

STATE OF MAINE

DISTRICT COURT
LOCATION: SPRINGVALE
DOCKET NO. SPRDC-RE-19-72

FEDERAL NATIONAL MORTGAGE
ASSOCIATION

PLAINTIFF

v.

MATTHEW A. RAYMOND

DEFENDANT

**MOTION OF DEFENDANT TO DEEM ADMITTED
CERTAIN OF DEFENDANT'S FIRST REQUESTS FOR ADMISSION TO PLAINTIFF**

Defendant's counsel served requests for admissions upon Plaintiff's counsel on February 10, 2022 (the "RFAs"). Plaintiff served answers and objections dated March 14, 2022 (the "Responses"). Defendant requested and the court conducted a discovery conference under M.R. Civ 26(g) regarding the Responses. At the May 3, 2022 Rule 26(g) conference the court, pursuant to Rule 26(g)(1) authorized Defendant to file this motion to assert his issues regarding the Responses. Before the discovery conference with the court, Defendant attempted to address with Plaintiff's counsel the deficient Responses with a letter dated March 30, 2022, detailing Defendant's issues, but Plaintiff's counsel responded stating an unwillingness to make any changes.

I. Factual background of the case and the requests for admissions.

Plaintiff commenced this foreclosure case on September 16, 2019. It alleges that Defendant, on September 1, 2005, granted a mortgage to Mortgage Electronic Registration

Systems, Inc. (“MERS”) as nominee for American Home Mortgage. Compl. ¶ 9. MERS received nothing more than the right to record that mortgage and American Home Mortgage was the actual grantee of the mortgage interest. *Bank of America, N.A. v. Greenleaf*, 2014 ME 89, 13-17, 96 A.3d 700. Plaintiff apparently recognized that, to have standing to foreclose, it needed to obtain an assignment of the mortgage from American Home Mortgage, because it alleges in the Complaint that it relies upon an assignment from American Home Mortgage to BAC Home Loans Servicing, LP dated November 21, 2018, and then assignment from BAC Home Loans Serving, LP to Plaintiff dated April 5, 2019. Compl. ¶ 10. Copies of these two assignments are attached as Exhibits 1 and 2.

Since the mortgage loan went into default as of October 1, 2009, Compl. ¶ 14, and Defendant vacated the property, and since Plaintiff had filed and dismissed three previous court actions arising out of the default and failed to complete any foreclosure action while the alleged mortgage debt more than doubled over the ten years before the commencement of this action, Defendant asserted an affirmative defense of laches. Defendant also asserted that the Complaint does not state a claim upon which relief can be granted because the two assignments in 2018 and 2019 involving BAC Home Loans Servicing, LP assigned nothing, since BAC Home Loans Serving, LP was merged out of existence in 2010. A copy of that Certificate of Merger, which is attached as Exhibit 3--it was also attached to the RFAs. The RFAs now in dispute were filed to elicit uncontroversial facts and applications of the law to the facts.

Defendant filed the RFAs after unsuccessful efforts to obtain full responses to previously served interrogators and requests for production of documents. Defendant file a Rule 26(g) discovery conference request regarding those responses on January 19, 2022, but the significant backlog in Maine courts made it appear unlikely that such a conference would be held soon.

Thus, on February 10, 2022, Defendant served the RFAs hoping they would narrow the potential for factual disputes and related legal issues and make it possible for Defendant to move for summary judgment. Unfortunately, the Responses to the RFAs were also filled with objections and incomplete responses. At the Rule 26(g) conference on May 3, 2022, Defendant requested that the court hold in abeyance his request for a conference regarding Plaintiff's responses to the interrogatories and requests for production hoping resolution of the issues regarding the Responses to the RFAs may allow Defendant to move forward with a motion to dismiss for Plaintiff's lacking standing or a motion for summary judgment, and thus possibly obviate the need for court attention to the other discovery responses.

II. Rule 36 and the purposes of request for admission.

A. Rule 36 of the Maine Rules of Civil Procedure.

Rule 36 of the Maine Rules of Civil Procedure is modeled upon the corresponding Fed. R. Civ. P. 36. The Maine rule provide that a party may "request the admission...of the truth of any matters within the scope of Rule 26(b)...that relate to statements or opinions of fact or of the application of law to fact." M.R. Civ. P. 36(a), 1st par. The rule provides that "the requests will be admitted unless the responding party serves written answers or objections within 30 days. M.R. Civ. P. 36(a), 2nd par. That paragraph then sets out specifications for the answering or objecting as follows:

The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that

a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it...”

The rule goes on to provide that “If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.” M.R. Civ.P 36(a), 3rd par.

B. The purposes of requests for admissions under M.R. Civ. P. 36.

“The purpose of Rule 36 is ‘expediting the trial and to relieve the parties of the burdens and expense of proving at trial facts which are undisputed.’” *Bouchard v. U.S.*, 241 F.R.D. 72 (D. Me. 2007), quoting *Kershner v. Beloit Corp.*, 106 F.R.D. 498, 499 (D. Me. 1985). The purposes of requests for admissions under Rule 36 and the process to be following by the court in addressing issues with the responses was well explained in more detail by the United States District Court for the District of Nebraska as follows:

“The quintessential function of Requests for Admissions is to allow the narrowing of issues, to permit facilitation in presenting cases to the factfinder and, at a minimum, to provide notification as to those facts, or opinions, that remain in dispute.” *Xcel Energy, Inc. v. United States*, 237 F.R.D. 416, 420–21 (D.Minn.2006) (quoting *Lakehead Pipe Line Co. v. Am. Home Assurance Co.*, 177 F.R.D. 454, 457–58 (D.Minn.1997)); *see also* Fed.R.Civ.P. 36 advisory committee’s note (1970 amend.) (“Rule 36 serves two vital purposes, both of which are designed to reduce trial time. Admissions are sought, first to facilitate proof with respect to issues that cannot be eliminated from the case, and secondly, to narrow the issues by eliminating those that can be.”). “The purpose of a request for admissions generally is not to discover additional information concerning the subject of the request, but to force the opposing party to formally admit the truth of certain facts, thus allowing the requesting party to avoid potential problems of proof.” *Layne Christensen Co. v. Purolite Co.*, No. 09–2381, 2011 WL 381611, at *4 (D.Kan. Jan. 25, 2011) (slip op.).

“The court has substantial discretion to determine the propriety of such requests and the sufficiency of responses.” *See Audiotext Comms. Network, Inc. v. U.S. Telecom, Inc.*, No. 94–2395, 1995 WL 625744, at *1 (D.Kan. Oct. 5, 1995) (quoting *Dubin v. E.F. Hutton Group Inc.*, 125 F.R.D. 372 (S.D.N.Y.1989)). If the courts determine “an answer does not comply with the requirements of Rule 36, they can

order either that the matter is admitted or require the responding party to serve an amended answer.” *O'Connor v. AM General Corp.*, No. 85–6679, 1992 WL 382366, at *2 (E.D.Pa. Dec. 7, 1992). “When passing on a motion to determine the sufficiency of answers or objections, the court obviously must consider the phraseology of the requests as carefully as that of the answers or objections.” *Audiotext*, 1995 WL 625744, at *2 (quoting *Thalheim v. Eberheim*, 124 F.R.D. 34, 35 (D.Conn.1988)). “The requesting party bears the burden of setting forth in necessary, but succinct, detail, the facts, events or communications to which admission is sought....” *Audiotext*, 1995 WL 625744, at *2 (quoting *Diederich v. Dep't of the Army*, 132 F.R.D. 614, 619 (S.D.N.Y.1990)). “[A] requesting party should not state ‘half of [a] fact’ or ‘half truths’ which require the answering party to qualify responses.” *Havenfield Corp. v. H & R Block, Inc.*, 67 F.R.D. 93, 96–97 (W.D.Mo.1973) (citations omitted). Further, “[r]egardless of the subject matter of the Rule 36 request, the statement of the fact itself should be in simple and concise terms in order that it can be denied or admitted with an absolute minimum of explanation or qualification.” *Id.* at 96. ...

National Independent Truckers Ins. Co. v. Gadway, 2011 WL 5554802 (D. Neb. 2011). These are the principles which should be applied to this motion under the Maine Rule 36 as well.

III. Plaintiff's objections repeated throughout its responses are impermissible.

A. The document speaks for itself.

This objection appears in Response to RFAs 6, 16 and 17. The impropriety of this objection was well addressed by the District of Columbia Circuit Court of Appeals in 2006 in overruling a respondent's objections to requests for admissions made on this basis. The court said:

It is astonishing that the objection that a document speaks for itself, repeated every day in courtrooms across America, has no support whatsoever in the law of evidence. James W. McElhaney, *The Cleveland Exception to the Hearsay Rule and Other Courtroom Oddities*, 1 Rev. of Litig. 93, 96–99 (1980). If, for example, a document has been admitted into evidence and a witness is asked to read from it, that the same information can be secured from the fact finder reading the document is certainly not grounds for objection to the witness reading from it. *Id.* There is no difference whatsoever between the jury reading it for itself or the witness reading it to them.

Alternatively, if the document has been admitted into evidence and the witness is asked to paraphrase it and does so inaccurately, objection would lie on the grounds of relevance. A mischaracterization of the contents of a document is an irrelevant waste of time, unless there is some significance to that mischaracterization in itself, i.e., the witness's misunderstanding of what the document says has independent evidentiary significance because it is probative on some issue in the trial. In any of these instances, however, invoking the tautology that “the document speaks for itself” has nothing to do with the actual objections that should be made.

Transposing these principles to requests for admission first means that if the request for admission quotes a documents and asks the other party to admit that the document contains the material quoted, it should be admitted if the quotation is accurate and denied if it is not. The tautological “objection” that the finder of fact can read the document for itself to see if the quote is accurate is not a legitimate objection but an evasion of the responsibility to either admit or deny a request for admission, unless a legitimate objection can be made or the responding party explains in detail why it can neither admit or deny the request. Fed.R.Civ.P. 36. *See Sigmund v. Starwood Urban Retail VI, LLC*, 236 F.R.D. 43, 46 (D.D.C.2006). It is also a waste of time, since the “objection” that the document speaks for itself does not move the ball an inch down the field and defeats the narrowing of issues in dispute that is the purpose of the rule permitting requests for admission.

If, on the other hand, the request for admission paraphrases a document, the request should be admitted if the paraphrase is accurate and denied if it is not. Again, stating the obvious—one can read the document oneself to see if the paraphrase is accurate—is not a legitimate objection and an equally great waste of time.

Miller v. Holzman, 240 F.R.D. 1 (D. D.C. 2006), cited in numerous cases, and most recently at *Jones v. University of Memphis.*, 2016 WL 6123510 (W.D. Tenn. 2016).

Less than six months ago, Maine’s (now retired) Magistrate Judge Rich squarely rejected the “document speaks for itself” response used by a party using it to respond to a complaint. In *Musto v. Liberty Ins. Corp.*, 2021 WL 5501765, fn. 2 (D. Me., Nov. 21, 2021). Judge Rich stated “Courts have long disdained such vague and unhelpful responses,” citing *State Farm Mut. Auto Ins. Co. v. Riley*, 199 F.R.D. 276, 279 (N.D. Ill. 2001). He deemed the responses making such statements to be admissions. While Judge Rich was addressing a defendant’s deficient response to a complaint, his criticism of the “document speaks for itself” objection, as shown by the cases

cited above, has equal if not greater applicability to using that objection in responses to requests for admissions as Plaintiff has done here.

B. The request seeks admission of facts that are public record and as easily verified by Defendant.

In RFA Number 7, Defendant asked Plaintiff to admit that American Home Mortgage Corp. filed a Ch. 11 Bankruptcy case in Delaware on August 6, 2007 as Case No. 07-11051. Plaintiff refused to admit this, asserting instead that the request seeks admission of facts that are public record “as easily verified by Defendant.” This objection is repeated in Responses 8-11 and 13. There is no merit such an objection to a request for admission because,

...the fact that information relevant to Plaintiffs’ requests is “‘equally available’ to plaintiffs or [can be] derived from public records.... misses the point of requests for admission.” *Concerned Citizens of Belle Haven v. Belle Haven Club*, 223 F.R.D. 39, 45 (D. Conn. 2004). Requests for admission are designed to narrow the issues at trial, *not* to discover information in the first instance. Thus, it does not matter that Plaintiffs could just as easily obtain information relevant to their requests for admission from another source. The question is whether Defendant Lee denies the veracity of that information.

League of Women Voters of Florida, Inc. v. Lee, 2021 WL 4963439 (N.D. Fla., Oct. 22, 2021).

There simply is no merit to this objection when used in response to requests for admission.

C. The request seeks admission of a legal theory rather than a fact.

In RFA Number 11, Defendant requested that Plaintiff admit that Steven D. Sass remained as Plan Trustee of American Home Mortgage Corp. through November 1, 2018, but Plaintiff objected to that request asserting, that “seeks admission of a legal theory rather than a fact.” Plaintiff made the same objection in its Responses numbered 13, 16, 18 and 21. M.R. Civ. P. 36 expressly provides that requests for admission may properly request admissions regarding “the application of law to fact.” M.R. Civ. P. 36(a), 1st par. Plaintiff’s “legal theory” objections

are simply impermissible objections that Plaintiff is being asked to admit legal conclusions, even though those requests do no more than ask for conclusions regarding the application of law to the specific facts of this case. The United States District Court for the District of Rhode Island explained why such objections are impermissible this way:

Even if the Court were to treat the requests as seeking opinions or conclusions of law from [Defendant], they would still not be objectionable.

“Requests for admission ... are not objectionable even if they require opinions or conclusions of law, as long as the legal conclusions relate to the facts of the case.” Ransom v. United States, 8 Cl. Ct. 646, 648 (1985). “Requests for admissions seeking the application of law to the facts of the case are proper under Fed. R. Civ. P. 36.” Employers Commercial Union Ins. Co. of Am. v. Browning-Ferris Indus. of Kan. City, Inc., No. 91-2161-JWL, unpublished op. at 10 (D. Kan. Dec. 16, 1993) “Opinions on abstract propositions of law are still objectionable, but requests seeking admission of the truth of statements applying law to the facts of the case are specifically sanctioned.” Ransom, 8 Cl. Ct. at 647 (quoting 4A James Wm. Moore, Moore’s Federal Practice ¶ 36.04).

Audiotext Commc’ns Network, Inc. v. US Telecom, Inc., Civ. A. No. 94-2395-GTV, 1995 WL 625744, at *6 (D. Kan. Oct. 5, 1995); accord S.A. Healy Co./Lodigiani USA, Ltd. v. United States, 37 Fed. Cl. 204, 205 (Fed. Cl. 1997)(quoting Audiotext Commc’ns Network). Accordingly, [Defendant’s] objections to the requests on the ground that they call for a “legal conclusion” are overruled.

Nautilus Ins. Co v. Operation Stand Down, 2009 WL 10729080 (D. R.I. 2009).

Had the RFAs asked Plaintiff to admit that it had no standing, or that its claims were barred by the doctrine of laches, those would have been objectionable requests asking for admissions of “abstract propositions of law” regarding the ultimate liability issues of the case, but that is not what Defendant’s RFAs do, as explained in more detail in Section IV below. Plaintiff’s objections to these properly limited requests regarding application of law to the facts of this case are not proper.

IV. Explanations of deficiencies in Plaintiff's responses to specific requests for admission.

The following discussion involves Defendant's requests for admissions as to public records regarding the actions of the Delaware Bankruptcy Court in the Chapter 11 case of American Home Mortgage Corp. (the originator of the mortgage loan at issue in this case), and filings in the Texas Secretary of State's office regarding the merger of BAC Home Loans Servicing, LP into Bank of America and the impact thereof.

Request No. 6. The Quitclaim Assignment from American Home Mortgage Corp. to BAC Home Loans Servicing, L.P. dated November 21, 2018, and referred to in paragraph 10 of the Complaint was executed by Steven D. Sass, on November 21, 2018, in his capacity as "Plan Trustee, Sole Officer and Sole Director of American Home Mortgage Corp."

Response No. 6. Plaintiff objects to this Request to the extent it seeks an admission regarding the contents of a document, which speaks for itself. Subject to and without waiving its objection, Plaintiff admits that Steven D. Sass signed the November 21, 2018 quitclaim assignment.

Argument regarding Request No. 6.

The "document speaks for itself" objection is improper. *See* Section III.A. above. While the response admits that Stephan D. Sass signed the mortgage assignment, it fails to admit or deny the capacity in which he signed. In its Response No. 3, plaintiff admits that Bendett & McHugh prepared the assignment reciting his capacity, so it knows the capacity in which he signed. Since Plaintiff failed to admit or deny the capacity in which Sass signed the mortgage assignment, request Number 6 should be deemed admitted.

Request Number 7. American Home Mortgage Corp., along with other co-debtors, commenced a Chapter 11 bankruptcy case in the Bankruptcy Court for Delaware on August 6, 2007, Case No. 07- 11051

Response Number 7. Plaintiff objects to this Request on the grounds that it seeks admission of facts that are public record and as easily verified by Defendant, concerning

documents and actions by third parties. Plaintiff admits that, upon information and belief, such a case appears to exist and denies this Request to the extent it is inconsistent with those public records.

Argument regarding Request No. 7.

The “public records” objection is impermissible. *See* Section III.B. above. Rule 36, 2nd par., states:

An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily available by the party is insufficient to enable the party to admit or deny.

“Rule 36 requires ‘that the respondent make ‘reasonable inquiry’ into the subject matter of the requests.’” *Bouchard v. U.S.*, 241 F.R.D. 72 (D. Me. 2007), citing *Veranda Beach Club Ltd. P’ship v. Western Sur. Co.*, 936 F.2d 1364, 1374 (1st Cir. 1991). Examination on PACER of the Delaware case number stated in the request conclusively shows the truth of the requested admission. A copy of the Bankruptcy Petition is attached as Exhibit 4. Plaintiff tries to hedge its answer using the phrases “information and belief, “appears to exist” and then “denies... to the extent inconsistent.” This is not a good faith denial. The only proper and good faith response is the single word “Admitted.” The request should be deemed admitted.

Request Number 8. American Home Mortgage Corp., along with its co-debtors filed an Amended Chapter 11 Plan of Liquidation in the Delaware Bankruptcy Court on February 18, 2009.

Response to Request Number 8. Plaintiff objects to this Request on the grounds that it seeks admission of facts that are public record and as easily verified by Defendant, concerning documents and actions by third parties. Plaintiff admits that, upon information and belief, such a plan appears to exist and denies this Request to the extent it is inconsistent with those public records.

Argument regarding Request Number 8.

The “public records” objection is impermissible. *See* Section III.B. above. “Rule 36 requires ‘that the respondent make ‘reasonable inquiry’ into the subject matter of the requests.’” *Bouchard v. U.S.*, 241 F.R.D. 72 (D. Me. 2007), citing *Veranda Beach Club Ltd. P’ship v. Western Sur. Co.*, 936 F.2d 1364, 1374 (1st Cir. 1991). Examination on PACER of the Delaware case number stated in the request conclusively shows the truth of the requested admission. Plaintiff again tries to hedge its answer using the phrases “information and belief,” “appears to exist,” and “denies... to the extent inconsistent.” Since the Chapter 11 plan does *in fact exist* on the PACER docket (a copy of the first page is attached as Exhibit 5), these qualifications and purported denial are not in good faith. The only proper and good faith response is the single word “Admitted.” The request should be deemed admitted.

Request Number 9. The Amended Chapter 11 Plan of Liquidation of American Home Mortgage Corp. and its co-debtors was confirmed by order of the Delaware Bankruptcy Court on February 23, 2009.

Response to Request Number 9. Plaintiff objects to this Request on the grounds that it seeks admission of facts that are public record and as easily verified by Defendant, concerning documents and actions by third parties. Plaintiff admits that, upon information and belief, such an order appears to exist and denies this Request to the extent it is inconsistent with those public records.

Argument regarding Request Number 9.

The “public records” objection is impermissible.” *See* Section III.A. above. A copy of the first page of the order confirming the Chapter 11 Plan of American Home Mortgage is attached as Exhibit 6. The remainder of the response has the same deficiencies as the responses to Requests Numbered 7 and 8 enumerated above. The request should be deemed admitted.

Request Number 10. The February 23, 2009, order of the Delaware Bankruptcy Court confirming the Amended Chapter 11 Plan of Liquidation of American Home Mortgage Corp. and its co debtors appointed Steven D. Sass as Plan Trustee.

Response to Request Number 10. Plaintiff objects to this Request on the grounds that it seeks admission of facts that are public record and as easily verified by Defendant, concerning documents and actions by third parties. Plaintiff admits that, upon information and belief, such a plan appears to exist and denies this Request to the extent it is inconsistent with those public records.

Argument regarding Request Number 10.

The “public records” objection is impermissible. *See* Section III.B. above. “Rule 36 requires ‘that the respondent make ‘reasonable inquiry’ into the subject matter of the requests.’” *Bouchard v. U.S.*, 241 F.R.D. 72 (D. Me. 2007), citing *Veranda Beach Club Ltd. P’ship v. Western Sur. Co.*, 936 F.2d 1364, 1374 (1st Cir. 1991). A copy of pages 1 and 25 of the cited order showing the appointment of Steven Sass as Plan Trustee are attached hereto as Exhibit 7 (with the other pages omitted as irrelevant to this request). Had Plaintiff’s counsel looked at the order on PACER, the absolute truth of Request Number 10 would have been inescapable. The admission that the Chapter 11 Plan exists is not what the request asked, but in so stating Plaintiff evades its duty to respond to what is asked in Request Number 10. Since Plaintiff fails to admit or deny that Sass was appointed as Plan Trustee, and since plainly he was so appointed, the request should be deemed admitted.

Request Number 11. Steven D. Sass remained as the Plan Trustee of American Home Mortgage Corp. and its co-debtors through the filing of the Verified Final Report filed by him in the bankruptcy case of American Home Mortgage Corp. on November 1, 2018.

Response to Request Number 11. Plaintiff objects to this Request on the grounds that it seeks admission of facts that are public record and as easily verified by Defendant, concerning documents and actions by third parties. Plaintiff further objects to this Request to the extent it seeks admission of a legal theory rather than a fact. Plaintiff admits that, upon information and belief, such a report appears to exist and denies this Request to the extent it is inconsistent with those public records.

Argument regarding Request Number 11.

The “public records” objection is impermissible. *See* Section III.B. above. The “legal theory” objection is also impermissible. *See* Section III.C. above. The response evades the requirement to admit or deny that Steven Sass remained as Plan Trustee until November 1, 2018, by stating “the report appears to exist.” Since Plaintiff fails to admit or deny that Sass remained as Plan Trustee until November 1, 2018, the request should be deemed admitted.

Request Number 13. A true copy of the order of the Delaware Bankruptcy Court of February 23, 2009, confirming the Chapter 11 plan of American Home Mortgage Corp. is attached hereto as Exhibit A

Response to Request Number 13. Plaintiff objects to this Request on the grounds that it seeks admission of facts that are public record and as easily verified by Defendant, concerning documents and actions by third parties. Plaintiff further objects to this Request to the extent it seeks admission of a legal theory rather than a fact. Subject to and without waiving its objection, Plaintiff answers that Exhibit A, which is titled “Findings of Fact, Conclusions of Law and Order Confirming the Amended Chapter 11 Plan of Liquidation of the Debtors Dated February 18, 2009,” appears to be the same document available on Pacer.gov as document no. 7042 in bankruptcy case no. 07-11047-CSS (Bankr.D.Del.). Plaintiff denies that Exhibit A is “the order . . . confirming the Chapter 11 plan” of this particular case as it appears to have been subsequently amended.

Argument regarding Request Number 13.

The “public records” objection is impermissible. *See* Section III.B. above. The “legal theory” objection is also impermissible. *See* Section III.C. above. The assertion that Defendant “seeks admission of a legal theory” when all that it is asking for is an admission that the attached exhibit is a true copy of the Delaware court order is a demonstration of Plaintiff’s lack of good faith in responding to the RFAs. Plaintiff failed to directly admit or deny that the attached Exhibit A is a true copy of the order. Its qualification about a later amendment may be permissible. The court should order that the request to admit that the Exhibit A attached to the

RFAs is a true copy should be deemed admitted subject to the qualification stated in the last sentence of the response.

