Client to perform the function. This includes credit information, appraisals, or other documents/information used in the Loan's evaluation.

The Client should take all steps necessary to ensure that each Loan sold to GMAC-RFC has been prudently originated and underwritten, and that all information supplied by, on behalf of, or concerning the Borrower is true, accurate and complete. The Client should ensure that interested parties are sufficiently independent from the Loan transaction and that adequate organizational controls are in place to ensure the independence, validity and reliability of the Loan information.

In addition, the Client should implement prudent practices when relying on designated agents (such as escrow companies, title companies, etc.) in order to ensure that they comply with its instructions and that the integrity of the Loan transaction has been maintained.

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Third-Party Originators

When relying on the actions or services of third-party originators, the Client should establish qualification and eligibility standards. The Client should consider the functions being performed by the third-party originator in establishing these standards. These standards should be reviewed periodically to ensure ongoing eligibility by the third-party originator.

The Client is encouraged to include the following items in formulating its qualification and eligibility standards and procedures:

- (1) Review personnel resumes and references of management and Loan origination staff (Loan officers, processors, underwriters, closers, etc.)
- (2) Establish minimum net worth requirements and evaluate the financial viability of the firm on an ongoing basis
- (3) Establish minimum requirements for errors and omissions insurance and fidelity bond coverage and monitor ongoing compliance with these standards
- (4) Document the relationship with a contractual agreement that contains specific warranties related to each party's responsibilities, as well as recourse rights in the event of warranty violations
- (5) Review the performance of Loans originated by third parties to evaluate trends or patterns of Delinquency

The Client should include a representative, random sample of third-party Loans in the quality control program through both pre- and post-closing quality control audits to ensure the quality of Loan information.

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Events of Default

Any one or more of the following events constitute an **Event of Default**:

- (1) The Client has not complied with one or more of the requirements (including any requirement outlined in the Eligibility Standards Chapter of this Client Guide), terms or conditions outlined in this Client Guide or one of the disqualification, suspension or inactivation events set forth in the **Disqualification Suspension or Inactivation** Section has occurred or occurs.
- (2) The Client has breached any agreement outlined or incorporated by reference in the Client Contract or any other agreement between the Client and GMAC-RFC.
- (3) The Client breaches any of the representations, warranties or covenants set forth in this Client Guide, fails to perform its obligations under this Client Guide or the Program Documents, makes one or more misleading representations, warranties or covenants to GMAC-RFC, or as failed to provide GMAC-RFC with information that is true, complete and accurate.
- (4) The Borrower or any other person or entity involved in the Loan transaction or in its underwriting or documentation (including any appraiser, broker, third-party originator, credit reporting agency, or other provider of underwriting information) has made any false representation and/or has failed to provide information that is true, complete and accurate in connection with such transaction, whether or not the Client was a party to or had knowledge of such misrepresentation or incorrect information.
- (5) Occurrence of an Event of **Servicer** Default with respect to any Loans serviced by the Client.
- (6) Termination of servicing for cause is a basis for the Client's immediate disqualification or suspension. Action taken by GMAC-RFC to terminate servicing may be merged with an action to disqualify, suspend or inactivate the Client.

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Remedies of GMAC-RFC

(A) Non-Exclusive, Cumulative Remedies

GMAC-RFC may exercise any remedy outlined in this Client Guide or as allowed by law or in equity. GMAC-RFC's exercise of one or more remedies in connection with a particular [Event of Default](#) will not prevent it from exercising:

- One or more other remedies in connection with the same [Event of Default](#)
- Any other rights which it may have at law or in equity

(B) Waiver Of Defaults

GMAC-RFC may waive any default by Client in the performance of Client's obligations hereunder and its consequences, but only by a written waiver specifying the nature and terms of such waiver. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto, nor shall any delay by GMAC-RFC in exercising, or failure to exercise, any right arising from such default affect or impair GMAC-RFC's rights as to such default or any subsequent default.

(C) Survival of Remedies

GMAC-RFC's remedies for breach of the representations, warranties and covenants shall survive the sale and delivery of the Loan to GMAC-RFC and funding of the related purchase price by GMAC-RFC, and will continue in full force and effect for the remaining life of the Loans, notwithstanding any termination of this Client Guide and the related [Funding Documents](#), or any restrictive or qualified endorsement on any mortgage [Note](#) or assignment of mortgage or Loan approval or other examination of or failure to examine any related mortgage Loan file by GMAC-RFC.

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Repurchase

(A) Repurchase Obligations

If GMAC-RFC determines that an **Event of Default** has occurred with respect to a specific Loan, the Client agrees to repurchase the Loan and its servicing (if the Loan was sold servicing released) within 30 days of receiving a repurchase letter or other written notification from GMAC-RFC.

If the Client discovers an Event of Default, it should give GMAC-RFC prompt written notice. Such notice should include a written description of the Event of Default. Upon receipt of this notice, GMAC-RFC will review these materials and any additional information or documentation that the Client believes may influence GMAC-RFC's decision to require repurchase. If GMAC-RFC decides to require repurchase, the Client shall repurchase the Loan and the servicing (if the Loan was sold servicing released) within 30 days after GMAC-RFC's decision is communicated to Client in writing.

To expedite the wiring of funds to GMAC-RFC, the Client should complete the servicing transfer instruction form provided by GMAC-RFC. GMAC-RFC will send the form to the Client along with the notification of repurchase.

GMAC-RFC is not required to demand repurchase within any particular period of time, and may elect not to require immediate repurchase. However, any delay in making this demand does not constitute a waiver by GMAC-RFC of any of its rights or remedies.

Where GMAC-RFC determines that repurchase of a Loan and/or the servicing is not appropriate, the Client shall pay GMAC-RFC all losses, costs and expenses incurred by GMAC-RFC and/or the Loan's **Servicer** as a result of an **Event of Default**. This includes all reasonable attorneys' fees and other costs and expenses incurred in connection with enforcement efforts undertaken.

Upon the Client's satisfaction of its repurchase obligation, GMAC-RFC will endorse the Note evidencing the Loan in blank and will deliver it and other pertinent **Loan Documents** to the Client. If GMAC-RFC acquired title to any of the real property securing the Loan pursuant to a foreclosure sale and has not disposed of such property, it will transfer such property to the Client on a "quit claim" basis or, if required by State law, a "warranty deed" basis. However, if GMAC-RFC has disposed of the real property securing the Loan, the Loan Documents will not be returned to the Client unless requested.

If the Client is also the **Servicer** of a Loan repurchased by reason of the occurrence of an Event of Default, GMAC-RFC will not reimburse the Client for any principal, interest or other advances made by the Client with respect to that Loan.

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(B) Repurchase Price of First Mortgage Programs

In the event the Client is obligated to repurchase a Loan the Client must pay to GMAC-RFC a repurchase price equal to the sum of:

- The actual principal balance of the Loan at the time of repurchase (if the Client sold the Loan to GMAC-RFC at a discount or a premium, the repurchase price above will be adjusted to reflect the actual principal balance minus the discount percentage multiplied by the actual principal balance, or plus the premium percentage multiplied by the actual principal balance, as appropriate, including that price paid for [Servicing Rights](#)), plus
- All accrued and unpaid interest on the Loan through the last day of the month of the date of repurchase; plus
- All interest, principal and other advances made to investors and all out of pocket costs and expenses of any kind incurred by GMAC-RFC and/or the primary [Servicer](#) in connection with the Loan, including, but not limited to, advances for taxes or insurance, and repair, foreclosure and insurance costs and reasonable attorneys' fees; plus
- The amount of the buyout fee as calculated in the [Buyouts and Extensions](#) Section of this Client Guide; plus
- In the event that GMAC-RFC or any of its [Affiliates](#) is required to repurchase the Loan from any subsequent assignee, then any additional amount as may be required to make the repurchase price that the Client is obligated to pay hereunder equal to the repurchase price that GMAC-RFC or its Affiliate is required to pay to such subsequent assignee; minus
- The net amount of any proceeds realized by the owner of the Loan upon the final liquidation of the Loan or the [Mortgaged Premises](#) to an unrelated third party.

The [Designated Servicer](#) will return to the Client any escrow funds, unapplied funds and prepaid principal and interest installments.

GMAC-RFC may demand that a Client repurchase, and Client must repurchase, a Loan after foreclosure even if the full amount of its outstanding debt was bid on by or on behalf of the Loan's owner to acquire the [Mortgaged Premises](#) at the foreclosure sale. In the event the Client is obligated to repurchase a Loan after foreclosure, the repurchase price shall be calculated using the formula above, however [Scheduled Principal Balance](#) shall be substituted for the actual principal balance.

