LEGAL SERVICES OF NEW JERSEY

REPORT AND RECOMMENDATIONS TO THE NEW JERSEY SUPREME COURT

CONCERNING FALSE STATEMENTS

AND

SWEARING IN FORECLOSURE PROCEEDINGS

NOVEMBER 4TH, 2010

OVERVIEW

Most (reported to be at least 95%) of New Jersey foreclosure actions involve unrepresented or defaulting defendants. A great volume of national information, corroborated by Legal Services' experience and anecdotal New Jersey accounts, suggests a pervasive, industry-wide pattern of false statements and certifications at various stages of foreclosure proceedings. The lack of representation for defendant homeowners precludes appropriate and necessary adversarial review and challenge to such practices, in twin creating a greater burden upon both the forum court and the judicial system generally to consider more aggressive document and evidence review and other actions to maintain the integrity of the judicial foreclosure procedure and the justice and propriety of the eventual outcome.

This submission has three parts:

(1) A description of the problematic certification and evidentiary practices.

(2) The national and New Jersey evidence of the prevalence of false certification practices.

(3) Recommendations for Supreme Court action.

While some of the recommendations could perhaps be included as part of the relief ordered in an individual case, we believe the recommended steps should be considered for judicial administrative action for at least three reasons:

- The urgency of protecting unrepresented mortgagors, contrasted with the realistic time it would take to reach such a relief point in actual litigation.
- Our recommendations are much more in the nature of steps appropriately taken by the Court in its administration and oversight of the judicial system, rather than relief typically granted to parties or classes in an individual case.
- The breadth of the recommended action is complex, with many interrelated parts, also militating toward a comprehensive judicial administrative response.

I. Common practices and characteristics.

A. Scope of the falsity commonly involved in foreclosure proceedings

1. Lack of personal knowledge of an affiant whose certification states that s/he has personal knowledge.
2. Failure to review documents or other evidence on which the certification is based and which it may generally reference.
3. Actual false statements about when and how a loan has been transferred since its origination , which are particularly significant to whether a homeowner is entitled to affirmative defenses such as set off and recoupment.
4. False identification of signatory (*e.g.*, an employee of a servicer will be identified as a vice president, or similar title, of the foreclosing mortgagee.)
5. Forged signatures.
6. Execution outside the presence of a notary, who nevertheless notarizes the signature.

B. Points of occurrence

False testimony is endemic at the following stages of a New Jersey foreclosure action. The bracketed material highlights the importance of the sworn item in the context of the foreclosure proceeding.

1. The Notice of Intention to Foreclose

The Notice of Intention to Foreclose is a unique requirement under the New Jersey Fair Foreclosure Act that must be satisfied before initiating a foreclosure complaint. Among other things jurisdictional, the Notice of Intention to Foreclose must identify the holder of the note and the amount due to date. [The Fair Foreclosure Act confers an important right on New Jersey Homeowners that allows them to cure their mortgage if they pay the amount due. As there can be disputes about the amount due, having access to the proper records and the ability to cure the imposition of charges is critical to homeowners. After a foreclosure judgment is entered (which often disallows charges sought by lenders) the homeowner no longer has the right to reinstate the mortgage but instead must pay in full. Truth and accuracy at this initial stage of foreclosure is vital to homeowners.

2. The complaint

Almost invariably, foreclosure complaints in New Jersey will falsely indicate that the named plaintiff is the "holder and/or owner" of the note and mortgage without indicating how the note or "evidence of indebtedness" traveled from the originator to the current plaintiff. [It is very important to know when a note was legally negotiated along the chain because entities which acquire a note after default or with notice of defects take the note subject to the defenses that would be available against the originator. Foreclosing plaintiffs nearly

always claim to be "holders in due course" without setting out an allegation much less proof of how they acquired the note.]

a. The complaint rarely indicates that the entity directing and controlling the foreclosure action is actually a servicer acting pursuant to a limited power of attorney on behalf of the named plaintiff. This is important because the true note holder is almost never involved in the foreclosure proceedings, including the mediation and loan modification process.
b. The complaint virtually never sets out the complete chain of assignments of the mortgage to demonstrate the plaintiff's right to foreclose. To the contrary, foreclosure complaints will set out the name of the originating lender and the name of the foreclosing mortgagee without any intervening transfers of title – even though a review of any relevant securitization documents will show usually four transfers.
c. The complaint is often inconsistent with other pleadings and evidence – the note submitted to the court is in the name of the originator and usually has no endorsements, the Notice of Intention to Foreclose in usually in the name of the servicer, and fails to identify the holder of the note and mortgage (in violation of the Fair Foreclosure Act), and the complaint is filed in the name of yet another party claiming to hold the note and mortgage, albeit with incomplete allegations and proofs showing standing.

3. Summary judgment motion

In contested matters, a plaintiff who moves for summary judgment must supply a certification in support thereof, as must all movants pursuant to R. 1:6-6. A proper certification must set forth all of the facts entitling the plaintiff to the relief sought.

[Many summary judgment motion are unsupported by any certification at all. Some are supported only by the certifications of counsel. If they are supported by someone other than counsel that person is nearly always someone who would fall into the category of robo-signer, *i.e.,* a person whose sole job is to execute documents and who has no knowledge of the underlying facts or access to any records which would support the motion. These motions are nearly always brought prior to discovery, often being filed simultaneously with or in lieu of an answer to a germane counterclaim or very soon after the homeowner has filed a contesting answer.

4. Application for Final Judgment

Ninety-five percent of foreclosures are uncontested, and these uncontested foreclosures are never subjected to any meaningful judicial scrutiny. In these matters, a plaintiff submits a certification or more often loose documents stamped certified to be true and signed by an attorney representing the plaintiff to the Office of Foreclosure in support of a Motion for Entry of Final Judgment. Pursuant to R. 4:64-2(a), proof may be submitted by affidavit "unless the court otherwise requires."

The affidavit "shall be made on personal knowledge of all of the facts recited therein, and if the affiant is not the plaintiff, it shall also state that the affiant is authorized to make the affidavit." R. 4:64-2(c).

In addition to the affidavit that must be filed at this time, the foreclosing mortgagee must also "produce the original mortgage, evidence of indebtedness, assignments . . . and any other original document upon which the claim is based. In lieu of an original document, the moving party may produce a legible copy of a recorded or filed document, certified as a true copy by the recording or filing officer or by a New Jersey attorney, or a copy of an original document, if unfiled or unrecorded, certified as a true copy by a New Jersey attorney." R. 4:64-2(a). Very rarely has an attorney certifying the copy as true ever seen the original. Often a cursory inspection of the copy shows it to be in the name of someone other than the plaintiff.

5. Assignments of Mortgages

A foreclosing plaintiff must show (1) that it holds the note, and (2) that the mortgage was either made to it or assigned to it in writing. N.J.S.A. 46:9-9. Lenders no longer routinely execute or record Assignments of Mortgage when a loan is transferred because they regard it as unnecessary unless there is a default and too costly and time consuming to do in every case. See Exhibit Q in which a foreclosure attorney explains in a submission to the Court that; "The assignee performs its due diligence, bulk transfer agreements are executed, money is wired, and on a date certain the proverbial 'switch is flipped' wherein the assignee takes over regardless of the execution of a formal, legal assignment for each and every loan. By way of example, one large national mortgage servicer recently purchased 1.3 million loans from another large servicer. Even if it took one minute per assignment to execute (which itself is a stretch) it would take over ten years to execute all the resulting assignments is same were executed at the rate of 40 hours per week." So typically at the time the lender makes a decision to foreclose it is not the record mortgagee. To correct that defect, the attorney for the foreclosing mortgagee or the servicer of the loan will create an Assignment of Mortgage for the purposes of litigation which is in turn signed by a robo-signer. Documents recorded with a public official are self executing and have special evidential status and therefore are especially pernicious. Usually the assignment purports not only to assign the mortgage but also the note or underlying obligation. The assignment of the note nearly always contradicts other documents which indicate that the note was transferred at different times and in different manners or not at all.

a. False Assignments. The assignments appear to be created based on the need for them rather than to memorialize an actual assignment of an instrument. For example, see Exhibit L, M and N describing the creation of an assignment and its subsequent execution outside the presence of notary by a New Jersey foreclosure attorney in three separate matters. The attorney who prepared and executed the

assignments testified that that he prepares Assignments according to instructions that he receives from the foreclosing mortgagee without reviewing the supporting documentation. The notary testified that he notarized signatures on Assignments of Mortgage that were signed outside of his presence. He also testified that he is a notary in the State of Pennsylvania, but not in New Jersey, but that nevertheless he routinely notarized signature in New Jersey.

b. Conflict of interest – Assignments are prepared (purportedly on behalf of the assignor) and executed by the assignee.

c. Multiple assignments containing contradictory information. Even, though there may be an existing assignment, it is not uncommon to see a new one produced and recorded. The new assignment typically enhances the plaintiff's claim to be a holder of the underlying obligation. See, for example Exhibit S, in which there are two recorded assignments of the same instrument by the same party at pages JA 29 and JA 164 in Wells Fargo v. Ford on appeal. The first assignment is dated March 11, 2005; the second assignment, signed by the entity that had already assigned the mortgage on March 11th, is dated September 1, 2006 . The March 2005 assignment was used in the state court proceeding to support the plaintiff's contention that it was a holder in due course; the September 2006 assignment was used later in connection with a subsequent bankruptcy to support the lender's proof of claim.

d. Assignments which appear to have been executed and notarized in blank. Many assignments contain information such as the recording date of the mortgage that purport to be signed and notarized on a date earlier than the recording date such that they were obviously signed and notarized in blank. See, for example, Exhibit S, at JA29 164 in Wells Fargo v. Ford on appeal in which the assignment executed and notarized on March 11, 2005 contains information about the recording of the mortgage with took place more than two weeks later on March 28, 2005. The instrument was obviously executed in blank. This is a typical assignment in our experience.

e. Forged signatures

f. False identification of signatory

g. False Notarizations

C. Anonymity of servicers and subsequent holders.

1. Where a loan is sold after origination, until very recently, no law required the seller or purchaser to notify the homeowner of the sale or of the identity of the purchaser. Securitized loans are held in pools managed by a trustee. No one entity has an individual interest in the undivided individual loan rather they have an interest in a triage or slice of the income stream produced by the loan. No one informs the homeowner that his or her mortgage has been securitized or the name of the investment security pool. The first time a homeowner might see the name of the trustee or securitization pool is as the plaintiff in a foreclosure complaint, and sometimes not even then.

   After loan origination, the homeowner's point of contact is a loan servicer, which collects payments and manages the loan account. The Real Estate Settlement Procedures Act requires a servicer to notify the homeowner when servicing rights are sold. Some servicers outsource foreclosure work to entities known as default servicers. The most notorious default servicer is Lender Processing Services (LPS), discussed in more detail below. Servicers do not notify homeowners when a default servicer is retained to handle the foreclosure.

   When a complaint is filed there is no mechanism for the borrower, the court, or any other interested party to identify the servicer or whether the a sub-servicer is involved.

   As context, homeowners pursuing loan modification often complain that the servicer's left hand does not know what its right hand is doing – a servicer may approve a loan modification, for example, and nevertheless proceed with a sheriff's sale. This problem may stem from the servicer's outsourcing of its foreclosure function while retaining its loss mitigation function.

2. Misrepresentation of position and authority.
   The signers do not identify themselves by their true title or as being an agent or employee of foreclosure related documents typical of their actual employer. Instead they hold themselves out as vice presidents and assistant vice presidents of other entities of whose officer's signature are required by law. Even then the signatures are buried deep within the pleadings on the file and are not reflective of the name of the foreclosing plaintiff or any other named party in the case.

II. Evidence of Prevalence of False Statements and Swearing

A. National

1. Prevalence of widely used default servicer.

Lender Processing Services (LPS), formerly known as Fidelity National Foreclosure Solutions, is a default mortgage servicer to which other servicers outsource their foreclosures. We describe LPS operations in considerable detail, because it both typifies the role of default services generally and, by a wide margin, it is the default servicer or platform used in the most cases. Its practices incorporate a significant portion of false statement and swearing. LPS's practices, including forged signatures, by apparently non-existent individuals, with documents referencing a "bogus assignee", were the subject of one PBS recent News Hour foreclosure segment, referenced below. LPS is extensively involved in New Jersey. On its website, LPS describes its foreclosure-related services as follows:

LPS Default Solutions offers administrative support services to mortgage servicers and attorneys nationwide. Through the active monitoring by its experience staff of client established processes, LPS Default Solutions enables servicers to manage multiple vendors, control costs of servicing, drive improvements in quality and improve value for all stakeholders: attorney, servicer and investor.

As a result of its tremendous economies of scale, LPS Default Solutions also affords clients the opportunity to realize significant improvements in efficiency, cost savings, and performance. Through integration with the Web-based LPS Desktop, all information is managed on a single platform, allowing servicers, their attorneys and vendors to view and update one centralized, comprehensive technology system. System data is used to objectively compare and summarize network performance across multiple servicers.

By bringing greater efficiencies to the default process, LPS Default Solutions enables servicers to reallocate staff from foreclosure and bankruptcy tasks to loss mitigation, collections, and borrower contact programs. The support services offered by LPS Default Solutions also enables servicers and law firms to focus on establishing consistent pricing for default administration services and achieving significant reductions in the cost per loan serviced.

http://www.lpsvcs.com/DefaultSolutions/ForeclosureandBankruptcyOutsourcing/Pages/default.aspx

Where LPS is involved, foreclosure attorneys receive information and instructions not from a homeowner's mortgage servicer, but from a third party vendor who has outsourced the foreclosure. LPS personnel sign certifications prepared by the foreclosure attorney using data from the LPS computer system. However, certifications executed by LPS employees do not identify the source of the data, and it impossible to ascertain whether the data is accurate: where LPS is involved, its records may not be the same as those kept in the ordinary course of

business by the day-to-day loan servicer. The data at issue are both the amount due and the holder of the note and mortgage.

Certifications prepared by foreclosure attorneys often do not specify that LPS is executing the certification or that LPS is involved at all. LPS employees or default servicers using the LPS platform will sign certifications as if they are officers of the servicing company or plaintiff or some intermediate player.

A subsidiary of LPS called DOCX prepares and executes assignments of mortgage. LPS employees will sign the assignment of mortgage on behalf of the assignee. The LPS employee will sign as an officer of the assignee, without identifying him- or herself as an LPS employee. A DOCX assignment can be identified by the record and return name and/or address.

a. Description of services, including document execution

   The LPS business model is described with some depth in the trial level decision of a case currently on appeal before the Third Circuit case of *In Re Taylor*, 407 B.R. 618 (Bankr. E.D. Pa. 2009), reversed, 2010 WL 624909 (E.D. Pa. Feb. 18, 2010) (EXHIBIT A). Most striking, foreclosure attorneys receive their instructions via an automated computer system, and have virtually no ability to communicate directly with the day-to-day mortgage servicer. The agreement between the servicer and LPS is also attached as part of EXHIBIT A.

b. LPS Summit – Profile of Document Execution Team

   In the September 2006 issue of its internal newsletter, "The Summit," LPS profiled its document execution department, admitting: "The document execution team is set up like a production line, ensuring that each document request is resolved within 24 hours. On average, the team will execute 1,000 documents per day." (EXHIBIT B). A copy of DOCX's document execution price sheet is also attached as part of EXHIBIT B.

c. LPS admission that employees executed documents and allowed signature to be signed by others

   On October 4, 2010, in response to media accusations of robo-signing, LPS issued a Press Release admitting executing affidavits, but claiming that it stopped doing so in 2008 (EXHIBIT C). It further claimed that its subsidiary DOCX stopped preparing assignments of mortgage in 2009. Since LPS issued its press release, however, samples of DOCX mortgage assignments executed more recently have continued to surface around the country. (EXHIBIT D).

   One DOCX assignment prepared in 2008 literally purports to assign a mortgage from American Home Mortgage Acceptance, Inc. to "BOGUS ASSIGNEE FOR INTERVENING ASSMTS." (EXHIBIT E).

d. LPS deposition transcripts (EXHIBIT F) -- transcripts of LPS employees describe the document execution process, and make clear that the goal of signing is efficiency and not accuracy or truthfulness. For example:

Greg Allen deposed in a matter arising in Washington state on January 13, 2010. Mr. Allen an employee of LPS in Minnesota. He is responsible for "document execution." He is authorized to sign for Everhome, EMC, JP Morgan Chase, Wilshire and "potentially MERS". The documents are not reviewed for accuracy by the person signing them. LPS's document execution services help make things more efficient, i.e., take less time than if they were being signed by the people actually reviewing the documents.

2. Other servicers – national deposition transcripts

Attached hereto as EXHIBIT G are deposition transcripts by employees of six different servicers, indicating that robo-signing is not limited to LPS or the three servicers prevalent in the media.

Specifically, the following transcripts are attached:

a. GMAC
   i. Jeffrey Stephan
   ii. Judy Faber Robinson

b. Bank of America
   i. Krystal Hall

c. JP Morgan Chase
   i. Beth Cottrell. Deposed in Florida on May 17, 2010, Cottrell testified that she signs allonges, lost note affidavits and lost mortgage affidavits. Her department signs about 18,000 such documents per month. The documents themselves are prepared by the foreclosure attorneys. Ms. Cottrell has no personal knowledge of the content of what she signs. She has no knowledge of whether a Note was signed or transferred or endorsed. She doesn't know if the transfer was for value. In the case she was being deposed on multiple notes were produced; Ms. Cottrell could not explain that or which was the right one. She referred to a shared database into which images can be uploaded but testified there is no way to identify who put what in the database when. The foreclosure attorneys have access to upload documents to that system. She later back tracks and says that she can tell

who uploaded an image but not who saw the actual note. She testified that they have a "signing table" at the workplace, and that people are called to assemble there and just sign documents to be notarized.T73

ii. Angela Melissa Nolan Florida. January 29, 2010. Ms. Nolan acknowledges that her electronic signature has been affixed to an allonge. T16. Ms. Nolan states that allonges are separately prepared and not affixed to the note. Allonges are used if the note was not endorsed at the time of transfer. They do not take the note out to have it endorsed. T19 There is an exhibit marked entitled "creating an allonge." When a loan goes into foreclosure, the custodian checks for endorsement and if it is not present at the time an allonge is created. The procedure distinguishes between creating allonges for prime loans and for sub-prime loans.

iii. Charles Herndon, Deposed in New York on October 6' 2009.

d. Wells Fargo

i. Herman John Kennerty: Deposition in a matter arising in Washington State on May 20th 2010. Kennerty works for Wells Fargo in South Carolina. He is responsible for default document execution and securing "collateral files" which he says means original documents. He doesn't always order the original documents because many states are "copy states" and they will accept a copy. He has signing authority for Wells, Citi, LaSalle, Deutsche and US Bank. He describes the teams of people whose job it is to sign particular types of documents including mortgage assignments and other documents needed to obtain foreclosure sales. He doesn't know how or when endorsements of Notes take place. However, sometimes someone in his department would sign or affix an endorsement to a Note if a foreclosure attorney asked for it. T56

ii. Xee Moua: Ms. Moua was deposed on March 9, 2010 in Florida. Moua leads a team of document executors. Moua explained that there is not enough time to go

around to all the departments you would need to go to get documents signed by people with knowledge so Moua got the authority and can sign documents cutting the time frame in half. T19 Moua signs hundreds of documents each day including affidavits for judgment and those submitted in connection with Summary Judgment motions without verifying the numbers or the facts stated therein, just signing.

iii. Tamara Savery: Ms. Savery was deposed on July 15, 2009 in a matter arising in Texas.
At the time of her deposition, Ms. Savery worked in the litigation default operation support area at Wells Fargo. In the course of being deposed, she answered that she relied on the expertise of others as it pertained to the accuracy of answers to interrogatories when signing verifications and admitted that she had not written the answers herself. Ms. Savery also explained that she did not review claims or documents for accuracy when signing verifications, again relying on the preparation work by other people.

e. IndyMac/OneWest -- Erica Johnson Seck:

i. Deposition taken in Maryland Bankruptcy case in March 9, 2009. Describes her job as developing procedures so that foreclosures happen quickly and with "zero exposure" to the investor. Ms. Johnson –Seck works for Indy Mac. Previously she worked for World Savings Bank, Wachovia, Wells Fargo. She discusses procedures in a non-judicial foreclosure state and how she added fees to the mortgage balance amount. She discusses the inflation of particular charges including but not limited to title insurance. She also discusses the relationship between the originator of the loan and the default servicer First American Default Services.

ii. Deposition taken July 9, 2009 . Two depositions taken back to back in Florida. Erica Johnson-Seck now works for One West. (One West purchased assets or servicing rights related to Indy Mac loans from the FDIC on or about March 19, 2009). Ms. Johnson claims not be an officer of

but to have signing authority for Indy Mac, Deutsche Bank, US Bank, Bank of New York and others whose names she cannot recall. Ms. Johnson Seck manages foreclosure attorneys. She initiates foreclosures if the investor won't cover her employers advances. She still signs documents including Lost Note affidavits but she doesn't read them first. It takes thirty seconds to sign something now that she has an e signature instead of using a pen. E-signing is incorporated into the LPS system. Notarizing of her signature is done later outside of her presence. Ms. Johnson Seck deals with loans in all 50 states. She refers files to attorneys and LPS as default servicer at the same time. She says that a Deutsche bank loan wouldn't even be considered for a HAMP modification.

f. Citi Residential Lending

i. Bryan Bly - Deposition taken on July 2, 2010 in a matter in which the plaintiff was named as Deutsche Bank N.A. as trustee for Ameriquest Mortgage Securities Trustee 2005-R9. Mr. Bly is employed by Nationwide Title Clearing. Mr. Bly's job description is simply signer. T17. He has held that position for seven and half years. T27. Prior to signer, Mr. Bly was a general laborer and envelope stuffer. He has signed for many entities. In this case as Vice President of CitiResidential. He exhibits no knowledge of the authority for signing or the significance of the documents he is signing or their contents. He signs between 2000 and 5000 documents per day.

ii. Tamara Price – deposition taken April 21, 2008 in Florida. The foreclosing plaintiff is Deutsche Bank as trustee for an Ameriquest securitized trust.

Ms. Price also signed documents in the Hollis case that LSNJ handled in New Jersey Bankruptcy Court. See Exhibit R.

Ms. Price describes her job as assistant foreclosure manager, but she signs as Vice President of AMC Mortgage Services. She acknowledges that she has not reviewed any books or records as stated in her affidavit.

T15 – 17. Her signature is notarized outside of her presence, in other words the notary does not observe her sign. T19- 20. Ms. Price never saw the Note or mortgage or loan history referred to in her affidavit. T 28 passim. She relies on the Fidelity system. T32. The figures and statements are prepared by the lawyers for her to sign and she just accepts them. T35. So for example, Ms. Price does not know how money is listed as being in suspense or anything about the bona fides of the charges. She does not know who enters the data but believes that the system is shared by many users who can all access the system and input data.

The deposition evidence discussed above and included reflects false testimony submitted by way of robo-signed affidavits executed at **each of the top five** (and six of the top 10) residential mortgage servicers in the country – with a **combined market share of more than 67%** -- according to the list of Top Residential Servicers at June 30, 2010, as reported in the October 1, 2010 issue of Mortgage Servicing News. There is no basis to believe New Jersey is in any way an exception to this national pattern.

3. Sample documents

Attached hereto as EXHIBIT H are samples of documents signed by people who admitted in depositions to signing documents without personal knowledge or reviewing the underlying documentation. Also attached are similar documents executed by employees of two other prolific servicers, PHH and Sand Canyon f/k/a Option One, illustrating that the practices are not limited to instances where a deponent has admitted to them.

a. Citi Residential Lending: Bryan Bly and Tamara Price
b. JP Morgan Chase: Beth Cottrell
c. Wells Fargo: Herman John Kennerty
d. PHH: Tracy Johnson
e. Sand Canyon f/k/a Option One: Christina Huang -- a review of the signatures of Christina Huang reveals substantial variations, suggesting that more than one person signs Ms. Huang's name.

4. Recognition of servicer misconduct by ultimate investors Deutsche Bank memos (EXHIBIT I)

Deutsche Bank is a trustee of numerous securitized mortgage- backed trusts, and as such is a plaintiff in numerous foreclosure actions. Attached as EXHIBIT I are copies of memos it has issued to the companies servicing concerning widespread pleading and proof deficiencies. Deutsche Bank sent a memo to the holders of Residential Mortgage

Backed Securities on October 25, 2010. The memo stated that it was sent in response to the media reports of allegations of defects in the foreclosure process. It reminds investors that holder of a "requisite principal amount" of the securities may direct the Trustee's remedial activities and it attaches its communications with the servicers dated August 30, 2007, July 28, 2008 and October 8, 2010.

The August 30, 2007 memo to "securitization loan servicers" admonishes them to always list Deutsche as a Trustee and to identify themselves and the capacity in which they are acting.

In the July 28, 2008 memo Deutsche Bank instructs securitization loan servicers on how to deal with demands for proof of "ownership" of the note. Deutsche Bank actually places the word ownership in quotes. Deutsche Bank does not suggest that they become a holder in due course and that if the servicer does not comply with state law it may seek indemnification from the servicer for any damages it suffers. It warns the servicer not to confuse transfer of title or the mortgage with the ownership of the loan.

5. Scholarly writing (EXHIBIT J)

a. Katherine Porter - October 27, 2010 Testimony Before Congressional Oversight Panel, Hearing on the TARP Foreclosure Mitigation Program: Katherine Porter is a Harvard law professor with expertise in consumer credit, consumer protection regulation, and mortgage servicing who has been conducting research on problems with mortgage servicing practices since 2005. She testifies that the foreclosure process lacks integrity in an unacceptable number of ways, including the imposition and collection of improper fees, a lack of standing to foreclose in judicial foreclosure states, the pursuit of foreclosure without rights in the note and mortgage, mortgage origination fraud, or liability to investors for poor underwriting or improper servicing. She discusses near universal agreement that at least some homeowners have lost their homes without adherence to legal procedures, that the validity of many pending foreclosures is in question, and that servicers may face much more extensive examination of their grounds for future foreclosures. Professor Porter argues that the allegations of problems in mortgage servicing should, if anything, only heighten the due process afforded consumers. She also contends that the structure of the mortgage servicing industry and the lack of accountability by financial institutions in the securitization process make it a fair inference that the problems from flawed foreclosure are not isolated incidents.

b. Sheila Bair – October 25, 2010 keynote address to the "Mortgages and the Future of Housing Finance" Symposium sponsored by the Federal Deposit Insurance Corporation and the Federal Reserve System: FDIC Chairman Sheila C. Bair addresses concerns that legal documents required for foreclosure have in some cases been improperly exercised – or "robo-signed" – by mortgage servicers. She maintains that foreclosure should be a last resort, undertaken only where bona fide loan restructuring efforts have not succeeded and all legal and procedural requirements have been fulfilled. In describing a possible global solution to address the problem, Blair suggests that all interested parties consider some type of "triage" on foreclosures, perhaps providing safe-harbor relief if the property is vacant or if the servicer offered a meaningful payment reduction and the borrower could still not perform on the loan. She acknowledges that in too many instances, servicers have not made meaningful efforts to restructure loans for borrowers who have documented that they are in economic distress, and argues that timely and meaningful loan restructuring efforts make economic sense now more than ever.

6. Media

a. **PBS NEWSHOUR**

i. ***Faulty Paperwork Prompts Deepening Foreclosure Problem***

http://www.pbs.org/newshour/bb/business/july-dec10/makingsense_10-14.html

This segment discusses mounting foreclosures and the investigation launched by State Attorneys General into claims of faulty lender paperwork. Of note, New York State Supreme Court Judge Arthur Schack states that he has seen robo-signers at banks other than JP Morgan Chase, GMAC and Bank of America. This piece also looks at some of the legal issues being raised about the validity of foreclosure filings, including fraudulent documentation, the use of robo-signing, and proof of ownership of the note.

ii. ***The Road to 'Robo-Signing'***

http://www.pbs.org/newshour/rundown/2010/10/faulty-paperwork-lending-institutions-have.html

This piece provides an exposition on robo-signing.

iii. ***'Robo-signing' Paperwork Breakdown Leaves Many Houses in Foreclosure Limbo***

http://www.pbs.org/newshour/bb/business/july-dec10/foreclosures_10-06.html

This segment includes interviews with Michael Calhoun, the president of the Center for Responsible Lending and a Columbia economics professor regarding the practice of robo-signing. Calhoun explains "[This] a critical breakdown in one of the most important safeguards in the foreclosure process. Before a bank or lender goes to court to take somebody's home, they're required by law to have someone individually review the paperwork and the payment history to make sure that the person is, in fact, behind on the mortgage, has not been charged improper fees. And then they certify, under oath, under personality of perjury, that they have done this individual review. We have now found that, on an industry-wide basis, that was totally ignored. And that means there are a lot of people out there who had foreclosure proceedings brought against them when they shouldn't have. And we're talking a lot of people. There are about 2.5 million households in foreclosure right now. Another 2.5 million people are at risk of foreclosure because they're behind on their mortgages."

iv. ***Would a US Foreclosure Ban Yield 'Catastrophic' Consequences?***

http://www.pbs.org/newshour/bb/business/july-dec10/foreclosure_10-11.html

Amid allegations by the securities industry that a nationwide ban on foreclosures would be "catastrophic" for America, this

segment features Ohio attorney general Richard Cordray and a foreclosure expert. Ohio Attorney General Richard Cordray suggests that where financial institutions have submitted fraudulent evidence, it would be well worth their while to sit down and think about how they can work those cases out, reach a resolution, maybe a loan mitigation to keep people in their homes, rather than going forward and seeking a court order, where the court may well have to sanction them and they may be facing severe exposure.

