How Derecognition, Securitization, and the Deliberate Destruction of Original Notes Rendered Mortgage Enforcement Structurally Impossible

PART 2: THE FOLLOW-THROUGH — The Industry's Own Economics, the Money Circuit, the Payment Stream, and the Tax Record

An Addendum to: *How Your Mortgage Became a Wall Street Security Without Your Knowledge*

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With Additional Research Contributions

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DEDICATION

To every homeowner still sending payments into a structure that cannot account for them — this is where the money actually went.

DISCLAIMER

This document is for informational, educational, and strategic purposes only. It does not constitute legal advice. Readers are strongly encouraged to seek independent legal counsel regarding any claims or defenses discussed herein.

Scope note: This analysis presumes that the mortgages, deeds of trust, and promissory notes discussed herein have been securitized. Nothing herein addresses a loan that has remained with its originating lender. This Part 2 continues the section numbering of Part 1; cross-references in the form "(Part 1, § X)" refer to the sections of Part 1 of this Addendum.

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XII. THE INDUSTRY'S OWN ACCOUNT: THE SERVICING WHITE PAPER

Part 1 proved the enforcement impossibility from the instruments, the statutes, the accounting mandates, and the industry's litigation admissions. Part 2 begins with a different category of proof: the industry's own description of its business model, published for its members, in plain English, when it did not think borrowers were reading.

In June 2015, the Mortgage Bankers Association and PricewaterhouseCoopers published *The Changing Dynamics of the Mortgage Servicing Landscape* ("MBA/PwC White Paper at ___"), a trade publication describing the economics of mortgage servicing for industry participants. It is not a litigation document. No one was cross-examined. That is what makes it devastating: it is the industry explaining itself to itself.

A. The MSR as a "Separate and Distinct Asset": The Admitted Bifurcation

The White Paper describes what securitization did to the loan in the industry's own words:

> "The MSR is a separate and distinct asset from the loan and allows for the bifurcation of the loan cash flows between investors who take on the primary interest risk and servicing activities. This means that loan investors can reap the financial gains (and bear the credit risk), without the operational and regulatory requirements associated with performing the servicing functions for those loans. Furthermore, it is an asset that can be traded and transferred which provides valuable options for servicers to manage their balance sheet, provide liquidity, or manage risk."

(MBA/PwC White Paper at 7.)

The borrower signed a note promising to pay a "Lender" and a deed of trust securing that promise. The industry's own trade association describes what became of that transaction: the loan was **bifurcated** — split into a coupon stream for investors and a servicing strip for the MSR holder, each "a separate and distinct asset," each independently "traded and transferred." The unified creditor-debtor relationship the note contemplates (Part 1, § II) is not merely lost in transit. Dismemberment is the business model. The servicing right "allows for" the split; it exists to be sold; and the entity the borrower must deal with month to month holds, at most, one slice of what was once a single obligation.

A thing that has been divided into separately tradeable assets, by design, cannot be put back together by a foreclosure complaint. The closed class of enforceability examined in Part 1 (§ II.E) is empty for the precise reason the White Paper celebrates: there is no "Note Holder" because the industry replaced the Note Holder with a market.

B. The Value Chain Decomposed: Where Every Basis Point of the Note Rate Goes

The White Paper's Figure 1 ("Illustration of Servicing Value Chain") decomposes the borrower's note rate into its pre-allocated components. On its own example loan — a 30-year fixed-rate conforming loan — the borrower's 4% note rate is:

> "4% note rate comprised of: • 3.50% coupon • 0.25% guarantee fee • 0.25% servicing fee"

(MBA/PwC White Paper at 6, fig. 1.)

The same figure records that the "MSR [is] created upon loan sale" — not upon origination, upon *sale* — and that the originator/servicer "[c]ollects principal and 4% interest from borrower" and "[k]eeps 0.25% servicing fee as compensation for servicing (MSR)." (Id.)

Every basis point of the interest the borrower believes is the price of borrowed money is, in fact, contractually pre-assigned at the moment of sale: 3.50% to the certificate investor, 0.25% to the guarantor, 0.25% to the servicer. None of it compensates a lender for the use of its money, because — as Part 1 documented and Section XIV below traces — no lender's money was ever at risk. And that is before float:

> "Revenues include servicing fees net of guarantee fees, ancillary fees, and float earnings from holding Principal & Interest (P&I) and Taxes & Insurance (T&I) payments between collection and remittance."

(MBA/PwC White Paper at 7.)

The borrower's monthly payment is, between collection and remittance, an interest-free loan to the servicer. The industry books earnings on the borrower's money at every stage of the pipeline — at sale, at servicing, and in the float — while telling the borrower the payment reduces a debt to a creditor that no longer exists.

C. Gain on Sale: The Originator's Profit Is Booked at the Sale, Not the Loan

The White Paper confirms, as a matter of routine industry accounting, the derecognition proof of Part 1 (§§ II.A, VI):

> "First, at the time of loan sale, originators record their gain on sale. Gain on sale is the difference between the net sales proceeds and the basis of the loans sold."

(MBA/PwC White Paper at 6.)

Three admissions sit inside that single sentence. **First**, the triggering event of the originator's profit is the *sale* — the loan is inventory, originated to be sold, not an investment originated to be held. **Second**, the profit is "record[ed]" "at the time of loan sale" — the receivable is gone from the originator's books from that instant, precisely as ASC 860 requires (Part 1, § II.A). **Third**, the measure of profit is sale proceeds minus "basis" — a formulation that raises the question examined in Section XV.D below: what, exactly, was the originator's basis in a loan it funded with credit created against the borrower's own instrument? The White Paper does not answer that question. It assumes a basis. Section XV examines what happens when the assumption is tested.

D. The Foreclosure Incentive in the Industry's Own Words

Part 1 documented that the structure prefers foreclosure to resolution. The White Paper states the mechanism as a simple feature of servicer compensation:

> “Servicing fees are currently collected by servicers (MSR owners) as a component of the loan’s note rate; therefore, servicers do not collect servicing fee revenue when borrowers are delinquent.”

(MBA/PwC White Paper at 7.)

Read it slowly. The servicer’s revenue is a strip of the borrower’s note rate — and the moment the borrower becomes delinquent, **the servicer’s revenue from that loan stops**. The compensation structure pays the servicer only while the loan performs, and pays nothing while the servicer performs the most labor-intensive work in the industry: collections, loss mitigation, and modification review. The White Paper then lists, on the expense side, “unreimbursed foreclosure and property expenses” and “the cost of funds (interest expense) for servicing advances.” (Id.)

The economics are not subtle. A delinquent loan is, to the servicer, a negative-carry asset that consumes labor and advance funding while generating no fee revenue. Every month of modification review is a month of uncompensated work. Foreclosure converts the dead asset back into a performing one — through liquidation, resale, and re-origination — and restarts the fee stream. The industry’s own white paper describes a compensation architecture in which foreclosure is the rational economic outcome. When servicers foreclose on borrowers who should have been modified, they are not malfunctioning. They are responding to the incentives the industry designed and its own paper describes.

E. The Subservicer Owns Nothing — and the Investors Control the Transfers

The entity that sends the borrower monthly statements, collects the payments, and appears in court is, increasingly, a subservicer — and the White Paper states flatly what the subservicer is:

> “Subservicers are typically non-banks and they perform all servicing functions for the servicer of record (they do not own the mortgage servicing right).”

(MBA/PwC White Paper at 6.)

The borrower faces an agent that owns nothing. What, then, transfers when servicing “transfers”? The White Paper enumerates the forms:

> “The contracts under which portfolios transfer can take on multiple forms: including transfers of whole loans (loan and servicing sold together), MSR only (servicing rights are transferred but the loan P&I remains), or subservicing contracts to perform servicing functions on behalf of another servicer (the MSR remains with the transferor but the servicing operations moves to the subservicer).”

(MBA/PwC White Paper at 13.)

Note the assumption buried in the parenthetical: in an “MSR only” transfer, “the loan P&I remains” — remains *somewhere*, with someone, presumably. But under Part 1’s analysis (§§ II–IV), the P&I does not “remain” with any enforceable creditor; it was derecognized at sale and passed into a trust structure whose chain of title was never created. The White Paper simply never asks who holds the loan. It is a paper about everything except the debt.

And who controls the movement? Not the borrower. Not even the servicer:

> "Investors also have a vested interest in timely collection of principal and interest payments and effective loss mitigation; therefore, investors reserve the right not only to approve or deny transfer requests, but also to mandate servicing transfers as the GSEs did in 2006-2007."

(MBA/PwC White Paper at 13.)

Remote, unnamed investors — parties the borrower has never seen, cannot identify, and cannot sue on any contract — "reserve the right" to force the borrower's loan relationship from one servicer to another at will. RESPA's question — "who is the owner of the loan?" (Part 1, § VIII.B) — is not merely unanswerable in this structure. The structure is engineered so that no participant ever has to answer it.

F. "Real-Time Remediation of Docs": The Document Void, Admitted

The White Paper's servicing-transfer checklist (Figure 9) specifies the post-transfer work plan. Among the required post-transfer steps:

> "• Execute Communication Strategy • Real-time Remediation of Data • Real-time Remediation of Docs"

(MBA/PwC White Paper at 13, fig. 9.)

An industry with intact loan files does not need a standardized, named, post-transfer process for "remediating" documents. The phrase is an admission, repeated in every bulk transfer in the industry, of precisely what Part 1 documented from the Florida Bankers Association's certified filing: the loans exist as "electronic files," "electronic data," and records "maintained by a servicing agent in an electronic database" (Part 1, § II.B; Appendix A, Quote 1) — and the data does not survive transfer in a condition fit for enforcement. It must be "remediated." In real time. After the sale.

