

Understanding of Executed 35B and 35C Affidavits

Affidavit Regarding Note Secured by Mortgage Being Foreclosed MLG c.244 sec. 35C

See attached form of affidavit

Question 1: Is the signer and employee of the Foreclosing Mortgagee or an employee of an agent of the Foreclosing Mortgagee?

- If foreclosing in the name of the servicer – the servicer is the mortgage holder of record, select option one (1).
 - The servicer is the Foreclosing Mortgagee:
 - Example: Client is the servicer and the Foreclosing Mortgage (holder of mortgage of record).
- If foreclosing in a name other than the servicer, select option two (2)
 - The servicer is not the Foreclosing Mortgagee:
 - Example: Client is the servicer and the Foreclosing Mortgagee is Big Bank National Association as Trustee for XYZ Series 1 Trust (“Big Bank National Association as Trustee for XYZ Series 1 Trust” is the mortgage holder of record and the name in which we are to foreclose

Question 2: Was new c. 244 sec. 35B (Right to Loan Modification for borrowers of Certain Mortgage Loans) complied with?

- If proper 150 day breach letter was sent after August 3, 2012, and loan is a “Certain Mortgage Loan,” as defined by the statute, and a proper 35B letter was sent and the Loan Modification process outlined in the new statute has been followed (after reviewing all documentation), then you may select option one (1).
- If proper breach letter (90 or 150 day) was sent prior to August 3, 2012, then you may select option two (2).
- If proper 150 day breach letter was sent after August 3, 2012, but loan is not a “Certain Mortgage Loan,” as defined by the statute, then you may select option two (2).

Question 3: Is Foreclosing Mortgagee (holder of mortgage of record) the owner of the mortgage loan (new MGL c. 244 sec. 35C)?

- In general, except for GSE owned loans, the foreclosure takes place in the name of the owner of the mortgage loan, choose option one (1).
 - Conventional loans owned by the foreclosing mortgagee
 - Trust/Investor owned loans which are held of record in the name of the Trust/Investor
- For GSE owned loans, you are foreclosing in the name of the servicer, so the foreclosing mortgagee is NOT the owner of the loan. Therefore, for such loans, you should choose option two (2) which provides that the servicer is the authorized agent for the GSE.

Signature Block:

- Conventional loans – Servicer/Owner are the same entity, so just state the name of the foreclosing mortgagee under the signature.
- Investor or GSE owned loans – Servicer should sign and state name of servicer “as servicer for Foreclosing Mortgagee” (a power of attorney should be attached to provide proof of signatory authority of servicer).

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*Orlans Moran has moved.
Please note our new mailing address, phone and fax numbers.*

**AFFIDAVIT REGARDING NOTE SECURED
BY MORTGAGE BEING FORECLOSED
MGL c. 244 sec. 35B and 35C**

Property Address: PROPERTY ADDRESS

Mortgage: MORTGAGORS to ORIGINAL MORTGAGEE, dated MORTGAGE DATE recorded at COUNTY County (DISTRICT District) Registry of Deeds in Book BOOK Page PAGE. Assigned to _____ by assignment recorded in said Deeds in Book BOOK Page PAGE. [as needed for multiple assignments: Assigned to _____ by assignment recorded in said Deeds in Book BOOK Page PAGE.]

Foreclosing Mortgagee: [NAME OF HOLDER OF MORTGAGE OF RECORD/NTFI]

The undersigned, _____, having personal knowledge of the facts herein stated, under oath deposes and says as follows:

- Property Address: PROPERTY ADDRESS

1. I am: [Check One]
[] An officer or employee of Foreclosing Mortgagee, where I hold the office of _____.
[] An officer or employee of a duly authorized agent of Foreclosing Mortgagee, under a Power of Attorney which is still in full force and effect as of the date hereof.

2. Based upon my review of the business records of [CLIENT’S NAME], I certify that: [Check One]
[] The requirements of M.G.L. c. 244 sec. 35B have been complied with.
[] G.L. c. 244, § 35B is not applicable to the above mortgage.

3. Based upon my review of the business records of [CLIENT’S NAME], I certify that the Foreclosing Mortgagee is: [Check One]
[] the holder of the promissory note secured by the above mortgage.
[] the authorized agent of the holder of said promissory note.

Affiant Signature: _____

Print Name: _____

Title: _____
[CLIENT’S NAME], [IF APPLICABLE: as
Servicer for Foreclosing Mortgagee]

STATE OF _____
COUNTY _____, ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

[SEAL]

Name:
Notary Public
My Commission Expires: