
Fidelity Funding Corp.

Forensic and Securitization Compliance Analysis

Borrower:

[REDACTED]

Property:

[REDACTED]

[REDACTED]

October 9, 2011



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October 9, 2011

[REDACTED]

Re: Forensic Compliance Analysis for
Loan #: [REDACTED]

Dear Recipient,

This report was based exclusively on the documentation provided by the borrower and attorney. There is no attempt made by Fidelity Funding Corp. to contact the lender, broker, title company or servicer. Any contact with such entities would immediately cause Fidelity Funding Corp. to fall under the California Foreclosure Act.

Disclosure: You have engaged Fidelity Funding Corp. to examine your real estate documents. This information is not to be construed as legal advice or the practice of law, pursuant to Business and Professions Code, it is the intent of Fidelity Funding Corp., its members, auditors, and independent contractors, not to engage in activities that could be considered the practice of law by conduct exhibiting any of the following practices:

"...the doing and/or performing of services in a court of justice in any matter depending therein throughout the various stages and in conformity with the adopted rules of procedure. It includes legal advice and counsel and the preparation of legal instruments and contracts by which the legal rights are secured although such matter may or may not be depending in a court."

Truly yours,

Fidelity Funding Corp.

Certified Securitization/Forensic Loan Investigators



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Interested Parties

Borrower
[REDACTED]

Co-Borrower
[REDACTED]

Original Mortgage Lender / Table Funder
Decision One Mortgage Company, LLC 6060 J.A. Jones Drive, Suite 1000 Charlotte, North Carolina 28287 Loan #: [REDACTED]

Mortgage Servicer
Wells Fargo, N.A.

Mortgage Nominee / Beneficiary
Mortgage Electronic Registration Systems ("MERS") P.O. Box 2026 Flint, MI 48501 MIN #: [REDACTED]

Mortgage Broker
Community Lending, Inc.

Mortgage Trustee
Chicago Title Insurance Company 171 N. Clark Street Chicago, Illinois 60601

Escrow / Title
Chicago Title Company



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Documents Provided for Review

1 st	2 nd	
X		Loan Application (Form 1003)
		Loan Commitment Letter/Lock Letter
X		Good Faith Estimate
X		Truth in Lending Disclosure Statement
X		(3-Day) Notice of Right to Cancel*
X		HUD-1 (or HUD-1A) Settlement Statement
X		Note (with Addendums)
X		Deed of Trust (with Riders)
X		Underwriting and Transmittal Summary (Form 1008)
		Appraisal Report
		RESPA Servicing Disclosure
X		Hazard Insurance Disclosure
X		Credit Score Disclosure
X		Lender's Closing Instructions
		Affiliated Business Arrangement Disclosure
		I-O and/or Negative Amortization Disclosure
		ARM Disclosure
		Itemization of Amount Finance Disclosure
		Right to Receive a Copy of the Appraisal
X		Equal Credit Opportunity Act Disclosure
		Patriot Act Disclosure
X		Fair Lending Notice
		Private Policy
X		2 Years W-2's or Tax Returns for Years Prior to Loan
X		Current Mortgage Statement within the Last 30 Days



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Report Summary

Total TILA Violations:	4
Total RESPA Violations:	3
Total Predatory Lending Violations:	7

Underwriting	TILA APR Tolerance Test	TILA Finance Charge Test
Conclusion: FAIL	Conclusion: FAIL	Conclusion: FAIL
Details: See Page 9	Details: Attachment at End of Report	Details: Attachment at End of Report
TILA Right of Rescission	RESPA Analysis	Predatory Indicators
Conclusion: N/A	Conclusion: FAIL	Conclusion: FAIL
Details:	Details: See Page 15	Details: See Page 17

* (Probability of Violations Ratings: No Evidence or Possible)

Auditor's Summary

This loan is a Refinance Core Interest Only 2-Year Arm for 30 years. The interest rate 6.84% with an interest only payment of \$3,397.20 for the first 2 years. It is tied to the 6 month LIBOR. **The margin is 5.84%, which is above the average of 2.25%.** The cap rate, or maximum, is 12.84%. After 2 years, this loan can change annually, no more than 2.0% per year. **When this loan caps out, the payment will be \$5,884.19, which is an increase of \$2,486.99.** This is an **extreme payment shock** for the borrowers! This loan was approved solely on the collateral due to LTV of 80%. The DTI ratio at the cap rate is 82%, which well exceeds normal underwriting standards. With high ratio, it is only a matter of time before this loan goes into default. This loan has a 2 year prepayment penalty. The borrowers will pay a prepayment charge of 6 months advance interest of the amount prepaid in excess of 20% of the original loan amount. **Any partial prepayment may reduce the amount of monthly payments after the first Change Date following the partial prepayment. However, any reduction due to the borrower's prepayment may be offset by an interest rate increase.** These guidelines are contradictory.

The borrowers have received a Notice of Default filed on June 24, 2008 and a Notice of Trustee Sale filed on September 23, 2011 from ReconTrust Company.



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Summary of Loan Terms

	1st Note	2nd Note
Type of Loan:	Cash out Refinance	
Loan Document Date:	June 16, 2006	
Amount of Loan:	\$596,000.00	\$
Appraised Value or Sale Price:	\$745,000.00	
Loan to Value:	80%	
Term of Loan:	30 Year	
Initial Fixed Rate:	6.84%	
Initial Payment:	\$3,397.20	\$
Fully Amortized Payment:	\$2,044,384.07	\$
First Payment Adjustment Date:	July 1, 2008	
Loan Program:	CORE-IO-2Year ARM	
Index:	6 Month LIBOR	
Index Rate:	5.3306%	
Margin:	5.84%	
Fully Indexed Rate:	11.1706%	
Floor/Ceiling Rate:	6.84%/12.84%	
TILA Disclosed Rate:	10.2145%	
Prepayment Penalty:	\$8,880.00	
Total Closing Costs:	\$3,667.00	\$
Total "Closing Costs" %:	1.0%	
Loan Origination Fees:	\$0.00	\$
Loan Discount Fees:	\$0.00	\$
Total Broker Fees:	\$0.00	\$
Unsecured Debt Paid off by Refinance:	\$0.00	\$



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Itemization of Closing Costs / Fees / Charges

Loan Origination:	\$0.00
Loan Discount Points:	\$0.00
Notary Fee:	\$20.00
06-ALTA Loan w/Form 1-1992:	\$269.25
Endorsement Fee:	\$50.00
Draw Deed:	\$50.00
Lender/Broker Fee:	\$0.00
Doc Prep Fee:	\$0.00
Processing Fee:	\$0.00
Underwriting Fee:	\$999.00
Prepaid Interest:	\$1,132.40
Hazard Insurance Premium:	\$1,694.00
Hazard Insurance:	\$282.34
County Property Taxes:	\$3,963.54
Aggregate Adjustment:	-\$988.19
Closing/Settlement Fee:	\$750.00
Title Insurance:	\$950.00
Wire Fee:	\$300.00
Recording Fee:	\$110.00
Other Fees:	\$432.39
TOTAL:	\$9994.73



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Financial & Underwriting Analysis

Underwriting Standards

The purpose of an underwriter is to determine whether the borrowers can qualify for a loan and if the borrowers have the ability to repay the loan. This determination of the ability to repay a loan is based upon employment and income in large measure, which is proved by getting pay stubs, 1040's, W-2's and a Verification of Employment and Income on the borrowers.

