

Securitization Audit Extended Pro

Prepared for

John Doe & Sherry Doe

2489 Miller Street, Citywide NJ 30201

The purpose of this examination is to trace the ownership history of the subject Mortgage. This information is a critical first step in determining which entity has the right to enforce your Note and Mortgage ("Mortgage Loan"). Armed with this critical threshold information, it is then possible to analyze forensically whether there are gaps in the chain of title between the originating lender and the current owner of a mortgage loan, whether there was fraud or a break in the chain of title, and, when a loan is in foreclosure, whether there are flaws in the foreclosure process.

The results will disclose if in fact a mortgage has been securitized. The findings of this report are not to be construed as Legal Advice. The findings and opinions are deduced from the facts as they became known to the Examiner through the Examiner's forensic investigation of the documents, records, and information available at the time of the audit. The results and/or findings of this report are independent of any other professional auditor or Fraud Examiner. However, the results of any findings in this report can be exhibited for any Court or Judicial System in conformity and for the preparation of such legal matters pursuant to the Court's jurisdiction. The Examiner has no direct or indirect interest in the outcome of the case. In the event that fraud is discovered, you may want to consult with your Attorney for legal advice.

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Explanation of Audits

Securitization Audit:

1. A mortgage securitization audit is a detailed report on the chain of title of the mortgage note. The results will disclose any violations of New York trust law and/or Internal Revenue Code regarding (REMIC) status. A Securitization audit also provides evidence that the party that purports to own the note may not be the actual “owner or holder” of the note.

To complete the Securitization Audits, I follow 2 steps:

Step 1, Loan Specific Title Search;

- a. I research all paperwork given to the borrower at closing. I cross check the Mortgage Deed of Trust and Servicing Transfer Disclosure with a public records search of the county recorder’s office in which the property is located. I check to see if the loan is currently listed with MERS. Based on these searches, I determine if the loan is a securitized loan. If the loan is a non-securitized loan our report will only include the results of the Loan Specific Title Search.

Step 2, Chain of Title History;

- a. For securitized loans I then check through our database to locate the pool, pools or group(s) of pools claiming to have ownership of the borrowers’ loan. My database search includes the EDGAR (SEC) Database and a proprietary search engine that helps locate possible ownership of the loan.
- b. My reports will show all findings in a clear and concise manner and will have loan specific analysis and commentary on the securitization status of the loan with suggested areas of focus and concentration for the borrower's lawyer or adviser.
- c. When I check through the database to locate the pool, pools or group(s) of pools claiming to have ownership of the borrowers' loan, I try to find actual mention of the note, either through loan number, address, loan size, loan type or other loan specific details. Otherwise we use the closing dates and cut-off dates for the specific pools that the loan may be in. I search through the 424B5 Prospectus and the Pooling and Servicing Agreements. If a 15- I5d Suspension of Duty to Report is filed we can provide that as well.

- d. Usually there is no recorded and perfected Chain of Assignments, nor is there a Chain of Endorsements in any Securitized Loan, no assignment history that goes from the lender, to the Sponsor, to the Depositor, and lastly, to the Trust, as required by most Pooling and Servicing Agreements.

- e. However, I know that each Securitized Loan has purportedly been transferred two to three times at a minimum, but in many cases no assignment of beneficiary was ever recorded when the transfers took place. That was the purpose of MERS (Mortgage Electronic Registration Systems). The Deeds would be kept in the name of MERS as "Nominee for the Beneficiary". This allowed MERS to appear to be the Beneficiary and avoid the expenses of recording Assignments at each transfer, usually about \$30 per recording.

- f. My audits usually find that there is a chain of ownership that has not been properly executed, and that any party trying to foreclose needs to present clear ownership and explain why they have a clear right to foreclose.

- g. The Securitization Audit can be completed with the documents provided to the Borrower at Closing. If the Audit is going to be used to its fullest potential it is recommended that in your Qualified Written Request (QWR), you also request information on the holder of the mortgage loan. This is a right granted to borrowers under TILA and RESPA. It is also advisable to request the Pooling and Service Agreement between the servicer and the investor in your Debt Verification Letter. They are not required to provide this, but sometimes they do.

- h. Once it has been determined that a loan has been securitized, it forever loses its security component (i.e., the Deed of Trust or Mortgage depending on where the loan was originated), and the right to foreclose through the Deed of Trust is forever lost.

- i. The Promissory Note has been converted into a stock as a permanent fixture. It is now a stock and governed as a stock under the rules and regulation of the SEC; hence, the requirements for filings of the registration statements, pooling and servicing agreement forms. Once securitized, this would indicate the Deed of Trust was transferred concurrently with the purported legal transfer of the Note, such that the deed of trust have irrevocably separated, thus making a nullity out of the purported security in a property, as claimed (Federal Rules of evidence rules 901 & 902)

Anti-Predatory Lending Violations

These are relating to Consumer Protection laws;

- + Violations usually occur because of the misunderstanding of how they work. Examples of violations include failing to include fees such as yield spread premiums in the calculations or using an incorrect loan amount value to perform the calculation. Penalties vary by each law. The usual costs include borrower reimbursements, statutory and punitive damages, attorneys' fees, administrative fines and penalties, loan buy-backs and reformation, and class-action lawsuits.

State Law Violations;

- + Examples include illegal prepayment penalty clauses, rates that are usurious, or fees that are not allowed to be charged. Some penalties include actual damages and costs, attorney's fees, administrative fines and penalties, loan buy-backs, and class-action lawsuits.
- + Reverse Mortgage Violations -These violations include violations relating to reverse mortgage obtained. Some violations include failing to disclose the APR, and providing incomplete or improper disclosures.
- + Real Estate Settlement Procedures Act (RESPA) Violations-RESPA prohibitions put limits on a lender's and broker's ability to charge or pay fees that are hidden from the borrower. Violations include accepting kickbacks or referral fees, up charging for services provided by 3rd parties, and charging for services not performed.
- + Penalties include actual damages, administrative fines and class-action lawsuits.
- + In addition, other violations include lending without providing borrowers a reasonable, tangible net benefit, state-specific disclosure errors, servicing violations, and Fair Lending violations.

If there is one of these types of violations in the loan audit discovered, it could result in some cases repayment of interest back to the borrower/homeowner.

Constructive Fraud

- Material facts relating to the loan, which include terms of the loan. Prepayment penalty or any information which a borrower must know before loan is accepted. Were these facts not properly disclosed to the borrower? Were they mentioned at all?

Fraud and Negligent Misrepresentation

- This is basically any statements comments and representation written or oral by the broker, loan officer, notary which in any way contradicted the terms of the loan documents.

Negligent Misrepresentation

- If the broker/loan officers who worked on the loan make errors which result in misrepresentation, this is classified as negligent misrepresentation.

Breach of Contract

- Any terms in the contract of the note the lender failed to follow, such as the way the interest is calculated and the penalties.

In conducting my opinion and analysis;

2. I reviewed various loan documents filed with the Hamilton County, Indiana public records. I also reviewed and analyzed the copy of the Mortgage and all other pertinent Mortgage documents that were involved with the subject loan.

The information on the Securitization Trust reveals the following:

- + The issuing entity is Citigroup Mortgage Loan Trust 2008-AR7.
- + The Title of the Offered Securities is Citigroup Mortgage Loan Trust, Inc., Mortgage Pass-Through Certificates, and Series 2008-AR7.
- + The party responsible for initiation of the Trust is Citigroup Global Markets Realty Corp.
- + The Depositor for the Trust is Citigroup Mortgage Loan Trust, Inc.
- + The Master Servicer for the Trust is CitiMortgage, Inc.
- + The Trustee for the Trust is US Bank, NA.
- + The Custodian for the Trust is Citibank, NA.

Tracing the ownership of residential mortgages involves researching the following public and private mortgage-related databases:

- + Fannie Mae's Loan Lookup;
- + Freddie Mac's Self-Service Loan Lookup;
- + Mortgage Electronic Registration Systems, Inc.'s website;
- + Bloomberg Professional and/or ABS Net Loan (robust mortgage-backed securities databases utilized by institutional investors); and the Securities and Exchange Commission's public access websites;
- + County Clerk Recorders Office;
- + Court Records when applicable;
- + Property lien search.

