The primary contractual document underlying a securitization transaction is the pooling and servicing agreement. The pooling and servicing agreement establishes the trust that will hold the securitized loans, and it creates the various classes of bondholders. It defines the servicer’s obligations and the various “representations and warranties” of the parties to the transaction. A securitization transaction involves other documents as well, including one or more mortgage loan purchase agreements, an interim servicing agreement, an underwriting agreement, a warehouse agreement, and an insurance agreement. The individual loans transferred to the trust are listed in a mortgage loan schedule that is normally attached to the purchase agreement as an exhibit.

The presence of a consumer’s loan on this schedule may indicate that the securitization transaction was intended to transfer ownership of the loan to the trust, but it does not indicate that the transfer actually happened. What the parties intended and actually did are questions of fact. Whether the parties’ conduct was sufficient to properly transfer ownership is a matter of state law. The answer to these questions will determine who has authority to foreclose on the mortgage or sue on the note. That subject is discussed in NCLC’s *Home Foreclosures*.430

If the securities are publicly sold, the pooling and servicing agreement and many other related documents can be found by searching the Securities and Exchange Commission’s EDGAR database of public filings.431 The Securities and Exchange Commission (SEC) has an extensive guide[1] to researching public companies through EDGAR. Finding what you need requires having some basic information about the securities or trust. While it is possible to do broad searches, doing so may return hundreds of results.

The best methods are to search by name, Committee on Uniform Securities Identification Procedures (CUSIP) number, or Central Index Key (CIK). The formal name of the trust holding a mortgage can be obtained by sending a demand to the loan servicer under the Truth in Lending Act432 or as a request for the identity of the mortgage owner under the Real Estate Settlement Procedures Act.433 It may also be listed on a foreclosure notice or court pleadings. Unfortunately, there may be many variations of a name in use. The CUSIP number is a unique identifier that can be used to search for anything filed by a particular company.434 The CIK is a unique number assigned by the SEC’s computer system to anyone who files disclosure documents with the SEC.435 The CUSIP number and CIK may be more difficult to request but should be available through internet research or formal discovery. But if the correct name, CUSIP number, and CIK are not available, it may nevertheless help to narrow a search by limiting the results to the standard industrial classification code (SIC) for asset-backed securities: 6189. Fannie Mae’s standard securitization documents are available on their website.436

The documents underlying a securitization transaction often contain interesting information. They may make representations about the characteristics of the borrowers and of the loan pools. A prospectus may list such information as purported default rates. And they may help identify potential defendants or sources of further discovery. At least one court has found that a pooling and servicing agreement can show a joint venture between the originator, securitizer, and servicer.437

Footnotes


Source URL: https://library.nclc.org/ml/010505-0

Links
[2] https://library.nclc.org/nclc/link/HF.02
[4] https://library.nclc.org/nclc/link/TIL.10.06.02.04.02
[5] https://library.nclc.org/nclc/link/MS.03.03.09