"Remediation of Docs" is the industry's term of art for reconstructing, after the fact, the paper trail that the law required to exist all along. It belongs on the same page of the record as the MLPSA's sale of loan "data" declared to be originals by contract (Part 1, § II.B) and the Texas Task Force's on-the-record discussion of servicers simply creating the document they need (Part 1, § IX; TX Tr. at 28–29). The White Paper did not describe an anomaly. It described the routine.

G. The Bifurcation in Practice: The Nationstar–Advance Purchaser Sale and the Loll Testimony, Revisited

The White Paper's abstractions are not hypothetical. The SEC record contains a named, dated transaction that executes every one of them — and it intersects directly with the sworn servicer testimony examined in Part 1 (§ IV.F).

The sale. By Master Servicing Rights Purchase Agreement dated as of December 17, 2013, Nationstar Mortgage LLC, as Seller, sold to Advance Purchaser LLC "certain rights to the servicing rights and fees under the Designated Servicing Agreements" — including, per the related sale documentation, the servicing agreement for the pool designated ZUNI 2006-AO1. (Master Servicing Rights Purchase Agreement (Dec. 17, 2013) ("MSRPA"), filed as Exhibit 2.1 to the New Residential Investment Corp. Form 8-K (filed Dec. 23, 2013), SEC Accession No. 0001193125-13-483167.)

The second securitization. By Indenture dated as of March 18, 2014, the sold rights were themselves securitized. New Residential Advance Receivables Trust (Issuer) issued Advance Receivables Backed Notes, with Wells Fargo Bank, N.A. as Indenture Trustee, Calculation Agent, Paying Agent and Securities Intermediary; Advance Purchaser LLC as Administrator and — from and after the respective "MSR Transfer Dates" — as Servicer; Nationstar reduced to Subservicer from those dates forward; and Credit Suisse AG, Barclays Bank PLC, Morgan Stanley Bank, N.A., and Natixis, New York Branch as Administrative Agents. (Indenture (Mar. 18, 2014), Exhibit 4.7; Series 2014-VF1 Indenture Supplement, Exhibit 4.8; Receivables Sale Agreement, Exhibit 10.41; Receivables Pooling Agreement, Exhibit 10.40 — New Residential Investment Corp. Form S-11/A (filed Apr. 7, 2014), SEC Accession No. 0001193125-14-132071.)

Note the architecture. The loan was securitized once, into the RMBS trust. Then the servicing strip on the same loans was securitized a second time, into the advance receivables trust. The borrower now sits beneath two securitization layers, each with its own issuer, its own indenture trustee, its own noteholders, and its own waterfall. The "servicer" the borrower sees — Nationstar, later Mr. Cooper — kept the name and the operations, but the servicing rights had been sold and re-securitized out from under it. This is the White Paper's taxonomy executed in the public record: the MSR as "a separate and distinct asset," "traded and transferred" (MBA/PwC White Paper at 7), with the named servicer reduced to the category that "do[es] not own the mortgage servicing right" (id. at 6).

The MERS mechanism. The Purchase Agreement itself dictates how the servicing sale is pressed into the county land records:

> "5.9 MERS. Seller shall prepare and record any assignments of mortgage required to be recorded by Seller prior to the related Servicing Transfer Date under the related Servicing Agreements. With respect to MERS Loans, Seller shall take any actions required to reflect the transfer of servicing from Seller to Purchaser or its designee and Purchaser's or its designee's status as servicing rights owner as of the related Closing Date."

(MSRPA § 5.9.)

The servicing-rights market writes itself into the public land records through MERS — the same nominee structure whose assignments Part 1 showed are nullities when detached from the note (Part 1, §§ II.F, III.F). And here the recorded assignment reflects not any transfer of the loan, but a transfer of the servicing strip: the mortgage record conscripted for a transaction in which the mortgage's owner — whoever that might be (Part 1, § IV) — plays no part at all.

Every institution was notified — except the borrower. The Indenture requires the servicer's warranty:

> "(b) Notification of MBS Trustees. The Servicer hereby represents and warrants that it has notified (or will notify) the related MBS Trustees with respect to the Designated

> Servicing Agreements as of the initial date of the assignment, transfer of ownership and pledge of Receivables related to such Servicing Agreements, including the related Advance Reimbursement Amounts, and that each related Receivable is subject to the Indenture Trustee's Security Interest…."

(Indenture § 2.1(b).)

The MBS trustee — in the ZUNI transaction, U.S. Bank — stood formally notified that the servicing rights and advance receivables on its pool had been assigned, transferred, and pledged to a second trust's indenture trustee. And the Indenture names the custodian of the servicing-file documents: not the MBS trustee, but the Administrator — "To reduce administrative costs, the Administrator [Advance Purchaser LLC] will act as custodian for the benefit of the Noteholders." (Indenture § 2.2(b).) Every institution in the chain knew exactly where the rights had gone and where the papers were kept. The only party never told was the borrower making the payments.

The Loll testimony, revisited. Part 1 (§ IV.F) examined the November 20, 2018 deposition of A.J. Loll, vice president of litigation support for Nationstar / Mr. Cooper — the testimony in which "owner" dissolved into "an industry term, but not… a legal term," and the trustee's role shrank to "act as the owner." Loll testified that "Nationstar bills the borrower in its own servicing name" and that Nationstar had "constructive and active possession of the note through unfettered access to the custodian." What the testimony never disclosed, and what these SEC filings establish: the servicing rights to the very pool at issue had been sold to Advance Purchaser LLC nearly five years before the deposition; those rights had been securitized into a second trust; from the MSR Transfer Dates, Nationstar was a contract subservicer; the MBS trustee had been formally notified of the second trust's security interest; and the custodian of the servicing documents was Advance Purchaser — not U.S. Bank. The "unfettered access to the custodian" that Loll described was access to the purchaser's custodial files. And U.S. Bank's absence from the litigation — the trustee that "acts as the owner" yet never appears — becomes explicable on the face of these documents: there was nothing left for it to defend.

The Loll testimony was not false in what it said. It was false in what the structure required it to omit. That omission is Part 1's point, and it is this Part 2's corroboration: even the truth, told by the industry's own witness, cannot assemble a creditor — because the creditor's functions had been sold, pledged, securitized, and dispersed years before the witness ever took the chair.

XIII. THE FEDERAL RESERVE'S OWN RESEARCH: THE BROOKINGS ADMISSIONS

In Spring 2018, the Brookings Papers on Economic Activity published *Liquidity Crises in the Mortgage Market* ("Brookings Study at ___"), authored by You Suk Kim, Steven Laufer, and Karen Pence of the Federal Reserve Board, together with Richard Stanton and Nancy Wallace of the University of California, Berkeley — an examination of the nonbank mortgage sector's funding structure written from inside the central banking system, using confidential supervisory data on warehouse credit lines. It is the closest thing in the public record to the Federal Reserve describing the machine it regulates. What it describes is Part 1's thesis, in the Fed's own words.

A. The Note as Collateral From the Moment of Signing

The Study's Figure 5 — a schematic of "the collateralized warehouse lending process for mortgage origination" — documents the life cycle of a mortgage note with an economist's precision:

> "(1) a mortgage borrower obtains a mortgage funded by a nonbank originator (technically the repo seller); (2) the mortgage originator funds the loan through a collateralized line of credit; (3) the warehouse lender (technically the repo buyer) holds the mortgage note as collateral against the draw on the line of credit (the draw amount is valued at the loan balance minus a haircut)."

(Brookings Study at 14, fig. 5.)

And the unwind:

> "(4) the nonbank mortgage originator must sell the mortgage note to a securitizer-investor…. The proceeds from the loan sales flow directly to the warehouse lender, who releases the collateral, the mortgage/trust deed and promissory note, to the securitizer-investor. The warehouse lender then pays down the dollar value of the draw to the nonbank originator's line of credit."

(Id.)

Every element of Part 1's structural analysis is present in that caption. The originator does not fund the loan with its own money — it draws on a collateralized line. The note does not rest in any portfolio as an enforceable asset — it is born as repo collateral, "valued at the loan balance minus a haircut." The sale proceeds never touch the originator as value — they "flow directly to the warehouse lender," retiring the draw. And the instrument itself — "the mortgage/trust deed and promissory note" — is released by the warehouse lender straight to the securitizer-investor. The note's entire existence, from the borrower's kitchen table to the securities pool, is a passage between collateral agents. The "loan" was a repurchase transaction wearing a mortgage's clothes.

This is the documented plumbing beneath the credit-creation analysis of Part 1 (§§ I, IX; *Modern Money Mechanics*; Todd Affidavit): created credit at origination, bridged by warehouse lines, extinguished by investor money. Section XIV traces that circuit step by step.

B. "Sheer Luck": The Ginnie Mae President's Confession

The Study opens its account with the words of the Honorable Ted Tozer, President of Ginnie Mae from 2010 to 2017 — the official who ran the government corporation guaranteeing the securities at the center of the nonbank sector — speaking in 2015:

> ". . . Also, we have depended on sheer luck. Luck that the economy does not fall into recession and increase mortgage delinquencies. Luck that our independent mortgage bankers remain able to access their lines of credit. And luck that nothing critical falls through the cracks. . ."

(Brookings Study at 2 (quoting the Honorable Ted Tozer, President of Ginnie Mae 2010–2017, in 2015).)

The man who guaranteed the paper says the guarantee held by luck. Not by reserves, not by documentation, not by the strength of the collateral — by luck that the originators' credit lines stayed open and that "nothing critical falls through the cracks." The official in charge of the government's own mortgage-backed securities program conceded, in public, that the structure has no margin of safety. Things had already fallen through the cracks — Part 1 documents the notes at the bottom of those cracks — but the confession stands for the larger point: the system is fragile by design, and its own operators know it.

C. The Foreclosure Incentive, Again — and Payments That May Never Be Credited

The Study confirms, from the central bank's side of the table, the incentive structure the MBA/PwC White Paper described from the industry's side. Reporting on the crisis-era appeals of the nonbank servicers:

> "Concerns were also raised that the servicers' financing difficulties would give them an incentive to foreclosure quickly on delinquent homeowners or give them modifications that [minimize their own costs]."

(Brookings Study at 33.)

And in its analysis of what a servicer failure does to borrowers, the Study states the consequence Part 1 borrowers already know in their bones:

> "a financially stressed servicer has an incentive to pursue resolutions to delinquent loans that minimize the nonbanks' servicing advances rather than alternatives that might be more beneficial for borrowers or investors…. borrowers might not be properly credited for their payments to mortgage lenders, tax authorities, and insurance companies; mortgage modifications might get stalled."

(Brookings Study at 45.)

Two admissions, from the Federal Reserve's own researchers. **First**: the servicer's incentive in distress is to minimize its own advances — not to serve the borrower, not even to serve the investor. **Second**: the borrower's payments may not be credited at all. The payment stream the borrower believes is reducing a debt to a creditor is, in the Fed's own analysis, a flow of money into a structure that may never post it correctly. Section XV takes up exactly what that payment stream is amortizing.

D. The Bailout Record: The IMSC Plea, TALF, and TBW

The Study documents what the nonbank sector did when its funding lines tightened: it asked the public for the money.

> "[The Independent Mortgage Servicers Coalition appealed] to the Federal Reserve, Treasury and FHFA to provide up to $8 billion in a short-term financing facility and/or a related guarantee to independent loan servicers who, combined, service in excess of $600 billion in mortgages (over four million homes)."

(Brookings Study at 33. The five IMSC members were American Home Mortgage Servicing, Carrington Mortgage Services, GMAC Mortgage, Nationstar Mortgage, and Ocwen Loan Servicing. Id. at 33 n.50–51.)

Five servicers — names that appear in virtually every foreclosure docket in America — asked the government for $8 billion to keep collecting payments on four million homes. The Study then records what happened when one of them failed:

> "As an outsized example of the costs involved, in 2010, Ginnie Mae increased its reserve for losses by $720 million, in large part due to the expected losses associated with its acquisition of the servicing portfolio of the nonbank, Taylor, Bean, and Whitaker…. The extensive fraud involved in the TBW failure, however, may make it a poor example for generalization."

(Brookings Study at 46.)

Note the pattern: the fees are private; the fragility is public. The sector strips servicing fees, float, and gain-on-sale in the good years, and when the structure fails — in TBW's case, amid "extensive fraud" — the government corporation absorbs the portfolio and reserves the loss. The public backstops the machine; the machine keeps the spread.

E. The Regulators' Data Void

Finally, the Study concedes the condition that makes every other admission in this section possible — no one outside the machine can see inside it:

> "Our data explorations, however, primarily highlight the fact that researchers—as well as many mortgage-market monitors and regulators—do not have the information needed to assess the risks of this sector."

(Brookings Study at 2.)

The Federal Reserve's own researchers, working with confidential supervisory data, conclude that the regulators cannot see the sector's risks. The opacity that Part 1 documented at the loan level — missing assignments, destroyed notes, a beneficiary that does not exist — exists at the market level, by the admission of the central bank itself. A structure that cannot be seen cannot be policed. A structure that cannot be policed cannot be presumed regular. And yet every foreclosure in America proceeds on exactly that presumption.

XIV. THE MONEY CIRCUIT: WHERE THE FUNDS ACTUALLY FLOWED

Part 1 proved that no enforceable creditor exists. Sections XII and XIII of this Part 2 proved that the industry and its regulators describe the structure the same way. This section completes the loop: follow the money. When the funds are traced through the circuit the documents describe, a single fact emerges — **the borrower is the only party who ever put value into the system, and the borrower's value is the only value the system ever had.**

A. The Three Moments: T0, T1, T2

The industry's own documents fix three distinct moments in the life of every securitized loan:

T0 — Origination. The borrower signs the note. The "lender" "funds" the loan. Under the credit-creation mechanism documented in Part 1 (*Modern Money Mechanics*; Todd Affidavit; § IX), a depository originator does not lend existing funds; it creates a deposit against the borrower's instrument. The borrower's signature is the value event. Nothing has yet entered the system except the borrower's promise.

T1 — The warehouse bridge. The note moves immediately onto a collateralized warehouse line. Per the Brookings Study's own schematic, the warehouse lender "holds the mortgage note as collateral against the draw on the line of credit (the draw amount is valued at the loan balance minus a haircut)." (Brookings Study at 14, fig. 5; § XIII.A above.) The note exists, from its first days of life, as repo collateral — not as any lender's held investment.

T2 — The securitization exit. The originator sells the loan into the securitization chain. "The proceeds from the loan sales flow directly to the warehouse lender, who releases the collateral, the mortgage/trust deed and promissory note, to the securitizer-investor." (Id.) The originator "record[s] their gain on sale." (MBA/PwC White Paper at 6; § XII.C above.) The certificates — sold to investors on the strength of prospectuses describing pools of loans — fund the exit.

Three moments, three different pockets, one constant: at no point does money belonging to the originator, the warehouse lender, or the trust ever travel to the borrower. The flows run the other way.

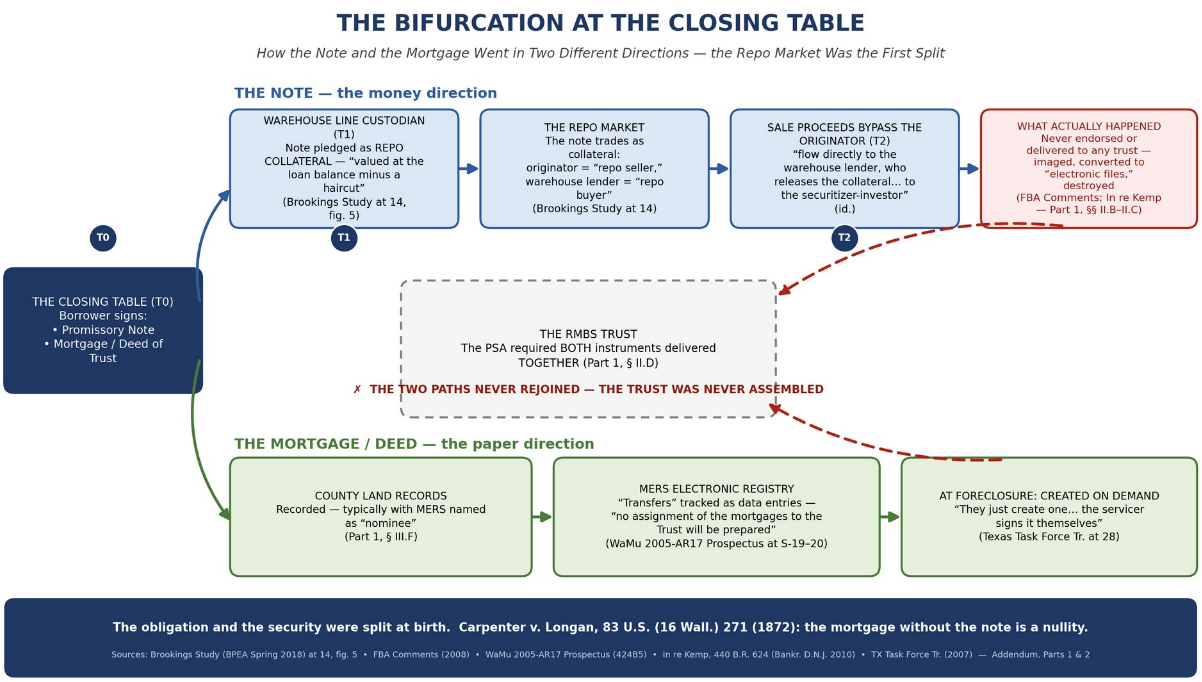

Figure 1 — The Bifurcation at the Closing Table. From the closing table (T0), the note was routed to the warehouse line custodians as repo collateral — the money direction — while the mortgage/deed went to the county land records and the MERS registry — the paper direction. The PSA required both instruments to be delivered to the trust together; neither arrived. (Sources: Brookings Study at 14, fig. 5; FBA Comments; WaMu 2005-AR17 Prospectus; In re Kemp; Texas Task Force Tr. at 28 — see §§ XIII.A, XIV.A–C; Part 1, §§ II.B–II.D, III.F.)

B. The Warehouse Bridge

The warehouse mechanism deserves its own focus because it answers the question every borrower eventually asks: *where did the money at my closing come from?* The documents answer: from a draw on a pre-arranged credit line, collateralized in advance by the very note the borrower was about to sign. The originator's closing-table disbursement was not its capital at risk; it was a bridge draw, sized at "the loan balance minus a haircut," repayable within weeks out of the sale proceeds — proceeds that, per the Fed's schematic, never even passed through the originator's hands as value: they "flow directly to the warehouse lender."