Request Number 14. BAC Home Loans Servicing, LP was a limited liability company organized under the laws of the State of Texas.

Response to Request Number 14. Admitted that BAC Home Loans Servicing, LP is identified by the Texas Secretary of State as a domestic limited partnership, otherwise denied.

Argument regarding Request Number 14.

Exhibit B attached to the RFAs (and attached hereto as Exhibit 3) is a copy of the Texas merger certificate for the merger of BAC into Bank of America which shows that BAC Home Loans Servicing, LP was organized under the laws of Texas as limited partnership. Request Number 14 erroneously asked Plaintiff to admit that BAC was organized as a limited liability company. Rule 36(a) states that “when good faith requires that a party qualify an answer or deny only part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.” The only good faith response to Request Number 14 by Plaintiff was to admit that BAC Home Loans Servicing is organized under the laws of the state of Texas, and deny the portion of the request regarding its status as a limited liability company. Yet Plaintiff equivocated by only admitting that the entity “is identified by the Texas Secretary of State as a domestic limited partnership.” The Texas Certificate of Merger bears the June 28, 2011 “Filed” stamp of the Texas Secretary of State. Under Rule 36(a), Plaintiff had a duty to conduct a reasonable inquiry into the truth of the request. If, after seeing the Certificate of Merger, it had any remaining doubt, a reasonable inquiry into the Texas Secretary of State website for BAC would have revealed the original February 23, 2000 Certificate of Limited Partnership for Countrywide I Home Loans, LP, the April 25, 2000 (copy attached hereto as

Exhibit 8), the Certificate of Amendment changing the name to Countrywide Home Loans Servicing, LP (copy attached hereto as Exhibit 9), and the April 21, 2009 Certificate of Amendment changing the name to BAC Home Loans Servicing, LP (copy attached hereto as Exhibit 10). These documents were available for viewing by Plaintiff if it had made the reasonable inquiry required by Rule 36(a) before filing its Responses. Plaintiff's response is not done in good faith. The request should be deemed admitted to the extent that it requested that BAC Home Loans Servicing, LP is an entity organized under Texas law.

Request Number 16. Bank of America, National Association was the surviving entity in the merger of BAC Home Loans Servicing, LP into Bank of America, National Association.

Response to Request Number 16. Plaintiff objects to this Request on the grounds it seeks an admission regarding the contents of a document, which speaks for itself. Plaintiff further objects to this Request to the extent it seeks admission of a legal theory rather than a fact. Subject to and without waiving its objections, Plaintiff admits that the document identified as Exhibit B indicates that BAC Home Loans Servicing, LP "will not survive the merger."

Argument regarding Request Number 16.

The "document speaks for itself" objection is impermissible. *See* Section III.A. above. The "legal theory" objection is also impermissible. *See* Section III.C. above. Request Number 16 asks Plaintiff to apply the law to the fact of the merger. The Certificate of Merger (attached hereto as Exhibit 3) expressly states that with respect to Bank of America that "The organization will survive the merger." Plaintiff's response-does not address this requested admission, and instead refers to BAC. The only proper and good faith response is the single word "Admitted." The request should be deemed admitted.

Request Number 17. Attached hereto as Exhibit B is a true copy of the Certificate of Merger of BAC Home Loans Servicing, LP into Bank of America, National Association.

Response to Request Number 17. Plaintiff objects to this Request on the grounds it seeks an admission regarding the contents of a document, which speaks for itself. Plaintiff did not prepare the document identified as Exhibit B and can neither admit nor deny whether a document purporting to be a “true copy” of a document filed with the Texas Secretary of State is in fact as described.

Argument regarding Request Number 17.

This is the most basic of requests for admissions--that a document attached to the request is a true copy of the identified document. A copy of that certificate is attached hereto as Exhibit 3. “If the accuracy of the documents subject to a Rule 36 request can be determined “from reliable sources without imposing undue hardship,” the respondent is obligated to respond.” *Bouchard v. U.S.*, 241 F.R.D. (D. Me. 2007, citing *E.H. Tate Co. v. Jiffy Enters.*, 16 F.R.D. 571, 574 (E.D.Pa.1954). All that Plaintiff’s lawyer had to do was compare the Exhibit B attached to the RFAs (Exhibit 3 to this motion) to the Certificate of Merger appearing on the Texas Secretary of State website. Plaintiff’s statement that it “can neither admit nor deny” is just nonsense and is not made in good faith. Plaintiff has failed to respond to the request. The request should be deemed admitted.

Request Number 18. BAC Home Loans Servicing, LP did not survive the merger of BAC Home Loans Servicing, LP into Bank of America, National Association.

Response to Request Number 18. Plaintiff objects to this Request to the extent it seeks admission of a legal theory rather than a fact. Plaintiff admits that the subject merger appears to anticipate that Bank of America, N.A. would be the “surviving” entity. Otherwise, denied.

Argument regarding Request Number 18.

The “legal theory” objection is impermissible. The request asks Plaintiff to apply the law to the fact of the merger. The Certificate of Merger (attached hereto as Exhibit 3) explicitly states with respect to BAC Home Loans that “The organization will not survive the merger.” Plaintiff’s response does not address this request as to the effect of the merger on BAC and

instead refers to Bank of America. The only proper and good faith response is the single word “Admitted.” The request should be deemed admitted.

Request Number 19. The Texas Business Organizations Code, § 10.008 provides that, when a merger takes effect, the separate existence of each domestic entity that is a party to the merger, other than the surviving or new domestic entity, ceases.

Response to Request Number 19. Plaintiff objects to this Request to the extent it seeks admission of a legal theory rather than a fact. Otherwise, admitted that § 10.008(a)(1) of the Texas Business Organizations Code provides that when a merger takes effect: “[T]he separate existence of each domestic entity that is a party to the merger, other than a surviving or new domestic entity, ceases.”

Argument regarding Request Number 19.

The “legal theory” objection is impermissible. This request asks for a pure admission of fact--what it is that Texas Business Organizations Code, § 10.008 says. A copy of the Texas statute is attached as Exhibit 11. The only proper and good faith response is the single word “Admitted.” The request should be deemed admitted.

Request Number 20. The separate existence of BAC Home Loans Servicing, LP ceased upon the merger of BAC Home Loans Servicing, LP into Bank of America, National Association effective July 1, 2011.

Response to Request Number 20. Plaintiff objects to this Request to the extent it seeks admission of a legal theory rather than a fact. Plaintiff admits that the subject merger appears to anticipate that Bank of America, N.A. would be the “surviving” entity. Otherwise, denied.

Argument regarding Request Number 20.

The “legal theory” objection is impermissible. *See* Section III.C. above. The request does not ask what the parties to the merger “anticipated” regarding Bank of America--it asks Plaintiff to admit that BAC did not survive after the merger. Plaintiff evades its duty to simply admit the request that BAC “ceased” to exist after the merger. The request should be deemed admitted.

Request Number 21. BAC Home Loans Servicing, LP did not exist at the time that Ditech Financial, LLC purported to act as its attorney in fact in executing the Assignment of Mortgage purportedly from “BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP” to Federal National Mortgage Association dated April 5, 2019, and referred to in paragraph 10 of the Complaint.

Response to Request Number 21. Plaintiff objects to this Request to the extent it seeks admission of a legal theory rather than a fact. Otherwise, denied.

Argument regarding Request Number 21.