If an underwriter has evaluated the loan properly, then there should be no question of the ability of the borrower to repay the loan. Debt ratios will have been evaluated, credit reviewed and a proper determination of risk made in relation to the loan amount. Approvals and denials would be made based upon a realistic likelihood of repayment.

Automated Underwriting Systems

The underwriter's role in approving loans has been delegated to a support role in the past decade. Automated Underwriting Systems became the normal approval method. An underwriter or even a loan officer would simply input the data and the Automated System would give an approval or denial. Any documents requested would be gathered and then loan documents drawn and signed.

The real issue with the automated systems is that they were not designed to be the "final word" in approval. The system approval was designed to be a guide, a preliminary approval and nothing more. After approval was received, the underwriter would then be expected to extensively review the file, closely examining the documents for final approval.

Discussion: Borrower's financial status at the time of the loan is taken from the loan application. An analysis of borrower's financial status at the time of the loan reveals the following: **BASED on STATED Income. The following figures are based on the information stated on the Loan Application and have not been verified.**

DTI at Initial Payment

Gross Monthly Income:	\$17095.56
Mortgage Payment:	\$4,104.59
Other Debt:	
Total Monthly Debt:	\$8,134.00
Debt-to-Income Ratio:	72%

DTI at Cap Rate Payment

Mortgage Payment:	\$5,884.19
Other Debt:	\$8,134.00
Total Combined	\$14,018.19
Debt-to-Income Ratio:	82%



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Conclusion

Normal underwriting practices include analysis for a 28/36% debt-to-income ratio. During 2003 to 2006, subprime lending involved higher DTI ratios, from 33/38% to 38/50%. **Lender's underwriting standard for this loan far exceeded normal underwriting practices for normal and subprime loans. The Lender/Broker has a fiduciary duty not to put the borrower in HARM'S WAY and by approving this loan, the Lender/Broker had put him in HARM'S WAY!**

The income used to approve this loan was stated by the borrower. The lender used a stated income product for approval based on the value of the collateral used as the security for the loan. Typically, such credit is underwritten predominantly on the basis of the liquidation value of the collateral, without regard to the borrower's ability to service and repay the loan according to its terms absent resorting to that collateral. When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments under the terms of the loan, based on the borrower's current and expected income, current obligations, employment status, and other relevant financial resources, the lender is effectively counting on its ability to seize the borrower's equity in the collateral to satisfy the obligation and to recover the typically high fees associated with such credit. Not surprisingly, such credits experience foreclosure rates higher than normal.

The failure to adequately underwrite this loan could be actionable under: Rescission Law for Fraud, Mistake, Undue Influence, Breach, Illegality.

Causes of Action could include:

- Lack of due diligence by the lender in approving the loan.
- Lack of Good Faith and Fair Dealings by the Lender.
- Fiduciary Duty by the lender for doing a loan where it could lead to default.
- Unconscionability by the lender for doing the loan.



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Risk Factors for the Loan:

1. Stated Income
2. High Debt to Income Ratios
3. Prepayment Penalty
4. Lack of Due Diligence in Underwriting
5. ARM Loan
6. Interest Only
7. Excess Fees/Charges
8. High LTV
9. Payment Shock
10. Less than Adequate Reserves Verified
11. High Margin
12. High Interest Rate



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Truth in Lending Act Analysis

Application: The TILA applies because the transaction involves the extension of credit to a consumer for personal, family or household purposes that is subject to a finance charge and/or payable by written agreement in more than four installments. 15 U.S.C. §§ 1601-1666j.

	Fail	TIL Disclosure Statement provided. 12 C.F.R. §§ 226.17, 226.18. NO EVIDENCE IN FILE	Pass	Prepayment Penalty disclosed. 12 C.F.R. § 226.18(k).
	Fail	Payment Schedule correctly identified on TIL. 12 C.F.R. §§ 226.18(g), (h). ARM LOAN	Pass	Itemization of amount financed. 12 C.F.R. § 226.18(c). [RESPA-GFE may be substituted]
Pass		Notice of Right to Cancel (2 copies per borrower; filled out completely). 12 C.F.R. § 226.23(b).	Pass	Property/Hazard Insurance disclosure provided (choice by consumer). 12 C.F.R. § 226.4(d)(2).
Pass		Interest-only payment feature adequately disclosed. 15 U.S.C. §§ 1638, 12 C.F.R. § 226.17-18.	Fail	Negative-amortization payment feature adequately disclosed. 15 U.S.C. §§ 1638, 12 C.F.R. § 226.17-18. NO EVIDENCE IN FILE
Pass		“Consumer Handbook on Adjustable Rate Mortgages” (CHARM) provided within 3 days of application. [Or equivalent disclosure - see 12 CFR § 226.19(b)].	Fail	Delivered good faith estimates of disclosures (preliminary TILDS) within 3 days of loan application. 12 C.F.R. §§ 226.19(a).
Pass		Interest rate consistent and properly disclosed: Loan app-GFE-Commitment-TIL; variable rate. 12 CFR § 226.17-18.	Pass	All disclosures accurately reflect the legal obligation between the parties; 15 U.S.C. §§ 1638, 12 C.F.R. § 226.17(c).

Total Potential TILA Violations: 4



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Further Recommendations

None at this time.

Potential Remedies for Violations

Where a material disclosure was not given or inaccurate (APR, finance charge, amount financed, payment schedule, or total of payments), or consumer was not provided with proper notice of right to cancel, the right of rescission is extended to 3 years. Statutory (up to \$2000) and actual damages, as well as attorney's fees, may also be available for the violations noted.



TILA Notations

Under the Truth in Lending Act ("TILA"), rescission rights arise when: (1) the transaction is a consumer credit transaction; (2) in which a non-purchase lien or security interest is or will be placed; and (3) on the consumer's principal dwelling. In a rescindable transaction, each consumer must be given a copy of the TILA disclosure statement with all "material" information correctly disclosed and notice of a three-day right to rescind. If these material disclosures are not properly provided, the three-day right to rescind is extended until one of the following events occurs: (1) all materials disclosures are correctly given and a new three day notice of cancellation, (2) the expiration of three years after consummation of the transaction; (3) the transfer of all of the consumer's interest in the property; or (4) the sale of the property. All persons entitled to rescind under TILA must receive two copies of the rescission notice rights and one copy of the material disclosures at or before closing. The notice of rescission must provide the following information: (1) the retention or the acquisition of a security interest in the consumer's principal dwelling; (2) the consumer's right to rescind; (3) how to exercise the right to rescind with a form for that purpose, designating the address of the creditor's place of business; (4) the effects of rescission; and (5) the date the rescission period expires.