The Debt and the Security Instruments

General	Principal Amount	\$560,000
	Date Granted	March 30, 2008
	Maturity Date	April 1, 2038
	Term	30 Years
The Debt Instrument	Type of Note	Adjustable Rate Note
	Initial Interest Rate	6.850% p.a.
	First Interest Rate Change Date	April 1, 2010
	Loan Number	56040201
The Security Instrument	Type of Document	Mortgage
	Date Executed	March 30, 2008
	Lien Priority	First Lien
	MERS ID Number	10003930291092-2019

The Parties Involved with the Note and Mortgage

Borrower	Name	John Doe
	Mailing Address	4503 Main Street Citywide NJ
	Property Address	4503 Main Street Citywide NJ
Co-Borrower	Name	Sherry Doe
Lender	Name	ABN Amro Mortgage Group, Inc.
	Mailing Address	4503 Main Street Citywide NJ
Mortgagee	Name	ABN Amro Mortgage Group, Inc.
Mortgage Servicer	Name	Bank of America, NA
	Mailing Address	PO Box 56040211 Citywide NJ 15043
Title Company	Name	Unknown

The Parties to the Securitization Trust

Issuing Entity	Citigroup Mortgage Loan Trust 2008-AR7
Title of the Offered Securities	Citigroup Mortgage Loan Trust, Inc., Mortgage Pass-Through Certificates, Series 2008-AR7
Sponsor	Citigroup Global Markets Realty Corp.
Depositor	Citigroup Mortgage Loan Trust, Inc.
Seller	Citigroup Global Markets Realty Corp.
Originators	CitiMortgage, Inc. and several other originators
Master Servicer	CitiMortgage, Inc.
Servicers	Countrywide Home Loans Servicing, LP and several other servicers
Trustee	US Bank, NA
Custodian	Citibank, NA
Insurers	No specific insurer is named. The applicable provisions on insurance are found in the section titled Description of the Securities of the Prospectus.
Affiliations	Citigroup Global Markets Realty Corp., Citigroup Mortgage Loan Trust, Inc., and CitiMortgage, Inc. are affiliated entities. There were no known affiliations among them and Countrywide Home Loans Servicing, LP and US Bank, NA at the time this trust was established.

How the Loan fits in the Trust's Pool

3. Hereunder is a comparison of the features of the subject loan with the characteristics of the loans in the mortgage pool of Citigroup Mortgage Loan Trust 2008-AR7.

Feature	This Loan	The Mortgage Pool, All Loans
Date Granted/Closing Date	March 30, 2008	May 31, 2008
Original Term	360 months	180 to 480 months
Interest Rate	6.850% p.a.	3.875% p.a. to 9.375% p.a.
Interest Type	Adjustable	Adjustable
Original Amount	\$560,000	\$34,000 to \$3,000,000.00
Property Location	Indiana	7 Property Locations in the state of Indiana
References	Adjustable Rate Note, Mortgage	Prospectus Supplement

The Certificates Issued by the Trust

Type	Class Code	Name	Beginning Cert. Bal.(Face)	Pass Thru Rate	CUSIP Numbers
Senior		1A	112,719,778.39	1.420000%	126671L79
		2A1	120,492,123.75	1.260000%	126671K54
		2A2	214,375,000.00	1.470000%	126671K62
		F	100.00	0.000000%	126671L95
		C	495,086,902.14	0.000000%	126671L87
Residual		AR	0.00	0.000000%	126671M29
Subordinate		M1	25,000,000.00	1.820000%	126671K70
		M2	3,750,000.00	2.070000%	126671K88
		M3	4,000,000.00	2.620000%	126671K96
		M4	7,000,000.00	2.820000%	126671L20
		M5	1,500,000.00	3.220000%	126671L38
		M6	4,250,000.00	4.620000%	126671L46
		B			
			2,000,000.00	4.620000%	126671L53
				0.000000	3.721667 1

4. CUSIP stands for Committee on Uniform Securities Identification Procedures. Formed in 1962, this committee developed a system (implemented in 1967) that identifies securities, specifically U.S. and Canadian registered stocks, and U.S. government and municipal bonds.
5. The CUSIP number consists of a combination of nine characters, both letters and numbers, which act as a sort of DNA for the security - uniquely identifying the company or issuer and the type of security. The first six characters identify the issuer and are assigned in an alphabetical fashion; the seventh and eighth characters (which can be alphabetical or numerical) identify the type of issue; and the last digit is used as a check digit.

The Links to the Trust Documents and Other Information

Date of Filing	Particulars
June 1, 2008	<p>Prospectus Supplement and Prospectus under Form 424-B5.</p> <p>The main parties are Citigroup Global Markets Realty Corp. as sponsor and seller, Citigroup Mortgage Loan Trust, Inc. as depositor, CitiMortgage, Inc. as master servicer and one of the originators, Countrywide Home Loans Servicing, LP as one of the servicers, and US Bank, NA as trustee. http://www.secinfo.com/dqTm6.u1ht.htm</p>
March 31, 2008	<p>Annual Report under Form 10-K.</p> <p>This document names CitiMortgage, Inc. as master servicer and reports the filing of an Annual Statement of Compliance for the servicer as of December 31, 2008. http://www.secinfo.com/d12rzv.t3a.htm</p>
January 29, 2008	<p>Notice of Suspension of Duty to File Reports under Form 15-15D.</p> <p>This document was filed on behalf of the trust by CitiMortgage, Inc., as trust administrator. The number of holders on record as of report date was 14. http://www.secinfo.com/d12rzv.t13.htm</p>
October 2, 2008	<p>Pooling and Servicing Agreement dated May 1, 2008.</p> <p>The parties are Citigroup Mortgage Loan Trust, Inc. as depositor, CitiMortgage, Inc. as master servicer and trust administrator, Citibank, NA as paying agent, certificate registrar, and authenticating agent, and US Bank, NA as trustee. http://www.secinfo.com/dqTm6.u278.c.htm#1stPage</p>
Cut-off Date	May 1, 2008
Closing Date	On or about May 31, 2008
Approx. Amount of Total Assets Held	US \$831,885,100
The Link to all	

The Securitization Trust Explained

The Diagram Explained:

- + The mortgage loan moves from the lender to the seller, from the seller to the depositor.
 - + This is returned to the lender.
 - + The mortgage loan is deposited to the trust.
 - + The trustee performs fiduciary duties for the trust.
 - + The mortgage loan document goes to the servicer to (collection monthly payments).
 - + The mortgage loan document is acknowledged by the servicer.
 - + The certificate is sold to the certificate holder.
 - + The certificate is bought back from the certificate holder.
 - + The lender collects from the borrower and the remits the proceeds to the trust through the servicer. The money is used to buy back the certificates from the certificate holder.
6. The following diagram illustrates, in simple theoretical terms, the flow of transactions in a typical securitization trust as they would have affected each party that has a role in it:

A Diagram on the Typical Process of Securitization

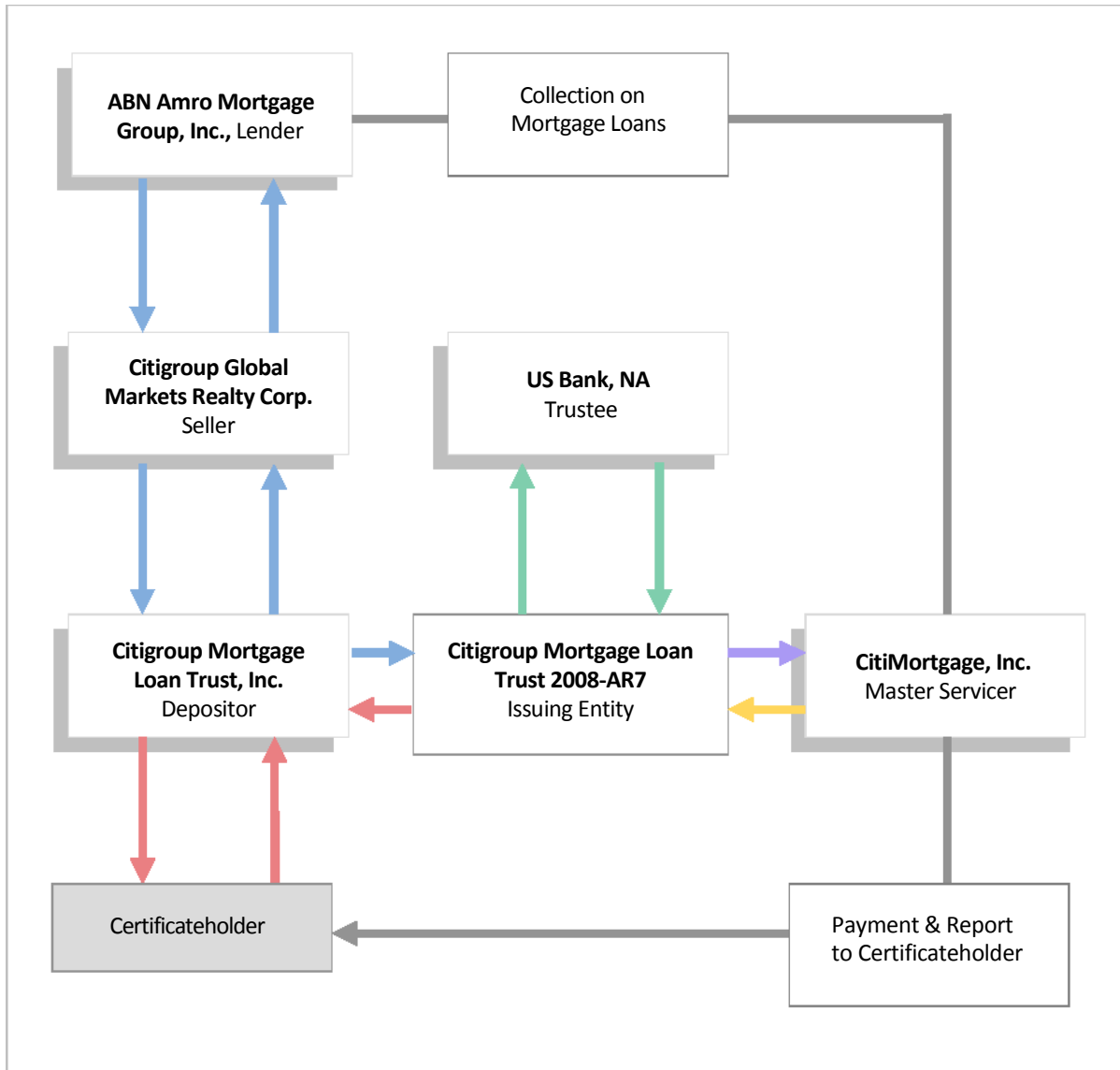


Diagram Explained:

7. The foregoing diagram is not intended to show any difference between the typical flow of transactions and the actual, as I have noted in the review of the documents presented. The latter is presented in the section titled “How the Parties Changed the Process of Securitization Trust” which is the subject of the succeeding section.

How the Parties Changed the Process of Securitization Trust

8. The loan that is the subject of this securitization audit was granted on March 30, 2008. The note names ABN Amro Mortgage, Inc. as the originating lender. It is an adjustable rate note with a term of 30 years to mature on April 1, 2037.
9. The Mortgage was executed on the same date. The originating lender is the mortgagee. This instrument secures the debt of the borrower to the lender, including interest. The mortgaged property is located at 10785 Harbor Bay Drive, Fortville, Indiana 46070.
10. An Annual Escrow Account Disclosure Statement dated July 13, 2009 discloses that the subject loan is serviced by Bank of America, NA, successor by merger to BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, L
11. ABN Amro Mortgage Group, Inc. securitized its home mortgage loans into trusts that were established by CitiMortgage, Inc. and its affiliates. ABN Amro Mortgage Group, Inc., then a subsidiary of La Salle Bank, NA, was acquired by CitiMortgage, Inc. in 2008. For its part, La Salle Bank, NA was acquired by Bank of America, NA in 2008.
12. The examiner infers that ABN Amro Mortgage, Inc. securitized the subject loan into a trust that was established by CitiMortgage, Inc. and its affiliates wherein Countrywide Home Loans Servicing, LP was one of the servicers.
13. A search of the filings with the Securities and Exchange Commission for securitization trusts that were established by CitiMortgage, Inc. and its affiliates in the year 2008 indicates that the trust into which the subject loan was securitized, identifies the Citigroup Mortgage Loan Trust 2008-AR7.
14. Citigroup Mortgage Loan Trust 2008-AR7 was established under a Pooling and Servicing Agreement dated May 1, 2008. The parties are Citigroup Mortgage Loan Trust, Inc. as depositor, CitiMortgage, Inc. as master servicer and trust administrator, Citibank, NA as paying agent, certificate registrar, and authenticating agent, and US Bank, NA as trustee.
15. The following table shows the transactions which resulted in the separation of the Promissory Note and the Security Deed:

The Chain of Title and the Foreclosure Process

Date	Promissory Note	Mortgage
March 30, 2008	Loan Granting ABN Amro Mortgage Group, Inc. Originating Lender	Execution of the Deed ABN Amro Mortgage Group, Inc. Originating Lender and Mortgagee
May 31, 2008	Sale, Securitization Citigroup Global Markets Realty Corp., Seller, Citigroup Mortgage Loan Trust 2008-AR7	
May 31, 2008	Simultaneous Sale, Securitization Citigroup Mortgage Loan Trust, Inc. Depositor, Citigroup Mortgage Loan Trust 2008-AR7	
May 31, 2008	Endorsement, Securitization US Bank, NA, Trustee, Citigroup Mortgage Loan Trust 2008-AR7	

16. Bank of America N.A., is identified as successor by merger to BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP. Accordingly, since Bank of America N.A. would have assumed the appointed responsibilities as Servicer for this Trust. Pursuant to the Annual Report 10-K as identified in the Trust, in particular The Servicer Compliance Statement referencing the Citigroup Mortgage Loan Trust 2008-AR7, reinforces that Bank of America N.A., would have no ability to foreclose on the property pursuant to the Pooling and Servicing Agreement.
17. If Bank of America N.A. is acting as “owner holder,” it would be without Authority, it is important to understand the structure of the master servicer’s role in a (REMIC) Trust. As the names suggest the servicer services the loans and has the responsibility of making sure that all of the funds received for the trust are properly disbursed to the investors (bond holders) and all other parties who have a financial interest in the securitized structure.
18. The PSA clearly describes and delineates the manner and order in which Notes and Mortgages (“Mortgage Loans”) as defined by the PSA in Section 1.01, are to be conveyed which is thoroughly outlined in Section 2.01 of the PSA and more detailed below in my affidavit.

SECTION 2.01. Conveyance of the Mortgage Loans.

<http://www.secinfo.com/dqTm6.u278.c.htm#1stPage>

- ***“The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee, on behalf of the Trust, without recourse, for the benefit of the Certificate-holders, all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor under the Mortgage Loan Purchase Agreement (including, without limitation the right to enforce the obligations of the other parties thereto thereunder), and all other assets included or to be included in REMIC I. Such assignment includes all interest and principal received by the Depositor, the Servicer and the Interim Servicer on or with respect to the Mortgage Loans (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee and the Servicer an executed copy of the Mortgage Loan Purchase Agreement.”***
- ***“In connection with such transfer and assignment, the Depositor does hereby deliver to, and deposit with the Custodian pursuant to the Custodial Agreement the documents with respect to each Mortgage Loan as described under Section 2 of the Custodial Agreement (the “Mortgage Loan Documents”). In connection with such delivery and as further described in the Custodial Agreement, the Custodian will be required to review such Mortgage Loan Documents and deliver to the Trustee, the Depositor, the Servicer and the Seller certifications (in the forms attached to the Custodial Agreement) with respect to such review with exceptions noted thereon. In addition, under the Custodial Agreement the Depositor will be required to cure certain defects with respect to the Mortgage Loan Documents for the related Mortgage Loans***

after the delivery thereof by the Depositor to the Custodian as more particularly set forth therein.”

- *“The Depositor shall deliver or cause the related Originator to deliver to the Servicer copies of all trailing documents required to be included in the Mortgage File at the same time the originals or certified copies thereof are delivered to the Trustee or Custodian, such documents including the mortgagee policy of title insurance and any Mortgage Loan Documents upon return from the recording office. The Servicer shall not be responsible for any custodian fees or other costs incurred in obtaining such documents and the Depositor shall cause the Servicer to be reimbursed for any such costs the Servicer may incur in connection with performing its obligations under this Agreement.”*

SECTION 2.02. Acceptance of REMIC I by Trustee.

<http://www.secdinfo.com/dqTm6.u278.c.htm#1stPage>

- *“The Trustee acknowledges receipt, subject to the provisions of Section 2.01 hereof and Section 2 of the Custodial Agreement, of the Mortgage Loan Documents and all other assets included in the definition of “REMIC I” under clauses (i), (iii), (iv) and (v) (to the extent of amounts deposited into the Distribution Account) and declares that it holds (or the Custodian on its behalf holds) and will hold such documents and the other documents delivered to it constituting a Mortgage Loan Document, and that it holds (or the Custodian on its behalf holds) or will hold all such assets and such other assets included in the definition of “REMIC I” in trust for the exclusive use and benefit of all present and future Certificate-holders.”*

SECTION 2.07 Conveyance of the REMIC I.

<http://www.secdinfo.com/dqTm6.u278.c.htm#1stPage>

- *“The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee, without recourse all the right, title and interest of the Depositor in and to the REMIC I Regular Interests for the benefit of the Class R-II Interest and REMIC II (as holder of the REMIC I Regular Interests). The Trustee acknowledges receipt of the REMIC I Regular Interests and declares that it holds and will hold the same in trust for the exclusive use and benefit of all present and future Holders of the Class R-II Interest and REMIC II (as holder of the REMIC I Regular Interests). The rights of the Holder of the Class R-II Interest and REMIC II (as holder of the REMIC I Regular Interests) to receive distributions from the proceeds of REMIC II in respect of the Class R-II Interest and Regular Certificate, respectively, and all ownership interests evidenced or constituted by the Class R-II Interest and the Regular Certificates, shall be as set forth in this Agreement. The Class R-II Interest and the Regular Certificates shall constitute the entire beneficial ownership interest in REMIC II.”*

19. The Pooling and Servicing Agreement and the Underwriting Agreement for this trust are crystal clear. No mortgage loan in this trust could be conveyed by any entity other than the Depositor, Citigroup Mortgage Loan Trust, Inc. and no later than May 31, 2008, since the PSA specifically requires all parties to strictly adhere to Internal Revenue Code (the “IRC”), Section 860 provisions.

20. The depositor was under agreement to purchase all mortgage loans for this Trust from the sponsor to originator CitiMortgage, Inc. So, if the trust, or a servicer, or a trustee, acting on behalf of the trust, is found to have violated the very strict REMIC guidelines (put in place in order to qualify as a REMIC), the “pass through” tax status of the REMIC can be revoked.
21. According to Section 860 of the Internal Revenue Code, in order for an investment entity to qualify as REMIC, all steps in the “contribution” and transfer process (of the notes) must be true and complete sales between the parties and must be accomplished within the three month time limit from the date of “startup” of the entity. Therefore, every transfer of the note(s) must be a true purchase and sale, and, consequently the note must be endorsed from one entity to another. Any mortgage note/asset identified for inclusion in an entity seeking REMIC status must be sold into the entity within the three-month time period calculated from the official startup day of the REMIC (i.e., closing date of the trust). Any procedural defect relating to endorsement, notarization, assignment of rights, and recordation renders foreclosure action on the loan asset on behalf of the REMIC vulnerable to stay of foreclosure, and possible dismissal through absence of proper standing to proceed.
22. The Promissory Note has been converted into a stock as a permanent fixture. It is now a stock and governed as a stock under the rules and regulation of the SEC; hence, the requirements for filings of the registration statements, pooling and servicing agreement forms. Once securitized, this would indicate the deed of trust was transferred concurrently with the purported legal transfer of the note, such that the deed of trust have irrevocably separated, thus making a nullity out of the purported security in a property, as claimed (Federal Rules of evidence rules 901 & 902).

Standing in a Mortgage Default

23. With securitization the mortgage is converted into something different from what was originally represented to the mortgagor/homeowner. For one thing, since the party (or parties) taking action to foreclose does not actually hold any legal or equitable interest in any securitized mortgage, they have not realized any loss or damages resulting from the purported default. Therefore, it also follows that the foreclosing party avoids the liability, which could result if a class of certificate holders claimed wrongful injury resulting from a modification made to achieve an alternate dispute resolution.
24. Securitization also makes the deed and note unalienable. The reason is simple; once certificates have been issued, the note cannot be transferred, sold or conveyed; at least not in the sense that such a transfer, sale, or conveyance should be considered lawful, legal, and legitimate. This is because the securitized note forever hangs the nature of that instrument in an irreversible manner.

25. The certificate holders are, in no sense, holders of any specific individual note and have no legal interest in any specific individual note. The certificate holders do not each hold undivided fractional interests in a note, which added together, total 100%. The certificate holders also are not the assignees of one or more specific installment payments made pursuant to the note.
26. For the certificate holder, there is no note. A certificate holder does not look to a specific note for their investment's income payment. Instead, the certificate holder holds a security to a bond with specific defined payments. The issuer of trust certificates is selling segments of cash flow.
27. The procedure for selling of the loans was to create a situation whereby certain REMIC tax laws were observed, and whereby the Issuing Entity and the Lender would be protected from issues regarding either entity going into bankruptcy. For the Mortgage Backed Securities(MBS) Trust to acquire this protection from lender and Issuer bankruptcy, two "True Sales" of the loan had to occur, when loans were transferred to different entities, a "True Sale" of the loan would be a circumstance whereby one party owned the note, and then sold it to another party. An offer would be made, and then accepted, with compensation given to the "seller" in return for the note. The notes would be transferred, and the security instruments (mortgages or deeds of trust) "assigned to the buyers" of the note, with an Assignment made every step of the way, and each note endorsed to the next party.

Framework for Analysis

In rendering my opinion(s), I am relying on the following facts and factual legal assumptions:

28. The documents which were filed in this case that were located by me on EDGAR, the Electronic Data Gathering, Analysis, and Retrieval system, which perform automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the U.S. Securities and Exchange Commission (SEC).
29. The operative and governing document of this Trust is the Pooling and Servicing Agreement dated May 1, 2008, and which was filed with the SEC. This document was located by me and holds the authority over the subject loan.
30. According to the Prospectus Supplement, filed with the Securities and Exchange Commission (the "SEC), the issuing Entity (ie. the "Trust") is a New York common law trust established pursuant to the Pooling and Servicing Agreement dated May 1, 2008.
31. US Bank, NA is the Trustee. The Trust and the Trustee are governed by the Laws of the State of New York as it relates to the governance of the trust by the trustee and the activities of the trust.

32. New York Trust law says every sale, conveyance or other act of the trustee in contravention of the trust is void. “NY CLS EPTL § 7-2.4, Application of Muratori, 183 Misc. 967, 970 (N.Y. Sup. Ct. 1944) See also *Dye v Lewis* 67 Misc 2d 426, 324 NYS2d 172 (1971), mod on other grounds 39 App Div 2d 828, 332 NYS2d 968 (1972, 4th Dept). (The authority of an agent of trust to whom a mortgage had been delivered under a trust indenture was subject to any limitations imposed by the trust instrument, and every act in contravention of the trust was void).
33. In several different sections of the PSA, the trust elected to be treated as a Real Estate Mortgage Investment Conduit (a “REMIC”) pursuant to the provisions and regulations of a REMIC found at 26 U.S.C. §§ 860A-F; Internal Revenue Code (the “Code”), Section 860. Election by the trust to be treated as one or more REMIC’s imposes strict and absolute requirements regarding transfers of assets (ie. mortgage loans or notes) to the trust and IRC Section 860 outlines and governs these strict requirements.
34. The subject mortgage loan is a closed-end, which means it is a federally-related mortgage loan transaction and is therefore covered under and regulated by;
- *The Truth in Lending Act, 15 U.S.C. §§ 1601 et seq. (“TILA”), and its implementing regulations at 12 C.F.R. § 226 et seq. (“Reg. Z”);*
 - *The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 et. seq. (ECOA), and its implementing regulations at 12 C.F.R. § 202 et seq. (“Reg. B”);*
 - *The Real Estate Settlement Procedures Act, 12 U.S.C §§ 2601 et. seq. (“RESPA”) and its implementing regulations at 24 C.F.R. § 3500 et seq.(“Reg. X”).*