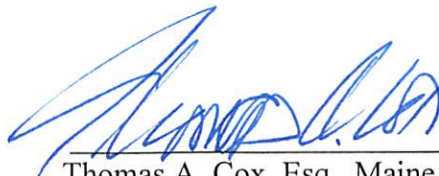
The “legal theory” objection is impermissible. *See* Section III.C. above. Since the Certificate of Merger and Texas Business Organizations Code, § 10.008 make it clear that BAC ceased to exist as of effective date of its 2011 merger into Bank of America, there is no good faith basis upon which Plaintiff can deny that BAC did not exist eight years later as of the April 5, 2019 purported assignment to Fannie Mae. “When a request is denied, the court must consider: (1) whether the denial *fairly* meets the substance of the request; (2) whether *good faith* requires that the denial be qualified; and (3) whether any “qualification” which has been supplied is a *good faith* qualification.” *Thalheim v. Ebereim*, 124 F.R.D. 34 (D. Conn. 1988). Here, Plaintiff could not meet the second and third criteria stated in *Thalheim*, because there is no good faith basis upon which Request Number 21 can be denied. The request should be deemed admitted.

V. Relief requested.

Rule 36(a), 3rd par., provides that, “if the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.” Defendant has requested that all the requests enumerated above be deemed admitted for two reasons. First, there was no reasonable of good faith basis for Plaintiff to fail to admit these requests. Second, by its voluminous objections and evasive

Responses, Plaintiff has demonstrated that any order for further amendments will simply prolong this process and create the risk of further equivocating responses. Also, and as to this second point, Defendant has asked the court to hold in abeyance its Rule 26(g) conference request as to Plaintiff's responses to Defendant's interrogatories and requests for production of documents, but there also there is a similar pattern of massive objections and evasive responses. This process is time consuming and expensive for Defendant and his counsel and a burden upon the court at a time when it continues to face a heavy backlog of cases. The resolution of the issues on this motion to compel needs to be final and complete and to avoid further protracted dispute that could arise if further responses are allowed.

DATED: May 10, 2022



Thomas A. Cox, Esq., Maine Bar No. 1248
Attorney for Defendant Raymond

P.O. Box 1314
Portland, Maine 04104
(207) 749-6671
tac@gwi.net

EXHIBIT 1

Record & Return to:
Bendett & McHugh, P.C.
270 Farmington Avenue, Suite 151
Farmington, CT 06032
9028FC-20181482

QUITCLAIM ASSIGNMENT

WHEREAS, American Home Mortgage Corp., formerly doing business as American Home Mortgage is identified as the "Lender" on a certain mortgage executed by Matthew A. Raymond, and bearing the date of the 9/1/2005 and recorded on 9/6/2005 in the Office of the Recorder of York County, State of Maine in Book 14590 at Page 575-592 (hereinafter the "Mortgage");

WHEREAS, Mortgage Electronic Registration Systems, Inc. ("MERS") is designated the mortgagee in the Mortgage as the nominee of American Home Mortgage and its successors and assigns, and, upon recording of the Mortgage, became the mortgagee of record;

WHEREAS, American Home Mortgage Corp., formerly doing business as American Home Mortgage wishes to convey and assign any and all rights it may have under the Mortgage to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP; and

WHEREAS this Quitclaim Assignment is not intended to and does not modify or assign any of the rights, title or interests that MERS has or had in the Mortgage.

Accordingly, American Home Mortgage Corp., formerly doing business as American Home Mortgage hereby assigns and quit claims all of its rights, title and interests (whatever they may be, if any) in the Mortgage to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP.

In Witness Whereof, the Assignor has duly executed this instrument this 21 day of November, 2018

American Home Mortgage Corp., formerly doing business as American Home Mortgage

By [Signature]
Steven D. Sass, in his capacity of Plan Trustee Sole Officer and Sole Director of American Home Mortgage Corp., formerly doing business as American Home Mortgage

STATE OF New York
COUNTY OF Queens

ss:

In NY on the 21 day of November, 2018, before me personally appeared Steven D. Sass, the Plan Trustee of American Home Mortgage Corp. to me known and known by me to be the party executing the foregoing instrument, and he/she acknowledged said instrument by him/her executed to be his/her free act and deed, and the free act and deed of American Home Mortgage Corp.

Carlo Colapiccolo, Jr.
Notary Public, State of New York
No. 02008113371
Qualified in Queens County
Commission Expires July 26, 2020

[Signature]
Notary Public
Printed Name: _____
My Commission Expires: _____

EXHIBIT 2

Record & Return to:
Bendett & McHugh, P.C.
270 Farmington Avenue, Suite 151
Farmington, CT 06032
9028FC-20181482

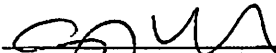
ASSIGNMENT OF MORTGAGE

Know all men by these presents, that BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP with a mailing address of P.O. Box 5170 Simi Valley, CA 93062, does hereby grant, bargain, sell, assign, transfer, and set over to FEDERAL NATIONAL MORTGAGE ASSOCIATION with a mailing address of 14221 Dallas Parkways 1000, Dallas, TX 75254 and its successors and assigns, all interest under that certain mortgage to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR AMERICAN HOME MORTGAGE, from MATTHEW A. RAYMOND, dated September 1, 2005 and recorded September 6, 2005 in VOLUME 14590 at PAGE 575-592 of the YORK County Registry of Deeds.

5th In Witness Whereof, the Assignor has duly executed this instrument this day of April, 2019.

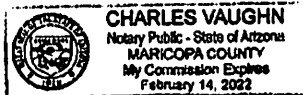
Signed, Sealed and Delivered
in the Presence of:

Ditech Financial LLC for BAC Home Loans
Servicing, LP fka Countrywide Home
Loans Servicing, LP as Attorney in Fact


Shannyn Warrick 04/05/2019
Document Execution Representative

STATE OF ARIZONA :
COUNTY OF MARICOPA :

The foregoing instrument was subscribed and sworn to (or affirmed) before me this 5th day of April 2019, by Shannyn Warrick as Document Execution Representative of Ditech Financial LLC for BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP as Attorney in Fact. Said person is personally known to me.




Charles Vaughn, Notary Public
My Commission Expires: 02/14/2022

EXHIBIT 3

Form 622
(Revised 12/08)
Return in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512-463-5555
FAX: 512-463-5709
Filing Fee: see instructions



**Certificate of Merger
Combination Merger
Business Organizations Code**

This space reserved for office use.

FILED
In the Office of the
Secretary of State of Texas
JUN 28 2011
Corporations Section

Parties to the Merger

Pursuant to chapter 10 of the Texas Business Organizations Code, and the title applicable to each domestic filing entity identified below, the undersigned parties submit this certificate of merger.

The name, organizational form, state of incorporation or organization, and file number, if any, issued by the secretary of state for each organization that is a party to the merger are as follows:

Party 1:

BAC Home Loans Servicing, LP

Name of Organization

The organization is a limited partnership It is organized under the laws of

Specify organizational form (e.g., for-profit corporation)

Texas USA

State

Country

The file number, if any, is 13186910

Texas Secretary of State file number

Its principal place of business is 6400 Legacy Drive

Plano

TX

Address

City

State

☐ The organization will survive the merger. ☒ The organization will not survive the merger.

☐ The plan of merger amends the name of the organization. The new name is set forth below.

Name as Amended

Party 2:

Bank of America National Association

Name of Organization

The organization is a national banking association It is organized under the laws of

Specify organizational form (e.g., for-profit corporation)

United States

State

Country

The file number, if any, is 0000000132

Texas Secretary of State file number

Its principal place of business is 101 South Tryon Street

Charlotte

NC

Address

City

State

☒ The organization will survive the merger. ☐ The organization will not survive the merger.

☐ The plan of merger amends the name of the organization. The new name is set forth below.

Name as Amended

Party 3:

Name of Organization

The organization is a

Specify organizational form (e.g., for-profit corporation)

It is organized under the laws of

Form 622

5

TX13080C - 01/02/2009 C.T. System Dallas

RECEIVED

JUN 28 2011

Secretary of State

The file number, if any, is _____
State Country Texas Secretary of State file number

Its principal place of business is: _____
Address City State

- ☐ The organization will survive the merger. ☐ The organization will not survive the merger.
☐ The plan of merger amends the name of the organization. The new name is set forth below:

Name as Amended

Plan of Merger

- ☐ The plan of merger is attached.

If the plan of merger is not attached, the following statements must be completed.

