TESTIMONY OF

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ON BEHALF OF

NATIONAL ADVOCACY AGAINST MORTGAGE SERVICING FRAUD

BEFORE THE

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GOVERNMENT SPONSORED ENTERPRISES

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"BROKEN DREAMS IN THE POCONOS:
THE RESPONSE OF THE SECONDARY MARKETS AND
IMPLICATIONS FOR FEDERAL LEGISLATION"

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Good morning Mr. Chairman and members of the Committee. My name is Maureen McGrath, and I appear today on behalf of the National Advocacy Against Mortgage Servicing Fraud. I wish to thank you for holding this important hearing to examine the problem of predatory mortgage lending and real estate fraud in the Poconos and for allowing me to testify before you today. I would also like to extend a special thank you to Congressman Kanjorski for the extraordinary time and effort he expends on this and other issues on behalf of his constituents in the Poconos.

Although the National Advocacy Against Mortgage Servicing Fraud is a relatively new consumer advocacy group, my co-advocates and I have many years of experience in fighting for and attempting to protect consumer rights against mortgage servicing fraud. Besides myself, there are currently advocates in the Commonwealth of Massachusetts, as well as the States of New Hampshire, New Jersey, New York, Ohio and Arkansas, and we are growing and expanding as we find other individuals who champion the cause for which we fight.

I am a homeowner in Monroe County, Pennsylvania, and until September 11, 2001, I worked as a paralegal in New York City. I speak with deep personal conviction that predatory lending and mortgage servicing fraud devastates communities and individuals lives, and with great certainty that approaches to the problem are workable and fair. Prior to founding the National Advocacy Against Mortgage Servicing Fraud, I was involved in fighting the mortgage servicing fraud perpetrated on over 1 million victims across the United States. The publicity of that dispute brought the matter to the attention of Senators Serbanes and Mikulski of

Maryland, the investigation by FTC and HUD of Fairbanks Capital's practices and handling of sub-prime or non-conforming loans and the subsequent settlement of a nationwide class action lawsuit.

The National Advocacy against Mortgage Servicing Fraud assists homeowners who have been victimized by various forms of mortgage servicing fraud. These practices include, but are not limited to not posting a payment as timely; forced placed insurance; daily interest when payments are made after due date; charging late fees on the entire outstanding principal; charging interest on servicing fees; abusive collection practices; charging prepayment penalties when not authorized by either the note or law; usurious forbearance agreements; and foreclosure abuses.

The Advocacy has not received any funds from any source whatsoever, and relies entirely on its volunteers to individually fund whatever monies are needed to assist consumers, which basically is for web sites, long distance telephone calls, copies, postage and faxes. On a daily basis, we assist individual homeowners who have been targeted by their mortgage servicer.

Everyone is aware of such terms as home equity theft and predatory mortgage lending. However, very few people are aware of mortgage servicing fraud, and this is the abuse that I would like to discuss with you today, for it is my firm belief that this is the missing link in the scheme of things, and hopefully I will be able to bring into the light the reasons for mortgage servicing fraud, the effects it has on entire communities, the secondary mortgage market, investors and taxpayers. I hope that this committee, after reading and hearing my testimony will no longer look at predatory mortgage lending as a process that begins with the mortgage broker and ends with the mortgagee, but will look further and realize that predatory lending breeds further abuse, in the form of mortgage servicing fraud.

As you know, predatory mortgage lending often consists of lenders who purposely target homeowners with substantial equity but less than perfect credit for high-cost, abusive mortgage loans. The lenders employ a bogus theory of high risk to legitimize lending money at unconscionably high interest rates and engaging in other abusive practices which increase the revenue on the loans. The abusive practices include loan flipping, balloon payments, and the sale and financing of overpriced credit life and disability insurance (insurance packing). Predatory mortgage lending by its innate nature, also brings about mortgage servicing abuse, because the consumer is already tagged with a nomenclature, and the mortgage servicers perpetrate this title consistently. That title is “deadbeat”. See Exhibit A for a list of the abusive practices and a description of each.

WHY DOES MORTGAGE SERVICING FRAUD OCCUR?

First, with some exceptions, the quality of servicing ranges from poor to abysmal, for reasons that are no secret. The financial incentives to provide good service to customers, which work in other sectors of our economy, don’t work for loan servicing. The firm servicing mortgages will not get more customers by improving service quality, only higher costs. And the firm providing minimal service or less will not lose customers, because their customers are locked in.

While this problem has been around for some time, the development of the sub-prime market in the 90s raised the stakes significantly. Sub-prime borrowers, unable to meet traditional underwriting requirements, became a profitable source of business at higher prices than those paid by prime borrowers.

Mortgage credit thus became available to a group that had previously been excluded from the market, which was a plus. Unfortunately, this group was also highly vulnerable to a number of sharp practices that left some worse off than if they had never borrowed. These practices came to be called "predatory lending”.

Sub-prime loans had to be serviced, and some of the firms doing the servicing adopted practices as outrageous as those used by predatory loan originators. Here are some:

> *They purchased overpriced homeowners’ insurance, even though the borrower already had a policy, and paid for it by increasing the borrower’s balance so it would not be noticed for a period, if ever.
>
> *They failed to credit borrowers for extra payments.
>
> *They held scheduled payments past the grace period before posting them, thus collecting late fees.
>
> *They imposed prepayment penalties on borrowers who were refinancing, even though the notes stated that there was no such penalty.

*In the past, they failed to report good payment history to the credit reporting bureaus, thus preventing borrowers from improving their credit scores. It is hoped that the new legislation requiring the prompt reporting of all information will alleviate this problem.

*The statements provided borrowers were late, and so poorly designed that even an expert found them incomprehensible, thus making it difficult for borrowers to detect their shenanigans.

Predatory servicing is even easier to get away with than predatory lending, since the customer has already been landed and has no place to go.