v. ***Homeowners Express Frustrations with Government Loan Modifications***

http://www.pbs.org/newshour/bb/business/july-dec10/mortgage_10-25.html

This segment focuses on common experiences by struggling homeowners who rely on loan modifications from government programs to keep afloat on their mortgages. It discusses many of the problems with the Obama Administration's Making Homes Affordable Program and specifically the Home Affordable Modification Program (HAMP).

vi. ***TARP Watchdog: Foreclosure Program 'Too Small, Too Slow'***

http://www.pbs.org/newshour/bb/politics/jan-june10/tarp2_06-22.html

In this piece, Elizabeth Warren, Chair of the Congressional Oversight Panel discusses the effectiveness of the TARP bank bailout and a program aimed at helping homeowners steer clear of foreclosures.

b. WASHINGTON POST

i. ***JP Morgan Chase to Freeze Foreclosures Over Flawed Paperwork***

http://www.washingtonpost.com/wp-dyn/content/article/2010/09/29/AR2010092907268.html

J.P. Morgan Chase, one of the nation's leading banks, announced Wednesday that it will freeze foreclosures in about half the country because of flawed paperwork, *a move that Wall Street analysts said will pressure the rest of the industry to follow suit.*

The bank's decision will affect 56,000 borrowers in 23 states where allegations of forged documents and signatures and other similar problems are being used to try to overturn court-ordered evictions. Yet the impact may be much broader, given J.P. Morgan's stature in the industry. If other banks adopt the same approach, the foreclosure process in many parts of the country will grind to a halt.

Officials at Fitch Ratings, a credit-rating firm that measures the health of companies, said the "defects" found in foreclosure documents at J.P. Morgan are industry-wide. Underscoring that concern, Fitch said it is considering whether to lower the grades it gives to the mortgage servicing divisions of the nation's largest lenders. Over the next few weeks, we expect to see more and more companies come out with similar announcements," said Diane Pendley, a managing director at Fitch.

ii. Speed Equaled Money in Foreclosure "Machine"

http://www.washingtonpost.com/wp-dyn/content/article/2010/10/15/AR2010101506350_pf.html

Millions of homes have been seized by banks during the economic crisis through a mass production system of foreclosures that was set up to prioritize one thing over everything else: speed. With 2 million homes in foreclosure and another 2.3 million seriously delinquent on their mortgages - the biggest logjam of distressed properties the market has ever seen - companies involved in the foreclosure process were paid to move cases quickly through the pipeline. Law firms competed with one another to file the largest number of foreclosures on behalf of lenders - and were rewarded for their work with bonuses. *These and other companies that handled the preparation of documents were paid for volume, so they processed as many as they could en masse, leaving little time to read the paperwork and catch errors.*

The law firm of David J. Stern in Plantation, Fla., for instance, assigned a team of 12 to handle 12,000 foreclosure files at once for big financial companies such as Fannie Mae, Freddie Mac and Citigroup, according to court documents. Each time a case

was processed without a challenge from the homeowner, the firm was paid $1,300. It was an unusual arrangement in a legal profession that normally charges by the hour. The office was so overwhelmed with work that managers kept notary stamps lying around for anyone to use. Bosses would often scream at each other in daily meetings for "files not moving fast enough," Tammie Lou Kapusta, the senior paralegal in charge of the operation, said in a deposition Sept. 22 for state law enforcement officials who are conducting a fraud investigation into the firm. In 2009 alone, Stern's law firm handled over 70,000 foreclosures. "The girls would come out on the floor not knowing what they were doing," Kapusta said. "Mortgages would get placed in different files. They would get thrown out. There was just no real organization when it came to the original documents." Fannie Mae, Freddie Mac and Citigroup said they no longer do new business with Stern's firm.

To keep up with the crush of foreclosures, document processors and mortgage service firms rushed to hire anyone they could - hair stylists, Wal-Mart clerks, assembly-line workers who made blinds - and gave them key roles in their foreclosure departments without formal training, according to court papers. A number of these employees have testified that they did not really know what a mortgage was, couldn't define "affidavit," and knew they were lying when they signed documents related to foreclosures, according to depositions of 150 employees for mortgage companies taken by the law firm run by Ticktin, the Florida lawyer.

iii. Wells Fargo Erred in Thousands of Foreclosures

http://www.washingtonpost.com/wp-dyn/content/article/2010/10/27/AR2010102706202.html

Wells Fargo admitted Wednesday it made mistakes in the paperwork for thousands of foreclosure cases and promised to fix them.

The San Francisco-based bank said it plans to refile documents in 55,000 of the cases by mid-November. The company said not all those cases included errors but didn't say how many thousands did.

iv. ***OneWest Bank employee: 'Not more than 30 seconds' to sign each foreclosure document***

http://voices.washingtonpost.com/political-economy/2010/09/onewest_bank_employee_not_more.html

The recent announcements by J.P. Morgan Chase and Ally Financial that they were freezing some foreclosures because of paperwork irregularities raises a key question: How many more mortgage companies employed "robo-signers?" In a sworn deposition in July, Erica Johnson-Seck, an Austin, Tex., based vice president for bankruptcy and foreclosure for OneWest Bank, said she and her team of seven others sign 6,000 documents a week or about 24,000 a month without reading all of them. Johnson-Seck estimated that she spent no more than 30 seconds to sign each document.

Johnson-Seck also said in the deposition that she had signing authority for Deutsche Bank, Bank of New York and U.S. Bank, among others.

v. ***Bernanke says US regulators are reviewing foreclosures***

http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102503342.html

Regulators are likely to discover more problems related to loan servicing by some of the biggest banks as they probe claims that documents were mishandled, Federal Deposit Insurance Corp. Chairman Sheila Bair said at the conference.

"We are going to get into more and more problems with the issues that are surfacing now on servicing," Bair said.

vi. ***In foreclosure controversy, problems run deeper than flawed paperwork***

http://www.washingtonpost.com/wp-dyn/content/article/2010/10/06/AR2010100607227.html

Millions of U.S. mortgages have been shuttled around the global financial system - sold and resold by firms - without the documents that traditionally prove who legally owns the loans. Now, as many of these loans have fallen into default and banks have sought to seize homes, judges around the country have increasingly ruled that lenders had no right to foreclose, because they lacked clear title.

For big banks, "there's a possible nightmare scenario here that no foreclosure is valid," said Nancy Bush, a banking analyst from

NAB Research. If millions of foreclosures past and present were invalidated because of the way the hurried securitization process muddied the chain of ownership, banks could face lawsuits from homeowners and from investors who bought stakes in the mortgage securities - an expensive and potentially crippling proposition.

B. Specific examples of Robo-Signing in New Jersey – Exhibits K-U

1. **EXHIBIT K: In Re Rivera, 342 N.R. 435 (Bankr. D. N.J. 2006).** In perhaps the most notorious example of robo-signing in New Jersey, Bankruptcy Court Judge Morris Stern *sua sponte* recognized and "exposed a long-standing and regularized practice of creating documents purported to be "certifications"; however, pre-signed forms were kept on file by counsel and simply, in case after case, attached to the body of data-laden mortgage default accountings, the composite being filed with the court as if they were certifications."

2. **EXHIBIT L: Bank of New York as Trustee for the Certificate Holders CWABS Inc. Asset Based Certificates Series 2005 –AB3 v. Ukpe, Docket No. F-10209-08** – The Ukpe matter involves an assignment of mortgage executed by Francis Hallinan, a partner in the foreclosure law firm that instituted the foreclosure action. As attorney of record for the plaintiff, Bank of New York as Trustee for a securitized trust, Hallinan essentially robo-signs an Assignment of Mortgage purporting to transfer ownership from Mortgage Electronic Registration System (MERS) to his client.

   The Assignment was acknowledged by a notary, Thomas Strain. In his deposition (the transcript of which is attached), Mr. Strain testified that he notarized signatures on Assignments of Mortgage that were signed outside of his presence. He also testified that he is a notary in the State of Pennsylvania, but not in New Jersey, but that nevertheless he routinely notarized signatures in New Jersey.

   In a deposition in another matter, also attached as part of Exhibit M, Hallinan testifies that he prepares Assignments according to instructions that he receives from the foreclosing mortgagee without reviewing and supporting documentation (T92-93).

3. **EXHIBIT M: Countrywide Home Loans v. Gustina Jones, F-21402-08** – Complaint alleged merely that MERS as nominee for the loan originator assigned the loan to the plaintiff, and as a result "plaintiff is the owner of the note and mortgage."
   In a later attempt to cure the defect, Francis Hallinan executes Assignment of Mortgage purporting to assign mortgage from MERS as nominee for the loan originator to the plaintiff. The assignment was notarized by Thomas Strain.

4. **EXHIBIT N: U.S. Bank NA as Trustee for CSAB Mortgage Backed Pass Through Certificates Series 2006-1 v. Sinchegarcia, F-18446-08**. Another instance of a Hallinan Assignment

notarized by Thomas Strain. Here, the court accepts a corrective Assignment acknowledged by a different notary despite awareness of the issues raised in the Ukpe matter. Significantly, Mr. Sinchegarcia alleged that he had not been served with the Summons and Complaint. The court relied upon proof of service notarized by Thomas Strain as evidence that Sinchegarcia had been served and refused to vacate default judgment.

5. **EXHIBIT O: Bank of New York as Trustee for Home Mortgage Investment Trust 2004-4 Mortgage Backed Notes Series 2004-2 v. Raftogianis, F-7356-09**.

   Holding that the foreclosing plaintiff failed to establish it was entitled to enforce the note at the time the complaint was filed. At issue in the case was when the note was endorsed. The Court noted that the securitization of the loan was not mentioned in either the complaint or the plaintiff's motion for summary judgment.

6. **EXHIBIT P: The Bank of New York as Trustee for the Holders of Structured Asset Mortgage Investments Trust 2006-AR8 Mortgage Pass Through Certificates Series 2006-AR8 v. William Wolf, Docket No. F-12418-08:** Significantly, this matter appears on the list of foreclosures identified by Plaintiff's attorneys as affected by the robo-signing issue. Here, final judgment entered against the defendant supported by a Note payable to Countrywide Bank N.A. but never endorsed by the plaintiff. The unendorsed note was rubber-stamped, "I certify this to be a true copy," and signed by plaintiff's attorney. An Assignment of Mortgage was prepared only in connection with the litigation, purporting to assign the mortgage from MERS to the plaintiff, signed by an employee of the servicer, BAC Home Loan Servicing.

   After entry of judgment, Mr. Wolf contacted LSNJ. LSNJ recognized a serious predatory lending issue – i.e., that the loan violated the New Jersey Home Ownership Security Act -- and moved to vacate the judgment. In addition to alleging that the judgment should be vacated as a matter of excusable neglect/meritorious defense, defendant alleged that the judgment should be set aside as void based on Plaintiff's inadequate proof of ownership. Instead of vacating the judgment, the trial court gave the plaintiff the opportunity to produce an endorsed note. Plaintiff did so without any certification by his client or himself indicating how the endorsement came to be placed on the note. The court refused to vacate the judgment.

   As an aside, the plaintiff's pleadings in Wolf demonstrate that the foreclosure bar routinely asserts facts and produces documents without any certification whatsoever, much less the certification of a person competent to testify about the issue. Worse, these submissions are routinely accepted and relied upon by the Chancery Court.

7. **EXHIBIT Q: LaSalle Bank, NA as Trustee v. Grizzle, Docket No F-21567-07**: Plaintiff's attorney contends that mortgages are not routinely assigned despite securitization agreements that purport to transfer ownership because they are too voluminous and states:

"The assignee performs its due diligence, bulk transfer agreements are executed, money is wired, and on a date certain the proverbial 'switch is flipped' wherein the assignee takes over regardless of the execution of a formal, legal assignment for each and every loan. By way of example, one large national mortgage servicer recently purchased 1.3 million loans from another large servicer. Even if it took one minute per assignment to execute (which itself is a stretch) it would take over ten years to execute all the resulting assignments is same were executed at the rate of 40 hours per week."

8. **EXHIBIT R: Orr and Hollis v. Ameriquest Mortgage Co. et al. , ADV. No. 07-02615 (Bankr.)** – Discovery motions replete with issues concerning Tamara Price, an admitted robo-signer.

