

**PALM BEACH COUNTY FORECLOSURES:
THE PURSUIT OF NON-PERFORMING MORTGAGES IN 2009 BY
BANK OF AMERICA & DEUTSCHE BANK**

By Lynn E. Szymoniak, Esq., Ed., Fraud Digest, August 23, 2010

In 2009, Bank of America filed 3,200 foreclosure actions in Palm Beach County; Deutsche Bank National Trust Company filed 2,375 foreclosure actions. Most of these foreclosure actions were filed on behalf of mortgage-backed trusts. The county records show that at the same time these bank/trustees were filing foreclosure actions, they were also acquiring thousands of other "non-performing" mortgages for trusts.

These statistics are similar in counties across the country. Judges rarely question these foreclosures and acquisitions, but in Brooklyn, a few judges have been curious about these patterns and have asked the trustee/banks to explain why they were acquiring non-performing loans for the trusts and whether such acquisition was a violation of the trustee's fiduciary duty to the trust.

"The Court wonders why HSBC would purchase a non-performing loan, four months in arrears?"

- Judge Arthur M. Schack of Kings County, New York, in *HSBC Bank v. Valentin*, 2008, NY Slip Op 52167(U), 21 Misc. 3d 1124 [A]

"Further, the Court requires an explanation from an officer of plaintiff DEUTSCHE BANK as to why, in the middle of our national sub-prime mortgage financial crisis, DEUTSCHE BANK would purchase a non-performing loan from INDYMAC..."

- Judge Arthur M. Schack of Kings County, New York, in *Deutsche Bank National Trust Co. v. Harris*, Kings, New York, Index No. 39192/2007 (05 FEB 2008)

This pattern of acquiring non-performing mortgages, then immediately pursuing foreclosures, was very evident in 2009 in Palm Beach County, a county particularly hard-hit by the mortgage crisis. Bank of America ("BOA") and Deutsche Bank National Trust Company ("DBNTC") acquired thousands of mortgages in 2009. Most often, BOA and DBNTC acquired these "foreclosure imminent mortgages" while acting as Trustees for residential mortgage-backed securitized "RMBS"

trusts. In almost every case, these acquisitions were made for trusts that closed several years prior to the 2009 acquisitions.

- How often are RMBS trusts acquiring mortgages where the foreclosure is imminent?

- What trusts are acquiring these "foreclosure imminent" mortgages?

- Have the Trustees disclosed to the investors that the trusts have embarked on this path that will cause the trusts to incur significant costs and attorney's fees to pursue these foreclosures?

- Are the trusts following local court rules making to resolve these cases through mediation and possibly modification?

- Have the Trustees disclosed to investors that, even where the foreclosure is "successful," the trusts in many cases have acquired properties worth far less than the mortgage amount, with the obligation to pay taxes, purchase insurance and maintain the properties?

- Have the Trustees disclosed that the mortgages being acquired have chain-of-title problems that will make resales difficult and costly?

- Have the Trustees disclosed to the Securities & Exchange Commission that they have embarked on this new, risky, costly activity of acquiring "foreclosure imminent" mortgages, often in violation of the terms of the trust's obligations as set forth in the Pooling & Servicing Agreement of the trust; specifically, have the Trustees disclosed that they are acquiring many mortgages long after the closing date of the trust?

- Have the Trustees disclosed to the Internal Revenue Service that the trusts have embarked on this new activity of acquiring "foreclosure imminent" mortgages, in violation of the terms of the trust's Pooling & Servicing Agreement; specifically, have the Trustees disclosed that they are acquiring many mortgages long after the closing date of the trust; and specifically, have the trusts disclosed that these transactions do not qualify as tax-exempt REMIC transactions?

- Have the Trustees disclosed to the investors the tax

consequences of these acquisitions?

An examination of mortgage assignments and foreclosures in Palm Beach County, Florida, by Trustees of Goldman Sachs Alternative Mortgage Product Trusts ("GSAMP"), Morgan Stanley ABS Capital I, Inc. ("MSABS") trusts and Soundview Home Loan Trusts answers some of these questions.

MORTGAGE ASSIGNMENTS

In total, LaSalle Bank acquired 664 mortgages in Palm Beach County in 2009, and Bank of America acquired 736 mortgages. Because Bank of America is the successor in interest to LaSalle Bank, the total acquisitions in Palm Beach County in 2009 for Bank of America was 1,400. Deutsche Bank National Trust Company acquired 3,039 mortgages.

An examination of acquisitions for particular trusts shows that the majority of these acquisitions were made as Trustees for mortgage-backed trusts and the majority of mortgages acquired were "foreclosure imminent" mortgages. **In hundreds of cases, BOA and DBNTC filed foreclosure actions within days of acquiring the mortgages.**

According to recorded documents, GSAMP (Goldman Sachs Alternative Mortgage Products) Trusts acquired 100 mortgages in Palm Beach County in 2009, Soundview Home Loan Trusts acquired 101 mortgages and Morgan Stanley ABS Capital 1 Trusts acquired 117 mortgages.

LIS PENDENS

The filing of a Lis Pendens is the first step in the foreclosure process in Florida (a judicial foreclosure state). The filing of a Lis Pendens alerts all interested persons that a court has acquired jurisdiction over the property described in the Lis Pendens.

In 2009, the Trustees of GSAMP Trusts filed 119 Lis Pendens; the trustees of Soundview Trusts filed 91 Lis Pendens; and the trustees of Morgan Stanley ABS Capital 1 Trusts filed 136 Lis Pendens.

Almost half of the GSAMP foreclosures were filed by Bank of America as successor to LaSalle Bank, or by LaSalle Bank, as Trustee

for a GSAMP Trust; most of the other GSAMP foreclosures were filed by Deutsche Bank National Trust Company, as Trustee.

Assignments of Mortgages were recorded less than half of these cases. No document filed in the official records of Palm Beach County established the right of the Trustees to file these foreclosure actions. The failure to record the mortgage makes proof of chain-of-title more difficult to establish, and is likely to impair the resale of the foreclosed property. Local governments are also deprived of filing fees at a time when every source of revenue to local government is important.

In the cases with recorded Mortgage Assignments, over 90% of the Assignments were dated AFTER the foreclosure action was filed. In these cases, from the records, BANK OF AMERICA and DEUTSCHE BANK filed for foreclosure several days, weeks, or months BEFORE they even acquired the mortgages for the Trusts.

The majority of the Assignments to GSAMP Trusts were signed by an employee of Litton Loan Servicing, a mortgage servicing company bought by Goldman Sachs in 2007. Employees of the foreclosing law firms also signed many of the Assignments. The law firm employees did not disclose that they were law firm employees. Instead, they used titles as officers of Mortgage Electronic Registration Systems, Inc. ("MERS"). The Litton Loan employees also used MERS titles so it is not readily apparent that a Goldman subsidiary – not the original lender - was assigning these mortgages to a Goldman trust.

The vast majority of the Soundview foreclosures were filed by Deutsche Bank National Trust Company, as Trustee. Again, in the cases with recorded Mortgage Assignments, the records show that in the majority of cases, DEUTSCHE BANK filed for foreclosure several days, weeks, or months BEFORE they even acquired the mortgages for the Trusts.

The majority of the Assignments to Soundview Trusts were signed by an employee of Lender Processing Services ("LPS"), a publicly-traded company that specializes in "facilitating" foreclosures for banks. Employees of the foreclosing law firms also signed many of the Soundview Assignments. The law firm employees did not disclose that they were law firm employees. Instead, they used titles as officers of MERS. The LPS employees also used MERS titles so it is not readily apparent that a company working for the Trustees – not the original lender - was assigning these mortgages to the Soundview trusts.

The vast majority of the Morgan Stanley ABS Capital 1, Inc. foreclosures were filed by Deutsche Bank National Trust Company, as Trustee. Again, in the cases with recorded Mortgage Assignments, the records show that in the majority of cases, DEUTSCHE BANK filed for foreclosure several days, weeks, or months BEFORE they even acquired the mortgages for the Trusts.

The majority of the Assignments to Morgan Stanley ABS Capital 1, Inc. Trusts were also signed by an employee of LPS. Employees of the foreclosing law firms also signed many of the Morgan Stanley ABS Capital Assignments. Again, the law firm employees did not disclose that they were law firm employees. Instead, they used titles as officers of MERS. The LPS employees also used MERS titles so it is not readily apparent that a company working for the Trustees – not the original lender - was assigning these mortgages to the Morgan Stanley ABS Capital 1 Trusts.

WHY PURSUE NON-PERFORMING LOANS?

Fees from the government-funded loan modification program funds (“HAMP Funds”) may be an incentive for RMBS Trusts and their mortgage servicing companies to acquire non-performing loans. Another incentive may be the opportunity to sell distressed loans to securities companies that are busily putting together new funds made up primarily of non-performing mortgages. Some authorities believe trusts may be acquiring non-performing loans so that the trust may reach the level of defaults necessary to make a claim on the financial guaranty insurance policies of the trust.

THE ACQUISITIONS THAT NEVER HAPPENED

Another explanation is that in the vast majority of cases, these mortgage assignments **NEVER HAPPENED** as represented in the documents. **The trusts did not acquire the mortgages in 2009.** Banks, trusts and/or their mortgage servicing companies and law firms may have created and filed hundreds of thousands of mortgage assignments so that they could use these very documents to “prove” that they had the legal right to foreclose – and conceal this simple truth: **many trusts failed to ever acquire the mortgages they promised investors and regulators they had acquired.**