While numerous legislative and regulatory actions have been taken at the Federal and state levels to curb predatory lending, predatory servicing has been relatively immune until recently. In a much-publicized action last year, the Federal Government sued Fairbanks Capital Corporation for a series of practices similar to those cited above, and won an injunction against continuation of the practices, along with a $40 million fine.

Such suits are useful but won't stop predatory servicing because there is too much money to be made. Predatory servicing won't go away until it starts resulting in lost customers. That will happen when borrowers are empowered to select another lender to service their loan.

Second, high equity makes homes attractive for mortgage servicing fraud. High equity is generally the result of two factors: (1) the appreciation of property values;

and (2) payment of mortgages, which over time results in the reduction of the principal balance on the mortgage loan.

Third, the absence of strong consumer protection laws and the lack of enforcement of existing laws permit these scams to flourish. For example, until 2002, loan servicers were not classified as a bank, lender, broker, debt collector, or any other entity governed by state and/or federal laws. Finally, in Schlosser v. Fairbanks, it was decided that Fairbanks Capital (a mortgage servicer) was in fact a “debt collector” if the debt they were servicing was in default at the time they assumed the servicing contract. (See Exhibit B) This, at least, gave footing to consumer complaints under the FDCPA. In addition, many states permit non-judicial foreclosure sales, which facilitate foreclosures and impede homeowners' efforts to raise defenses in court.

Fourth, consumers do not have a choice concerning who will service their loans. The decision is made between the original mortgage lender, and the trustee of the REMIC, or REIT, and they are the customers of the servicer. When a tranche of sub-prime loans are bundled and sold in the secondary market, many servicers will target those loans as an easy target, and will foster the impression that the mortgagors are “deadbeats”, knowing that the consumers are a captive market with no access to any other way of paying their monthly principal and interest on their mortgage.

Fifth, greed is the primary driving force behind mortgage servicing fraud. The game is motivated by the economics of loan servicing. In recent years, servicing has become an increasingly specialized activity. Many firms originate few or no loans, but purchase servicing contracts as an investment. Even among firms that both originate and service loans, servicing is viewed as a profit center that must justify itself by earning a target rate of return. The investment in servicing is what a specialized servicer pays for it, or what an originating firm that retains the servicing could have sold it for. For example, lets say a firm pays $1 million for the right to service a loan portfolio of 1,000 loans with total balances of $100 million. The portfolio has an estimated average life of 7 years. The servicing fee on the $100 million is .25%, which generates income of $250,000 a year. It only costs the firm $50 a year to service each loan, or $50,000 in total. Net income is thus $200,000 a year for 7 years. The rate of return on investment is 9.20%. Now add late charges, which by industry practice are retained by the servicing agent. If a late charge of 5% of the payment is collected from just 1% of the borrowers, the rate of return on the investment in servicing jumps almost to 10%. If late charges can be collected from 5% of the borrowers, the rate of return exceeds 12%.

TYPES OF VICTIMS

The loans that fall prey to mortgage servicing fraud consist of sub-prime or non-conforming loans, usually in a trust wherein the note holder has either declared bankruptcy or is no longer in business. Homeowners who tend to have substantial equity are perhaps the principal targets.

The abusive business practices of the mortgage servicers have resulted in a substantial increase in foreclosures which divest homeowners of their property and often make them homeless. The result is destabilization of what were formerly vibrant neighborhoods populated by owner-occupied homes and an increase in the need for government-funded social service agencies to address the social ills generated by this destabilization. We also see that many of the Trusts are not making distributions to their certificate holders, thus causing an increasingly growing distrust of the pass-though certificates.

ILLUSTRATIVE CASES

At this point, I would like to provide the stories of three victims of mortgage servicing fraud abuse.

Mr. M. is a forty year old who lives in Monroe County. He is gainfully employed, and has consistently paid his mortgage in a timely manner. He has owned his home in eight years. In November 2001, Mr. M was notified by his mortgage servicer that they were placing his loan in default. The reason was that he was in arrears for four months. Mr. M. disputed the servicer's claim, and immediately wrote qualified RESPA written letters of dispute. Despite three such letters, the mortgage servicer never responded to Mr. M's RESPA inquiry, and his loan was foreclosed on. After commencing litigation, a redacted copy of the loan history was finally supplied to Mr. M. A line-by-line audit of the information provided indicates that at the time of foreclosure, over $8,000 in principal and interest payments were missing, charges for a property in Cleveland, Ohio, were charged to Mr. M's account, and usurious fees were assessed.

Ms. X is a fifty-eight year old African-American woman. She has owned her home in Monroe County, Pennsylvania since January 2000. Over a period of three years, the value of her home has dropped over $40,000, based on the BPO's conducted by her mortgage servicer. There is no explanation for this decrease in value, and is currently under investigation

Ms. Y is a fifty-year-old immigrant. She has owned her home in Monroe County, Pennsylvania, since November 1999. Her mortgage servicer assessed her with forced placed insurance fees, in the amount of $1,998 per year, despite the fact that Ms. Y had hazard insurance in place on her home. Lenders require homeowners to carry homeowner's insurance, with the lender named as a loss payee. Mortgage loan documents allow the lender to force place insurance when the homeowner fails to maintain the insurance, and to add the premium to the loan balance. Some predatory mortgage lenders force place insurance even when the homeowner has insurance and has provided proof of such insurance to the lender. Even when the homeowner has in fact failed to provide the insurance, the premiums for the force placed insurance are often exorbitant. Often the insurance carrier is a company affiliated with the lender. Furthermore, the cost of forced placed insurance is frequently padded because it covers the lender for risks or losses in excess of what the lender may require under the terms of the mortgage loan. The taking of the forced placed fees placed Ms. Y’s mortgage in default, and she was forced into bankruptcy to save her home. The case is on going.