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(C) Repurchase Price of Home Equity Loan Program

In the event the Client is obligated to repurchase a Home Equity Loan, the Client must, upon repurchase, service such Home Equity Loan. The repurchase price for such Home Equity Loan shall be equal to the sum of:

- The unpaid principal balance of the Home Equity Loan
- All accrued and unpaid interest on the Home Equity Loan
- The amount of all fees and/or purchase premium paid, if any, to the Client by GMAC-RFC for origination of the Home Equity Loan
- All fees paid to any **Servicer** or sub-servicer of a Home Equity Loan by reason of the termination of that Servicer's or Sub-Servicer's right to service that Home Equity Loan
- All costs incurred or paid by GMAC-RFC or any Servicer in collecting or enforcing the Home Equity Loan, including, without limitation, interest or other costs paid to bring or maintain a prior lien current or up to date, costs to insure or pay delinquent taxes, attorneys' fees, court costs, appraisal and title expenses and other similar costs or expenses (collectively, "Foreclosure Expenses")
- Any additional amount GMAC-RFC or any of its **Affiliates** is required to pay to repurchase the Home Equity Loan from a subsequent assignee

In lieu of repurchasing a Home Equity Loan that has not yet been foreclosed and accepting the servicing of such Home Equity Loan, GMAC-RFC may in its sole discretion allow Client to pay to GMAC-RFC the Estimated Loss (as defined below). Estimated Loss, as it relates to each Home Equity Loan subject to repurchase, shall equal the product of:

120% multiplied by the result of:

- Repurchase price as calculated above, plus
- Accrued interest on the Home Equity Loan through the date GMAC-RFC estimates that the Home Equity Loan will be fully liquidated (which in the case of a foreclosure, shall mean the date that GMAC-RFC estimates that the **Mortgaged Premises** will be sold to a third party and which in any other case means the date that GMAC-RFC estimates that all collection efforts on the Home Equity Loan will be abandoned) and estimated foreclosure and other enforcement expenses for the entire collection process, less
- Amount by which the current market Value of the **Mortgaged Premises** as determined by GMAC-RFC using valuation services provided by an independent third party exceeds the current outstanding amount of indebtedness secured by the Mortgaged Premises that is senior to the Home Equity Loan.

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(D) Repurchase Price of a Servicing Released Loan

In the event the Client repurchases a Loan for which the servicing has also been sold to GMAC-RFC, the Client will also be required to repurchase the servicing. If the repurchase of the servicing of the Loan is for any reason other than a breach of the [Delinquency](#) Payoff/Liquidation warranty contained in the Servicing Released [Chapter 8](#), the Client must pay to GMAC-RFC a repurchase price equal to the original [Servicing Premium](#) percentage multiplied by the actual unpaid principal balance at the time of repurchase.

In no event however, will the required repurchase Servicing Premium be greater than the original Servicing Premium paid to the Client.

The [Designated Servicer](#) will return to the Client any escrow funds, [Temporary Buydown](#) funds, unapplied funds and prepaid principal and interest installments. The Client will be required to reimburse the Designated Servicer for any delinquent principal and interest advances, and any escrow advances and foreclosure expenses they have made and not recovered on a repurchased Loan.

(E) Repurchase as a Result of Conversion

The Client (or, if the Client has transferred servicing of the Loans, the [Servicer](#)) shall repurchase a Loan which has converted from an ARM to a fixed-rate mortgage. The Servicer must submit the ARM Conversion Notification Report no less than 15 days prior to the conversion date.

If the Client or Servicer repurchases a converted Loan and subsequently resells that converted Loan to GMAC-RFC, all the Client's representations and warranties with respect to that Loan shall survive such repurchase and resale. In addition, the Client shall be subject to all rights and remedies (including repurchase) available to GMAC-RFC as a result of any misrepresentation or breach of warranty with respect to that Loan prior to conversion.

The Client shall also submit the modification agreement if requested by GMAC-RFC or its assigns.

After its receipt of the Loan funds, GMAC-RFC will endorse the Note to the party which repurchased the Loan. The Loan will then be assigned to such party, and all credit documentation will be returned. Failure to submit the ARM Conversion Notification Report in a timely manner may delay the receipt of the endorsed Note and other legal documents.

The [Servicer](#) shall submit a Payoff/Liquidation Report and wire transfer Loan funds to the GMAC-RFC [Loan Accounting Department](#) no later than the last [Business Day](#) prior to the conversion date. The Servicer must remit interest for the entire month preceding the conversion date. The Client shall attach a copy of the ARM Conversion Notification Report.

If the appropriate amount is not wired on time, GMAC-RFC will charge a late payment fee. This fee will equal the amount due multiplied by the "[Prime Rate](#)" plus 3% multiplied by the number of days overdue divided by 365. The term "Prime Rate" shall mean the highest quoted Prime Rate printed in *The Wall Street Journal* in its regular column "Money Rates" on the first [Business Day](#) of the month in which the payment was due and not paid. If the Prime Rate is not available, GMAC-RFC will determine a comparable rate.

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(F) Substitution

Instead of requiring the Client to repurchase a Loan as provided above, GMAC-RFC, at its discretion, may allow the Client to substitute another Loan satisfactory to GMAC-RFC in place of the original Loan, within 10 days of notification by GMAC-RFC, unless otherwise notified. If the substituted Loan contains terms different from those of the Loan that it is replacing, a purchase price adjustment will be calculated by GMAC-RFC based on market changes and Loan characteristics. Every Loan substituted will be subject to all agreements, terms, conditions, representations and warranties in this Client Guide as of the [Substitution Date](#).

In the event a Loan is eligible for purchase by GMAC-RFC but the servicing is ineligible for purchase by GMAC-RFC, the Loan will be purchased and the sale of servicing denied. GMAC-RFC will not allow the Client to substitute another servicing released Loan.

(G) Cost Of Transfer Fees Due To Repurchase

The Client agrees that, if it is required to repurchase a Loan and the related Servicing, it will pay all documentary stamp taxes, recording fees, transfer taxes and all other expenses payable in connection with the repurchase and will indemnify and hold harmless GMAC-RFC and the [Designated Servicer](#) against all losses, costs and expenses, including attorney fees, resulting from such required repurchases or the breach giving rise hereto.

(H) Notice and Appeal

The Client may appeal GMAC-RFC's decision by providing any additional information or documentation it believes may affect GMAC-RFC's determination.

Send all notifications and appeals to:

GMAC-RFC
One Meridian Crossing
Suite 100
Minneapolis, MN 55423
Attention: Repurchase Management

Such information and documentation must be received within 30 days after the Client's receipt of a repurchase letter or similar written notification from GMAC-RFC. GMAC-RFC will review all appeals and advise the Client in writing of the appeal decision. GMAC-RFC will in its sole discretion determine the validity of any appeal filed by the Client. If GMAC-RFC's decision remains firm following an appeal, the Client shall repurchase the Loan and its servicing (if the Loan was sold servicing released) within 10 days of notification by GMAC-RFC, in writing, that the appeal has been denied.

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- (17) The Client or Servicer's failure to maintain a qualified Loan origination, servicing and quality control staff, an acceptable ongoing quality control program, adequate facilities and written policies and procedures to ensure:
- The investment quality of Loans sold to GMAC-RFC
 - The adequacy of the servicing of Loans purchased by GMAC-RFC **OR**
- (18) The failure of the Client or the Servicer to meet any test as may be prescribed for eligibility,
- (19) The determination by GMAC-RFC that a Client has not delivered an adequate volume of Loans to GMAC-RFC.

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Indemnification

The Client shall indemnify GMAC-RFC from all losses, damages, penalties, fines, forfeitures, court costs and reasonable attorneys' fees, judgments, and any other costs, fees and expenses resulting from any Event of Default. This includes any act or failure to act or any breach of warranty, obligation or representation contained in the Client Contract; or from any claim, demand, defense or assertion against or involving GMAC-RFC based on or resulting from such breach or a breach of any representation, warranty or obligation made by GMAC-RFC in reliance upon any warranty, obligation or representation made by the Client contained in the Client Contract.

In addition, Client shall indemnify GMAC-RFC against any and all losses, damages, penalties, fines, forfeitures, judgments, and any other costs, fees and expenses (including court costs and reasonable attorneys' fees) incurred by GMAC-RFC in connection with any litigation or governmental proceeding that alleges any violation of local, State or federal law by Client, or any of its agents, or any originator or broker in connection with the origination or servicing of a Loan. With regard to legal fees or other expenses incurred by or on behalf of GMAC-RFC in connection with any such litigation or governmental proceeding, Client shall reimburse GMAC-RFC for such fees and expenses. Reimbursement shall be made directly to GMAC-RFC within ten days of receipt of a request for payment, which request shall include copies of the relevant invoices. Except for notices for reimbursement, GMAC-RFC is not required to give Client notice of any litigation or governmental proceeding that may trigger indemnification obligations. Client shall instruct its officers, directors and agents (including legal counsel) to cooperate with GMAC-RFC in connection with the defense of any litigation or governmental proceeding involving a Loan. GMAC-RFC has the right to control any litigation or governmental proceeding related to a Loan, including but not limited to choosing defense counsel and making settlement decisions.

The Client also shall indemnify GMAC-RFC and hold it harmless against all court costs, attorney's fees and any other costs, fees and expenses incurred by GMAC-RFC in enforcing the Client Contract. The obligations of the Client under this Section shall survive the Delivery Date, the Funding Date (and each Substitution Date, if applicable) and the termination of the Client Contract and the disqualification, suspension or inactivation of the Client.