   In Ms. Hollis' case, we sought discovery from the foreclosing entity Deutsche Bank . The initial response by Deutsche Bank asserted that Ms. Hollis' 2006 promissory note was sold by the originator Ameriquest and the mortgage securing that note assigned to Deutsche Bank as Trustee for AMC Mortgage Securities, Inc. In support of this they presented two contradictory documents: a pooling and servicing agreement and a recorded assignment. The assignment of mortgage is dated June 26, 2007 and is signed by Tamara Price and purportedly notarized.

9. **EXHIBIT S: Wells Fargo Bank, NA as Trustee v. Ford, F-12259-06 (Docket on Appeal A-3627-06T1)**: Summary Judgment granted to plaintiff despite absence of any certification in support of the allegations in its motion and despite that only proof of plaintiff's right to foreclose consisted of Note made payable to loan originator and not endorsed by plaintiff and an unrecorded Assignment of Mortgage that is (a) unrecorded and unsupported by certification; (b) prepared by the servicer for the assignee and not by the assignor; (c) backdated and contradictory to one later filed with the Bankruptcy Court.

10. **EXHIBIT T: Bank of New York as Trustee for Equity One Inc. Mortgage Pass Through Certificates Series 2006-A v. Brena Docket No. F-27578-08**: Pro bono attorneys for the defendant successfully showed that Mr. Brena's loan not was not in the pool of mortgages alleged by Plaintiff. Despite plaintiff's refusal to dismiss the complaint as frivolous prior to motion to dismiss, Court nevertheless refuses to award defendant's attorneys counsel fees.

    Exhibit U: U.S. Bank, N.A. v. Guillaume, F-26869-08 (notice of appeal filed) : After entry of final judgment, upon defendant's application to vacate default to raise predatory lending defenses, Plaintiff's attorney admits on the record that the attorney who certifies the note to be a true copy never inspects the original note, but instead relies on a copy of the note provided by the loan servicer. The Court is not concerned about the false certification, saying, "I'm not about to totally change the over the foreclosure practice and the industry. If the Civil Practice Committee wants to impose that kind of a hurdle, then I think it's up to them to do so and revise foreclosure rules accordingly." Similarly, the Court is not concerned that the Notice of Intention to Foreclose falsely identifies the servicer as the holder and owner of the mortgage, because the homeowner would not recognize the name of the holder and might get confused. Thomas Strain notarized the Assignment in this

matter, and a plaintiff subsequently filed a corrective assignment. The Court accepts the corrective assignment without question.

C. Example of sanctions and corrective actions taken by courts to date

Courts have issued sanctions in individual cases over the years. Bankruptcy Judge Stern here in New Jersey issued monetary sanction of $250,000 and injunctive relief in a related practice five years ago. Numerous other courts have issued sanctions and dismissed individual cases, yet the practices continue unabated. In re Rivera, EX. K; see also, In re Ulmer, bankruptcy court South Carolina EX. Y. Other courts have dismissed cases both with and without prejudice. See, decisions rendered by J.Schack in the New York Supreme Court at EX. V and EX. Y.

III. Recommendations for Supreme Court Action

The evidence demonstrates that the greatest of abuses and concurrent lack of scrutiny occur in the 95% of foreclosures where there is no legal representation. The legal culture surrounding foreclosures is characterized by an emphasis on speed, volume and skepticism concerning a mortgager's defenses, and frankly favors those parties seeking foreclosure. The extensive abuses and current legal culture combine to suggest the need for strong steps to encourage a new attitude and culture, emphasizing accountability rules, intensive judicial scrutiny of filings, and a priority on solid and just outcomes rather than speed or volume.

A. Potential directive to trial courts (including possible special judges handling foreclosures).

The bulk of potential Supreme Court initiatives appears concentrated here.

1. Strict enforcement of court document and pleading rules, including the initial notice of foreclosure with special emphasis on compliance with applicable certification requirements including actual knowledge.

2. Emphasis that summary judgment and application for judgment review must include the original note.

3. Stipulating that any defendant response challenging or questioning any aspect of the note or mortgage, including amounts paid or owing, shall be deemed an answer sufficient to constitute a contested case.

4. Instruction that R4:50 applications to reopen and set aside should be liberally granted in foreclosure contexts where there is an apparent meritorious claim.

5. Instruction that courts of equity should liberally use the inherent equitable power to reform mortgage obligations where there is any evidence of false statements or swearing, robo-signing or other improper conduct, since all can have a negative impact on any court-annexed mediation/modification process. By exercising the inherent equitable power to reform contracts, a court can compel mortgage modifications, consistent with the Homes Affordable Modification Program (HAMP), which the vast majority of servicers have agreed to comply with and which is consistent with the lender's acceptance of TARP funds to keep them afloat in the crisis.

   A mortgage loan modified in accordance with the HAMP program provides affordable mortgage payments (31% of gross income) to homeowners if the net present value of the cash flow of the modified mortgage exceeds the net present value of the home if the home were sold at sheriff's sale. Under HAMP, loans are not modified in such a way that the plaintiff lender would receive less over time that the modification provides. HAMP modifications provide affordable mortgages to homeowners, more value to lenders than sheriff's sales, and stability to communities.

6. On a homeowner's independent application or, where a corrective certification or assignment is filed which should be on notice to the homeowner, a court should permit limited discovery as to the issue of whether plaintiff provided willfully false testimony.

7. Instruction that the R.1:4-8 power to sanction be used when improper certifications, statements or other practices are evident. To be effective these generally have to be on the court's own initiative under R.1:4-8(c). Monetary sanctions should be awardable to the opposing party and the judiciary, to be used to finance the cost of any specially assigned judges.

8. Issue guidance for instituting a new process of thorough and intensive scrutiny of all applications for judgment involving unrepresented or defaulting mortgagors.

B. Other possible steps.

1. Specially assign judges to review foreclosures, if possible, given available personnel and resources, such specially assigned judges would review and oversee *all* foreclosures, both contested and those that have been deemed uncontested.

2. Notice to mortgagors in uncontested cases which have proceeded to judgment of the potential availability of relief under R.4:50.

3. We considered but do not recommend an enhanced attorney certification process. Since the current rules already contain such requirements they need to be properly and fully enforced.