These cases typify what we have been seeing in mortgage servicing fraud. Why are we seeing these cases? Mortgage servicers say that the fees assessed and handling of the loan is correct and justified. This explanation is bogus. These are not uncollateralized, signature loans. If they were, the argument about risk might be justified. Most predatory lenders lend up to only 80% of the value of the home, leaving the other 20% as a cushion to protect the lender in case of foreclosure. If the homeowner is able to make the payments, the revenue stream created by these loans is very profitable because of the high interest, points and other revenue enhancers. If in fact a default occurs, the lender forecloses, often buys the home at the foreclosure sale, and resells it for a substantial profit. The mortgage servicing fraud is a result of greed, and the need to always increase the bottom line of profits.

I would like, at this time, to focus on one of the ways that equity is stripped from a home, how a homeowner is forced either into foreclosure or bankruptcy and how this has an effect on an entire community.

The path toward losing a home is actually quite simple. The first phase is designed to fabricate the default, and typically begins with the Servicer's records being fed false data. Usually the very first fraudulent entry made is the manipulation of the date the monthly payment is received in order to create a late payment. This will now trigger a "late fee". The "late fee" is deducted from the next month's principal and interest payment, which then creates a) a partial payment, which is placed in suspense and b) another late fee. The homeowner is now considered 1 month delinquent. The following month, when the principal and interest payment is again made on a timely basis, the payment will be divided once again. Part of the payment will be applied to the money being held in suspense to make a whole month payment. Part of the payment will be applied to the new late fee, and part of the payment will be placed in suspense, because it is now a partial payment for the current month's scheduled payment. This series of events will continue until the consumer is 90-days late. At that point, the loan is placed into default.

Usually, at the 60-day delinquent point, the Servicer will initiate property preservation. This will involve real estate agents "driving-by" the property to make sure that it is not in a condition that would jeopardize the investment of the trust. This, in and of itself, is a normal procedure of the mortgage industry, and is considered innocuous. However, in order to reap additional fees, the Servicer will normally bill for 2, 3 or even 4 "drive-bys" per month, week, or even per day, charging anywhere from $10.00 to $150.00 per occurrence. In most cases, the "real estate personnel" who are doing the property preservation are actually employees of the Servicer, and the Servicer is actually just creating book entries in order to garner additional fees.

At the 90-day delinquent point, the Servicer will institute foreclosure proceedings. This is where I wish to focus your attention, to bring to the forefront what has happened not only in the Poconos, but also throughout the nation. Once the foreclosure process has commenced, the Servicer will order a "BPO", or Brokers Price Opinion. This is meant to be used by legitimate sellers and buyers of real estate, who are interested in a property and wish to know the best, worst and median price of a home they are contemplating selling or purchasing. However, in the case of mortgage servicing fraud, it has become a lethal weapon. The mortgage servicer will use the BPO in lieu of an Appraisal, performed by a licensed appraiser. The mortgage servicer will also order a "quick sale" price for the property. This will often drop the price of a home by thirty, forty, or even fifty thousand dollars. In the case of one mortgage servicer, if the BPO does not come in low enough, the "internal review" will lower the price of the home down to what they feel is should be. (See Exhibit C) Why would a mortgage service do this?

1. According to most pooling and servicing agreements, once a property has been placed in default and it has been determined that recoupment of any "advanced" fees is negligible, the mortgage servicer no longer need forward the monies collected to the trustee for distribution. Usually, at this point in time, the consumer is still making mortgage payments, however, they are being applied to fees assessed by the servicer. This now leaves the servicer free from having to advance any of its own money, and leaves the mortgage payments free for application to fees.

2. According to most pooling and servicing agreements, once a property has been placed in default, the mortgage servicer is reimbursed from the trust for all out-of-pocked expenditures, including servicing advances. In addition, the servicer is entitled to recoup from the proceeds of the sale any advances not reimbursed by the trust. If, however, there is no realization of sufficient capital to pay off the note and recoup the out-of-pocket expenditures, the mortgage servicer is reimbursed by the insurer of the trust.

3. According to most pooling and servicing agreements, the mortgage servicer has the right to purchase from the trust the notes of any properties placed in default. The certificate holders of the top tiers of the trust are reimbursed for this loss through the lower tiers over collateralization.

4. The servicer can have a judgment entered against the homeowner for any arrearage not covered after the foreclosure sale.

5. The servicer is often the entity that enters the bid for the property, and they will then place the property in an REO and attempt the sale of same for full market value.

What typically happens is that i) The use of a “fast sale” BPO deflated the value of the home by tens of thousands of dollars; ii) The mortgage servicer no longer needs to advance any funds to the trust; (iii) The mortgage servicer is reimbursed from the trust for any funds advanced; and (iv) the mortgage servicer will purchase a home a below market cost.

As seen in the Poconos, this practice of having undervalued, or “quick sale” BPO’s performed has the devastating effect of devaluing an entire community. Once one or two homes are placed into wrongful foreclosure (and due to the fact that many loans in the Poconos are sub-prime or non-conforming, there is a high propensity towards this behavior on the part of the servicers), any legitimate appraisal for a refinancing request by any of the homes in the proximity of the wrongfully foreclosed home, will need to be “adjusted” to reflect the value of the home due to the low sale or foreclosure price of the comparable wrongfully foreclosed home. Once you have several homes with high loan-to-value ratios because of the downward trend of the values of the homes, an avalanche effect begins, effecting home after home, consumer after consumer, until finally, you have the phenomenon of people simply walking away from their homes because they cannot afford their current mortgages; they have been placed in a fraudulent status of default; or they cannot refinance because of the downward trend of the values of their homes.

We must also, at this point in time, look at how this trend will affect the secondary mortgage market, the REMICS, REITS, and pass-through certificates. First, let us address the distribution, or lack thereof, of dividends (or interest) to the certificate holders. If enough loans in a trust are placed in default, the trustee will not have sufficient funds to make a distribution. In several trusts being serviced by known fraudulent mortgage servicers, distributions have not been made to certificate holders for over a year. This may, or may not, cause litigation (usually in the form of a class action) to be commenced on the part of the certificate holders; adding additional expense in the form of attorney fees for both the certificate holders, the trust originator, the trustee, and often the securities dealer. This will eventually make it more and more difficult to sell the securitization of these loans in the secondary market, and will eventually affect the ability of lending institutions to offer credit to borrowers.