The mechanism is not an inference from the Fed's schematic. It exists as a produced document. In discovery in a California foreclosure case, a form "Bailee Letter" from Residential Funding Corporation ("RFC"), dated August 3, 2005, was produced under subpoena — transmitting two original promissory notes from the originator, Central Pacific Mortgage, to the conduit purchaser, Aurora Loan Services, Inc. (Bates No. NATIONSTAR.SUBPOENA.000758 (the "RFC Bailee Letter").) It begins:

> "Enclosed with this Bailee Letter are 2 original promissory notes evidencing the mortgage loans described on the attached schedule, along with other related documents (hereinafter collectively referred to as the"Pledged Mortgages"), for your inspection prior to purchase pursuant to commitment(s) to purchase such Pledged Mortgages from the above-referenced Seller. A security interest in the Pledged Mortgages and proceeds thereof has been granted to RESIDENTIAL FUNDING CORPORATION ("RFC"), in accordance with the Seller's Warehousing Credit and Security Agreement with RFC."

(RFC Bailee Letter (Aug. 3, 2005).)

RESIDENTIAL FUNDING CORPORATION
1646 North California Blvd.
Suite 400
Walnut Creek, CA 94596
925-935-0614

Date: WED, AUG 3, 2005

Tracking#: 656323496175

AURORA LOAN SERVICES, INC.
327 INVERNESS DRIVE SOUTH

ATTN: CONDUIT SERVICE CENTER
ENGLEWOOD CO 80112

Seller: CENTRAL PACIFIC MORTGAGE

Enclosed with this Bailee Letter are 2 original promissory notes evidencing the mortgage loans described on the attached schedule, along with other related documents (hereinafter collectively referred to as the "Pledged Mortgages"), for your inspection prior to purchase pursuant to commitment(s) to purchase such Pledged Mortgages from the above-referenced Seller. A security interest in the Pledged Mortgages and proceeds thereof has been granted to RESIDENTIAL FUNDING CORPORATION ("RFC"), in accordance with the Seller's Warehousing Credit and Security Agreement with RFC.

Pledged Mortgages now or hereafter delivered to you are to be held by you as a bailee and agent for the benefit of RFC, subject to only RFC's direction and control until released as provided herein. Immediately upon purchase by you, the purchase proceeds ("Purchase Proceeds") of the Pledged Mortgages must be wire transferred in immediately available funds to:

JPMorgan Chase Bank, National Association	Acct. No. 1024314
New York, New York	Attn: Marisol Gonzales
ABA No. 021000021	Re: RFC/CENTRAL PACIFIC MORTGAGE

RFC has no obligation to release its security interest in the Pledged Mortgages unless RFC receives the Purchase Proceeds for the Pledged Mortgages. RFC acknowledges that the Purchase Proceeds for the Pledged Mortgages may be less than the advanced amount set forth on the attached schedule. RFC will only release its security interest in the Pledged Mortgages if the Purchase Proceeds are not reduced by adjustments or offsets unrelated to the Pledged Mortgages. Subject to the foregoing, upon RFC's receipt of the Purchase Proceeds, its security interest in the Pledged Mortgages shall terminate without further action.

Pledged Mortgages which are not accepted for purchase must be returned immediately to RFC at the above address, to the attention of the undersigned. RFC reserves the right at any time, prior to receipt of the Purchase Proceeds, to demand the return of the Pledged Mortgages. In the event that you do not accept any Pledged Mortgage for purchase, you will execute and deliver to RFC an assignment in recordable form of such Pledge Mortgage and will endorse the promissory note evidencing such Pledge Mortgage in blank, but without recourse (assuming the promissory note has been endorsed to you).

You are not to honor any communications from Seller relating to any Pledged Mortgages without the written consent of RFC, or until RFC has received the Purchase Proceeds. You are not to deliver any Pledged Mortgages to any third party without the written consent of RFC. In no event shall the Pledged Mortgages enclosed herein be returned to Seller.

No deviation in performance of the terms of any previous Bailee Letter will alter any of your duties or responsibilities as set forth in this Bailee Letter.

By accepting the Pledged Mortgages for inspection, you are bound by the terms of this Bailee Letter, and the notices stated herein, whether or not you sign or return this Bailee Letter to RFC. We ask that you promptly date, sign and return a copy of this Bailee Letter to RFC at the above address.

RESIDENTIAL FUNDING CORPORATION

By: Marisol Gonzales

Enclosures

RECEIVED AND ACKNOWLEDGED:

Investor: AURORA LOAN SERVICES, INC.
By:____________________
Its:____________________
Date:____________________

NATIONSTAR SUBPOENA 000758

The produced document: RFC Bailee Letter (Aug. 3, 2005), Bates No. NATIONSTAR.SUBPOENA.000758 — note the blank "RECEIVED AND ACKNOWLEDGED" block at the signature line.

Every element of the T1 bridge is on the face of the letter.

The pledge. Before the loans left the closing table, they were already “Pledged Mortgages” — held by the conduit “as a bailee and agent for the benefit of RFC, subject to only RFC’s direction and control until released.” RFC is the warehouse lender under the originator’s “Warehousing Credit and Security Agreement.” And RFC appears nowhere in the chain of title: the subject deed of trust names Central Pacific Mortgage as lender, with MERS as beneficiary and nominee for the lender. The money and the title traveled in different hands from day one. (See Figure 1, § XIV.A.)

The proceeds. The letter dictates where the purchase money goes — and it is not the originator:

> “Immediately upon purchase by you, the purchase proceeds (”Purchase Proceeds”) of the Pledged Mortgages must be wire transferred in immediately available funds to: JPMorgan Chase Bank, National Association … New York, New York … Re: RFC/CENTRAL PACIFIC MORTGAGE.”

(Id.)

The sale proceeds bypass the originator and land at JPMorgan Chase for RFC’s account — the Fed’s schematic executed as a single wire instruction. “RFC has no obligation to release its security interest in the Pledged Mortgages unless RFC receives the Purchase Proceeds for the Pledged Mortgages” — and the letter even contemplates the haircut: “RFC acknowledges that the Purchase Proceeds for the Pledged Mortgages may be less than the advanced amount set forth on the attached schedule.” (Id.) The warehouse lender advanced the funds, is repaid first, off the top, directly from the sale — “upon RFC’s receipt of the Purchase Proceeds, its security interest in the Pledged Mortgages shall terminate without further action” (id.) — and then vanishes from the transaction, having never appeared in the chain of title at all.

The endorsement, again. The letter’s own conditional language concedes the state of the paper: a rejected loan is to be returned with “an assignment in recordable form of such Pledge Mortgage and [the conduit] will endorse the promissory note evidencing such Pledge Mortgage in blank, but without recourse **(assuming the promissory note has been endorsed to you)**.” (Id. (emphasis added).) The form itself assumes the notes may travel the entire warehouse-conduit pipeline unendorsed — precisely as DeMartini testified in Kemp (Part 1, § II.C.2), and precisely as Wells Fargo’s manual operationalized (Part 1, § II.C.3). And precisely as happened here: on the subject loan, the note was never endorsed. The originator’s pledge to RFC transferred possession without negotiation; RFC’s release upon payment transferred nothing at all; no endorsement ever entered the chain. Control and rights were relinquished in fact at the warehouse door — the derecognition of Part 1 (§ II.A), executed as a form letter.

One further detail completes the picture: the conduit’s own “RECEIVED AND ACKNOWLEDGED” block on the letter — Aurora Loan Services’ acknowledgment of the bailment — is blank. The industry did not merely fail to complete the paperwork of the chain of title. It failed to complete the paperwork of its own private pipeline.

The same loan, seven years later. The after picture exists too — in the industry’s own correspondence. In February 2012, the borrower on a loan transmitted under the RFC Bailee Letter sent a Qualified Written Request under RESPA — while current on every payment. The response came not from the servicer but from a law firm, McGinnis Tessitore Wutscher LLP, writing for Aurora Bank FSB. (Letter Response to Qualified Written Request (Feb. 21, 2012) (produced in discovery; borrower identifiers withheld) (the "QWR Response").) Its admissions, in its own words:

The enforcer is not the owner. "Aurora Bank has the right to enforce the Note evidencing the debt, and has the right to receive payment of the debt for and on behalf of the owner of the debt. The name of the current owner of the debt is: Wells Fargo Bank, N.A., In Trust For, Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2005-20." (QWR Response at 2–3.) The party the borrower pays is an agent; the "owner" is a trustee for a certificate series — the split the borrower was never told about, stated as routine.

The "transfers" were of "beneficial rights" — not of the note. Asked to identify each transferor, transferee, and date, Aurora did not describe a single endorsement or assignment. It recited a chain of "beneficial rights":

> "beneficial rights in the above-referenced loan were transferred as follows: From Central Pacific Mortgage to Aurora Loan Services, LLC on August 23, 2005; From Aurora Loan Services, LLC to Aurora Bank FSB on September 26, 2005; From Aurora Bank FSB to HSBC Bank, N.A. on September 28, 2005; From HSBC Bank, N.A. to Wells Fargo as Trustee on February 2, 2007."

(QWR Response at 3 (the letter misprints the first year as "2025").)

"Beneficial rights" is not negotiation. A note moves by endorsement and delivery (UCC §§ 3-201, 3-203); even an Article 9 sale of promissory notes leaves enforcement to Article 3 negotiation (UCC §§ 9-203(g), 9-309(4); Part 1, § II.E). The response catalogs everything except what the law requires. And two absences speak louder than the list. **RFC** — the warehouse lender holding the notes as pledgee three weeks before the first listed "transfer" — appears nowhere in the chain. And the trust named as current owner, a 2005 series, received the loan — by the response's own dates — on **February 2, 2007**, a year and a half after the pool closed, outside every transfer window the trust's own governing documents impose (Part 1, § II.D).

No assignments — unless foreclosure. Twice, the response states the practice in terms:

> "there have been no assignments of the Security Instrument, unless the loan is in foreclosure, in which case, the Security Interest is sometimes transferred to Aurora of record."