Statement of Case and Facts

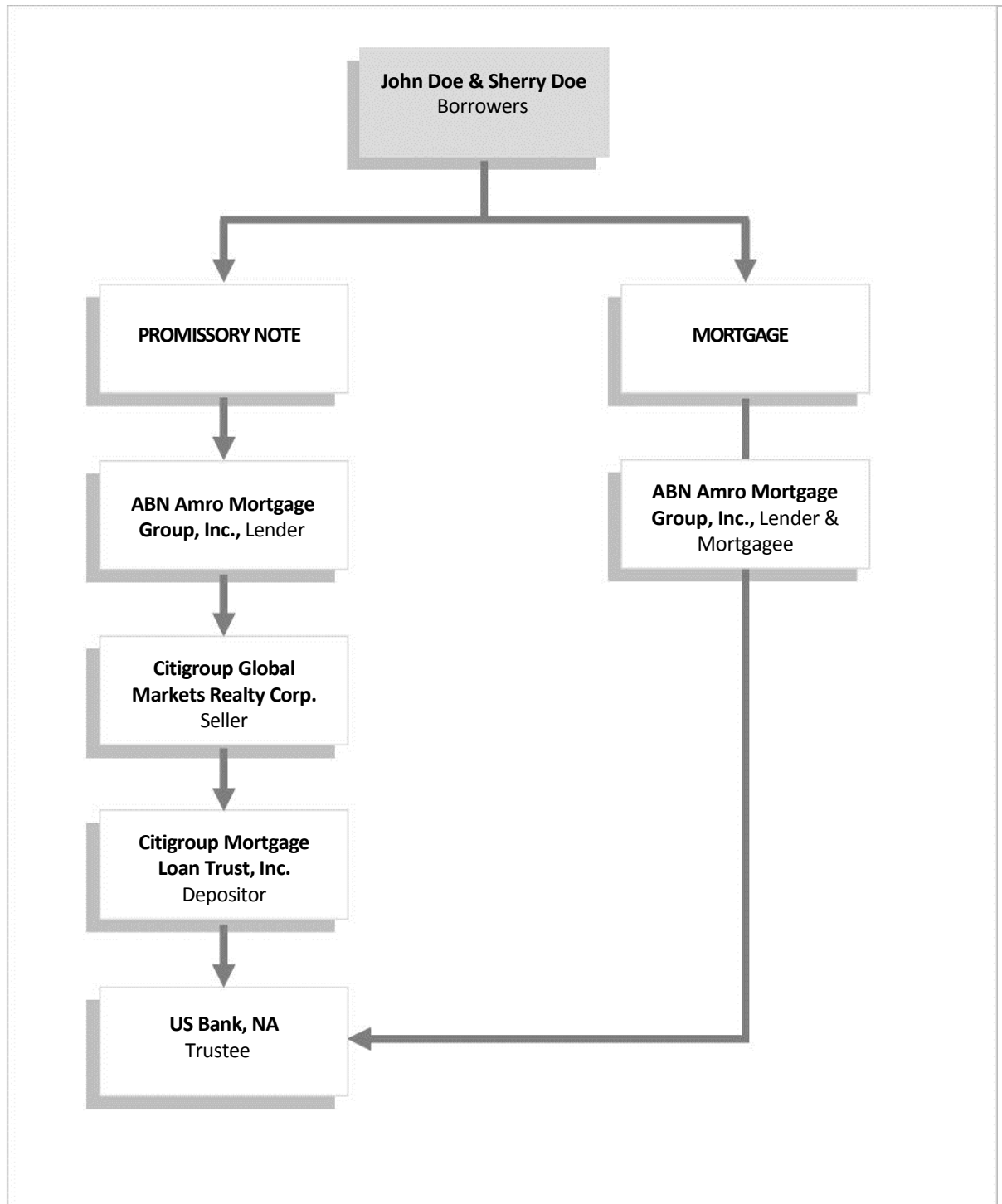
35. On March 30, 2008, John Doe & Sherry Doe consummated and ratified the subject mortgage loan by executing a Promissory Note and Mortgage in favor of the Lender, ABN Amro Mortgage Group, Inc. The Mortgage securing the Note was executed on the same date. The Originating lender was the Mortgagee.
36. According to the PSA, The Startup Day for this Trust was elected to be the same date as the Closing Date which was on or about: May 31, 2008.
37. According to Internal Revenue Code, Section 860G, all of a REMIC’s loans must be acquired on the startup day of the REMIC or within three months thereafter. Any contribution of an asset (other than cash) that is contributed to the REMIC after the Startup Day (or within the allowable 90 day window) is deemed an “unqualified or prohibited contribution” and can cause the entire REMIC Trust to lose its tax-free status which would be catastrophic to the Trust (and all the individual beneficiaries, shareholders or Certificate holders) because the Trust cash flow would be subjected to double-taxation or at a minimum, the prohibited transaction is taxed at 100% to the Trust.

38. For this reason, all parties serving as agents for the trust must strictly adhere to the guidelines and conveyance clauses specifically delineated in the PSA lest the trust lose its special REMIC tax status which would result in double taxation on all trust income, or, at the very least, subject the Trust to a 100% tax on any and all prohibited transactions.
 39. The PSA governing certain activities of the trustee, specifically the trustee, shall not consent to partial releases of mortgages, alterations, removal, demolition or division of properties subject to mortgages, modification or second mortgage subordination agreements with respect to any mortgage loan that would: affect adversely the status of any Trust REMIC as a REMIC, cause any Trust REMIC to be subject to a tax on “prohibited transactions” or “contributions” pursuant to the REMIC Provisions, or both affect an exchange or reissuance of such mortgage loan under the Code (or Treasury regulations promulgated thereunder) and cause any Trust REMIC constituting part of the Trust Fund to fail to qualify as a REMIC under the Code or the imposition of any tax on “prohibited transactions” or “contributions” after the Startup Day under the REMIC Provisions.”
 40. The PSA specifically and absolutely dictates that all Mortgage Loans selected for inclusion into this specific Trust MUST be conveyed to the Trustee without recourse by the DEPOSITOR through a true purchase and sale conveyance.
 41. The Depositor in the securitization chain must purchase the mortgage loans from the Seller, which means in the instant case; Citigroup Mortgage Loan Trust, Inc., the (Depositor) would have purchased the subject mortgage loan from Citigroup Global Markets Realty Corp. Seller and then Depositor would have conveyed all rights, title and interest in the subject mortgage loan to US Bank, N.A., (Trustee) for the benefit of the Certificateholders of the Trust.
 42. Accordingly, the Promissory Note should have been endorsed by ABN Amro Mortgage Group, Inc., the originating lender and the seller, to Citigroup Mortgage Loan Trust, Inc., the depositor. The depositor should have endorsed the note to US Bank, N.A., the trustee.
 43. Pursuant to the PSA;” <http://www.secinfo.com/dqTm6.u278.c.htm#1stPage>
- ***The “Purchaser will transfer, assign, set over and otherwise convey to the Trustee without recourse for the benefit of the Certificate-holders, all the right, title and interest of the Purchaser in and to the Mortgage Loans, together with its rights under this Agreement”.***

- ***“The Seller does hereby sell, transfer, assign, set over and convey to the Purchaser, without recourse, but subject to the terms of this Agreement, all of its right, title and interest in, to and under the Mortgage Loans. The contents of each Mortgage File related to a Mortgage Loan not delivered to the Purchaser or to any assignee, transferee or designee of the Purchaser on or prior to the Closing Date are and shall be held in trust by the Seller for the benefit of the Purchaser or any assignee, transferee or designee of the Purchaser and promptly transferred to the Trustee Upon the sale of the Mortgage Loans, the ownership of each related Mortgage Note, the related Mortgage and the other contents of the related Mortgage File shall be vested in the Purchaser and the ownership of all records and documents with respect to the related Mortgage Loan prepared by or that come into the possession of the Seller on or after the Closing Date shall immediately vest in the Purchaser and shall be delivered promptly to the Purchaser or as otherwise directed by the Purchaser;”***
- ***“the Seller will, on or prior to the Closing Date deliver or cause to be delivered to the Purchaser, the Trustee or their designee each of the following documents for each Mortgage Loan, the original Mortgage Note, endorsed in blank or in the following form. “Pay to the order US Bank, NA, as Trustee, under the applicable agreement, without recourse,” with all prior and intervening endorsements, showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee or (in the case of not more than 1.00% of the Mortgage Loans, by aggregate principal balance as of the Cut-off Date) a copy of such original Mortgage Note with an accompanying Lost Note Affidavit executed by the Seller;”***
- ***“the original Mortgage with evidence of recording thereon, and a copy, certified by the appropriate recording office, of the recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon an original Assignment in blank; the original recorded Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee or in blank;”***

44. Simply put, the PSA allows for absolutely no other form, method or chain of conveyance of mortgage loans to the Trust.
45. It is important to note again that New York Trust law says every sale, conveyance or other act of the trustee in contravention of the trust is void. “NY CLS EPTL § 7- 2.4, Application of Muratori, 183 Misc. 967, 970 (N.Y. Sup. Ct. 1944) See also Dye v Lewis 67 Misc 2d 426, 324 NYS2d 172 (1971), mod on other grounds 39 App Div 2d 828, 332 NYS2d 968 (1972, 4th Dept). (The authority of a trustee to whom a mortgage had been delivered under a trust indenture was subject to any limitations imposed by the trust instrument, and every act in contravention of the trust was void.)
46. As stated, Bank of America N.A. relies on a “owner holder” status as a servicer. When the servicer obtains the note at the originating phase of the securitization process, it unlawfully remains in possession when failed to convey the note pursuant to trust law. The actual Holder of the note should be in possession of the custodian for the trust. However, it is important to understand that the trust (investors) remains the owner of the note.

A Diagram on this Securitization



The Examiner's Findings of Securitization Audit

The foregoing transactions are more fully described as follows:

47. The original Mortgage was executed on March 30, 2008. The lender and mortgagee is ABN Amro Mortgage Group, Inc.
48. The Trust agreement is filed under oath with the Securities and Exchange Commission. The acquisition of the assets of the subject trust and the PSA are governed under the law. In view of the foregoing, all assignments executed filed after the Trust's Closing Date would be a void act for the reason that it violated the express terms of the trust instrument.
49. The loan that is the subject of this securitization appears to have been securitized into Citigroup Mortgage Loan Trust 2008-AR7. The trust existed and operated according to its purpose as shown by the certificates it issued bearing their respective CUSIP Numbers, the Statement of Compliance by its servicer, and the Notice of Suspension of Duty to File Reports that was executed by its trustee.
50. The Trust is also described in a "Prospectus Supplement," also available on the SEC website. The Trust by its terms set a "Closing Date" on or about May 31, 2008. The promissory note in this case became trust property in compliance with the requirement set forth in the PSA.
51. The obligation and the security are commonly drafted as separate documents – typically a promissory note and a deed of trust. If the creditor transfers the note but not the deed of trust, the transferee receives a secured note; the security follows the note, legally if not physically.
52. It is important to understand the difference between the (Deed of Trust), the Note, and the Mortgage. Depending on whether you live in a non-judicial or judicial state, the Deed of Trust is used in a non-judicial and a Mortgage is used in a judicial state. So in this case, since Indiana is a judicial state, the documents that would be pertinent would be the Note and the Mortgage. In this instant case, the securitization would have resulted in the separation of the Promissory Note and the Mortgage. As a result, there is no basis to foreclose on the property that was mortgaged to secure the note on this loan.
53. Indeed, in the event that a mortgage loan somehow separates interests of the Note and the Mortgage, with the deed of trust lying with some independent entity, the mortgage shall become unenforceable. The practical effect of splitting the Mortgage from the promissory note is to make it impossible for the entity claiming to be holder of the note to foreclose, unless the holder of the Mortgage is the agent of the holder of the note. Without the agency relationship, the person holding only the note lacks the power to foreclose in the event of default. The same rule applies for the entity

holding only the Mortgage will never experience default because only the owner of the note is entitled to payment of the underlying obligation. The mortgage loan becomes ineffectual when the note holder did not also hold the Mortgage.

54. Generally, if the Mortgage and the note are not together with the same entity, there can be no legal enforcement of the note. The Mortgage enforces the note and provides the capability for the lender to foreclose on the property. Thus, if the Mortgage and the Note are separated, foreclosure legally cannot occur.
55. The note cannot be enforced by the Mortgage if each contains a different mortgagee/beneficiary; and, since the Mortgage is not itself a legally enforceable instrument, there can be no valid foreclosure on the homeowner's property.
56. No entity can be a Creditor if they do not hold/own the asset in question (i.e. the Note and/or the Property); a Mortgage Pass-Through Trust (i.e. REMIC as defined in Title 26, Subtitle A, Chapter 1, Subchapter M, Part II §850-862) cannot hold assets, for if they do, their tax-exempt status is violated and the trust itself is void ab initio. Therefore, either the trust has either voided its intended Tax Free Status, or the asset is not in fact owned by it.
57. Further said, once the note was converted into a stock, or stock equivalent, it is no longer a note. If both the note and the stock, or stock equivalent, exist at the same time, that is known as double-dipping. Double-dipping is a form of securities fraud.
58. The Promissory Note has been converted into a stock as a permanent fixture. It is now a stock and governed as a stock under the rules and regulations of the SEC; hence, the requirements for the filings of the registration statements, pooling and service agreements, form Citigroup Mortgage Loan Trust 2008-AR7, etc. There is no evidence on record to indicate that the Mortgage was ever transferred concurrently with the purported legal transfer of the note, such that the Mortgage and note has been irrevocably separated, thus making a nullity out of the purported security in a property, as claimed (Federal Rules of Evidence Rules 901 & 902)
59. Once a loan has been securitized, which the aforementioned loan has been, it forever loses its security component (i.e., the deed of trust), and the right to foreclose through the deed of trust/mortgage is forever lost.
60. Careful review and examination reveals that this was a securitized loan. The Assignment of the Note pretended to be an A to D transaction when in fact Bank of America N.A., did not disclosed that the A to B, B to C, and C to D facts of true sales. They also have not disclosed that the legal SEC filings; the true original loan Note and Mortgage had to be provided by the Document Custodian certified to have been in possession of them by on or about May 31, 2008. Because it was not, the claim of ownership by the Trust cannot be substantiated and the loan servicing rights not established at law by agreement. Therefore, there is no ability to foreclose on the property until the Note and the Mortgage are re-united.
61. Finally, I have discovered that the most common issues result when the parties involved in the creation of a mortgage securitization failed to take the steps

necessary to convey the loans to the legal entity, a trust, which was set up to hold them. In that, there is substantial evidence in this case that the note was not conveyed to the trust as stipulated.

62. As I have discussed, the pooling and servicing agreement, which governs who does what when in a mortgage securitization, requires the note (the borrower IOU) to be endorsed (just like a check, signed by one party over to the next), showing the full chain of title.
63. The minimum conveyance chain in recent vintage transactions is A (originator) => B (sponsor) => C (depositor) => D (trust). The proper conveyance of the note is crucial, since the mortgage, which is the lien, is a mere accessory to the note and can be enforced only by the proper note holder (the legalese is “real party of interest”). The investors in the mortgage securitization relied upon certifications by the trustee for the trust at and post-closing that the trust did indeed have the assets that the investors were told it possessed. It isn’t simply that the notes had to go through a particular chain of parties to get to the trust. All these steps had to be accomplished by a particular date, which was generally no later than ninety days after the trust closed. And all the assets conveyed to the trust had to be “performing”, meaning the borrower was current on his payments.
64. The findings of this report are being provided with the understanding that I am not providing legal advice, nor do I have any relationship, contractual or otherwise, with anyone other than the recipients that provided the documentation to be audited. I supply this report as written testimony and am available if called for testimony.

Notes on MERS

1. According to the Deed of Trust, the lender on this loan is ABN Mortgage and the beneficiary is Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for the lender. The Promissory Note also states that the lender is Realty Mortgage, LLC but does not name Mortgage Electronic Registration Systems, Inc. as a party in any capacity whatsoever.
2. There are provisions in the Mortgage that states that (a) "MERS is nominee for the lender," and (b) "MERS is the beneficiary under this Security Instrument." The first statement means that MERS is only an agent for the lender while the second means that MERS is a principal in this instrument.

These statements contradict a law that presupposes that an agent and its principal must be two different persons or entities (Restatement of the Law – Agency, Section 1.01, Agency, defined).

3. A beneficiary is defined as "any person or entity who is to receive assets or profits from an estate, a trust, an insurance policy, or any instrument in which there is distribution."

An inquiry on the website of MERS discloses that the loan is serviced by US Bank, NA. It is the servicer who receives payments on the loan on behalf of the lender. From this viewpoint, it is clear that US Bank, NA is acting as the servicer for the lender and not for MERS.

Notes on MERS Continued

Screenshots of the results of our MERS inquiry are provided herein.

1. MERS Servicer Information



www.mers-servicerid.org

Process Loans, Not Paperwork™

1 record matched your search:

MIN: 1000212-6800342210-8 Note Date: 08/18/2010

MIN Status: Inactive

Servicer: U.S. Bank N.A.
Owensboro, KY

Phone: (800) 365-5001

If you are a borrower on this loan, you can [click here](#) to enter additional information and display the Investor name.

Allonge Definition Page

Allonge [ə-ˈlɒŋj, a-lɔːŋ] n

[French, literally, something that lengthens, from Old French *alonge*, from *alongier* to make long, ultimately from Latin *longus* long]

: a paper attached to an instrument to provide space for additional endorsements

: rider *NOTE: Under Uniform Commercial Code section 3-202(2), an allonge must be so firmly affixed to the instrument that it becomes part of it in order for the endorsements to be valid. Endorsements on an allonge are often considered invalid if there is still room on the instrument for endorsements.*

New

Jersey New

York

"An "allonge" is defined as "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further endorsements when the original paper is filled with endorsements." Black's Law Dictionary (8th ed. 2004)."

Cases Involving Allonge

SCR Joint Venture, L.P. v. Warshawsky, 06 CV 3532 (ADS)(MLO), UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, 2008 U.S. Dist. LEXIS 98643, June 6, 2008, Decided, June 6, 2008, Filed, Reconsideration denied by SCR Joint Venture, L.P. v. Warshawsky, 2008 U.S. Dist. LEXIS 98646 (E.D.N.Y., Aug. 17, 2008) Affirmed by, in part, Vacated by, in part, Remanded by SCR Joint Venture L.P. v. Warshawsky, 559 F.3d 133, 2009 U.S. App. LEXIS 5159 (2d Cir. N.Y., 2009)

Allonge defined and other cases

"The indorsement may be on the instrument itself, or it may be on "a paper affixed to the instrument." Id. Such a paper is called an "allonge", defined as "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements." See Black's Law Dictionary at 88 (9th Ed. 2009)."

Kemp v. Countrywide Home Loans, Inc. (In re Kemp), Case No. 08-18700-JHW, Adversary No. 08- 2448, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY, 2010

Bankr. LEXIS 4085, November 16, 2010, Decided, November 16, 2010,

Cases Dismissed for Lack of Standing In NJ & NY

U.S. Bank v. Dellarmo (Standing-NY Sup.Ct.)(4/12)

"In a mortgage foreclosure action, a plaintiff has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced" (*Bank of N.Y. v Silverberg*, 86 AD3d 274, 279; see *Countrywide Home Loans, Inc. v Gress*, 68 AD3d 709). Where a defendant raises the issue of standing, the plaintiff must prove its standing to be entitled to relief (see *CitiMortgage, Inc. v Rosenthal*, 88 AD3d 759; *U.S. Bank, N.A. v Collymore*, 68 AD3d 752, 753). Moreover, while assignment of a promissory note also effectuates assignment of the mortgage (see *Bank of N.Y. Silverberg*, 86 AD3d at 280; *U.S. Bank, N.A. v Collymore*, 68 AD3d at 753-754; *Mortgage Elec. Registration Sys., Inc. v Coakley*,), the converse is not true: since a mortgage is merely security for a debt, it cannot exist independently of the debt, and thus, a transfer or assignment of only the mortgage without the debt is a nullity and no interest is acquired by it (see *Deutsche Bank Natl. Trust Co. v Barnett*, 88 AD3d 636; *Bank of N.Y. v Silverberg*, 86 AD3d at 280). The failure to record an assignment prior to the commencement of the action is not necessarily fatal since "an assignment of a note and mortgage need not be in writing and can be effectuated by physical delivery" (*Bank of N.Y. v Silverberg*, 86 AD3d at 280; see *Deutsche Bank Natl. Trust Co. v Barnett*, 88 AD3d 636; *U.S. Bank, N.A. v Collymore*, 68 AD3d at 754; *LaSalle Bank Natl. Assn. v Ahearn*, 59 AD3d 911, 912).