We also need to look at the tax consequences to the REMICS. If a multitude of homes are wrongfully foreclosed on, the REMIC may in fact be in violation of tax code. The foreclosures may not be considered "foreclosures" and may actually be considered a "prohibited transaction" causing the asset cap to be effected. This, in turn, will affect the tax consequences for the certificate holders, and once again, this will affect the ability to sell securitizations, and will affect the ability of lending institutions to offer credit.

The implications and effects of mortgage servicing fraud are far reaching, and need to be considered when looking at real estate fraud or predatory lending.

I would like to propose that when future legislation is considered that consideration should be given that a certified appraisal performed by a licensed appraiser accompany any foreclosure. This will curtail the current practice of using "quick sale" BPO's and falsely devaluing the value of a home, which in turn will serve to protect not only the certificate holders of the trusts, but also the neighboring property owners by maintaining the value of the homes in a neighborhood, and guaranteeing that the "fair market value" of a home is preserved.

Concerning the mortgage servicing aspect of the industry, it should be kept in mind that the great majority of loans today are serviced by firms that don't own the notes. The servicer is paid by, and is beholding to the owner of the mortgage. Borrowers have no say in who services their loan, and if they get poor service, about all they can do is write a letter of complaint to HUD or the FTC. It is hardly surprising, therefore, that servicing does not generally meet the needs of borrowers. However, it doesn't have to be that way.

Servicing systems can be designed to meet the needs of borrowers as well as the trusts. The borrower would be the client along side the lender, and have the right to change servicers. This would invoke competition between servicers to keep their cash flow basis, and would help prevent the fraud that is currently being perpetrated.

I estimate there are roughly 38 million homeowners who have a long-term relationship with a servicing agent that they did not choose. Their loan provider was either a mortgage broker, or a lender who subsequently sold the servicing. These borrowers should be empowered to opt out.

To avoid undue disruption and encourage rational decisions, the opt-out option should become effective only after (approximately) 6 months of servicing, and should apply only once.

If borrowers have the right to opt out, many firms with servicing capacity will vie for the privilege of serving them. The stream of income generated by servicing contracts has value. Ordinarily, these contracts must be purchased for anywhere from 1/2% to 2% or more of the balance. An opt-out contract would be free.

To win the favor of opt-outs, servicers would be obliged to compete. Since servicers are paid by lenders rather than by borrowers, they will compete with service, which is exactly what is needed. Firms with efficient and courteous support people, short waits, easy-to-read statements, etc., will draw opt-outs from firms that have served the consumer badly. The market would, at long last, begin to work for the borrower.

This concludes my testimony. Once again, thank you for your time and kind consideration. I will be available to provide answers to any questions that may arise.

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EXHIBIT A

The following is a catalogue of predatory mortgage lending abusive practices. The practices have been placed into categories of abuses associated with the origination of the loan, servicing of the loan, and collection of the loan.

I. ORIGINATION OF LOAN

1. Solicitations. Predatory mortgage lenders engage in extensive marketing in targeted neighborhoods. They advertise through television commercials, direct mail, signs in neighborhoods, telephone solicitations, door to door solicitations, and flyers stuffed in mailboxes. Many of these companies deceptively tailor their solicitations to resemble social security or other U.S. government checks to prompt homeowners to open the envelopes and otherwise deceive them regarding their predatory intentions.

2. Home Improvement Scams. Predatory mortgage lenders use local home improvement companies essentially as mortgage brokers to solicit business. These companies solicit homeowners for home improvement work. The company may originate a mortgage loan to finance the home improvements and then sell the mortgage to a predatory mortgage lender, or steer the homeowner directly to the predatory lender for financing of the home improvements. The home improvements are often grossly overpriced, and the work is shoddy and incomplete. In some cases, the contractor begins the work before the three-day cooling off period has expired. In many cases, the contractor fails to obtain required permits; thereby making sure the work is not inspected for compliance with local codes.

3. Mortgage Brokers - Kickbacks. Predatory mortgage lenders also originate loans through local mortgage brokers who act as bird dogs (finders) for the lenders. Many predatory mortgage lenders have downsized their operations by closing their retail outlets and shifting the origination of loans to these brokers. These brokers represent to the homeowners that they are working for the homeowners to help them obtain the best available mortgage loan. The homeowners usually pay a broker's fee. In fact, the brokers are working for predatory mortgage lenders and being paid kickbacks by lenders for referring the borrowers to the lenders. On loan closing documents, the industry employs euphemisms to describe these referral fees: yield spread premiums and service release fees. Also, unbeknownst to the borrower, his interest is raised to cover the fee. Within the industry, this is called bonus upselling or par-plus premium pricing.

4. Steering to High Rate Lenders. Some banks and mortgage companies steer customers to high rate lenders, including those customers who have good credit and

would be eligible for a conventional loan from that bank or lender. In some cases, the customer is turned away before completing a loan application. In other cases, the loan application is wrongfully denied and the customer is referred to a high rate lender. The high rate lender is often an affiliate of the bank or mortgage company, and kickbacks or referral fees are paid as an incentive to steer the customer in this way.

5. Lending to People Who Cannot Afford The Loans. Some predatory mortgage lenders purposely structure the loans with monthly payments which they know the homeowner cannot afford with the idea that when the homeowner reaches the point of default, they will return to the lender to refinance which provides the lender additional points and fees. Other predatory mortgage lenders, whom we call hard lenders, purposely structure the loans with payments the homeowner cannot afford in order to trigger a foreclosure so that they may acquire the house and the valuable equity in the house at the foreclosure sale.