1. Annual Percentage Rate Tolerances and Right of Rescission

An APR deviation is a material violation permitting the right of rescission if: (a) it was a refinance, (b) within 3 years of the transaction, and (c) outside the tolerances set forth below.

12 CFR § 226.22(a)(2) provides: "As a general rule, the annual percentage rate shall be considered accurate if it is not more than 1/8 of 1 (.125%) percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section." Under 12 CFR 226.22(a)(3): "In an irregular transaction, the annual percentage rate shall be considered accurate if it is not more than 1/4 of 1 (.25%) percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section."

2. Finance Charge Tolerances and Right of Rescission

12 CFR § 226.18(d) requires the disclosure of the finance charge amount. For purposes of "mortgage loans," 12 CFR § 226.18(d) (1) provides: "In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge: (i) is understated by no more than \$100; or (ii) is greater than the amount required to be disclosed." Statutory and actual damages are available for this violation.

A finance charge deviation is a material violation permitting the right of rescission if: (a) it was a refinance, (b) within 3 years of the transaction, and (c) outside the tolerances set forth below.

12 CFR § 226.23(g) provides: "Tolerances for accuracy.--(1) One-half of 1 percent tolerance. Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge: (i) is understated by no more than ½ of 1 percent of the face amount of the note or \$100, whichever is greater; or (ii) is greater than the amount required to be disclosed. (2) One percent tolerance. In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 226.32), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge: (i) is understated by no more than 1 percent of the face amount of the note or \$100, whichever is greater; or (ii) is greater than the amount required to be disclosed."

15 U.S.C. §1635(i) also provides: "Rescission Rights In Foreclosure.--(2) Tolerance For Disclosures.--Notwithstanding section 106(f), and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights after the initiation of any judicial or non-judicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this title."



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Real Estate Settlement Procedures Act Analysis

Application: The RESPA applies because lender regularly extends federally related mortgage loans aggregating more than \$1 million per year, and intended for the purchase of a one- to four-family residential property. 12 U.S.C. §§ 2601-2617.

Pass		Informed borrower of intention to transfer the servicing of the loan and/or failed to inform the borrower of the actual transfer within fifteen (15) days before the effective date of the transfer. 24 C.F.R. § 3500.21.	Fail		Purchase Money: Provided the Special Information Booklet explaining the settlement costs within three (3) business days after consumer submitted loan application. 24 C.F.R. § 3500.6. NO EVIDENCE FOUND
Pass		Did not require deposit of funds in escrow in excess of the statutorily permitted amounts. 24 C.F.R. § 3500.17.	Pass		No fees charged for preparation of the settlement statement, escrow account statement, and/or the TILA disclosure statement. 24 C.F.R. § 3500.12.
Fail		Disclosed all affiliated business arrangements. 24 C.F.R. § 3500.15. NO EVIDENCE IN FILE	Pass		HUD-1 provided at closing (or 1 day before if requested) and accurate. 24 C.F.R. § 3500.8(b).
Fail		No fees charged in excess of the reasonable value of goods provided and/or services rendered. SEE BELOW	Pass		Purchase Money: Seller did not impose use of particular service provider. 24 C.F.R. § 3500.16.
TBD		Properly and timely paid for property taxes, insurance and other charges for which Defendants are collecting within an escrow impound account; or other servicing violations. 24 C.F.R. § 3500.17.	Pass		Did not give, provide or receive a hidden fee or thing of value for the referral of settlement business, including but not limited to, kickbacks, hidden referral fees, and/or yield spread premiums. 24 C.F.R. § 3500.14.

The following are **suspect or excessive closing costs/fees** that may be actionable for treble damages pursuant to 12 U.S.C. §2607: **UNDERWRITING FEE: \$999.00**

Total Potential RESPA Violations: 3



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Further Recommendations

QWR/discovery re: mortgage servicing for potential servicing violations or breach of contract.

Potential Remedies for Violations

Actual damages, statutory (up to \$1000 if show pattern and practice), and treble damages for excessive portion of fees (below), plus attorney's fees and costs for violations noted.

The following are suspect or excessive closing costs/fees that may be actionable for treble damages pursuant to 12 U.S.C. §2607:



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Predatory Loan Indicators

The predatory lending factors present in the subject transaction were found to be as follows:

	Fail	Stated Income/Assets or No Income/No Assets loan program.	Pass		Mortgage broker and corresponding lender involved.
Pass		Loan-to-value ratio above 80%.		Fail	Debt-to-income ratio above 28/36%. 72%, 82%
Pass		Teaser/Discount rate involved.		Fail	Excessive Closing Costs/Fees. \$999.00
	Fail	Prepayment Penalty.		Fail	Interest-Only Payments. 2 YEARS
Pass		Negative Amortization Payments.	Pass		Broker Compensation >2% (including yield spread premium).
Pass		Loan Flipping – refinance within 3 years of previous loan.	Pass		Balloon Payments.
Pass		Unsecured Debt Shifted to Secured (i.e., credit cards).	Pass		Unnecessary insurance and other products offered in closing.
Pass		Mandatory arbitration clause in Note.		Fail	Other unfair, deceptive, or fraudulent practices in transaction.
Pass		Bait & Switch – e.g., borrower initially offered lower rate than final Note.	Pass		Borrower was a minority and/or the transaction was conducted in a foreign language.
	Fail	Interest rate on 1 st was more than 2 points above: 6.08% (2.77 margin) [average US 5/1 ARM rate] or 6.4% [average 30-year fixed]. (source: Freddie Mac 1/2003-12/2006)	Pass		Elder Abuse (62 and over in age).

Total Predatory Indicators: 7



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Predatory Lending

“Predatory lending” is a general term used to describe unfair, deceptive, or fraudulent practices of lenders during the loan origination process. Predatory lending is often a combination of several factors that can only be evaluated in the context of the overall lending transaction. Typically, no single factor can be relied upon to consider it a predatory loan.

A large number of agencies and consumer organizations recognize predatory lending, including, for example, the Department of Housing and Urban Development, Federal Deposit Insurance Corporation, National Consumer Law Center, California Department of Real Estate, Fannie Mae, National Association of Consumer Advocates, Association of Community Organizations for Reform Now, National Home Equity Mortgage Association, and Center for Responsible Lending.

The terms “abusive lending” or “predatory lending” are most frequently defined by reference to a variety of lending practices. Although it is generally necessary to consider the totality of the circumstances to assess whether a loan is predatory, a fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered.