Wells Fargo v McNee(11/11) As the First Department held in *Katz v. East-Ville Realty Co.*, (249 AD2d 243, 243), a "[p]laintiff's attempt to foreclose upon a mortgage in which he had no legal or equitable interest [is] without foundation in law or fact" (see *Kluge v. Fugazy*, 145 AD2d 537). Hence, Wells Fargo's attempt to foreclose upon the subject mortgage must be denied, the complaint dismissed, and McNee's cross-motion(s) to dismiss for lack of standing pursuant to CPLR 3211(a)(3) granted.

Downey v. Trujillo (8/11)(Schack) **Dismissed with prejudice.** Schack was angered after lawyer Margaret Carucci said in a sworn affidavit that a Downey Savings & Loan officer on Dec. 24, 2010 claimed to have personally reviewed and could vouch for the accuracy of the paperwork underlying Trujillo's foreclosure -- although Downey had long ceased to exist.

Deutsche Bank v. Mitchell(8/11) **Summary judgment reversed - sale vacated.** The assignment was not perfected until after the filing of the complaint, and plaintiff presented no evidence of having possessed the underlying note prior to filing the complaint. If plaintiff did not have the note when it filed the original complaint, it lacked standing to do so, and it could not obtain standing by filing an amended complaint.

We vacate the sheriff's sale, the final judgment and the order granting summary judgment and remand to the trial court.

Deutsche Bank v. Francis (Dismissed With Prejudice-Schack)(3/11): I discovered that there is no record of plaintiff DEUTSCHE BANK ever owning the subject mortgage and note.

Therefore, with plaintiff DEUTSCHE BANK lacking standing, the instant action is dismissed with prejudice and the notice of pendency cancelled.

A want of "standing to sue," in other words, is just another way of saying that this particular plaintiff is not involved in a genuine controversy, and a simple syllogism takes us from there to a "jurisdictional" dismissal: (1) the courts have jurisdiction only over controversies; (2) a

plaintiff found to lack "standing" is not involved in a controversy; and (3) the courts therefore have no jurisdiction of the case when such a plaintiff purports to bring it.

Johnston v. HSBC** ((complaint), (extrinsic fraud, real party) (3/11)

Extrinsic Fraud: Because the fraud is extrinsic in nature, HSBC is precluded from raising the doctrine of-- res judicata --as a defense against this Courts obligation to verify first and foremost that the claimant has federal jurisdiction "real party in interest" status.

Real Party in interest: HSBC MORTGAGE CORP (USA) (hereinafter, "HSBC") does not qualify as a "real party of interest" pursuant to Rule 17 of the Federal Rules of Civil Procedure, which provides: "An action must be prosecuted in the name of the real party in interest." The purpose of this rule is to require that an action be brought "in the name of the party who possesses the substantive right being asserted under the applicable law...." 6A WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 1541 (1990) ("WRIGHT").

ALE v. U.S. Bank (Expunge Mortgage and Assignment*)(1/11)

American Brokers Conduit v. ZAMALLOA - Judge SCHACK 11Sep2008

EMC Mortgage v. Wink - (1/07) MERS, which is not itself the owner and holder of the note and mortgage, does not have the authority to assign the ownership of the note and mortgage to plaintiff. Judgment of foreclosure and sale is denied

Countrywide Home Loans, Inc. v Taylor - Mayer, J., Supreme Court, Suffolk County / Sept. 2008

American Brokers Conduit v. ZAMALLOA - Judge SCHACK 28Jan2008

Aurora Loan Services v. MACPHERSON - Judge FARNETI 11Mar2008

Bank of New York v. SINGH - Judge KURTZ 14Dec2008

Bank of New York v. TORRES - Judge COSTELLO 11Mar2008

Bank of New York v. OROSCO - Judge SCHACK 19Nov2008

CitiMortgage Inc. v. BROWN - Judge FARNETI 13Mar2008

Countrywide Mortgage v. BERLIUK - Judge COSTELLO 13Mar2008

Deutsche Bank v. Barnes-Judgment Entry

Deutsche Bank v. Barnes-Withdrawal of Objections and Motion to

Dismiss **Deutsche Bank v. ALEMANY** Judge COSTELLO 07Jan2008

Deutsche Bank v. Benjamin CRUZ - Judge KURTZ 21May2008

Deutsche Bank v. Yobanna CRUZ - Judge KURTZ 21May2008

Deutsche Bank v. CABAROY - Judge COSTELLO 02Apr2008

he Bank v. CASTELLANOS / 2008NYSlipOp50978U/- Judge SCHACK 11May2008

HE Bank v. CASTELLANOS/ 2008NYSlipOp50033U/ - Judge SCHACK

14Jan2008 **HSBC v. Valentin** - Judge SCHACK calls them liars and dismisses

WITH prejudice ** **Deutsche Bank v. CLOUDEN** / 2008NYSlipOp51767U/

Judge SCHACK 18Sep2008 **Deutsche Bank v. EZAGUI** - Judge SCHACK

21Dec2008 **Deutsche Bank v. GRANT** - Judge SCHACK 25Apr2008 **Deutsche**

Bank v. HARRIS - Judge SCHACK 05Feb2008

Deutsche Bank v. LaCrosse,Cede,DTC Complaint

Deutsche Bank v. NICHOLLS - Judge KURTZ 21May2008

Deutsche Bank v. RYAN - Judge KURTZ 29Jan2008

Deutsche Bank v. SAMPSON - Judge KURTZ 16Jan2008

Deutsche v. Marche - Order to Show Cause to VACATE Judgment of Foreclosure - 11June2009

GMAC Mortgage LLC v. MATTHEWS - Judge KURTZ 10Jan2008

GMAC Mortgage LLC v. SERAFINE - Judge COSTELLO 08Jan2008

HSBC Bank USA NA v. JACK - Judge COSTELLO 02Apr2008

IndyMac Bank FSB v. RODNEY-ROSS - Judge KURTZ 15Jan2008

LaSalle Bank NA v. CHARLEUS - Judge KURTZ 03Jan2008

LaSalle Bank NA v. SMALLS - Judge KURTZ 03Jan2008 PHH

Mortgage Corp v. BARBER - Judge KURTZ 15Jan2008 Property

Asset Management v. HUAYTA 05Dec2008

Rivera, In Re

Services LLC v. SATTAR / 2008NYSlipOp51895U/ - Judge SCHACK

09Oct2008 U.S. Bank NA v. AUGUSTE - Judge KURTZ 27Nov2008

U.S. Bank v. Emmanuel - (Judge Schack May 2010) Dismissed with prejudice. "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity".

U.S. Bank NA v. GRANT - Judge KURTZ 14Dec2008

U.S. Bank NA v. ROUNDTREE - Judge BURKE 11Oct2008

U.S. Bank NA v. VILLARUEL - Judge KURTZ 01Feb2008

Wells Fargo Bank NA v. HAMPTON - Judge KURTZ 03Jan2008

Wells Fargo, Litton Loan v. Farmer WITH PREJUDICE Judge Schack June2008

Plaintiff has renewed its application for an order of reference for the subject premises, but the papers submitted fail to cure the defects enumerated in my prior decision and order. The purported plaintiff, WELLS FARGO, does not own the instant mortgage loan. Therefore, the instant matter is dismissed with prejudice.

- **Two invalid assignments** of the instant mortgage and note took place, with ARGENT assigning the note and mortgage to AMERIQUEST, and then AMERIQUEST assigning the note and mortgage to plaintiff WELLS FARGO. Both of these assignments were not recorded for more than fourteen months, until February 21, 2006, when they were both recorded at that same time.

Wells Fargo v. Reyes WITH PREJUDICE, Fraud on Court & Sanctions Judge Schack June 2008
No defendant answered in this foreclosure action.

WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE AND CUSTODIAN FOR MORGAN STANLEY ABS CAPITAL1 INC., MSAC 2008-HE4, lacks standing and has never been the mortgagee in this foreclosure action, the instant complaint, Index No. 5516/08, is dismissed with prejudice; and it is further ORDERED, that the Notice of Pendency filed with the Kings County Clerk on February 21, 2008, by purported plaintiff, WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE AND CUSTODIAN FOR MORGAN STANLEY ABS CAPITAL1 INC., MSAC 2008-HE4, in an action to foreclose a mortgage for real property located at 379 Lincoln Avenue, Brooklyn New York (Block 4173, Lot 6, County of Kings), is cancelled.

Deutsche Bank v. Peabody Judge Nolan (Regulation Z)

Indymac Bank, FSB v. Boyd - Schack J. January 2009

Indymac Bank, FSB v. Bethley - Schack, J. February 2009 (The tale of many hats)

Indymac Bank, v. Yano-Horoski - Judge Blasts Bank's Foreclosure Conduct and Cancels Mortgage.

LaSalle Bank Natl. Assn. v Ahearn - Appellate Division, Third Department (*Pro Se*)\

NEW JERSEY COURT DISMISSES FORECLOSURE FILED BY DEUTSCHE BANK FOR FAILURE TO PROVIDE DISCOVERY AS TO OWNER AND HOLDER OF NOTE, SECURITIZED TRUST DOCUMENTS, AND OTHER DOCUMENTS DEMANDED BY BORROWERS

HSBC Bank USA v Miller 2009 NY Slip Op 29444 / Decided on October 29, 2009 / Meddaugh, J.

Lasalle Bank v. Smith, MERS (Judge Schack - March 22, 2010)

Wells Fargo Bank, Americas Servicing Company, MERS v Hunte (Judge Schack, Apr. 14, 2010/ Dismissed with prejudice, possible sanctions.) (The court "discovered that WELLS FARGO executed a satisfaction of the instant mortgage more than ten months ago." "The Court is gravely concerned that: it expended scarce resources on an action that should have been discontinued." "the Court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct.")

Chase v. Johnson (Judge Schack May 4, 2010) (**vacated judgment of foreclosure and sale with prejudice as plaintiff lacked standing.**)

OneWest Bank v. Cullen (Judge Zwack - March 3, 2010) (**The Court finds that OneWest has failed to establish it has standing and dismissed the complaint.**)

ARGENT v. Maitland (Aug. 2010) (Judge Schack) Plaintiff's counsel never notified the Court that the mortgage had been satisfied and failed to discontinue the instant action with prejudice. I discovered that the mortgage had been satisfied by personally searching the Automated City Register Information System (ACRIS) website of the Office of the City Register, New York City Department of Finance. AHMSI's President and Chief Executive Officer or its Executive Vice President, Chief Legal Officer and Secretary Jordan D. Dorchuck, Esq., its counsel, Melissa A. Sposato, Esq. and her firm, Jordan S. Katz, P.C., will be given an opportunity to be heard as to why this Court should not sanction them for making a "frivolous motion,"

MERS as Nominee for U.S. Bank v. Munoz - (ORDER TO SHOW CAUSE)

Mortgage Electronic Registration System as Nominee for **US Bank**, and any of its attorneys, agents, successors and assignees, be and are hereby restrained from implementing the closing of title on any third party sale of the premises and restrained from evicting the family from the premises.

LLP v. Sabine (8/2010) "the assignment produced by LPP is insufficient to demonstrate it has standing as (1) **MERS has no ownership rights in the note and thus cannot assign it**; (2) the language of the assignment of the mortgage does not evidence **an** intent to assign the underlying note, (3) the assignment arises out of a purchase agreement with an entity who is not a party to this action, and (4) the provision of mortgage document relied on by LPP does not give MERS the authority to assign the mortgage or the note.

Wells Fargo Bank, N.A. v Hughes (1/10) The terms of the proposed **modification agreement**, particularly but not exclusively the inclusion of an adjustable rate component, are unacceptable to this court. "The above matter is hereby **dismissed without prejudice**; and it is further ordered, that in the event Wells Fargo commences a new action in foreclosure with respect to this borrower and the premises at issue herein, no additional costs or attorney fees will be allowed, absent good cause shown.

BACKFIRE! Emigrant Mtge. Co. Inc. v Corcione: (7/10) "**unconscionable, unreasonable [and] overreaching" mortgage agreement.** For all of the foregoing reasons, it is, therefore ordered, adjudged and decreed that plaintiff's application for summary judgment and appointment of a referee is denied; and it is further ordered, adjudged and decreed that plaintiff, its successors, assigns and others are forever barred, foreclosed and prohibited from demanding, collecting or attempting to collect, directly or indirectly, any and all of the sums in this proceeding delineated as interest, default interest, attorney's fees, legal fees, costs, disbursements, advances or any sums other than the principal balance, that may have accrued from May 1, 2008 up to the date of this order; and it is further ordered, adjudged and decreed that defendants recover judgment against plaintiff Emigrant Mortgage Co. Inc., in the principal sum of \$100,000.00 as damages for what he said was an "**unconscionable, unreasonable [and] overreaching" mortgage agreement.**

Beneficial v. Steele*** (Judge Spinner)(Jan 7/11) An action claiming foreclosure of a mortgage is a suit in equity, Jamaica Savings Bank v. M.S. Investment Co. 274 NY 215 (1937), and the very commencement of the proceeding invokes the equity jurisdiction of the Supreme Court. Thus, in order to obtain equitable relief, the applicant must come before the Court with clean hands, else such relief will be denied. Thus, where a party comes before the Court and is shown to have acted in a manner which is offensive to good conscience, fairness and justice, that party will be completely without recourse in a court of equity, no matter what his legal rights may be, York v. Searles 97 AD 331 92nd Dept. 1904), aff'd 189 NY 573 (1907). Stated a bit differently, in order to obtain equity, one must do equity.

Here, it is irrefutable that Defendant SUSAN STEELE was not a party to the Loan Agreement and certainly did not execute the same. It is equally indubitable that Defendant STEPHEN STEELE did not execute the Loan Agreement that has been presented on this application. Nonetheless, Plaintiff has vigorously prosecuted this action, demanding foreclosure of the mortgage as well as money damages against both named Defendants. Under these circumstances, the Court is compelled to conduct a hearing to determine whether or not Plaintiff has proceeded in good faith and what sanction, if any should be imposed should the Court find a lack of good faith. (Id.)

Definitions

Beneficiary:

A beneficiary (also, in trust law, *cestui que use*) in the broadest sense is a natural person or other legal entity who receives money or other benefits from a benefactor. The beneficiaries of a trust are the persons with equitable ownership of the trust assets, although legal title is held by the trustee. The term can also be described as an "*inheritance*" used in the context for the party (heir or heiress) receiving the property related thereto. Beneficiaries in other contexts are known by other names: for example, the beneficiaries of a will are called *devisees* or *legatees* according to local custom.

Issuing Entity:

The issuing entity provides the securities for the investors which purchase the securities from the issuing entity.

Investor:

An **investor** is a party that makes an investment into one or more categories of assets --- equity, debt securities, real estate, currency, commodity, derivatives such as put and call options, etc. --- with the objective of making a profit.

Debtor:

Person or entity who is or has borrowed money from the lender or bank.

Loan Servicer:

A loan servicer is a public or private entity that collects, monitors and reports loan payments, handles property tax, insurance escrows and late payments, forecloses defaulted loans, and remits payments.

Custodian/Servicer:

Involved in the act of collecting the cash flows as well as disturbing them. Custodian also acts as a middle entity between the owners of the securities.

A **Custodian bank**, or simply **custodian**, is a specialized financial institution responsible for safeguarding a firm's or individual's financial assets and is not likely to engage in "traditional" commercial or consumer/retail banking such as mortgage or personal lending, branch banking, personal accounts, ATMs and so forth.

Lender:

The lender is the original entity whom originates the loan to the borrower or also known as the debtor.

A private, public or institutional entity which makes funds available to others to borrow.

Trustee

The trustee is an entity which manages the payments to the holders of the certificates also known as pass through certificates. The trustee basically works for the investors in addition to the trust itself, as a representative, representing them.

Trustee (or the holding of a **Trusteeship**) is a legal term which, in its broadest sense, can refer to any person who holds property, authority, or a position of trust or responsibility for the benefit of another.

Underwriter:

Is the firm which is on wall street who structures the deal. Typically it is a wall street investment firm. They provide the funds and capital to acquire the securities deal. The wall street investment firm who is involved in this transaction layers the deal together in a structured form.

Underwriting refers to the process that a large financial service provider (bank, insurer, investment house) uses to assess the eligibility of a customer to receive their products (equity capital, insurance, mortgage, or credit).

Sponsor:

Is the entity who purchases the loans direct from originators then packages them up into pools and moves forward with the selling of them to depositors.

The Underwriter:

The underwriter creates the securities and arranges to place the various tranches of securities (different classes of certificates) with investors. The underwriter then transfers the mortgage portfolio and securities to the issuer.