FOXBORO CONSULTING GROUP, INC.'s FORECLOSURE DEFENSE PROCESS (FDP) – REVEALING THE HOME FORECLOSURE STING PERPETRATED ON AMERICAN HOMEOWNERS

If **Fannie Mae** and **Freddie Mac** are not the true and beneficial holder in due course, how can foreclosures be done in their name?

This is the scam bankers don't want you to know.

THE GREAT PRETENDER LENDER SWITCH

This is how the scam is perpetrated by your so - called lender. They advertise that they offer loans.

They work with the mortgage broker network around the nation to get consumers to apply for the loan.

Once the loan has been approved (I use the word "approved" very loosely because very little due diligence is actually done by the so called lender), the MORTGAGE LOANS are pre-placed into a **Real Estate Mortgage Investment Conduit (REMIC)**.

The lender then waits for the paperwork to be signed. Once it is signed, it is immediately transfers the mortgage loan into the REMIC. Once a REMIC has enough loans to be packaged, it then gets registered onto the SEC database and then gets converted and traded as a stock (therefore the instrument is converted from debt to stock/or equity securities).

All the while, unbeknownst to the consumer, the lender all of a sudden switches their position from lender to servicer of the note. Again, as you recall under the accounting rule FAS 140...once an asset has been sold, the lender forever loses control of the asset.

FAS 140 - - Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities-a replacement of FASB Statement No. 125 (Issued 9/00)

A transfer of financial assets in which the transferor surrenders control over those assets is accounted for as a sale to the extent that consideration other than beneficial interests in the transferred assets is received in exchange. The transferor has surrendered control over transferred assets if and only if all of the following conditions are met:

a. The transferred assets have been isolated from the transferor—put presumptively beyond the reach of the transferor and its creditors, even in bankruptcy or other receivership.

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Office: (774) 719-2236 or Mobile: (508) 878-8390
E-mail: adams.r@foxboro-consulting.com

b. Each transferee (or, if the transferee is a qualifying special-purpose entity (SPE), each holder of its beneficial interests) has the right to pledge or exchange the assets (or beneficial interests) it received, and no condition both constrains the transferee (or holder) from taking advantage of its right to pledge or exchange and provides more than a trivial benefit to the transferor.
c. The transferor does not maintain effective control over the transferred assets through either (1) an agreement that both entitles and obligates the transferor to repurchase or redeem them before their maturity or (2) the ability to unilaterally cause the holder to return specific assets, other than through a cleanup call.

This Statement requires that liabilities and derivatives incurred or obtained by transferors as part of a transfer of financial assets be initially measured at fair value, if practicable. It also requires that servicing assets and other retained interests in the transferred assets be measured by allocating the previous carrying amount between the assets sold, if any, and retained interests, if any, based on their relative fair values at the date of the transfer.

In other words, they no longer own or control your **Mortgage Loan**. They merely act as a servicer for your **Mortgage Loan**, with the proceeds going directly into the REMIC to be distributed to the REMIC shareholders.

Remember, since your lender is just a servicer, they do not own the note. They do not have the right to enforce the note. They can only act as a servicing agent (they collect the interest and principal payments, as well as escrow real estate taxes and homeowners insurance for periodic disbursements to municipalities, cities & towns for real estate taxes, and insurance companies for homeowner's insurance).

Please refer to: **U.S. Code Title 12: Banks and Banking, Part 226** - Truth in Lending (Regulation Z). This is enclosed in the Appendix A-1 for your convenience at the end of this article.

These are codified laws of banking. It defines who a Lender is, and what the rights of a Servicer are. Specifically, it refers in 226 (a) 1 that a servicer is not treated as the owner of the obligation.

Scope - The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

(1) A "covered person" means any person, as defined in §226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any twelve - month period.

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E-mail: adams.r@foxboro-consulting.com

For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

You will also note that the scope does not cover the servicer if the servicer was assigned the note for administrative convenience in servicing the obligation. This means, the servicer is not treated as and does not have the rights of a lender (or owner of the obligation).

As I discussed earlier, even if the servicer was to buy the note back after it has been securitized, reattachment of the loan/note to the Deed of Trust/Mortgage is impossible.

YOU CAN NOT MAKE CARROTS FROM CARROT JUICE

Once a loan has been written off, it is discharged. Once a loan has been securitized, reattachment is impossible.

REATTACHMENT IS IMPOSSIBLE FOR THE FOLLOWING REASONS:

1.) Permanent conversion - The promissory note had been converted into a stock as a permanent fixture. Its nature is forever changed. It is now and forever a stock.

It is treated as a stock and governed as a stock under the SEC. Since the Deed of Trust secures the promissory note, once the promissory note is destroyed, the Deed of Trust secures nothing.

Therefore, the Trust is invalid.

2.) Asset has been written off, the debt is discharged since the owner of the asset has received compensation for the discharge in the for m of tax credits from the IRS. The debt has been settled/or discharged.

The servicer acts as a debt collector of an unsecured note. The servicer is deceiving the court, the county, and the borrower when it tries to re-attach the note to the Deed of Trust as if nothing has happened. It's called adhesion.

The funny thing about the law is, it is legal until or unless the other party objects.

Since this scam is so devious, it is beyond the comprehension of most people...including that of lawyers and judges. It takes someone who has studied accounting, securities and law to unravel this deception.

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E-mail: adams.r@foxboro-consulting.com

Most people in the legal profession only take the arguments on face value.

3) Broken chain of assignment Under the Uniform Commercial Code (UCC), the promissory note is a one of a kind instrument.

All assignments (much like endorsements on the back of a check) have to be done as a permanent fixture onto the original promissory note.

The original promissory note has the only legally binding chain of title. Without a proper chain of title, the instrument is faulty. Rarely can a lender" produce the note" because by law, the original note has to be destroyed. Remember?

The note and the stock cannot exist at the same time. Often times, the lender would come into court with a photocopy of the original note made years ago.

Another popular method of deceit lenders prefer is to use the State Civil Code in non-judicial states to state that" there is no law requiring a lender to produce the note or any other proof of claim."

THEY DON'T HAVE IT & CANNOT PRODUCE IT

Oftentimes, the lender would do blank assignments of the original promissory note into the REMIC. Then, when they need the note to perform the foreclosure, they will magically produce a blank assignment. Again, this is not legal and is bringing fraudulent documents before the courts and the county records.

Let's be very clear here. Once a loan has been securitized, the note is no more.

Anything the lender brings to court as evidence is prima facie evidence of fraud.
The attorney for the lender is either an accessory to fraud through ignorance or willful intent.

Either way, as an informed borrower, it is your job to bring this deception to light so these lawyers can be sanctioned. So, your lender would close your loan, sell it to a REMIC and get paid. Once your loan goes into default, the loan is written off.

The loan is then bought by the same lender in the open secondary market as a dead/unsecured note. To be able to pull this stunt off, every lender involved in this scheme is required to act in collusion. Once the servicer buys the dead note, they then claim to be the true holder in due course of a written off asset. They then present to the world that they are who they claim.

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They rely on the homeowner/borrower to be ignorant of this deception and clean up, allowing them to take possession of a house for pennies on the dollar.

This is the extent of the fraud done to the American public every single day. As a homeowner defending your rights, it is imperative you understand the nature of this fraud so you can use these arguments to defend your home. As a legal professional, it is imperative that you understand these arguments so you can raise the proper objections and interrogatories when representing your clients in a foreclosure defense.

LOAN MODIFICATIONS ARE A SCAM

By now, you should wise up to this whole notion of who is the real party of interest. So, if your lender is not a real and beneficial party of interest, how can they give you a loan modification?

The answer is ...they can't."

What?

It happens all the time," I hear you say. The truth is, very few loan modifications are approved and they usually take months.

If you have ever tried to talk to your bank about getting a loan modification, you will likely hear something like:

"I am sorry sir; we can only consider you for a loan modification if you are 60 days or more delinquent."

WHAT??

That's just stupid.

Not really.

Here's why.

Let's make it simpler for you to understand the scam.

Remember FAS 140 (see page 1 of this article or Appendix 1)**?**

Once an asset has been sold, the Lender/Servicer forever loses the right to enforce or control the asset ... except when a loan is considered delinquent.

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E-mail: adams.r@foxboro-consulting.com

After 60 days, your servicer becomes a debt collector and is governed under the **Fair Debt Collections Practices Act.**

This is another scam they don't want you to know about.

If you have ever received a Notice of Default or anything else from the bank, you will see language like: "This is an attempt to collect a debt."

This is required by law under the Fair Debt Collections Practices Act.

Under the Terms of the Pooling and Servicing Agreement, the **REMIC** can "**set off**" or write off the asset as non-performing. The servicer may then buy this asset back as a non-performing, non-secured debt, very much like the collections agencies that buy non-performing credit card debts.

Once a debt has been written off for tax purposes, it is discharged/or settled.

The company may sell the asset to a debt collector who will do anything and everything in its power to lie, cheat and steal to collect on the debt.

This is why they must have the notice: "This is an attempt to collect a debt." **This is your clue that it is not an original creditor.**

Once a debt is set off, the FDIC comes in and covers 80% of the face value of the loan. Your bank then buys the bad debt for pennies on the dollar from the REMIC so that they can negotiate a loan modification.

Once they get you to sign the loan mod agreement, they have successfully renegotiated, re-contracted and re-acquired the loan. Notice how hard it is to get a loan modification?

Do you know why?

They can no longer dump their toxic asset son those …"Suckers on Wall Street".

Fool me once, shame on you.

Fool me twice, shame on me.

Wall Street is getting wise.

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Now, strict underwriting standards must be applied because they have to keep the loan. Furthermore, there are strict accounting rules about buying back toxic assets. The asset has to be bought on the open market.

That is why it takes months for them to buy your note back. Can you see the light now? Are you having an "AHA" moment?

But If They Bought The Loan, Don't They Then Have the Right to Foreclose?

Once a debt has been written off as a bad debt, the owners get tax credits for the asset.

When this happens, the debt is discharged .

Settled!

Gone!

What these banks are doing is buying a discharged asset.

They then try to convince the world; the borrower, the courts, and the Trustee, that they a re the real party of interest.

That is a lie.

As I discussed earlier, once a loan has been written off, it cannot be re-adhered and made whole again.

Remember?

You cannot make carrots from carrot Juice . It's forever changed.

ENTER ROBO-SIGNERS AND FRAUDULENT LOAN ASSIGNMENTS

Let me ask you a question. If you could pick up a promissory note for pennies on the dollar, and all you have to do is to "**convince**" (con) the homeowners that you are the true party of interest ... to what extent would you go to lie/cheat/steal to get the home?

The answer is...whatever it takes.

At least that's what the banks are doing.

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This brings us back to the Uniform Commercial Code.

Under the law, the original promissory note is the only valid and legally binding chain of title for the note.

Your original promissory note is like an original check. It's a one of a kind instrument.

To convince the court that they have the right to foreclose, banks have taken to:

a) Forging documents

b) Creating arbitrary loan assignments to suit their needs

c) Bringing fraudulent documents before the court

d) Recording fraudulent documents at the county.

There is a company called Loan Processing Services (LPS), who for less than $100.00, can fabricate any loan documents the bank needs to facilitate their foreclosure.

It's called reverse engineering of title. Instead of following proper legal due process of proper chain of title assignment as required by law, these companies will reverse engineer a title to facilitate for the foreclosure, even if they have to bend the rules a little.

They then go under oath to testify that they have firsthand knowledge of the fact that these loan documents are legitimate.

I have depositions of employees from these foreclosure mills passing the notary stamp around and stamping signatures as they go. See: http://4closurefraud.org/2011/07/19/notorious-robo-signers-bryan-bly-and-crystal-moore-still-working-for-nationwide-title-clearing/ .

The literally pass around notary signatures like it was a rubber stamp. Often times, you can see signatures as notaries that do not match that registered with the State.

There was even an instance where one outfit had an assignment table" where they would put a whole stack of paper and a manager would then rubber stamp the appropriate loan assignment as they saw fit with no verification, no first hand knowledge of the fact, no confirmation, **ZIP**.

But as I discussed earlier, "you cannot make carrots from carrot juice".

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If a loan has been securitized, any supposed original promissory note is nothing more than counterfeit at best; not to mention securities fraud.

DON'T BELIEVE US?

Just go to You Tube and search for the Alan Grayson Foreclosure Fraud and The video deposition of nationwide title clearing Bryan Bly. These are but hundreds of such videos.

Congressman Grayson is a Representative from Florida....one of the worst affected States in the US.

http://4closurefraud.org/2011/07/19/notorious-robo-signers-bryan-bly-and-crystal-moore-still-working-for-nationwide-title-clearing/

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APPENDIX A

FAS 140 - Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities-a replacement of FASB Statement No. 125 (Issued 9/00)

Summary

This Statement FAS 140 replaces FASB Statement No. 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities.* It revises the standards for accounting for securitizations and other transfers of financial assets and collateral and requires certain disclosures, but it carries over most of Statement 125's provisions without reconsideration.

This Statement provides accounting and reporting standards for transfers and servicing of financial assets and extinguishments of liabilities. Those standards are based on consistent application of a *financial-components approach* that focuses on control. Under that approach, after a transfer of financial assets, an entity recognizes the financial and servicing assets it controls and the liabilities it has incurred, derecognizes financial assets when control has been surrendered, and derecognizes liabilities when extinguished. This Statement provides consistent standards for distinguishing transfers of financial assets that are sales from transfers that are secured borrowings.