Alternative Statements

In lieu of providing the plan of merger, each domestic filing entity certifies that:

1. A signed plan of merger is on file at the principal place of business of each surviving, acquiring, or new domestic entity or non-code organization that is named in this form as a party to the merger or an organization created by the merger.
2. On written request, a copy of the plan of merger will be furnished without cost by each surviving, acquiring, or new domestic entity or non-code organization to any owner or member of any domestic entity that is a party to or created by the plan of merger and, if the certificate of merger identifies multiple surviving domestic entities or non-code organizations, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding.

Complete item 3B if the merger effected changes to the certificate of formation of a surviving filing entity.

3A. No amendments to the certificate of formation of any surviving filing entity that is a party to the merger are effected by the merger.

3B. ☐ The plan of merger effected changes or amendments to the certificate of formation of:

Name of filing entity effecting amendments

The changes or amendments to the filing entity's certificate of formation, other than the name change noted previously, are stated below.

Amendment Text Area

--

4. Organizations Created by Merger

The name, jurisdiction of organization, principal place of business address, and entity description of each entity or other organization to be created pursuant to the plan of merger are set forth below. The certificate of formation of each new domestic filing entity to be created is being filed with this certificate of merger.

Name of New Organization 1 Jurisdiction Entity Type (See instructions)

Principal Place of Business Address City State Zip Code

Name of New Organization 2 Jurisdiction Entity Type (See instructions)

Principal Place of Business Address City State Zip Code

Name of New Organization 3 Jurisdiction Entity Type (See instructions)

Principal Place of Business Address City State Zip

Approval of the Plan of Merger

The plan of merger has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger and by the governing documents of those organizations.

☐ The approval of the owners or members of _____
Name of domestic entity
was not required by the provisions of the BOC.

Effectiveness of Filing (Select either A, B, or C.)

A. ☐ This document becomes effective when the document is accepted and filed by the secretary of state.

B. ☒ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: July 1, 2011

C. ☐ This document takes effect on the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

☐ Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the non-surviving filing entity.

☒ In lieu of providing the tax certificate, one or more of the surviving, acquiring or newly created organizations will be liable for the payment of the required franchise taxes.

Execution:

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code, or other law applicable to and governing the merging entity, to execute the filing instrument.

Date: 06/28/2011

BAC Home Loans Servicing, LP

Merging Entity Name:

[Signature]

Signature of authorized person (see instructions)

Tim Huval, President and CEO, BAC GP, LLC, General Partner

Printed or typed name of authorized person

Bank of America, National Association

Merging Entity Name:

Merrily S. Gerrish

Signature of authorized person (see instructions)

Merrily Gerrish, Associate General Counsel, Assistant Secretary

Printed or typed name of authorized person

Merging Entity Name:

Signature of authorized person (see instructions):

Printed or typed name of authorized person

EXHIBIT 4

Official Form 1 (04/07)

United States Bankruptcy Court DISTRICT OF DELAWARE				Voluntary Petition																					
Name of Debtor (if individual, enter Last, First, Middle): American Home Mortgage Holdings, Inc.			Name of Joint Debtor (Spouse) (Last, First, Middle):																						
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):			All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):																						
Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all): 13-4066303			Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all):																						
Street Address of Debtor (No. and Street, City, and State): 538 Broadhollow Road Melville, NY ZIP CODE 11747			Street Address of Joint Debtor (No. and Street, City, and State): ZIP CODE																						
County of Residence or of the Principal Place of Business: Suffolk, NY			County of Residence or of the Principal Place of Business:																						
Mailing Address of Debtor (if different from street address): ZIP CODE			Mailing Address of Joint Debtor (if different from street address): ZIP CODE																						
Location of Principal Assets of Business Debtor (if different from street address above): ZIP CODE																									
Type of Debtor (Form of Organization) (Check one box.) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)		Nature of Business (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other Tax-Exempt Entity (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).		Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 Nature of Debts (Check one box.) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or house-hold purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.																					
Filing Fee (Check one box.) <input checked="" type="checkbox"/> Full Filing Fee attached. <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.			Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,190,000. ----- Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).																						
Statistical/Administrative Information <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.					THIS SPACE IS FOR COURT USE ONLY																				
Estimated Number of Creditors* <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">1-49</td> <td style="text-align: center;">50-99</td> <td style="text-align: center;">100-199</td> <td style="text-align: center;">200-999</td> <td style="text-align: center;">1,000-5,000</td> <td style="text-align: center;">5,001-10,000</td> <td style="text-align: center;">10,001-25,000</td> <td style="text-align: center;">25,001-50,000</td> <td style="text-align: center;">50,001-100,000</td> <td style="text-align: center;">Over 100,000</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>						1-49	50-99	100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	Over 100,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>															
Estimated Assets* <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;"><input type="checkbox"/> \$0 to \$10,000</td> <td style="text-align: center;"><input type="checkbox"/> \$10,000 to \$100,000</td> <td style="text-align: center;"><input type="checkbox"/> \$100,000 to \$1 million</td> <td style="text-align: center;"><input type="checkbox"/> \$1 million to \$100 million</td> <td style="text-align: center;"><input checked="" type="checkbox"/> More than \$100 million</td> </tr> </table>					<input type="checkbox"/> \$0 to \$10,000	<input type="checkbox"/> \$10,000 to \$100,000	<input type="checkbox"/> \$100,000 to \$1 million	<input type="checkbox"/> \$1 million to \$100 million	<input checked="" type="checkbox"/> More than \$100 million																
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Estimated Liabilities* <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;"><input type="checkbox"/> \$0 to \$50,000</td> <td style="text-align: center;"><input type="checkbox"/> \$50,000 to \$100,000</td> <td style="text-align: center;"><input type="checkbox"/> \$100,000 to \$1 million</td> <td style="text-align: center;"><input type="checkbox"/> \$1 million to \$100 million</td> <td style="text-align: center;"><input checked="" type="checkbox"/> More than \$100 million</td> </tr> </table>					<input type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,000 to \$100,000	<input type="checkbox"/> \$100,000 to \$1 million	<input type="checkbox"/> \$1 million to \$100 million	<input checked="" type="checkbox"/> More than \$100 million																
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* The estimated number of creditors, assets and liabilities is on a consolidated basis.

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): American Home Mortgage Holdings, Inc.	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed: Not Applicable	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor: See Attached Schedule 1	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<p style="text-align: center;">Exhibit A</p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>		<p style="text-align: center;">Exhibit B</p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).</p> <p>X _____ Signature of Attorney for Debtor(s) (Date)</p>	
<p style="text-align: center;">Exhibit C</p> <p>Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?</p> <p><input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition.</p> <p><input checked="" type="checkbox"/> No.</p>			
<p style="text-align: center;">Exhibit D</p> <p>(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)</p> <p><input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition.</p> <p>If this is a joint petition:</p> <p><input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.</p>			
<p style="text-align: center;">Information Regarding the Debtor - Venue (Check any applicable box.)</p> <p><input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.</p> <p><input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.</p> <p><input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.</p>			
<p style="text-align: center;">Statement by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes.)</p> <p><input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)</p> <p style="text-align: right; margin-right: 100px;">_____ (Name of landlord that obtained judgment)</p> <p style="text-align: right; margin-right: 100px;">_____ (Address of landlord)</p> <p><input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and</p> <p><input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.</p>			

Official Form 1 (04/07)

Form B1, Page 3

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): American Home Mortgage Holdings, Inc.	
Signatures			
Signature(s) of Debtor(s) (Individual/Joint) I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b). I request relief in accordance with the chapter of title 11, United States Code, specified in this petition. <input checked="" type="checkbox"/> _____ Signature of Debtor <input checked="" type="checkbox"/> _____ Signature of Joint Debtor Telephone Number (if not represented by attorney) _____ Date _____		Signature of a Foreign Representative I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition. (Check only one box.) <input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached. <input checked="" type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached. <input checked="" type="checkbox"/> _____ (Signature of Foreign Representative) _____ (Printed Name of Foreign Representative) Date _____	
<input checked="" type="checkbox"/> _____ Signature of Attorney Signature of Attorney for Debtor(s) James L. Patton, Jr., Esq. Pauline K. Morgan, Esq. Young Conway Stargatt & Taylor, LLP The Brandywine Building 1000 West Street, 17th Floor Wilmington, Delaware 19801 Telephone (302) 571-6600 and Facsimile (302) 571-1253 8-6-07 Date		Signature of Non-Attorney Bankruptcy Petition Preparer I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(h); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached. _____ Printed Name and title, if any, of Bankruptcy Petition Preparer _____ Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.) Address _____ <input checked="" type="checkbox"/> _____ Date _____ Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above. Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual. If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.	
Signature of Debtor (Corporation/Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition. <input checked="" type="checkbox"/> _____ Signature of Authorized Individual Michael Strauss Printed Name of Authorized Individual Chief Executive Officer Title of Authorized Individual 8/6/07 Date			

SCHEDULE 1

Including the debtor in this chapter 11 case, the following affiliated debtors simultaneously have filed voluntary chapter 11 petitions in this Court. Contemporaneously with the filing of these petitions, such entities filed a motion requesting that their chapter 11 cases be consolidated for procedural purposes only and jointly administered.

American Home Mortgage Acceptance, Inc.
American Home Mortgage Corp.
American Home Mortgage Holdings, Inc.
American Home Mortgage Investment Corp.
American Home Mortgage Servicing, Inc.
American Home Mortgage Ventures LLC
Great Oak Abstract Corp.
Homegate Settlement Services, Inc.

EXHIBIT 5

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	x	Hon. Christopher S. Sontchi
	:	Chapter 11
	:	
AMERICAN HOME MORTGAGE HOLDINGS, INC.	:	Case No. 07-11047
AMERICAN HOME MORTGAGE INVESTMENT CORP.	:	Case No. 07-11048
AMERICAN HOME MORTGAGE ACCEPTANCE, INC.	:	Case No. 07-11049
AHM SV, INC. (f/k/a American Home Mortgage Servicing, Inc.)	:	Case No. 07-11050
AMERICAN HOME MORTGAGE CORP.	:	Case No. 07-11051
AMERICAN HOME MORTGAGE VENTURES LLC	:	Case No. 07-11052
HOMEGATE SETTLEMENT SERVICES, INC.	:	Case No. 07-11053
GREAT OAK ABSTRACT CORP.	:	Case No. 07-11054
	:	
Debtors. ¹	:	Jointly Administered
	x	

**AMENDED CHAPTER 11 PLAN OF LIQUIDATION OF THE DEBTORS
DATED AS OF FEBRUARY 18, 2009**

YOUNG CONAWAY STARGATT & TAYLOR, LLP

James L. Patton, Jr. (No. 2202)

Robert S. Brady (No. 2847)

Pauline K. Morgan (No. 3650)

Sean M. Beach (No. 4070)

Matthew B. Lunn (No. 4119)

Patrick A. Jackson (No. 4976)

The Brandywine Building

1000 West Street, 17th Floor

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

Counsel for Debtors and Debtors in Possession

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: American Home Mortgage Holdings, Inc., a Delaware corporation (6303); American Home Mortgage Investment Corp., a Maryland corporation (3914); American Home Mortgage Acceptance, Inc., a Maryland corporation (1979); AHM SV, Inc. (f/k/a American Home Mortgage Servicing, Inc.), a Maryland corporation (7267); American Home Mortgage Corp., a New York corporation (1558); American Home Mortgage Ventures LLC, a Delaware limited liability company (1407); Homegate Settlement Services, Inc., a New York corporation (7491); and Great Oak Abstract Corp., a New York corporation (8580). The address for all of the Debtors is 538 Broadhollow Road, Melville, New York 11747.

EXHIBIT 6

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	x	Chapter 11
	:	
AMERICAN HOME MORTGAGE HOLDINGS, INC.,	:	Case No. 07-11047 (CSS)
a Delaware corporation, <u>et al.</u> , ¹	:	
	:	Jointly Administered
	:	
Debtors.	:	
	x	Ref. Docket No. 6626, 6942, 6965 & 7029

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CONFIRMING THE AMENDED CHAPTER 11 PLAN OF LIQUIDATION
OF THE DEBTORS DATED FEBRUARY 18, 2009**

Upon consideration of the Amended Chapter 11 Plan of Liquidation of the Debtors, dated as of February 18, 2009 [D.I. 7029], as may be amended and/or modified, the "Plan",² at or in connection with the hearing on confirmation thereof (the "Confirmation Hearing") or pursuant to the terms of this order confirming the Plan (the "Confirmation Order"), which is (i) a further modified version of that certain Plan, filed with this Court by the above-captioned debtors and debtors in possession (collectively, the "Debtors") on November 25, 2008, [D.I. 6626] and (ii) described on the record of the Confirmation Hearing and in this Confirmation Order; and upon the related Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code with respect to the Amended Chapter 11 Plan of Liquidation of the Debtors dated as of November 25, 2008

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: American Home Mortgage Holdings, Inc., a Delaware corporation (6303); American Home Mortgage Investment Corp., a Maryland corporation (3914); American Home Mortgage Acceptance, Inc., a Maryland corporation (1979); AHM SV, Inc. (f/k/a American Home Mortgage Servicing, Inc.), a Maryland corporation (7267); American Home Mortgage Corp., a New York corporation (1558); American Home Mortgage Ventures LLC, a Delaware limited liability company (1407); Homegate Settlement Services, Inc., a New York corporation (7491); and Great Oak Abstract Corp., a New York corporation (8580). The address for all of the Debtors is 538 Broadhollow Road, Melville, New York 11747.

² All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

EXHIBIT 7

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----	x	
In re:	:	Chapter 11
	:	
AMERICAN HOME MORTGAGE HOLDINGS, INC.,	:	Case No. 07-11047 (CSS)
a Delaware corporation, <u>et al.</u> ¹	:	
	:	Jointly Administered
	:	
Debtors.	:	
-----	x	Ref. Docket No. 6626, 6942, 6965 & 7029

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CONFIRMING THE AMENDED CHAPTER 11 PLAN OF LIQUIDATION
OF THE DEBTORS DATED FEBRUARY 18, 2009**

Upon consideration of the Amended Chapter 11 Plan of Liquidation of the Debtors, dated as of February 18, 2009 [D.I. 7029], as may be amended and/or modified, the "Plan",² at or in connection with the hearing on confirmation thereof (the "Confirmation Hearing") or pursuant to the terms of this order confirming the Plan (the "Confirmation Order"), which is (i) a further modified version of that certain Plan, filed with this Court by the above-captioned debtors and debtors in possession (collectively, the "Debtors") on November 25, 2008, [D.I. 6626] and (ii) described on the record of the Confirmation Hearing and in this Confirmation Order; and upon the related Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code with respect to the Amended Chapter 11 Plan of Liquidation of the Debtors dated as of November 25, 2008

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: American Home Mortgage Holdings, Inc., a Delaware corporation (6303); American Home Mortgage Investment Corp., a Maryland corporation (3914); American Home Mortgage Acceptance, Inc., a Maryland corporation (1979); AHM SV, Inc. (f/k/a American Home Mortgage Servicing, Inc.), a Maryland corporation (7267); American Home Mortgage Corp., a New York corporation (1558); American Home Mortgage Ventures LLC, a Delaware limited liability company (1407); Homegate Settlement Services, Inc., a New York corporation (7491); and Great Oak Abstract Corp., a New York corporation (8580). The address for all of the Debtors is 538 Broadhollow Road, Melville, New York 11747.

² All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

Assets of its Estate to the Plan Trust for the benefit of the Holders of Claims against its Estate, whether or not such Claims are Allowed Claims as of the Effective Date.

17. Appointment of Plan Trustee. Steven D. Sass, Esq., ("Mr. Sass") is hereby appointed Plan Trustee. Mr. Sass shall commence serving as the Plan Trustee on the Effective Date; provided, however, that Mr. Sass, as Plan Trustee, shall be permitted to act in accordance with the terms of the Plan Trust Agreement from the Confirmation Date (or such earlier date as authorized by the Creditors Committee) through the Effective Date and shall be entitled to seek compensation in accordance with the terms of the Plan Trust Agreement and the Plan.

18. Actions Against the Plan Trustee. Without the permission of this Court, no judicial, administrative, arbitral, or other action or proceeding shall be commenced in any forum other than the Court against the Plan Trustee in its official capacity, with respect to its status, duties, powers, acts, or omissions as Plan Trustee.

19. Bond. The Plan Trustee shall at all times maintain a bond acceptable to the Plan Oversight Committee and approved by the U.S. Trustee.

20. Responsibilities of Plan Trustee. The Plan Trustee shall be vested with the rights, powers and benefits set forth in the Plan and Plan Trust Agreement. The Plan Trust shall be subject to the directions of the Plan Oversight Committee as set forth in the Plan Trust Agreement. Notwithstanding anything to the contrary contained in the Plan or this Confirmation Order, any act by the Plan Trustee, including discretionary acts, will require the consent of or consultation with the Plan Oversight Committee in accordance with and to the extent of the terms of the Plan Trust Agreement. If there is any inconsistency or ambiguity between the Plan, Confirmation Order or the Plan Trust Agreement in respect of the Plan Oversight Committee's role in the Plan Trustee's authority to act, the provision of the Plan Trust Agreement shall control.

EXHIBIT 8



Office of the Secretary of State
Corporations Section
P.O. Box 13697
Austin, Texas 78711-3697

FILED
In the Office of the
Secretary of State of Texas
FEB 28 2000
Corporations Section

CERTIFICATE OF LIMITED PARTNERSHIP

1. The name of the limited partnership is COUNTRYWIDE I HOME LOANS LP
2. The street address of its proposed registered office in Texas is (a P.O. Box is not sufficient)
800 Brazos, Austin, TX, 78701
and the name of its proposed registered agent in Texas at such address is
Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company
3. The address of the principal office in the United States where records of the partnership are to be kept or made available is 4500 Park Granada, CH-11
Calabasas, California 91302
4. The name, the mailing address, and the street address of the business or residence of each general partner is as follows:

NAME	MAILING ADDRESS (include city, state, zip code)	STREET ADDRESS (include city, state, zip code)
<u>Countrywide LP, Inc.</u>	<u>4500 Granada, CH-11</u> <u>Calabasas, CA 91302</u>	<u>(Same)</u>
<u>Countrywide GP, Inc.</u>	<u>4500 Granada, CH-11</u> <u>Calabasas, CA 91302</u>	<u>(Same)</u>

Date Signed: 2/23/2000

Countrywide LP, Inc.

S. E. Samuels
General Partner(s)
By: Sandor E. Samuels, Secretary
Countrywide GP, Inc.

S. E. Samuels
General Partner(s)
By: Sandor E. Samuels, Secretary

3473394

EXHIBIT 9

FILED
In the Office of the
Secretary of State of Texas

CERTIFICATE OF AMENDMENT**APR 25 2000****TO****THE CERTIFICATE OF LIMITED PARTNERSHIP Corporations Section**

The undersigned general partner(s), having filed an original Certificate of Limited Partnership, hereby duly execute this Certificate of Amendment of Limited Partnership, which is being filed with the Secretary of State in accordance with Section 2.02 of the Texas Revised Limited Partnership Act.

1. The name of the limited partnership is
Countrywide I Home Loans LP
2. The Certificate of Limited Partnership is amended as follows:
The name of the Corporation is Countrywide Home Loans Servicing LP
3. The Certificate of Amendment will be effective upon filing.

Signed on this 25th day of April, 2000

Countrywide LP, Inc.


Any General Partner

Submit an originally signed copy and one duplicate copy with a \$200.00 filing fee.

3473395

EXHIBIT 10

FILED
In the Office of the
Secretary of State of Texas

APR 21 2009

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF LIMITED PARTNERSHIP** **Corporations Section**

Pursuant to the provisions of Section 2.02 of the Texas Revised Partnership Act, the undersigned limited partnership desires to amend its Certificate of Limited Partnership and for that purpose submits the following Certificate of Amendment:

1. The name of the limited partnership is Countrywide Home Loans Servicing LP.
2. The Certificate of Limited Partnership is amended as follows:

The name of the limited partnership is BAC Home Loans Servicing, LP.

The Certificate of Limited Partnership shall be amended, as of April 27, 2009, to reflect the above name change.

Dated: April 21, 2009

**COUNTRYWIDE HOME LOANS
SERVICING LP**

By: Countrywide GP, LLC
Its: General Partner

By:



Jack W. Schakett
President and Chief Executive Officer

RECEIVED
APR 21 2009
Secretary of State

EXHIBIT 11

V.T.C.A., Business Organizations Code § 10.008

§ 10.008. Effect of Merger

Effective: September 1, 2015

(a) When a merger takes effect:

(1) the separate existence of each domestic entity that is a party to the merger, other than a surviving or new domestic entity, ceases;

(2) all rights, title, and interests to all real estate and other property owned by each organization that is a party to the merger is allocated to and vested, subject to any existing liens or other encumbrances on the property, in one or more of the surviving or new organizations as provided in the plan of merger without:

(A) reversion or impairment;

(B) any further act or deed; or

(C) any transfer or assignment having occurred;

(3) all liabilities and obligations of each organization that is a party to the merger are allocated to one or more of the surviving or new organizations in the manner provided by the plan of merger;

(4) each surviving or new domestic organization to which a liability or obligation is allocated under the plan of merger is the primary obligor for the liability or obligation, and, except as otherwise provided by the plan of merger or by law or contract, no other party to the merger, other than a surviving domestic entity or non-code organization liable or otherwise obligated at the time of the merger, and no other new domestic entity or non-code organization created under the plan of merger is liable for the debt or other obligation;

(5) any proceeding pending by or against any domestic entity or by or against any non-code organization that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic entity or entities or the surviving or new non-code organization or non-code organizations to which the liability, obligation, asset, or right associated with that

proceeding is allocated to and vested in under the plan of merger may be substituted in the proceeding;

(6) the governing documents of each surviving domestic entity are amended, restated, or amended and restated to the extent provided by the plan of merger, and a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments of a surviving filing entity shall have the effect stated in Section 3.063;

(7) each new filing entity whose certificate of formation is included in the plan of merger under this chapter, on meeting any additional requirements, if any, of this code for its formation, is formed as a domestic entity under this code as provided by the plan of merger;

(8) the ownership or membership interests of each organization that is a party to the merger and that are to be converted or exchanged, in whole or part, into ownership or membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations, into cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any organization, or into any combination of these, or that are to be canceled or remain outstanding, are converted, exchanged, canceled, or remain outstanding as provided in the plan of merger, and the former owners or members who held ownership or membership interests of each domestic entity that is a party to the merger are entitled only to the rights provided by the plan of merger or, if applicable, any rights to receive the fair value for the ownership interests provided under Subchapter H;¹ and

(9) notwithstanding Subdivision (4), the surviving or new organization named in the plan of merger as primarily obligated to pay the fair value of an ownership or membership interest under Section 10.003(2) is the primary obligor for that payment and all other surviving or new organizations are secondarily liable for that payment.

(b) If the plan of merger does not provide for the allocation and vesting of the right, title, and interest in any particular real estate or other property or for the allocation of any liability or obligation of any party to the merger, the unallocated property is owned in undivided interest by, or the liability or obligation is the joint and several liability and obligation of, each of the surviving and new organizations, pro rata to the total number of surviving and new organizations resulting from the merger.

(c) If a surviving organization in a merger is not a domestic entity, the surviving organization is considered to have:

(1) appointed the secretary of state in this state as the organization's agent for service of process in a proceeding to enforce any obligation of a domestic entity that is a party to the merger; and

(2) agreed to promptly pay to the dissenting owners or members of each domestic entity that is a party to the merger who have the right of dissent and appraisal under this code the amount, if any, to which they are entitled under this code.

(d) If the surviving organization in a merger is not a domestic entity, the organization shall register to transact business in this state if the entity is required to register for that purpose by another provision of this code.

Credits

Acts 2003, 78th Leg., ch. 182, § 1, eff. Jan. 1, 2006. Amended by Acts 2005, 79th Leg., ch. 64, § 35, eff. Jan. 1, 2006; Acts 2007, 80th Leg., ch. 688, § 50, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., ch. 139 (S.B. 748), § 11, eff. Sept. 1, 2011; Acts 2015, 84th Leg., ch. 32 (S.B. 860), § 8, eff. Sept. 1, 2015.