(QWR Response at 4–5.)

No assignment of the deed of trust was ever prepared or recorded — unless and until foreclosure, and then only "sometimes," and to *Aurora* — the servicer — "of record." Not to the trust. The deed travels only when the machine needs standing paper, and it travels to a party that owns nothing (MBA/PwC White Paper at 6; § XII.E). This is the WaMu prospectus disclosure (Part 1, § II.C.1), the Texas Task Force testimony (Part 1, § IX; TX Tr. at 28), and the Wells Fargo manual (Part 1, § II.C.3) — restated as ordinary business practice, in a RESPA response, to a borrower who was current on his payments.

The note "in its present form" — unendorsed. The borrower requested "Copies of the original promissory note in its present form." The response enclosed "a copy of the Note and

Security Instrument … including copies of all addenda and riders that you executed to receive the loan" — and nothing else. (QWR Response at 5.) The enclosed note bore no endorsement. Seven years and four "beneficial transfers" after the closing, the note in its present form was exactly what the RFC Bailee Letter had assumed it might be: unendorsed — never negotiated to Aurora, never negotiated to HSBC, never negotiated to the trust.

And the one question that matters is the one they refuse. Asked when the Note was endorsed and transferred into the trust, Aurora objected — the request was "vague, ambiguous and unintelligible"; the information "may be proprietary, confidential, and/or otherwise protected"; and the borrower should "provide a draft confidentiality agreement for review." (QWR Response at 4.) The borrower's own QWR invoked 12 C.F.R. § 226.39 — the federal regulation entitling him to the identity of the owner of his note — but the date of the endorsement, the indispensable act of transfer under Article 3, is claimed as a trade secret. It is a secret because it does not exist.

The originator's exposure in the entire transaction was the haircut — a few points of margin, for days or weeks, fully collateralized by the borrower's instrument. For that exposure, the system booked the borrower as a debtor for thirty years.

The custodial reality is corroborated by the industry's own foreclosure playbook: Wells Fargo's internal Foreclosure Attorney Procedure Manual instructs that files be "ordered from the custodian" — with "a 14-business-day turnaround time for files to be ordered and received from the custodian" — and, once received, that the bank's documents team "execute the endorsement" or "[t]ype the appropriate endorsement directly to the note." (WF Manual at 16–17; Part 1, § II.C.3.) The notes lived in the custodial warehouses this section describes — unendorsed and unnegotiated — until a foreclosure mill ordered one out.

C. The Extinguishment: Investor Money Retires the Created Credit

At T2, the investors' purchase money for the certificates enters the circuit. That money does two things, and only two things: it retires the warehouse draw (repaying the bridge), and it becomes the originator's booked "gain on sale" (net proceeds over basis). The created credit of T0 is extinguished — not by the borrower, who has made perhaps one payment, but by the investors. The borrower is thereafter told that his creditor is a trust funded by those investors; yet the trust holds no enforceable instrument (Part 1, §§ II–III), and the investors were sold certificates "backed by" loans whose transfers were never completed (Part 1, § II, Tine Two).

The capital the investors supplied did not fund the loan. It funded the *exit*. The loan was funded, at T0, by the only thing of value that was ever created in the transaction: the borrower's promise.

D. The Borrower as the Sole Source of New Value

Trace every dollar in the circuit to its source:

- The T0 "loan proceeds" — created against the borrower's note. Source: **the borrower**.
- The T1 warehouse draw — advanced against the borrower's note as collateral. Source: the warehouse lender's credit line, secured by **the borrower's** instrument.

- The T2 sale proceeds — investors' money, paid for certificates whose value derives entirely from **the borrower's** promised payment stream.
- The thirty-year payment stream — **the borrower's** labor, converted to cash, month after month.

Every asset in the chain — the note, the warehouse position, the trust corpus, the certificate, the MSR strip — is a derivative of a single value event: the borrower signed. The industry built a multi-trillion-dollar capital markets sector on top of that signature, booked its profit at T2, and then returned to the same borrower to collect the stream a second time — this time as "servicer" for a creditor the structure had already dissolved.

E. The Whole-Loan Inverse: Double Recovery When the Transfer Fails

The Congressional Oversight Panel mapped the inverse scenario: if the transfers into the trusts failed, "the improperly transferred loans are not trust assets and MBS are in fact not backed by some or all of the mortgages that are supposed to be backing them," with recoveries flowing back to investors and losses shifted to the sponsors. (COP Report at 21; Part 1, § II.) On that branch — Tine Two of Part 1's fork — the recovery arithmetic is stark. The sponsor was paid at T2: the investors' money for certificates backed by loans the trust never received. And the sponsor's successors-in-collection are paid again at enforcement: the borrower's payments, and ultimately the house, collected in the name of the empty trust. One asset, two recoveries — once from the investors, once from the borrower — with the transfer failure the only thing standing between the structure and an accounting. That is why the transfers can never be litigated to a conclusion, why the documents must be "remediated" (§ XII.F), and why the industry's entire litigation posture reduces to the single imperative of Part 1: never let the chain be examined.

XV. THE PAYMENT STREAM: AMORTIZING AN UNBOOKED LIABILITY

The borrower who keeps paying is the system's final mystery. If Part 1 is correct — no creditor, no instrument, no chain — then what is the monthly payment actually doing? The industry's own accounting supplies the answer: it is retiring a liability that was never booked, for the benefit of parties who already booked their gain.

A. The Traditional Ledger

In a loan that stays with its maker, the ledger is bilateral and boring. The bank carries the note as a loan receivable (asset). Each payment splits: interest to income, principal to reduce the receivable. The bank's asset declines exactly as the borrower's obligation declines. Both sides of the ledger exist, are verifiable, and match.

B. The Securitized Reality

Under ASC 860 derecognition (Part 1, §§ II.A, VI), the securitized loan left the originator's balance sheet at T2. There is no loan receivable on any identifiable creditor's books against which the borrower's payments post. The payments flow instead to a servicer — a party that, by the industry's own definition, "do[es] not own the mortgage servicing right" or owns only the servicing strip (MBA/PwC White Paper at 6) — which commingles them — a commingling the trusts' own prospectuses disclosed as perfection-defeating (Part 1, § II.C.1) — earns float on them (id. at 7), and remits them into a waterfall for the benefit of certificateholders whose trust never received the instrument (Part 1, §§ II–IV). The Fed's researchers concede that in stress the payments may not even be credited (Brookings Study at 45; § XIII.C). There is no bilateral ledger. There is a collection stream in search of a creditor.

C. The Unbooked Liability

What, then, do the payments retire? Follow the originator's books backward. At T0, the originator extended created credit against the borrower's note — an extension that, had it been booked as what it was, would have appeared as a liability (a deposit created; a debt owed). It was never so booked; the asset (the note) was sold and derecognized within weeks, and the gain was booked at T2. The liability side of the original entry — the created credit that funded the closing — was extinguished at T2 by the investors' money (§ XIV.C). The borrower's subsequent thirty years of payments therefore do not amortize any living receivable. They flow through the servicer into a distribution waterfall, reducing no balance owed to any identifiable party, while the parties who structured the transaction keep the gain booked years earlier. The borrower's payments are the system collecting, twice, on value the borrower created once.

D. Basis: Why "Return of Capital" Fails When No Capital Was Advanced

The industry's reflexive answer to all of this is that the sale proceeds were merely a "return of capital." The industry's own definition refutes it. Gain on sale is "the difference between the net sales proceeds and the **basis** of the loans sold." (MBA/PwC White Paper at 6 (emphasis added).) Basis is the measure of capital invested. What was the originator's basis in a loan it funded (i) with created credit drawn against the borrower's own instrument (T0), or (ii) with a warehouse draw collateralized by that same instrument and repaid directly out of sale proceeds (T1–T2)? In either case the originator's capital at risk was the haircut for the warehouse period — points, for weeks. A return of capital can only return capital that was actually advanced. Where the advance was created credit — a bookkeeping entry made against the borrower's promise — there is no capital to return. The principal recovered at sale is not basis recovery; it is conversion of the borrower's promise into the originator's cash.

E. Glenshaw Glass: The Gain Was Income the Moment It Was Booked

The Supreme Court's definition of income is settled: "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). The originator's own books confess the realization: gain on sale "record[ed]" "at the time of loan sale" (MBA/PwC White Paper at 6). Whatever the correct tax characterization of the full principal component — and the analysis of Section XV.D says the basis defense to it fails — one fact is not debatable: the accession was realized, booked, and kept, in the year of sale, while the borrower's obligation was thereafter collected as though nothing had been realized at all. A system that books the entire gain up front, derecognizes the asset, destroys the instrument, and then collects the principal stream for thirty more years has not made a loan. It has executed a monetization — and left the borrower paying the note for a transaction the payee's own ledgers say is closed.

XVI. THE TAX RECORD: ENFORCING THE 1099-C DUTY THE INDUSTRY ABANDONED

Part 1 (§ VII) established the 1099-C void: the industry took the tax benefit of derecognition while concealing the corresponding discharge from the IRS and the borrower. This section completes the analysis: it identifies the regulatory triggers the industry cannot escape, the penalty structure it has ignored, the exclusion landscape as it stands in 2026, and — most importantly — the concrete, four-step mechanism by which a borrower can force the tax record to reflect what actually happened.