A transfer of financial assets in which the transferor surrenders control over those assets is accounted for as a sale to the extent that consideration other than beneficial interests in the transferred assets is received in exchange. The transferor has surrendered control over transferred assets if and only if all of the following conditions are met:

a. The transferred assets have been isolated from the transferor—put presumptively beyond the reach of the transferor and its creditors, even in bankruptcy or other receivership.
b. Each transferee (or, if the transferee is a qualifying special-purpose entity (SPE), each holder of its beneficial interests) has the right to pledge or exchange the assets (or beneficial interests) it received, and no condition both constrains the transferee (or holder) from taking advantage of its right to pledge or exchange and provides more than a trivial benefit to the transferor.
c. The transferor does not maintain effective control over the transferred assets through either (1) an agreement that both entitles and obligates the transferor to repurchase or redeem them before their maturity or (2) the ability to unilaterally cause the holder to return specific assets, other than through a cleanup call.

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E-mail: adams.r@foxboro-consulting.com

This Statement requires that liabilities and derivatives incurred or obtained by transferors as part of a transfer of financial assets be initially measured at fair value, if practicable. It also requires that servicing assets and other retained interests in the transferred assets be measured by allocating the previous carrying amount between the assets sold, if any, and retained interests, if any, based on their relative fair values at the date of the transfer.

This Statement requires that servicing assets and liabilities be subsequently measured by (a) amortization in proportion to and over the period of estimated net servicing income or loss and (b) assessment for asset impairment or increased obligation based on their fair values.

This Statement requires that a liability be derecognized if and only if either (a) the debtor pays the creditor and is relieved of its obligation for the liability or (b) the debtor is legally released from being the primary obligor under the liability either judicially or by the creditor. Therefore, a liability is not considered extinguished by an in-substance defeasance.

This Statement provides implementation guidance for assessing isolation of transferred assets, conditions that constrain a transferee, conditions for an entity to be a qualifying SPE, accounting for transfers of partial interests, measurement of retained interests, servicing of financial assets, securitizations,transfers of sales-type and direct financing lease receivables, securities lending transactions, repurchase agreements including "dollar rolls," "wash sales," loan syndications and participations, risk participations in banker's acceptances, factoring arrangements, transfers of receivables with recourse, and extinguishments of liabilities. This Statement also provides guidance about whether a transferor has retained effective control over assets transferred to qualifying SPEs through removal-of-accounts provisions, liquidation provisions, or other arrangements.

This Statement requires a debtor to (a) reclassify financial assets pledged as collateral and report those assets in its statement of financial position separately from other assets not so encumbered if the secured party has the right by contract or custom to sell or repledge the collateral and (b) disclose assets pledged as collateral that have not been reclassified and separately reported in the statement of financial position. This Statement also requires a secured party to disclose information about collateral that it has accepted and is permitted by contractor custom to sell or repledge. The required disclosure includes the fair value at the end of the period of that collateral, and of the portion of that collateral that it has sold or repledged, and information about the sources and uses of that collateral.

This Statement requires an entity that has securitized financial assets to disclose information about accounting policies, volume, cash flows, key assumptions made in determining fair values of retained interests, and sensitivity of those fair values to changes in key assumptions. It also requires that entities that securitize assets disclose for the securitized assets and any other financial assets it manages together with them (a) the total principal amount outstanding, the

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Office: (774) 719-2236 or Mobile: (508) 878-8390
E-mail: adams.r@foxboro-consulting.com

portion that has been derecognized, and the portion that continues to be recognized in each category reported in the statement of financial position, at the end of the period; (b) delinquencies at the end of the period; and (c) credit losses during the period.

In addition to replacing Statement 125 and rescinding FASB Statement No. 127, *Deferral of the Effective Date of Certain Provisions of FASB Statement No. 125,* this Statement carries forward the actions taken by Statement 125. Statement 125 superseded FASB Statements No. 76, *Extinguishment of Debt,* and No. 77, *Reporting by Transferors for Transfers of Receivables with Recourse.* Statement 125 amended FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities,* to clarify that a debt security may not be classified as held-to-maturity if it can be prepaid or otherwise settled in such a way that the holder of the security would not recover substantially all of its recorded investment. Statement 125 amended and extended to all servicing assets and liabilities the accounting standards for mortgage servicing rights now in FASB Statement No. 65, *Accounting for Certain Mortgage Banking Activities,* and superseded FASB Statement No. 122, *Accounting for Mortgage Servicing Rights.* Statement 125 also superseded FASB Technical Bulletins No. 84-4, *In-Substance Defeasance of Debt,* and No. 85-2, *Accounting for Collateralized Mortgage Obligations (CMOs),* and amended FASB Technical Bulletin No. 87-3, *Accounting for Mortgage Servicing Fees and Rights.*

Statement 125 was effective for transfers and servicing of financial assets and extinguishments of liabilities occurring after December 31, 1996, and on or before March 31, 2001, except for certain provisions. Statement 127 deferred until December 31, 1997, the effective date (a) of paragraph 15 of Statement 125 and (b) for repurchase agreement, dollar-roll, securities lending, and similar transactions, of paragraphs 9-12 and 237(b) of Statement 125.

This Statement is effective for transfers and servicing of financial assets and extinguishments of liabilities occurring after March 31, 2001. This Statement is effective for recognition and reclassification of collateral and for disclosures relating to securitization transactions and collateral for fiscal years ending after December 15, 2000. Disclosures about securitization and collateral accepted need not be reported for periods ending on or before December 15, 2000, for which financial statements are presented for comparative purposes.

This Statement is to be applied prospectively with certain exceptions. Other than those exceptions, earlier or retroactive application of its accounting provisions is not permitted.

Know of someone threatened with a foreclosure process, call Ronald J. Adams, CPA, CVA, ABV, CBA, BCA, CFF, FVS, GCMA – we can help them stay in their homes and may even be able to settle/ discharge their Mortgage Loan. E-mail adams.r@foxboro-consulting.com ; or call us at (774) 719-2236.

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E-mail: adams.r@foxboro-consulting.com

Appendix A] U.S.Code Title 12: Banks and Banking

PART 226—TRUTH IN LENDING (REGULATION Z)

§ 226.39 Mortgage transfer disclosures.

Link to an amendment published at 75 FR 58501, Sept. 24, 2010.

(a) *Scope.* The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

(1) A "*covered person*" means any person, as defined in §226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

(2) A "*mortgage loan*" means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(b) *Disclosure required.* Except as provided in paragraph (c) of this section, any person that becomes a covered person as defined in this section shall mail or deliver the disclosures required by this section to the consumer on or before the 30th calendar day following the acquisition date. If there is more than one covered person, only one disclosure shall be given and the covered persons shall agree among themselves which covered person shall comply with the requirements that this section imposes on any or all of them.

(1) *Acquisition date.* For purposes of this section, the date that the covered person acquired the mortgage loan shall be the date of acquisition recognized in the books and records of the acquiring party.

(2) *Multiple consumers.* If there is more than one consumer liable on the obligation, a covered person may mail or deliver the disclosures to any consumer who is primarily liable.

(c) *Exceptions.* Notwithstanding paragraph (b) of this section, a covered person is not subject to the requirements of this section with respect to a particular mortgage loan if:

(1) The covered person sells or otherwise transfers or assigns legal title to the mortgage loan on or before the 30th calendar day following the date that the covered person acquired the mortgage loan; or

(2) The mortgage loan is transferred to the covered person in connection with a repurchase agreement and the transferor that is obligated to repurchase the loan continues to recognize the loan as an asset on its own books and records. However, if the transferor does not repurchase the mortgage loan, the acquiring party must make the disclosures required by §226.39 within 30 days after the date that the transaction is recognized as an acquisition in its books and records.

(d) *Content of required disclosures.* The disclosures required by this section shall identify the loan that was acquired or transferred and state the following:

(1) The identity, address, and telephone number of the covered person who owns the mortgage loan. If there is more than one covered person, the information required by this paragraph shall be provided for each of them.
(2) The acquisition date recognized by the covered person.
(3) How to reach an agent or party having authority to act on behalf of the covered person (or persons), which shall identify a person (or persons) authorized to receive legal notices on behalf of the covered person and resolve issues concerning the consumer's payments on the loan. However, no information is required to be provided under this paragraph if the consumer can use the information provided under paragraph (d)(1) of this section for these purposes. If multiple persons are identified under this paragraph, the disclosure shall provide contact information for each and indicate the extent to which the authority of each agent differs. For purposes of this paragraph (d)(3), it is sufficient if the covered person provides only a telephone number provided that the consumer can use the telephone number to obtain the address for the agent or other person identified.
(4) The location where transfer of ownership of the debt to the covered person is recorded. However, if the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person complies with this paragraph by stating this fact.
(e) *Optional disclosures.* In addition to the information required to be disclosed under paragraph (d) of this section, a covered person may, at its option, provide any other information regarding the transaction.