6. Falsified Loan Applications, Unverified Income. In some cases, lenders knowingly make loans to homeowners who do not have sufficient income to repay the loan. Often, such lenders wish to sell the loan to an investor. To sell the loan, the lender must make the loan package have the appearance to the investor that the borrower has sufficient income. The lender has the borrower sign a blank loan application form. The lender then inserts false information on the form (for example, a job the borrower does not have), making the borrower appear to have higher income than he or she actually has.

7. Adding Co-signers. This is done to create the false impression that the borrower is sufficiently credit worthy to be able to pay off the loan, even though the lender is well aware that the co-signer has no intention of contributing to the repayment of the mortgage. Often, the lender requires the homeowner to transfer half ownership of the house to the co-signer. The homeowner has lost half the ownership of the home and is saddled with a loan she cannot afford to pay.

8. Incapacitated Homeowners. Some predatory lenders make loans to homeowners who are clearly mentally incapacitated. They take advantage of the fact that the homeowner does not understand the nature of the transaction or the papers that she signs. Because of her incapacity, the homeowner does not understand she has a mortgage loan, does not make the payments, and is subject to foreclosure and subsequent eviction.

9. Forgeries. Some predatory lenders forge loan documents. In an ABC Prime Time Live news segment that aired on April 23, 1997, a former employee of a high cost mortgage lender reported that each of the lender's branch offices had a "designated forger" whose job it was to forge documents. In such cases, the unwary homeowners are saddled with loans they know nothing about.

10. High Annual Interest Rates. The very purpose of engaging in predatory mortgage lending is to reap the benefit of high profits. Accordingly, these lenders always charge unconscionably high interest rates, even though their risk in minimal or non-existent.

Such rates drastically increase the cost of borrowing for homeowners. Predatory mortgage lenders routinely charge Atlanta area borrowers rates ranging from 12% to 18%, while other lenders charge rates of 7.0% to 7.5%

11. High Points. Legitimate lenders charge points to borrowers who wish to buy down the interest rate on the loan. Predatory lenders charge high points but there is no corresponding reduction in the interest rate. These points are imposed through prepaid finance charges (or points or origination fees), they are usually 5 to 10% of the loan and may be as much as 20% of the loan. The borrower does not pay these points with cash at closing. Rather, the points are always financed as part of the loan. This increases the amount borrowed, which produces more annual interest to the lender.

12. Balloon Payments. Predatory mortgage lenders frequently structure loans so that at the end of the loan period, the borrower still owes most of the principal amount borrowed. The last payment balloons to an amount often equal to 85% or so of the principal amount borrowed. Over the term of the loan, the borrower's payments are applied primarily to interest. The homeowner cannot afford to pay the balloon payment at the end of the term, and either loses the home through foreclosure or is forced to refinance with the same or another lender for an additional term at additional cost.

13. Negative Amortization. This involves a system of repayment of a loan in which the loan does not amortize over the term. Instead, the amount of the monthly payment is insufficient to pay off accrued interest and the principal balance therefore increases each month. At the end of the loan term, the borrower owes more than the amount originally borrowed. A balloon payment at the end of the loan is often a feature of negative amortization.

14. Padded Closing Costs. In this scheme, certain costs are increased above their true market value as a method of charging higher interest rates. Examples include charging document preparation of $350 or credit report fees of $150, both of which are many times the actual cost.

15. Inflated Appraisal Costs. This is another padding scheme. In most mortgage loan transactions, the lender requires that an appraisal be done. Most appraisals include a typical, detailed report of the condition of the house (interior and exterior) and prices of comparable in the area. Others are "drive-by" appraisals, done by someone driving by the homes. The former naturally cost more than the latter. In some cases, borrowers are charged a fee for an appraisal which should include the detailed report, when only a drive-by appraisal was done.

16. Padded Recording Fees. Mortgage transactions usually require that documents be recorded at the local courthouse. State or local laws establish the fees for recording the documents. Mortgage lenders typically pass these costs on to the borrower. Predatory mortgage lenders often charge the borrowers a fee in excess of the actual amount required by law to record the documents.

17. Bogus Broker Fees. In some cases, predatory lenders charge borrowers broker fees when the borrower never met or knew of the broker. This is another way such lenders increase the cost of the loan for the benefit of the lender.

18. Unbundling. This is another way of padding costs by breaking out and itemizing charges which are duplicative or should be included under other charges. An example is where a lender imposes a loan origination fee, which should cover all costs of initiating the loan, but then imposes separate, additional charges for underwriting and loan preparation.

19. Credit insurance - Insurance Packing. Predatory mortgage lenders market and sell credit insurance as part of their loans. This includes credit life insurance, credit disability insurance, and involuntary unemployment insurance. The premiums for this insurance are exorbitant. In some cases, lenders sell credit life insurance covering an amount which constitutes the total of payments over the life of the loan rather than the amount actually borrowed. The payout of claims is extremely low compared to the revenue from the premiums. The predatory mortgage lender often owns the insurance company, or receives a substantial commission for the sale of the insurance. In short, credit insurance becomes a profit center for the lender and provides little or no benefit to the borrower.

20. Excessive Prepayment Penalties. Predatory mortgage lenders often impose exorbitant prepayment penalties. This is done in an effort to lock the borrower into the predatory loan for as long as possible by making it difficult for her to refinance the mortgage or sell the home. Another feature of this practice is that it provides back end interest for the lender if the borrower does prepay the loan.

21. Mandatory Arbitration Clauses. By inserting pre-dispute, mandatory, binding arbitration clauses in contractual documents, some lenders attempt to obtain unfair advantage of their borrowers by relegating them to a forum perceived to be more favorable to the lender than the court system. This perception exists because discovery is not a matter of right but is within the discretion of the arbitrator; the proceedings are private; arbitrators need not give reasons for their decisions or follow the law; a decision in one case will have no precedential value; judicial review is extremely limited; a lender will be a frequent user while the consumer is a one time participant; and injunctive relief and punitive damages will not be available.

22. Flipping. Flipping involves successive, repeated refinancing of the loan by rolling the balance of the existing loan into a new loan instead of simply making a separate, new loan for the new amount. Flipping always results in higher costs to the borrower. Because the existing balance of one loan is rolled into a new loan, the term of repayment is repeatedly extended through each refinancing. This results in more interest being paid than if the borrower had been allowed to pay off each loan separately. A powerful example of the exorbitant costs of flipping is the case of Bennett Roberts, who had eleven loans from a high cost mortgage lender within a period of four years. See, Wall Street Journal, April 23, 1997, at 1. Mr. Roberts was charged in excess

of $29,000 in fees and charges, including ten points on every financing, plus interest, to borrow less than $26,000.

23. Spurious Open End Mortgages. In order to avoid making required disclosures to borrowers under the Truth in Lending Act, many lenders are making "open-end" mortgage loans. Although the loans are called "open end" loans, in fact they are not. Instead of creating a line of credit from which the borrower may withdraw cash when needed, the lender advances the full amount of the loan to the borrower at the outset. The loans are non-amortizing, meaning that the payments are interest only so that no credit will be replenished. Because the payments are applied only to interest, the balance is never reduced.

24. Paying Off Low Interest Mortgages. A predatory mortgage lender usually insists that its mortgage loan pay off the borrower's existing low cost, purchase money mortgage. The lender is able to increase the amount of the new mortgage loan by paying off the current mortgage and the homeowner is stuck with a high interest rate mortgage with a principal amount which is much higher than necessary.

25. Shifting Unsecured Debt Into Mortgages. Mortgage lenders badger homeowners with telephone and mail solicitations and other advertisements that tout the "benefits" of consolidating bills into a mortgage loan. The lender fails to inform the borrower that consolidating unsecured debt into a mortgage loan secured by the home is a bad idea. The loan balance is increased by paying off the unsecured debt, which necessarily increases closing costs (which are calculated on a percentage basis), increases the monthly payments, and increases the risk that the homeowner will lose the home.

26. Making Loans in Excess of 100% Loan to Value (LTV). Recently, some lenders have been making loans to homeowners where the loan amount exceeds the fair market value of the home. This makes it very difficult for the homeowner to refinance the mortgage or to sell the house to pay off the loan, thereby locking the homeowner into a high cost loan. Additionally, if a homeowner goes into default and the lender forecloses on a loan, the foreclosure auction sale generates enough money to pay off the mortgage loan. Therefore, the borrower is not subject to a deficiency claim. However, where the loan is 125% LTV, a foreclosure sale may not generate enough to pay off the loan and the borrower would be subject to a deficiency claim.

II. SERVICING OF LOAN

1. Forced Placed Insurance. Lenders require homeowners to carry homeowner's insurance, with the lender named as a loss payee. Mortgage loan documents allow the lender to force place insurance when the homeowner fails to maintain the insurance, and to add the premium to the loan balance. Some predatory mortgage lenders force place insurance even when the homeowner has insurance and has provided proof of such insurance to the lender. Even when the homeowner has in fact failed to provide

the insurance, the premiums for the force placed insurance are often exorbitant. Often the insurance carrier is a company affiliated with the lender. Furthermore, the cost of forced placed insurance is frequently padded because it covers the lender for risks or losses in excess of what the lender may require under the terms of the mortgage loan.

2. Daily Interest When Payments Are Made After Due Date. Most mortgage loans have grace periods, during which a borrower may make the monthly payment after the due date and before the end of the grace period without incurring a "late charge." The late charge is often assessed as a small percent of the late payment. However, many lenders also charge daily interest based on the outstanding principal balance. While it may be proper for a lender to charge daily interest when the loan so provides, it is deceptive for a lender to charge daily interest when a borrower pays after the due date and before the grace period expires when the loan terms provide for a late charge only after the end of the grace period. Predatory lenders take advantage of this deceptive practice.

III. COLLECTION OF LOAN

1. Abusive Collection Practices. In order to maximize profits, predatory lenders either set the monthly payments at a level the borrower can barely sustain or structure the loan to trigger a default and a subsequent refinancing. Having structured the loans in this way, the lenders consciously decide to use aggressive, abusive collection tactics to ensure that the stream of income flows uninterrupted. (Because conventional lenders do not structure their loans in this manner, they do not employ abusive collection practices.) The collection departments of predatory lenders call the homeowners at all hours of the day and night, send late payment notices (in some cases, even when the lender has received timely payment or even before the grace period expires), send telegrams, and even send agents to hound homeowners in person. Some predatory lenders bounce homeowners back and forth between regional collection offices and local branch offices. One homeowner received numerous calls every day for several months, even after she had worked out a payment plan. These abusive collection tactics often involve threats to evict the homeowners immediately, even though lenders know they must first foreclose and follow the eviction procedures. The resulting emotional impact on homeowners, especially elderly homeowners, can be devastating. Being ordered out of a home one has owned and lived in for decades is an extremely traumatic experience.

2. High Prepayment Penalties. See description in I. 20 above. When a borrower is in default and must pay the full balance due, predatory lenders will often include the prepayment penalty in the calculation of the balance due.

3. Flipping (Successive, Repeated Refinancing of Loan). See description in I. 22 above. When a borrower is in default, predatory mortgage lenders often use this as an opportunity to flip the homeowner into a new loan, thereby incurring additional high costs and fees.

4. Foreclosure Abuses. These include persuading borrowers to sign deeds in lieu of foreclosure in which they give up all rights to protections afforded under the foreclosure statute, sales of the home at below market value, sales without the homeowner/borrower being afforded an opportunity to cure the default, and inadequate notice which is either not sent or backdated. There have even been cases of "whispered foreclosures", in which persons conducting foreclosure sales on courthouse steps have ducked around the corner to avoid bidders so that the lender was assured he would not be out-bid. Finally, foreclosure deeds have been filed in courthouse deed records without a public foreclosure sale.

EXHIBIT B

In the
United States Court of Appeals
For the Seventh Circuit

No. 01-3487

CHAD SCHLOSSER and FRANCES SCHLOSSER,

Plaintiffs-Appellants,

v.

FAIRBANKS CAPITAL CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of Illinois.
No. 2:01 C 2121—**Michael P. McCuskey**, *Judge*.

ARGUED FEBRUARY 11, 2002—DECIDED MARCH 20, 2003

Before RIPPLE, DIANE P. WOOD, and WILLIAMS, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Fairbanks Capital Corp. acquired 12,800 allegedly delinquent high-interest mortgages from ContiMortgage, including one owed by the plaintiffs, Chad and Frances Schlosser. Identifying itself as a debt collector, Fairbanks sent the Schlossers a letter asserting that the debt was in default. Fairbanks was mistaken; the Schlossers were not in default. The Schlossers filed suit claiming that Fairbanks's letter failed to notify them of their right to contest the debt, as required by the Fair Debt Collection Practices Act (FDCPA), 15

U.S.C. § 1692g(a). Fairbanks's mistake, as it turned out, worked to its advantage: the district court concluded that, because the debt was not actually in default when Fairbanks acquired it, Fairbanks was not a debt collector within the meaning of the FDCPA. The court granted Fairbanks's motion to dismiss, and the Schlossers appeal. We disagree with the district court's interpretation of the FDCPA and therefore reverse.

I. BACKGROUND

Fairbanks purchased the Schlossers' mortgage from ContiMortgage as part of Fairbanks's acquisition of 128,000 subprime mortgages, 10% of which were identified as in default. According to ContiMortgage's records, the Schlossers' mortgage was delinquent at the time of the transfer, and Fairbanks treated it as such. It sent a letter to the Schlossers, identifying itself as a debt collector, notifying the Schlossers that they were in default, and attempting to collect:

> DEMAND LETTER—YOU COULD LOSE YOUR HOME! . . .
>
> This letter constitutes formal notice of default under the terms of the Note and Deed of Trust or Mortgage because of failure to make payments required. . . .
>
> This letter is a formal demand to pay the amounts due. In the event that these sums are not paid to Fairbanks Capital Corp. "Fairbanks" within 30 days of this letter the entire unpaid balance, together with accrued interest, legal fees and expenses, WILL BE ACCELERATED and foreclosure proceedings will be instituted. . . .
>
> You have the right to bring a court action if you claim that the loan is not in default or if you be-

> lieve that you have any other defense to the acceleration and sale. . . .
>
> This letter is from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

When the Schlossers tried to make their regular monthly payment to Fairbanks, Fairbanks refused, again asserting that the loan was in default, and instead instituted foreclosure proceedings. The Schlossers sent letters insisting that they weren't in default and eventually Fairbanks caused the foreclosure action to be dismissed.

The Schlossers filed suit against Fairbanks for violation of the FDCPA, claiming (on behalf of themselves and a class of similar debtors) that Fairbanks's letter did not notify them of their right to contest the debt in writing, which would have required Fairbanks to verify the debt before continuing collection activity. *See* 15 U.S.C. § 1692g(a)(4). They also asserted an individual claim under the Illinois Consumer Fraud Act, 815 Ill. Comp. Stat. 505/2. The district court granted Fairbanks's motion to dismiss the FDCPA claim, denied as moot the Schlossers' motion for class certification, and declined to take supplemental jurisdiction over the state law claim. The Schlossers appeal.

II. ANALYSIS

As the district court recognized, the FDCPA distinguishes between "debt collectors" and "creditors." Creditors, "who generally are restrained by the desire to protect their good will when collecting past due accounts," S. Rep. 95-382, at 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696, are not covered by the Act. Instead, the Act is aimed at debt collectors, who may have "no future contact with the consumer and often are unconcerned with the consumer's opinion of them." *See id.* In general, a creditor is broadly defined as one who "offers or extends credit creating a debt or to whom a debt is owed," 15 U.S.C. § 1692a(4), whereas a debt collector is one who attempts to collect debts "owed or due or asserted to be owed or due another." *Id.* § 1692a(6).

For purposes of applying the Act to a particular debt, these two categories—debt collectors and creditors—are mutually exclusive. However, for debts that do not originate with the one attempting collection, but are acquired from another, the collection activity related to that debt could logically fall into either category. If the one who acquired the debt continues to service it, it is acting much like the original creditor that created the debt. On the other hand, if it simply acquires the debt for collection, it is acting more like a debt collector. To distinguish between these two possibilities, the Act uses the status of the debt at the time of the assignment:

> (6) The term "debt collector" means any person who . . . regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. . . . The term does not include—
>
> (F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . (iii) *concerns a debt which was not in default at the time it was obtained by such person.*

15 U.S.C. § 1692a (emphasis added). In other words, the Act treats assignees as debt collectors if the debt sought to be collected was in default when acquired by the assignee, and as creditors if it was not. *See Bailey v. Sec. Nat'l Serving Corp.*, 154 F.3d 384, 387 (7th Cir. 1998); *Whittaker v. Ameritech Corp.*, 129 F.3d 952, 958 (7th Cir. 1998); *see also Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379, 403-04

(3d Cir. 2000); *Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103, 106-07 (6th Cir. 1996); *Perry v. Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985).

Fairbanks argues (and the district court held) that under the plain language of the statutory definition, it is not a debt collector because the Schlossers' loan was not actually in default when Fairbanks acquired it. Fairbanks relies on *Bailey,* in which we held that a mortgage servicing company was not a debt collector under the FDCPA when it attempted to collect on a forbearance agreement acquired from HUD. *See* 154 F.3d at 388. Payments on that agreement were current, but the original mortgage, which was replaced by the forbearance agreement, had been in default. *Id.* We held that "[c]ommon sense and the plain meaning" of the statute dictated application of the exclusion in § 1692a(6)(F)(iii) because the defendant was not attempting to collect on the original note, but rather the forbearance agreement, which was not in default at the time it was acquired. *Id.* at 387-88.