A. The Identifiable Events the Industry Refuses to Recognize

Treas. Reg. § 1.6050P-1(b)(2) does not leave "cancellation" to the creditor's discretion. It enumerates identifiable events that trigger the Form 1099-C filing duty as a matter of law, including:

- A discharge of indebtedness in bankruptcy;
- A cancellation or extinguishment of the debt by agreement or by operation of law, rendering the debt unenforceable;
- The expiration of the statute of limitations for collection;
- Certain foreclosure, repossession, or abandonment events; and
- The expiration of a 36-month nonpayment testing period (a rebuttable presumption of cancellation).

The securitization structure walks through these triggers and ignores each one. A note destroyed as an original (Part 1, § II.B) and rendered unenforceable as a matter of law (Part 1, §§ II–III) is a debt "extinguished" and "unenforceable" within the regulation's meaning. A debt sold and derecognized for tax and accounting purposes, while never reported as cancelled to the debtor, is the precise asymmetry the regulation exists to prevent. The industry's position requires it to maintain simultaneously that the debt was discharged for its own accounting purposes and that it was never discharged for reporting purposes. The regulation does not permit the split.

B. The Penalty Structure: IRC §§ 6721–6722

The failure is not costless — it is merely unenforced. IRC § 6721 imposes per-return penalties for failure to file correct information returns with the IRS; IRC § 6722 imposes parallel per-statement penalties for failure to furnish correct payee statements to the debtor; both escalate sharply for intentional disregard. Multiplied across millions of securitized loans discharged without a corresponding 1099-C, the exposure is not a foot-fault. It is one of the largest unassessed penalty positions in the history of the information-reporting system — which is precisely why the industry cannot file the forms now: filing them today would confess decades of non-filing, and would hand every affected borrower an official record that the debt was discharged.

C. The QPRI Sunset and the Permanent Insolvency Route

Borrowers who force or receive a 1099-C must know the current exclusion landscape, because it changed on January 1, 2026:

The qualified principal residence indebtedness (QPRI) exclusion — IRC § 108(a)(1)(E) — has sunset. By its terms, as extended, it applied only to discharges of indebtedness occurring before January 1, 2026. For discharges in 2026 and later, it is no longer available.

The insolvency exclusion — IRC § 108(a)(1)(B) — is permanent. A borrower is insolvent to the extent liabilities exceed the fair market value of assets immediately before the discharge; cancellation-of-debt income is excluded up to that amount, reported on IRS Form 982 with the required reduction of tax attributes. For most distressed borrowers facing a discharge event, insolvency — not QPRI — is now the operative route, and unlike QPRI it has no expiration date and no dollar cap keyed to acquisition debt.

D. The Borrower's Corrective Mechanism: Four Steps to Force the Record

The borrower is not helpless before the missing forms. IRS procedure allows the borrower to build the record the industry refused to build:

Step One — Establish the record: Form 4506-T. Request a Wage and Income Transcript from the IRS (Form 4506-T). The transcript shows every information return — including any Form 1099-C — filed under the borrower's Social Security number for each tax year. If the loan was derecognized, sold, foreclosed, or written off and no 1099-C appears, the transcript is the government's own proof of non-filing.

Step Two — Correct the record: Schedule 1 and Form 982. The borrower who determines a discharge occurred reports the cancellation-of-debt income on Schedule 1 (Form 1040), line 8c, and files Form 982 to claim the applicable exclusion — insolvency under § 108(a)(1)(B), or bankruptcy under § 108(a)(1)(A). This is not an admission that money is owed; it is the creation of an official, sworn tax record that the debt was discharged, paired with the lawful exclusion that zeroes the tax. The filing borrower pays nothing and proves everything.

Step Three — Report the non-filer: Form 3949-A. Submit Form 3949-A (Information Referral) identifying the applicable entity that failed to file the required 1099-C. This routes the non-filing creditor into the IRS's enforcement pipeline as the reporting party — with the borrower's own corrected return and transcript as the documentation.

Step Four — Claim the whistleblower award: Form 211. Where the aggregate non-compliance meets the statutory thresholds, file Form 211 (Application for Award for Original Information) with the IRS Whistleblower Office. This is the same channel used in the Stone & Carroll claims documented in Part 1 (Citations Index, Government Enforcement Actions) — systematic information-return failures by major financial institutions are precisely the subject matter the whistleblower program exists to receive.

The four steps convert the industry's silence into the borrower's evidence. Each creates a dated, official, unrebutted government record; together, they assemble the administrative file that Part 1 (§ VII.C) described — and that no foreclosure plaintiff who failed to report the discharge can comfortably explain to a court.

XVII. THE FOUR FALSE NARRATIVES: ANSWERING THE COURT'S OWN QUESTIONS

Every foreclosure defense eventually collides with the same four presumptions — delivered from the bench, in the same order, with the same shrug: *"Well, you took out a loan, correct?" "You stopped paying on the loan, correct?" "I don't see anyone else standing here today seeking to enforce." "Nobody gets a free house."* Each question sounds like common sense. Each is, in fact, a narrative device: it converts the plaintiff's failure of proof into the borrower's concession. The two Parts of this Addendum exist to answer them — not with rhetoric, but with the industry's own documents. Here are the four answers, assembled in one place.

A. "You Took Out a Loan, Correct?" — The Question Presumes the Transaction That Never Completed

The question is engineered to end the case in six words. But it embeds its conclusion. "A loan" presumes a lender who advanced value and to whom a debt remains owed. The documents show a different transaction entirely. The originator did not advance its own funds: it drew on a warehouse line collateralized in advance by the note the borrower was about to sign — the warehouse lender "holds the mortgage note as collateral against the draw on the line of credit" (Brookings Study at 14, fig. 5; § XIII.A above). Within weeks, the loan was sold, the gain was booked — "at the time of loan sale, originators record their gain on sale" (MBA/PwC White Paper at 6; § XII.C) — the asset was derecognized under ASC 860 (Part 1, § II.A), and the investors' certificate proceeds retired the created credit (§ XIV.C). That is not a loan the way the question means it. It is a monetization, complete at the sale.

The honest answer is therefore not a concession but a correction: *"I signed a note, Your Honor. Whether that signature ever created a 'loan' owed to anyone in this courtroom is the very question the plaintiff must prove — and cannot."* A signature is not a creditor. And even accepting the premise that a loan once existed, the note's own closed class (Part 1, § II) decides who may enforce it: the named lender — gone, sold, derecognized — or a transferee by proper endorsement and delivery of an instrument that was destroyed. The question "you took out a loan, correct?" cannot bridge from *a transaction occurred* to *this plaintiff may enforce*. That bridge is the entire case, and the industry burned it.

B. "You Stopped Paying, Correct?" — Default Requires a Creditor; Presentment Requires a Holder

Nonpayment is a fact. Default is a legal conclusion — and the question trades on the confusion between the two. A default runs to someone: a party entitled to receive the payment that was missed. The note itself names that class — the "Note Holder," a closed class of two (Part 1, § II). Article 3's mechanics make the same demand: presentment is a demand for payment made by or on behalf of a person entitled to enforce the instrument (UCC § 3-501), and dishonor follows a proper presentment refused (UCC § 3-502). Where no person entitled to enforce exists (Part 1, §§ II–III), there is no lawful presentment; and without presentment there is no dishonor as a matter of law. The "default" was not declared by a holder. It was declared by a servicer — an entity that, by the industry's own description, "do[es] not own the mortgage servicing right" (MBA/PwC White Paper at 6; § XII.E), whose fee revenue stops the moment the borrower is delinquent (id. at 7; § XII.D), and whose economics therefore favor foreclosure over resolution

(Brookings Study at 33, 45; § XIII.C). The default was pronounced by the one party in the structure that profits from pronouncing it.

Nor can the system even establish the underlying fact reliably. The Federal Reserve's own researchers concede that in a servicer failure or transfer, "borrowers might not be properly credited for their payments" (Brookings Study at 45; § XIII.C) — and the servicer commingles the collections it does receive (MBA/PwC White Paper at 7; Part 1, § II.C.1). A ledger that cannot reliably credit payments cannot reliably prove their absence. And the debt against which the "default" is measured was derecognized years earlier (Part 1, § II.A) and discharged for the industry's own accounting purposes without the 1099-C the law required (Part 1, § VII; § XVI above). The borrower stands accused of defaulting on a debt the industry wrote off its own books, to a plaintiff that cannot prove it was ever owed the payment, on a ledger the Fed says cannot be trusted. *"However the payments stopped, Your Honor, a default requires a creditor, a presentment, and a ledger. The plaintiff has none of the three."*

C. "I Don't See Anyone Else Here Seeking to Enforce" — The Empty Courtroom Is the Evidence, Not the Rebuttal

Of course the courtroom is empty. The industry built it that way. The certificateholders cannot appear: they hold securities — Article 8 entitlements — not notes (Part 1, § IV), and the industry's own litigation officer testified they are owners "in industry terms … not from a legal perspective" (Part 1, § IV.F). The trustee will not appear in its own right: it "doesn't consider itself the owner" and merely "act[s] as the owner" (id.). The trust "has no authority" (id.). MERS is a nominee for an empty class (Part 1, § III.F). The servicing rights were sold and re-securitized years ago, with every institution in the chain formally notified — except the borrower (§ XII.G above). Every potential rival claimant has been dispersed, disclaimed, or contractually silenced by the plaintiff's own structure. The absence the court observes is not the plaintiff's corroboration. It is the plaintiff's handiwork.