Typically, such credit is underwritten predominantly on the basis of the liquidation value of the collateral, without regard to the borrower’s ability to service and repay the loan according to its terms. When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments under the terms of the loan, the borrower’s current and expected income, current obligations, employment status, and other relevant financial resources, the lender is effectively counting on its ability to seize the borrower’s equity in the collateral to satisfy the obligation and to recover the typically high fees associated with such credit. Not surprisingly, such credits experience foreclosure rates higher than the norm.

“Predatory Lending” can be defined as any lien secured by real estate which shares well known common characteristics. While such disregard of basic principles of loan underwriting lies at the heart of predatory lending, a variety of other practices may also accompany the marketing of such credit, such as:

- **HOEPA Loans:** High cost loans that violate the Homeownership and Equity Protection Act.



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- **Excessive Fees and Rates:** Requires borrowers to pay interest rates, fees and/or charges not justified by marketplace economics in place at the time the lien was originated.
- **Shifting Unsecured Debt into Mortgage:** Mortgage lenders badger homeowners with advertisements and solicitations that tout the "benefits" of consolidating bills into a mortgage loan. The lender fails to inform the borrower that consolidating unsecured debt such as credit cards and medical bills into a mortgage loan secured by the home is a bad idea. If a person defaults on an unsecured debt, they do not lose their home. If a homeowner rolls their unsecured debt into their mortgage loan and default on their mortgage payments, they can lose their home. Furthermore, since unsecured debt generally is paid off between three and five years, shifting unsecured debt into a mortgage loan extends the payoff period to 15 to 30 years. Paying off unsecured debt with a mortgage loan also necessarily increases closing costs because they are often calculated on a percentage basis, thereby increasing the loan balance. Whereas the old total monthly household debt payments may in some cases be less than the monthly payments on the new mortgage loan, the monthly mortgage payments are often more than the previous mortgage payments, thus exacerbating the risk that the homeowner will lose the home to foreclosure.
- **High Debt Ratios:** This is the practice of approving loans with high debt ratios, usually 50% or more, without determining the true ability of the borrower to repay the loan. This can often be seen with Prime borrowers approved through the Automated Underwriting Systems.
- **High Loan to Value Loans:** Loans offered to a borrower having little or no equity in the home. Usually adjustable rate mortgages that the borrower will not be able to refinance out of when the rate adjusts due to lack of equity.
- **Fraudulently Caused to Execute Loan Documents:** Adjustable rate mortgage loan was an inter-temporal transaction on which Plaintiffs had only qualified at the initial teaser fixed rate, and could not qualify for the loan once the interest rate terms changed in two years.
- **Deception, Fraud, Unconscionable:** Is marketed in a way that fails to fully disclose all material terms. Includes any terms or provisions which are unfair, fraudulent or unconscionable. Is marketed in whole or in part on the basis of fraud, exaggeration, misrepresentation or the concealment of a material fact. Includes interest only loans, adjustable rate loans, negative amortization and HOEPA loans.



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- **Stated or No Income/No Assets:** Is based on a loan application that is inappropriate for the borrower. For instance, the use of a stated-income loan application from an employed individual who has or can obtain pay stubs, W-2 forms and tax returns.
- **Lack of Due Diligence in Underwriting:** Is underwritten without due diligence by the party originating the loan. No realistic means test for determining the ability to repay the loan. Lack of documentation of income or assets, job verification. Usually with Stated Income or No documentation loans, but can apply to full documentation loans.
- **Inappropriate Loan Programs:** Is materially more expensive in terms of fees, charges and/or interest rates than alternative financing for which the borrower qualifies. Can include prime borrowers who are placed into subprime loans, negative or interest only loans. Loan terms whereby the borrower can never realistically repay the loan.
- **Prepayment Penalty:** This loan has a 2 year prepayment penalty where if the borrower makes a partial or full prepayment of more than 20% of the original principal amount in any 12 month period, then the borrower will pay a prepayment penalty of 6 months advance interest on the amount prepaid in excess of 20% of the original principal amount.



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APR Calculations

Borrower Information		Monthly Income	Monthly Expense	Available for Payment	Disclosed TIL Data			
Name: [REDACTED]		\$17,095.56	\$8,134.00	\$8,961.56	APR 10.214%			
Loan Terms		Balloon Term:	ARM (Adjustable Rate Mortgage) Terms		Total Finance Charge			
Amount Financed	\$596,000.00	<input type="checkbox"/> Loan has Balloon Term?	Initial Adj Period	24	\$1,451,565.47			
Loan Rate	6.8400%	Amort. Term (Mths)	Initial Increase Adj	3.0000%	Calculated TIL Data			
Loan Term (Mths)	360	0	Subsequent Adj Period	6	12.36%			
Interest Only (Mths)	24		Subsequent Rate Adj	1.0000%	\$1,670,643.13			
Pre-Finance Charges	\$3,181.40		Lifetime Max Rate	12.8400%	Calculated Difference (+/-)			
Payment Stream					-2.15%			
#	Term	Int. Rate %	Principal	Interest	Payment	Balance (@Term)	Total Payments	(\$219,077.66)
24	24	6.8400%	\$0.00	\$3,397.20	\$3,397.20	\$596,000.00	\$81,532.80	TILA Disclosure Test Result
30	6	9.8400%	\$349.92	\$4,873.20	\$5,223.12	\$593,942.68	\$31,338.75	
36	6	10.8400%	\$304.25	\$5,351.90	\$5,656.15	\$592,157.56	\$33,936.92	
42	6	11.8400%	\$265.95	\$5,829.88	\$6,095.83	\$590,600.31	\$36,575.00	
360	318	12.8400%	\$6,471.88	\$69.25	\$6,541.13	\$0.00	\$2,080,078.25	
5	360						\$2,263,461.73	APR FAIL
								Finance Charge FAIL



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Securitization Transaction Participants

Originator / Lender Fremont Investment & Loan 2727 E. Imperial Highway Brea, CA 92821	Sponsor / Seller Greenwich Capital Financial Products, INC.	Depositor Financial Asset Securities Corp.
Issuing Entity Fremont Home Loan Trust 2006-3	Trustee Deutsche Bank National Trust Company	Master Servicer / Servicer Wells Fargo Bank, N.A. (Servicer) Fremont Investment & Loan (Interim Servicer)
Custodian Deutsche Bank National Trust Company	Cut-Off Date September 1, 2006	Closing Date October 19, 2006



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\$1,573,510,000 (Approximate)
FREMONT HOME LOAN TRUST 2006-3

Issuing Entity

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

Sponsor

FINANCIAL ASSET SECURITIES CORP.

Depositor

FREMONT INVESTMENT & LOAN

Interim Servicer

WELLS FARGO BANK, N.A.

Servicer

Cut-off Date

September 1, 2006.

Closing Date

On or about **October 19, 2006.**

The Issuing Entity

Fremont Home Loan Trust 2006-3, a New York common law trust established under the pooling and servicing agreement. The Issuing Entity is also referred to as the trust in this prospectus supplement. *We refer you to "The Issuing Entity" in this prospectus supplement for additional information.*

The Depositor

Financial Asset Securities Corp., a Delaware corporation and an affiliate of Greenwich Capital Markets, Inc. *We refer you to "The Depositor" in this prospectus supplement for additional information.*

Servicer

Fremont Investment & Loan, a California industrial bank will be the servicer of the initial mortgage loans from the Closing Date up until December 31, 2006 and will be the servicer of the subsequent mortgage loans from the related subsequent transfer date up until January 31, 2007.

Wells Fargo Bank, N.A., a national banking association will be the servicer of the initial mortgage loans effective January 1, 2007 and will be the servicer of the subsequent mortgage loans effective February 1, 2007.

Any obligation specified to be performed by the master servicer in the base prospectus will be, with respect to the servicing of the mortgage loans, an obligation to be performed by the Servicer pursuant to the pooling and servicing agreement. *We refer you to "The Servicer" in this prospectus supplement for additional information.*



Originator

Fremont Investment & Loan, a California industrial bank, originated or acquired the mortgage loans. *We refer you to "The Originator" in this prospectus supplement for additional information.*

Sponsor

Greenwich Capital Financial Products, Inc., a Delaware corporation. *We refer you to "The Sponsor" in this prospectus supplement for additional information.*

Trustee

Deutsche Bank National Trust Company, a national banking association. *We refer you to "The Trustee" in this prospectus supplement for additional information.*

Custodians

Deutsche Bank National Trust Company, a national banking association and JPMorgan Chase Bank, National Association, a national banking association. *We refer you to "The Trustee" in this prospectus supplement for additional information.*

SECTION 2.01 Conveyance of Mortgage Loans

The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey in trust to the Trustee without recourse for the benefit of the Certificateholders all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to (i) each Mortgage Loan identified on the Mortgage Loan Schedule, including the related Cut-off Date Principal Balance, all interest accruing thereon on and after the Cut-off Date and all collections in respect of interest and principal due after the Cut-off Date; (ii) property which secured each such Mortgage Loan and which has been acquired by foreclosure or deed in lieu of foreclosure; (iii) its interest in any insurance policies in respect of the Mortgage Loans; (iv) the rights of the Depositor under the Master Agreement (as assigned to the Depositor pursuant to the terms of the Assignment Agreement), (v) the right to receive any amounts payable under the Basis Risk Cap Agreement; (vi) payments made to the Trustee by the Swap Provider under the Interest Rate Swap Agreement, (vii) payments made to the Cap Trustee by the Interest Rate Cap Provider and the Cap Account, (viii) all other assets included or to be included in the Trust Fund and (ix) all proceeds of any of the foregoing. Such assignment includes all interest and principal due and collected by the Depositor or the Servicer after the Cut-off Date with respect to the Mortgage Loans.

In connection with such transfer and assignment, the Depositor, does hereby deliver to, and deposit with the Custodian on behalf of the Trustee, the following documents or instruments with respect to each Initial Mortgage Loan so transferred and assigned, and in accordance with Section 2.08, deliver or caused to be delivered to the Trustee with respect to each Subsequent Mortgage Loan, the following documents or instruments (with respect to each Mortgage Loan, a "Mortgage File"):



(i) the original Mortgage Note, endorsed either (A) in blank or (B) in the following form: *“Pay to the order of Deutsche Bank National Trust Company, as Trustee, without recourse”* or with respect to any lost Mortgage Note, an original Lost Note Affidavit stating that the original mortgage note was lost, misplaced or destroyed, together with a copy of the related mortgage note; provided, however, that such substitutions of Lost Note Affidavits for original Mortgage Notes may occur only with respect to Mortgage Loans, the aggregate Cut-off Date Principal Balance of which is less than or equal to 1.00% of the Pool Balance as of the Cut-off Date;

(ii) the original Mortgage (noting the presence of the MIN of the Mortgage Loan and language indicating that the Mortgage Loan is a MOM Loan if the Mortgage Loan is a MOM Loan), with evidence of recording thereon, and the original recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon or, if such Mortgage or power of attorney has been submitted for recording but has not been returned from the applicable public recording office, has been lost or is not otherwise available, a copy of such Mortgage or power of attorney, as the case may be, certified to be a true and complete copy of the original submitted for recording;

(iii) unless the Mortgage Loan is a MERS® loan, an original Assignment, in form and substance acceptable for recording. The Mortgage shall be assigned either (A) in blank or (B) to *“Deutsche Bank National Trust Company, as Trustee, without recourse”*;

(iv) an original of any intervening assignment of Mortgage showing a complete chain of assignments (or to MERS if the Mortgage Loan is a MERS loan);

(v) the original or a copy of lender’s title insurance policy; and

(vi) the original or copies of each assumption, modification, written assurance or substitution agreement, if any.

The Depositor herewith also delivers to the Trustee an executed copy of each Assignment Agreement and each Master Agreement.

The Trustee agrees to execute and deliver (or cause the Custodian to execute and deliver) and to the Depositor on or prior to the Closing Date an acknowledgment of receipt of the original Mortgage Note (with any exceptions noted), substantially in the form attached as Exhibit F-3 hereto.

If any of the documents referred to in Section 2.01(ii), (iii) or (iv) above has as of the Closing Date (or Subsequent Transfer Date, with respect to Subsequent Mortgage Loans) been submitted for recording but either (x) has not been returned from the applicable public recording office or (y) has been lost or such public recording office has retained the original of such document, the obligations of the Depositor to deliver such documents shall be deemed to be satisfied upon (1) delivery to the Custodian on behalf of the Trustee no later than the Closing Date (or Subsequent Transfer Date, with respect to Subsequent Mortgage Loans), of a copy of each such document certified by the Originator in the case of (x) above or the applicable public recording office in the case of (y) above to be a true and complete copy of the original that was submitted for recording and (2) if such copy is certified by the Originator, delivery to the Custodian on behalf of the Trustee, promptly upon receipt



thereof of either the original or a copy of such document certified by the applicable public recording office to be a true and complete copy of the original. If the original lender's title insurance policy, or a certified copy thereof, was not delivered pursuant to Section 2.01(v) above, the Depositor shall deliver or cause to be delivered to the Custodian on behalf of the Trustee, the original or a copy of a written commitment or interim binder or preliminary report of title issued by the title insurance or escrow company, with the original or a certified copy thereof to be delivered to the Custodian on behalf of the Trustee, promptly upon receipt thereof. The Servicer or the Depositor shall deliver or cause to be delivered to the Custodian on behalf of the Trustee promptly upon receipt thereof any other documents constituting a part of a Mortgage File received with respect to any Mortgage Loan, including, but not limited to, any original documents evidencing an assumption or modification of any Mortgage Loan.