And the observation proves nothing, because the absence of a rival has never conferred standing on a stranger. Standing is personal: the plaintiff must prove its own right, not the vacancy of others'. In no other civil context does a court accept "no one else is claiming it" as proof of title — a squatter is not quieted into ownership because the true owner's heirs are unknown. The question shifts the burden the law places on the plaintiff onto a defendant now expected to produce a rival — precisely the inversion Part 1's fork forbids (Part 1, § II): the borrower never has to establish which tine is true; the plaintiff must be put to its election. Often, moreover, the premise is false: post-2008 dockets are littered with successive and conflicting claimants to the same note — the robo-signing scandal existed because the claims conflicted (Part 1, Citations Index, Government Enforcement Actions) — and where the real parties do not appear, it is because they were already paid (National Mortgage Settlement, $25 billion; Bank of America settlement, $16.65 billion; Part 1, § VII.D). *"No one else can be here, Your Honor. The plaintiff's structure made sure of it. The empty room is the evidence."*

D. "Nobody Gets a Free House" — The Equities Run the Other Way

The phrase presumes the house is the plaintiff's to give. The record says otherwise at every stage. The plaintiff's side of the transaction contributed no value: the closing was funded by created credit (Part 1, § IX; *Modern Money Mechanics*; Todd Affidavit) bridged by a warehouse draw collateralized by the borrower's own note (Brookings Study at 14, fig. 5), and retired by investor money at the sale (§ XIV.C). The originator's profit was booked and kept "at the time of loan sale" (MBA/PwC White Paper at 6). The borrower, meanwhile, paid at every stage: the signature that was the sole source of new value in the entire circuit (§ XIV.D); the down payment; years of payments into a stream the system admits it may never have credited (Brookings Study at 45); the equity. "Free" is a strange word for the most expensive asset the borrower ever paid for.

The windfall the court fears runs in precisely the opposite direction. The foreclosing party's claim is the double recovery documented in Section XIV.E: paid once at the sale — derecognition plus certificate proceeds — and paid a second time, through foreclosure, for a house securing a debt it no longer owns. The Congressional Oversight Panel mapped exactly this inverse: if the transfers failed, the MBS were not backed, and complete recoveries flow back through the chain to investors while the losses land on the sponsors (COP Report at 21; Part 1, § II). "Nobody gets a free house" is, verbatim, the borrower's argument — the party seeking to take the house already received its value once, from the investors, and now demands the house too. And the industry's own tax posture gives the rhetoric the lie: if the borrower were truly receiving value for nothing, cancellation-of-debt income would follow, and the industry would long since have filed the Forms 1099-C the law requires (Part 1, § VII; § XVI above). It has never once treated the borrower as the recipient of anything free when reporting to the IRS. The "free house" exists only in the courtroom — never in the industry's ledgers. Denial of enforcement is not a gift; it is the ordinary consequence of a plaintiff failing to prove its case. In every other civil action in American law, that consequence has a different name: the rule of law.

E. The Four Questions Are One Question

Each narrative asks the court to skip the same step. "You took out a loan" skips the proof that the plaintiff is the lender. "You stopped paying" skips the creditor, the presentment, and the ledger. "No one else is here" skips the plaintiff's burden by shifting it to the borrower. "Nobody gets a free house" skips the evidence entirely and appeals to an equity the plaintiff's own double recovery has forfeited (Part 1, § II — the fraud is indivisible). The four questions are the structure's last line of defense: when the documents cannot be defended, defend the presumption. The answer to all four is the sentence the law has always required of every claimant in every courtroom that question has ever been asked in: **prove it.**

XVIII. THE PART 2 CAPSTONE: THE TWO HALVES CLOSE ON EACH OTHER

Part 1 proved, from the instruments, the statutes, the accounting mandates, and the industry's litigation admissions, that mortgage enforcement is structurally impossible: the closed class of enforceability is empty; the note was destroyed; the transfer chain was never created; the beneficiary does not exist.

Part 2 has now proven that the impossibility is not an accident of documentation. It is the design.

The industry's own white paper describes a loan dismembered into separately tradeable strips, a servicer paid only while the loan performs, agents who own nothing, investors who dictate transfers, and a standardized post-sale process for "remediating" the documents. The Federal Reserve's own researchers describe a note that was never anything but collateral, a system held together by "sheer luck," servicers incentivized against borrowers, payments that may never be credited, and regulators who cannot see the sector at all. The money circuit shows that no institutional money ever reached the borrower — that the borrower's signature was the only value the system ever had. The payment-stream analysis shows thirty years of payments collected against no living receivable, amortizing a liability that was never booked, for parties who booked their gain at the sale. And the tax record is missing because making it — one Form 1099-C per discharged loan — would commit the whole structure to paper.

The two halves close on each other. Part 1 demonstrated that they cannot enforce. Part 2 has demonstrated that their own books, their own trade papers, their own regulators, and their own tax filings say exactly why. The structure cannot enforce the loan because the structure was never a loan. It was a monetization of the borrower's signature — complete at the sale, booked at the sale, taxed at the sale — and everything that has happened to the borrower since is collection on a closed transaction.

XIX. CITATIONS INDEX (PART 2)

Case Law

- Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 431 (1955) (definition of gross income: "accessions to wealth, clearly realized")

Federal Statutes

- 26 U.S.C. § 108(a)(1)(A) (bankruptcy exclusion)
- 26 U.S.C. § 108(a)(1)(B) (insolvency exclusion — permanent)
- 26 U.S.C. § 108(a)(1)(E) (qualified principal residence indebtedness exclusion — applicable only to discharges before January 1, 2026; sunset)
- 26 U.S.C. § 6050P (cancellation of debt reporting) — see also Part 1, § XI
- 26 U.S.C. §§ 6721–6722 (failure to file correct information returns and payee statements)

Federal Regulations

- Treas. Reg. § 1.6050P-1(b)(2) (identifiable events triggering Form 1099-C: bankruptcy discharge; cancellation or extinguishment rendering debt unenforceable; statute of limitations expiration; foreclosure/repossession events; 36-month nonpayment testing period)

Uniform Commercial Code

- UCC § 3-501 (Presentment — demand for payment by a person entitled to enforce)
- UCC § 3-502 (Dishonor — following proper presentment)

IRS Forms and Guidance

- IRS Form 4506-T (Request for Transcript of Tax Return — Wage and Income Transcript)
- IRS Form 982 (Reduction of Tax Attributes Due to Discharge of Indebtedness)

- Schedule 1 (Form 1040), line 8c (cancellation of debt income)
- IRS Form 3949-A (Information Referral)
- IRS Form 211 (Application for Award for Original Information — Whistleblower Office)
- IRS Chief Counsel Memorandum 202137010 (Sept. 17, 2021) — see Part 1, § VII.C

Industry Publications

- Mortgage Bankers Association & PwC, *The Changing Dynamics of the Mortgage Servicing Landscape* (June 2015) — cited herein as "MBA/PwC White Paper at ___" (internal pagination)

SEC Filings

- Master Servicing Rights Purchase Agreement, dated as of December 17, 2013, between Nationstar Mortgage LLC (Seller) and Advance Purchaser LLC (Purchaser), § 5.9 (MERS) — filed as Exhibit 2.1 to New Residential Investment Corp. Form 8-K (filed Dec. 23, 2013), SEC Accession No. 0001193125-13-483167; also filed by Nationstar Mortgage Holdings Inc., SEC Accession No. 0001193125-13-481955 — cited herein as "MSRPA § ___"
- Indenture, dated as of March 18, 2014, among New Residential Advance Receivables Trust (Issuer), Wells Fargo Bank, N.A. (Indenture Trustee, Calculation Agent, Paying Agent and Securities Intermediary), Nationstar Mortgage LLC (Subservicer on and after the MSR Transfer Dates; Servicer prior), Advance Purchaser LLC (Administrator; Servicer on and after the MSR Transfer Dates), and Credit Suisse AG, Barclays Bank PLC, Morgan Stanley Bank, N.A., and Natixis, New York Branch (Administrative Agents), §§ 2.1(b), 2.2(b) — filed as Exhibit 4.7 to New Residential Investment Corp. Form S-11/A (filed Apr. 7, 2014), SEC Accession No. 0001193125-14-132071 — cited herein as "Indenture § ___"
- Series 2014-VF1 Indenture Supplement, dated as of March 18, 2014 — Exhibit 4.8, same filing
- Receivables Sale Agreement, dated as of March 18, 2014 — Exhibit 10.41, same filing
- Receivables Pooling Agreement, dated as of March 18, 2014 — Exhibit 10.40, same filing

Discovery-Produced Documents

- Residential Funding Corporation, Form Bailee Letter to Aurora Loan Services, Inc. (Aug. 3, 2005)
- McGinnis Tessitore Wutscher LLP (Aaron Freeman, Of Counsel), Letter Response to Qualified Written Request on behalf of Aurora Bank FSB (Feb. 21, 2012), at 2–5 (enforcement "for and on behalf of the owner of the debt"; owner "Wells Fargo Bank, N.A., In Trust For, Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2005-20"; chain of "beneficial rights" transfers 2005–2007; "no assignments of the Security Instrument, unless the loan is in foreclosure"; unendorsed note enclosure; endorsement date refused as "proprietary, confidential") — produced in discovery; borrower identifiers withheld for privacy — cited herein as "QWR Response at ___" (transmittal of two original promissory notes; Seller: Central Pacific Mortgage; "Warehousing Credit and Security Agreement"; Pledged Mortgages held "as a bailee and agent for the benefit of RFC"; Purchase Proceeds payable by wire to

"JPMorgan Chase Bank, National Association … Re: RFC/CENTRAL PACIFIC MORTGAGE"; security interest terminating "without further action" upon receipt; endorsement conditional "(assuming the promissory note has been endorsed to you)"; conduit acknowledgment block blank) — produced under subpoena in a California foreclosure case, Bates No. NATIONSTAR.SUBPOENA.000758 — cited herein as "RFC Bailee Letter"