Upon discovery or receipt of notice of any materially defective document in, or that a document is missing from, a Mortgage File, the Trustee (or the Custodian on behalf of the Trustee) shall notify the Servicer and the Servicer shall enforce the obligations of the Originator under the Master Agreement to cure such defect or deliver such missing document to the Trustee or the Custodian within 90 days. If the Originator does not cure such defect or deliver such missing document within such time period, the Servicer shall use commercially reasonable efforts to attempt to enforce the obligations of the Originator to either repurchase or substitute for such Mortgage Loan in accordance with Section 2.03; provided, however, that the Servicer shall not be under any obligation to take any action pursuant to this paragraph unless directed by the Depositor and provided, further, the Depositor hereby agrees to assist the Servicer in enforcing any obligations of the Originator to repurchase or substitute for a Mortgage Loan which has breached a representation or warranty under the Assignment Agreement. In connection with the foregoing, it is understood that the Custodian on behalf of the Trustee shall have no duty to discover any such defects except in the course of performing its review of the Mortgage Files to the extent set forth herein.

Except with respect to any Mortgage Loan for which MERS is identified on the Mortgage, the Trustee shall enforce the obligations of the Originator under the Master Agreement to cause the Assignments which were delivered in blank to be completed and to record all Assignments referred to in Section 2.01(iii) hereof and, to the extent necessary, in Section 2.01(iv) hereof. The Trustee shall enforce the obligations of the Originator under the Master Agreement to deliver such assignments for recording within 180 days of the Closing Date. In the event that any such Assignment is lost or returned unrecorded because of a defect therein, the Trustee shall enforce the obligations of the Originator under the Assignment Agreement to promptly have a substitute Assignment prepared or have such defect cured, as the case may be, and thereafter cause each such Assignment to be duly recorded.

Notwithstanding the foregoing, for administrative convenience and facilitation of servicing and to reduce closing costs, the Assignments of Mortgage shall not be required to be submitted for recording (except with respect to any Mortgage Loan located in Maryland) unless the Trustee (or the Custodian on behalf of the Trustee) and the Depositor receive notice that such failure to record would result in a withdrawal or a downgrading by any Rating Agency of the rating on any Class of Certificates; provided, however, each Assignment, except with respect to any Mortgage Loan for which MERS is identified on the Mortgage, shall be submitted for recording in the manner described above, at no expense to the Trust Fund or Trustee, upon the earliest to occur of: (i) reasonable direction by the Holders of Certificates entitled to at least 25% of the Voting Rights, (ii) the occurrence of a Servicer Event of Termination, (iii) the occurrence of a bankruptcy, insolvency or foreclosure relating to the Originator, (iv) the occurrence of a servicing transfer as described in Section 7.02 hereof, (v) upon receipt of notice from the Servicer, the occurrence of a bankruptcy, insolvency or foreclosure relating to the Mortgagor under the related



Mortgage, (vi) upon receipt of notice from the Servicer, any Mortgage Loan that is 90 days or more Delinquent and such recordation would be necessary to facilitate conversion of the Mortgaged Property in accordance with Section 3.16 and (vii) reasonable direction by the NIMS Insurer. In the event of (i) through (vii) set forth in the immediately preceding sentence, the Trustee shall enforce the obligations of the Originator to deliver such Assignments for recording as provided above, promptly and in any event within 30 days following receipt of notice by the Originator. Notwithstanding the foregoing, if the Originator fails to pay the cost of recording the Assignments, such expense will be paid by the Trustee (if it reasonably believes it will be reimbursed) and the Trustee shall be reimbursed for such expenses by the Trust.

The Servicer shall forward to the Custodian original documents evidencing an assumption, modification, consolidation or extension of any Mortgage Loan entered into in accordance with this Agreement within two weeks of their execution; provided, however, that the Servicer shall provide the Custodian with a certified true copy of any such document submitted for recordation within two weeks of its execution, and shall provide the original of any document submitted for recordation or a copy of such document certified by the appropriate public recording office to be a true and complete copy of the original within 365 days of its submission for recordation. In the event that the Servicer cannot provide a copy of such document certified by the public recording office within such 365 day period, the Servicer shall deliver to the Custodian, within such 365 day period, an Officers' Certificate of the Servicer which shall (A) identify the recorded document, (B) state that the recorded document has not been delivered to the Custodian due solely to a delay caused by the public recording office, (C) state the amount of time generally required by the applicable recording office to record and return a document submitted for recordation, if known and (D) specify the date the applicable recorded document is expected to be delivered to the Custodian, and, upon receipt of a copy of such document certified by the public recording office, the Servicer shall immediately deliver such document to the Custodian. In the event the appropriate public recording office will not certify as to the accuracy of such document, the Servicer shall deliver a copy of such document certified by an officer of the Servicer to be a true and complete copy of the original to the Custodian.

The parties hereto understand and agree that it is not intended that any Mortgage Loan be included in the Trust that is a high-cost home loan as defined by the Homeownership and Equity Protection Act of 1994 or any other applicable predatory or abusive lending laws.

The Depositor hereby directs the Trustee to execute, deliver and perform its obligations under the Basis Risk Cap Agreement, the Interest Rate Swap Agreement (in its capacity as Supplemental Interest Trust Trustee) and the Interest Rate Cap Contract (in its capacity as Cap Trustee). The Depositor, the Servicer and the Holders of the Floating Rate Certificates by their acceptance of such Certificates acknowledge and agree that the Trustee shall execute, deliver and perform its obligations under the Basis Risk Cap Agreement, the Interest Rate Swap Agreement and the Interest Rate Cap Contract and shall do so solely in its capacity as Trustee, Supplemental Interest Trust Trustee, or Cap Trustee, as the case may be, and not in its individual capacity. Every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall apply to the Trustee's execution of the Basis Risk Cap Agreement, the Interest Rate Swap Agreement and the Interest Rate Cap Contract, and the performance of its duties and satisfaction of its obligations thereunder.

<http://www.secmf.com/dqTm6.v3P7.c.htm#1stPage>



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Securitization Summary

Note:

On **August 24, 2006, Debtors** [REDACTED] **and** [REDACTED], executed a negotiable promissory note in the form of a Promissory Note in the amount of **\$517,500.00**. The original lender of the promissory note is **Fremont Investment & Loan**. Examiner was provided with a Note that appears to be a copy from settlement as the Note does not contain any signatures from the homeowners or any endorsements. The law on endorsements was not followed (See Cal Comm Code Section 3109, 3201, 3203, and 3204).

Deed of Trust/Mortgage:

On **August 24, 2006, Debtors** [REDACTED] **and** [REDACTED], executed a security interest in the form of a Deed of Trust in the amount of **\$517,500.00**. **Mortgage Electronic Registration Systems, Inc. (hereafter "MERS") is named as acting solely as a "nominee" for lender as the beneficiary of the security interest Deed of Trust.** Paragraph R of the Deed of Trust provides in part "This Security Instrument secures to Lender: (i) the repayment of the Loan..." Paragraph 20 of the Deed of Trust provides **"The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower.**

Assignment of the Deed of Trust/Mortgage:

NO Assignment of the Deed of Trust/Mortgage transferring it into **Deutsche Bank National Trust Company.**

An Assignment of deed of Trust was filed as document number [REDACTED] in the Official Records, **Kings County, WA** on **August 13, 2008**. This document purports to be executed by MERS. **Any assignment after 90 days of the Trust closing date of February 28, 2007 would be a void act because it would violate the express terms of the Trust instrument.**

"All REMIC loans must be acquired on the startup day of the REMIC or within 3 months thereafter," according to the IRS Code 860G. Any contribution of an asset other than cash to the REMIC after the startup day or within the 3 months is deemed "unqualified or prohibited contribution" and will cause the REMIC trust to lose its tax-free status which would be catastrophic to the Trust because the Trust cash flow would be subjected to double-taxation or at a minimum, the prohibited transaction is taxed 100% to the Trust.

All the parties serving as agents for the Trust must strictly adhere to the guidelines and conveyance clauses specifically delineated in Section 2.01 of the PSA lest the Trust lose its REMIC



status which would result in double taxation on all trust income, or, at the very least, subject the Trust to a 100% tax.

Section 2.01 of the PSA specifically and absolutely dictates that all Mortgage loans selected for inclusion in into this **Fremont Home Loan Trust 2006-3** MUST be conveyed to the Trustee without recourse by the DEPOSITOR through a true purchase and sale conveyance.

The Sponsor/Seller in the securitization chain must purchase the mortgage loans from the original Lender **Fremont Investment & Loan**. The Depositor must purchase the mortgage loans from the Sponsor/Seller. The Depositor is required to convey the mortgage loans to the Trustee. The PSA allows for absolutely no other form, method or chain of conveyance of mortgage loans to the Trust. The Assignment of the Deed of Trust from the Lender, **Fremont Investment & Loan** went directly to **Fremont Home Loan Trust 2006-3**, bypassing the Sponsor/Seller and the Depositor. **Any assignment after 180 days of the Trust closing date of October 19, 2006 would be a void act because it would violate the express terms of the Trust instrument.**

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; New York law states 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), 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.**

Section 3.01 of the PSA governing certain activities of the Master Servicer specifically states:

"(C) the Master Servicer shall not consent to (i) partial releases of Mortgages, (ii) alterations, (iii) removal, demolition or division of properties subject to Mortgages, (iv) modification or (v) second mortgage subordination agreements with respect to any Mortgage Loan that would: (i) affect adversely the status of any Trust REMIC as a REMIC, (ii) cause any Trust REMIC to be subject to a tax on "prohibited transactions" or "contributions" pursuant to the REMIC Provisions, or (iii) both (x) effect an exchange or reissuance of such Mortgage Loan under Section 1001 of the Code (or Treasury regulations promulgated thereunder) and (y) 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”.

Conclusion:

1. There is **NO** evidence that the Note was ever “Endorsed in Blank” or any evidence of an Allonge to the Depositor and the **Trust**.
2. The Assignment of Mortgage was conveyed to **Trust** NOT by the Depositor, but by the originating Lender, and that it was conveyed to the Trustee for the benefit of the Certificate holders of the Trust on or about **January 20, 2009**, approximately **thirty-two (32) months** after the very last date any mortgage loan could have been conveyed and transferred to this Trust pursuant to the IRC regulations. Per the 424B5 Prospectus in the Assignment of the Mortgage Loans section, “The Seller will make certain representations and warranties as of the Closing Date as to the accuracy in all material respects of certain information furnished to the Trustee with respect to each Mortgage Loan.” “Upon discovery of a breach of any such representation and warranty which materially and adversely affects the interests of the Certificate holders in the related Mortgage Loan and related documents, the Seller will have a period of **90 days** after the earlier of discovery or receipt of written notice of the breach to effect a cure.”
3. This constitutes a prohibited transaction if it truly represents that the Note and Mortgage were conveyed to the Trust on the date of the Assignment. The Trustee simply has no vested power to accept such a prohibited transaction. It is a serious breach of trust and the conveyance is null and void under New York trust law.
4. The Pooling and Servicing Agreement is the governing document for this Trust and all parties. The PSA clearly defines the conveyance method and order for all mortgage loans in this Trust. The Trustee for the Trust has only the powers to act which are conferred on the Trustee by the PSA. The Trustee strictly violated Article II, Section 2.01 of the PSA when it accepted, if in fact it did, the Note and Mortgage via the Assignment of Mortgage, together with the Note, after **April 17, 2007**.
5. The “Assignment of Mortgage” filed by **Fremont Investment & Loan**, and which the **Fremont Investment & Loan** relies on, to substantiate its “owner and holder” status of the Note and Mortgage is IN DIRECT CONTRAVENTION to Section 2.01 of the PSA.



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- a) The Mortgage Assignment was from **Fremont Investment & Loan** (The Originating Lender) directly to the Trust, bypassing the Sponsor/Seller, and the Depositor
 - b) The Mortgage Assignment was (dubiously) signed on **January 20, 2006**, almost **3 years after the "Closing Date" per the PSA**.
6. Section 2.01 of 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.**
7. Section 2.01, PSA states, "In connection with such transfer and assignment, the Depositor does hereby deliver to, and deposit with, the Trustee the following documents or instruments with respect to each Mortgage Loan so transferred and assigned, and the Depositor shall deliver or cause to be delivered to the Custodian the following documents or instruments."
- a) 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;
 - b) an original Assignment assigned in blank, without recourse;
 - c) the original recorded intervening Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause
 - d) or the original unrecorded intervening Assignments;
8. Section 2.01 of the PSA in the instant case specifically requires the Depositor (and only the Depositor) to convey the mortgage loans to the Trustee. The PSA allows for absolutely no other form, method or chain of conveyance of mortgage loans to the Trust.
9. Section 2.02, the PSA states, "The Trustee or the Custodian on its behalf shall, for the benefit of the Trustee and the Certificate holders, review each Mortgage File within 45 days after execution and delivery of this Agreement, to ascertain that all



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- required documents have been executed, received and recorded, if applicable, and that such documents relate to the Mortgage Loans.”
10. The Pooling and Servicing Agreement (PSA) and the Underwriting Agreement for this Trust are clear. No mortgage loan in this trust could be conveyed by any entity other than the Depositor, **Financial Asset Securities Corp.**, and no later than **April 08, 2006**, since the PSA specifically requires all parties to strictly adhere to Internal Revenue Code (the “IRC”), Section 860 provisions. The Depositor was under agreement to purchase all mortgage loans for this Trust from the Sponsor and Seller, **Greenwich Capital Financial Products, INC.**
 11. **Fremont Investment & Loan was required by the PSA to sell the Mortgage Loan to the Depositor, Financial Asset Securities Corp. and not directly to the Fremont Home Loan Trust 2006-3.**
 12. **The conveyance of the mortgage loan is null and void under New York trust law** as it relates to the powers of the Trustee to accept and/or convey a mortgage loan for this trust in this manner.
 13. **The Trustee has no power or authority** to act outside of the scope of the powers conferred upon the Trustee under the PSA.
 14. **The Trustee has committed a serious breach of trust and has also exposed the Trust** to serious tax penalties and possible IRS and SEC audits of the entire conveyance practices of the Trust which jeopardizes the entire tax status of the Trust.
 15. The subject Note and Mortgage likely did NOT get deposited or ultimately make it into this Trust and, therefore, another entity is likely to be found to be the true and actual owner and holder of the Note and Mortgage, however further discovery would need to be conducted to make a final determination of exactly who at this point does own the subject Note and Mortgage and to determine if the Note and Mortgage have been bifurcated or not.
 16. The promissory note was made payable to **Fremont Investment & Loan**. No record document suggests that it has been endorsed to any other named entity. The Deed of Trust/Mortgage states that MERS is the beneficiary of it



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In *Carpenter v. Longan* 16 Wall. 271,83 U.S. 271, 274, 21 L.Ed. 313 (1872), the **U.S. Supreme Court stated “The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while assignment of the latter alone is a nullity.”**

Traditionally, when a loan was executed, the beneficiary of the loan on the Deed of Trust/Mortgage was the lender. Once the loan was funded, the Deed of Trust/Mortgage would be recorded with the local County Recorder’s office. The recording of the Deed of Trust/Mortgage created a Public Record of the transaction. All future Assignments of the Deed of Trust/Mortgage were expected to be recorded as ownership changes occurred. The recording of the Assignments created a “Perfected Chain of Title” of ownership of the Note and the Deed of Trust. This allowed interested or affected parties to be able to view the lien holders and if necessary, be able to contact the parties. The recording of the document also set the “priority” of the lien. The priority of the lien would be dependent upon the date that the recording took place.

Recordings of the document also determined who had the “beneficial interest” in the Note. An interested party simply looked at the Assignments, and knew who held the Note and who the legal party of beneficial interest.

When the initial Deed of Trust/Mortgage is made out in the name of MERS as Nominee for the Beneficiary and the Note is made to AB Lender, there should be no issues with MERS acting as an Agent for AB Lender. Hawkins even recognizes this as fact.

The issue does arise when the Note transfers possession. Though the Deed of Trust/Mortgage states “beneficiary and/or successors”, the question can arise as to who the successor is, and whether Agency is any longer in effect. MERS makes the argument that the successor Trustee is a MERS member and therefore Agency is still effective, and there does appear to be merit to the argument on the face of it. The original Note Holder, AB Lender, no longer holds the note, nor is entitled to payment. Therefore, that Agency relationship is terminated. However, the Note is endorsed in blank, and no Assignment has been made to any other entity, so who is the true beneficiary? And without the Assignment of the Note, is the Agency relationship intact?

My loan started as a negotiable instrument. There are specific laws governing negotiable instruments detailed in the Uniform Commercial Code (UCC).

Uniform Commercial Code Â§ 3-301. PERSON ENTITLED TO ENFORCE INSTRUMENT.



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“Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a non-holder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

In the case of MERS, the Note and the Deed of Trust are held by separate entities. This can pose a unique problem dependent upon the court. There are many court rulings based upon the following:

“The Deed of Trust is a mere incident of the debt it secures and an assignment of the debt carries with it the security instrument. Therefore, a Deed of Trust is inseparable from the debt and always abides with the debt. It has no market or ascertainable value apart from the obligation it secures.

A Deed of Trust has no assignable quality independent of the debt, it may not be assigned or transferred apart from the debt, and an attempt to assign the Deed of Trust without a transfer of the debt is without effect. “

“Black’s Law Dictionary defines a nominee as “[a] person designated to act in place of another, usu. in a very limited way” and as “[a] party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.” Black’s Law Dictionary 1076 (8th ed. 2004). This definition suggests that a nominee possesses few or no legally enforceable rights beyond those of a principal whom the nominee serves.....The legal status of a nominee, then, depends on the context of the relationship of the nominee to its principal. Various courts have interpreted the relationship of MERS and the lender as an agency relationship.”

The law generally understands that a mortgagee is not distinct from a lender: a mortgagee is “[o]ne to whom property is mortgaged: the mortgage creditor, or lender.” Black’s Law Dictionary 1034 (8th ed. 2004). By statute, assignment of the mortgage carries with it the assignment of the debt. K.S.A. 58-2323. Although MERS asserts that, under some situations, the mortgage document purports to give it the same rights as the lender, the document consistently refers only to rights of the lender, including rights to receive notice of litigation, to collect payments, and to enforce the debt obligation. The document consistently limits MERS to acting “solely” as the nominee of the lender.

The right for a bank to enforce and foreclose on a property is subject to the claimant being a real party of interest. This is protected under Federal Rule 17(a) and has not been proven. The



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ability to prove that a party is a Real Party in interest is a hallmark our Constitution guaranteeing Due Process.

No Entity can be a CREDITOR if they don't hold/own the asset in question [i.e. the NOTE and/or the property] a Mortgage Pass Through Trust [i.e. R.E.M.I.C., 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.

Since the loan was sold, pooled and turned into a security, the bank, can no longer claim that it is are a real party of interest, as it has been **paid in Full**.

Not only that, 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.**

Once a loan has been securitized which this loan has done, it **forever** loses its security component (i.e., the Deed of Trust/Mortgage), and the right to foreclose on through the Deed of Trust/Mortgage is forever lost.

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 requirement for the filings of the registration statements, trust agreements, pooling and servicing agreements form 424B-5 etc.. There is no evidence on the Record to indicate that the Deed of Trust/Mortgage was ever transferred concurrently with the purported legal transfer of the Note, such that the Deed of Trust/Mortgage and Note have been irrevocably separated, thus making a nullity out of the purported security in a property, as claimed (Federal Rules of Evidence Rules 901 & 902).

Since the Deed of Trust/Mortgage secures the Promissory Note, once the Promissory Note is destroyed and made into a Stock, the Deed of Trust/Mortgage secures nothing. Therefore the Deed of Trust/Mortgage is invalid. Once a loan has been securitized, reattachment is impossible.