Academic and Federal Reserve Research

- You Suk Kim, Steven Laufer, Karen Pence, Richard Stanton & Nancy Wallace, *Liquidity Crises in the Mortgage Market*, Brookings Papers on Economic Activity (Spring 2018) (Federal Reserve Board; University of California, Berkeley) — cited herein as "Brookings Study at ___" (internal pagination)

Congressional Reports (cross-reference)

- Congressional Oversight Panel, November Oversight Report (Nov. 16, 2010) at 21 — full citation at Part 1, § XI — cited herein as "COP Report at ___"

Cross-References to Part 1

- *Modern Money Mechanics* (Federal Reserve Bank of Chicago) — Part 1, § XI
- Walker F. Todd Affidavit (Oakland County Circuit Court, Michigan, 2004) — Part 1, § XI
- FASB ASC 860 (Transfers and Servicing of Financial Assets) — Part 1, § XI
- IRS Whistleblower Claims (Form 211) of Stone & Carroll (filed Mar. 18, 2011) — Part 1, § XI
- Wells Fargo Home Mortgage, Foreclosure Attorney Procedure Manual (Ver. 1, Rev. 3, Feb. 24, 2012) — full citation at Part 1, § XI — cited herein as "WF Manual at ___"

APPENDIX B: VERIFIED QUOTATION TABLE

Mortgage Bankers Association & PwC, The Changing Dynamics of the Mortgage Servicing Landscape (June 2015); and Kim, Laufer, Pence, Stanton & Wallace, Liquidity Crises in the Mortgage Market, Brookings Papers on Economic Activity (Spring 2018) — every quotation below verified word-for-word against the published documents.

Part One — MBA/PwC White Paper (June 2015)

1. "The MSR is a separate and distinct asset from the loan and allows for the bifurcation of the loan cash flows between investors who take on the primary interest risk and servicing activities."

(MBA/PwC White Paper at 7 — used in § XII.A)

2. "4% note rate comprised of: • 3.50% coupon • 0.25% guarantee fee • 0.25% servicing fee" — with "MSR created upon loan sale."

(MBA/PwC White Paper at 6, fig. 1 — used in § XII.B)

3. "Revenues include servicing fees net of guarantee fees, ancillary fees, and float earnings from holding Principal & Interest (P&I) and Taxes & Insurance (T&I) payments between collection and remittance."

(MBA/PwC White Paper at 7 — used in § XII.B)

4. "First, at the time of loan sale, originators record their gain on sale. Gain on sale is the difference between the net sales proceeds and the basis of the loans sold."

(MBA/PwC White Paper at 6 — used in §§ XII.C, XV.D)

5. "Servicing fees are currently collected by servicers (MSR owners) as a component of the loan's note rate; therefore, servicers do not collect servicing fee revenue when borrowers are delinquent."

(MBA/PwC White Paper at 7 — used in § XII.D)

6. "Subservicers are typically non-banks and they perform all servicing functions for the servicer of record (they do not own the mortgage servicing right)."

(MBA/PwC White Paper at 6 — used in § XII.E)

7. "The contracts under which portfolios transfer can take on multiple forms: including transfers of whole loans (loan and servicing sold together), MSR only (servicing rights are transferred but the loan P&I remains), or subservicing contracts to perform servicing functions on behalf of another servicer (the MSR remains with the transferor but the servicing operations moves to the subservicer)."

(MBA/PwC White Paper at 13 — used in § XII.E)

8. "Investors also have a vested interest in timely collection of principal and interest payments and effective loss mitigation; therefore, investors reserve the right not only to approve or deny transfer requests, but also to mandate servicing transfers as the GSEs did in 2006-2007."

(MBA/PwC White Paper at 13 — used in § XII.E)

9. "• Execute Communication Strategy • Real-time Remediation of Data • Real-time Remediation of Docs"

(MBA/PwC White Paper at 13, fig. 9 (post-transfer checklist) — used in § XII.F)

Part Two — Brookings Study (Spring 2018)

10. "(3) the warehouse lender (technically the repo buyer) holds the mortgage note as collateral against the draw on the line of credit (the draw amount is valued at the loan balance minus a haircut)."

(Brookings Study at 14, fig. 5 — used in §§ XIII.A, XIV.B)

11. "The proceeds from the loan sales flow directly to the warehouse lender, who releases the collateral, the mortgage/trust deed and promissory note, to the securitizer-investor. The warehouse lender then pays down the dollar value of the draw to the nonbank originator's line of credit."

(Brookings Study at 14, fig. 5 — used in §§ XIII.A, XIV.A–C)

12. ". . . Also, we have depended on sheer luck. Luck that the economy does not fall into recession and increase mortgage delinquencies. Luck that our independent mortgage bankers remain able to access their lines of credit. And luck that nothing critical falls through the cracks. . ."

(Brookings Study at 2, quoting the Honorable Ted Tozer, President of Ginnie Mae 2010–2017, in 2015 — used in § XIII.B)

13. "Our data explorations, however, primarily highlight the fact that researchers—as well as many mortgage-market monitors and regulators—do not have the information needed to assess the risks of this sector."

(Brookings Study at 2 — used in § XIII.E)

14. "Concerns were also raised that the servicers' financing difficulties would give them an incentive to foreclosure quickly on delinquent homeowners or give them modifications that [minimize their own costs]."

(Brookings Study at 33 — used in § XIII.C)

15. "[The Independent Mortgage Servicers Coalition appealed] to the Federal Reserve, Treasury and FHFA to provide up to $8 billion in a short-term financing facility and/or a related guarantee to independent loan servicers who, combined, service in excess of $600 billion in mortgages (over four million homes)."

(Brookings Study at 33 — used in § XIII.D; IMSC membership at id. n.50)

16. "a financially stressed servicer has an incentive to pursue resolutions to delinquent loans that minimize the nonbanks' servicing advances rather than alternatives that might be more beneficial for borrowers or investors.... borrowers might not be properly credited for their payments to mortgage lenders, tax authorities, and insurance companies; mortgage modifications might get stalled."

(Brookings Study at 45 — used in §§ XIII.C, XV.B)

17. "As an outsized example of the costs involved, in 2010, Ginnie Mae increased its reserve for losses by $720 million, in large part due to the expected losses associated with its acquisition of the servicing portfolio of the nonbank, Taylor, Bean, and Whitaker.... The extensive fraud involved in the TBW failure, however, may make it a poor example for generalization."

(Brookings Study at 46 — used in § XIII.D)

Part Three — The Nationstar–Advance Purchaser Transaction (SEC Filings, 2013–2014)

18. "MASTER SERVICING RIGHTS PURCHASE AGREEMENT dated as of December 17, 2013 between NATIONSTAR MORTGAGE LLC, as Seller, and ADVANCE PURCHASER LLC, as Purchaser"

(MSRPA, preamble — Exhibit 2.1 to New Residential Investment Corp. Form 8-K (filed Dec. 23, 2013) — used in § XII.G)

19. "5.9 MERS. Seller shall prepare and record any assignments of mortgage required to be recorded by Seller prior to the related Servicing Transfer Date under the related Servicing Agreements. With respect to MERS Loans, Seller shall take any actions required to reflect the transfer of servicing from Seller to Purchaser or its designee and Purchaser's or its designee's status as servicing rights owner as of the related Closing Date."

(MSRPA § 5.9 — used in § XII.G)

20. "INDENTURE NEW RESIDENTIAL ADVANCE RECEIVABLES TRUST, as Issuer and WELLS FARGO BANK, N.A., as Indenture Trustee, Calculation Agent, Paying Agent and Securities Intermediary and NATIONSTAR MORTGAGE LLC, as a Subservicer (on and after the respective MSR Transfer Dates) and as Servicer (prior to the respective MSR Transfer Dates) and ADVANCE PURCHASER LLC, as Administrator and as Servicer (on and after the respective MSR Transfer Dates)…."

(Indenture (Mar. 18, 2014), preamble — Exhibit 4.7 to New Residential Investment Corp. Form S-11/A (filed Apr. 7, 2014) — used in § XII.G)

21. "(b) Notification of MBS Trustees. The Servicer hereby represents and warrants that it has notified (or will notify) the related MBS Trustees with respect to the Designated Servicing Agreements as of the initial date of the assignment, transfer of ownership and pledge of Receivables related to such Servicing Agreements, including the related Advance Reimbursement Amounts, and that each related Receivable is subject to the Indenture Trustee's Security Interest…."

(Indenture § 2.1(b) — used in § XII.G)

22. "(b) Administrator as Custodian. To reduce administrative costs, the Administrator will act as custodian for the benefit of the Noteholders of the following documents relating to each Receivable: (i) a copy of the related Designated Servicing Agreement and each amendment and modification thereto;…."

(Indenture § 2.2(b) — used in § XII.G)

Provenance note: The MBA/PwC White Paper was publicly distributed by the Mortgage Bankers Association (June 2015). The Brookings Study was published in the Spring 2018 volume of the Brookings Papers on Economic Activity. Pinpoint citations to those documents are to their internal printed pagination. The Nationstar–Advance Purchaser transaction documents (Quotes 18–22) are public filings maintained in the SEC's EDGAR system under the accession numbers given in the Citations Index (§ XIX); quotations were verified word-for-word against the filed exhibits.

ABOUT THE AUTHOR

William J. Paatalo is a licensed private investigator in the State of Oregon (PSID #49411) with more than 15 years of experience in mortgage securitization research, forensic analysis, and litigation support. He has testified as an expert in state and federal courts and has assisted homeowners, attorneys, and legislators in understanding the structural defects in modern mortgage lending.

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