Although, as in *Bailey*, the debt in this case was not actually in default, Fairbanks acquired it as a debt in default, and its collection activities were based on that understanding. As applied to these circumstances, the meaning of § 1692a(6)(F)(iii) is less obvious than it was in *Bailey*, which did not address the question posed by this case: do Fairbanks's mistaken assertions and collection activity have any relevance to the application of the exclusion, or does it depend only on the actual status of the loan when it was acquired? We have found no opinions addressing this question, which we review de novo, assuming for purposes of the motion to dismiss that the allegations of the complaint are true. *See Marshall-Mosby v. Corporate Receivables, Inc.*, 205 F.3d 323, 326 (7th Cir. 2000).

Fairbanks's interpretation, which exempts its collection activities from the statute if the debt was not actually in default when acquired, produces results that are odd in light of the conduct regulated by the statute. For example, § 1692g, upon which the Schlossers' suit is based, requires debt collectors to notify the debtor that she may contest the debt in writing, and that if she does, the collector will obtain verification of the debt. 15 U.S.C. § 1692g(a). This validation provision is aimed at preventing collection efforts based on mistaken information. *See* S. Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699. Yet Fairbanks's interpretation makes its mistake about the status of the loan irrelevant. So those like Fairbanks that obtain a mix of loans, only some of which are in default, would be subject to the FDCPA if they fail to provide the required notice of the mechanism for correcting mistakes when they attempt to collect a loan they assert is in default—but only as to those loans about which they are *not* mistaken. And the same would be true for professional debt collectors in the business of acquiring defaulted loans for collection; debtors correctly asserted as being in default when the loan was acquired could challenge the failure to provide notices aimed at correcting mistakes, while those mistakenly identified as in default would have no recourse under the statute. We cannot believe that Congress intended such implausible results, and therefore, even if Fairbanks's reading is the most straightforward, it is not necessarily the correct one:

> Usually when a statutory provision is clear on its face the court stops there, in order to preserve language as an effective medium of communication from legislatures to courts. If judges won't defer to clear statutory language, legislators will have difficulty imparting a stable meaning to the statutes they enact. But if the clear language, when read in the context of the statute as a whole or of the commercial or other real-world (as opposed to

> law-world or word-world) activity that the statute is regulating, points to an unreasonable result, courts do not consider themselves bound by "plain meaning," but have recourse to other interpretive tools in an effort to make sense of the statute.

Krzalic v. Republic Title Co., 314 F.3d 875, 879-80 (7th Cir. 2002) (citing *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 453-55 (1989); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 527 (1989) (Scalia, J., concurring); *AM Int'l, Inc. v. Graphic Mgmt. Assocs., Inc.*, 44 F.3d 572, 577 (7th Cir. 1995)); *see also United States v. X-Citement Video, Inc.*, 513 U.S. 64, 69-70 (1994); *Foufas v. Dru*, 319 F.3d 284, 287 (7th Cir. 2003).

We think the language of § 1692a(6)(F)(iii) is susceptible to an alternative interpretation, one that avoids these odd results and is more consistent with the rest of the statute. Fairbanks's interpretation narrowly focuses on the limitation in subparagraph (iii) regarding the default status of the debt. *See* 15 U.S.C. § 1692a(6)(F)(iii) ("concerns a debt which was not in default"). But the antecedent of that limitation is "such activity," which in turn refers to "collecting or attempting to collect any debt owed or due or asserted to be owed or due." *See id.* § 1692a(6)(F). This suggests that the relevant status is that of the debt or asserted debt that is the subject of the collection activity, particularly when read along with the statute's definition of "debt" as an "obligation or alleged obligation," *see id.* § 1692a(5), which (along with other definitions in the Act, *see*, *e.g.*, *id.* § 1692a(3) (defining "consumer" as one "obligated or allegedly obligated to pay any debt")) extends the reach of the statute to collection activities without regard to whether the debt sought to be collected is actually owed. *See Schroyer v. Frankel*, 197 F.3d 1170, 1178 (6th Cir. 1999) ("[T]he FDCPA holds 'debt collectors liable for various abusive, deceptive, and unfair debt collection practices regardless of whether the debt is valid.' ") (quoting *McCartney v. First City Bank*, 970 F.2d 45 (5th Cir. 1992)); *see also Baker v. G. C. Servs. Corp.*, 677 F.2d 775, 777 (9th Cir. 1982).

Focusing on the status of the obligation asserted by the assignee is reasonable in light of the conduct regulated by the statute. For those who acquire debts originated by others, the distinction drawn by the statute—whether the loan was in default at the time of the assignment—makes sense as an indication of whether the activity directed at the consumer will be servicing or collection. If the loan is current when it is acquired, the relationship between the assignee and the debtor is, for purposes of regulating communications and collection practices, effectively the same as that between the originator and the debtor. If the loan is in default, no ongoing relationship is likely and the only activity will be collection. But if the parties to the assignment are mistaken about the true status, that status will not determine the nature of the activities directed at the consumer. It makes little sense, in terms of the conduct sought to be regulated, to exempt an assignee from the application of the FDCPA based on a status it is unaware of and that is contrary to its assertions to the debtor. The assignee would have little incentive to acquire accurate information about the status of the loan because, in the context of the mistake in this case, its ignorance leaves it free from the statute's requirements.

It is of course conceivable that Congress intended a bright-line rule based on the actual status of the debt at the time of assignment without regard to the assignee's knowledge or assertions about the debt, even if such a rule would be under-inclusive. But another provision of the statute suggests otherwise; according to the parallel exclusion for assignees from the statute's definition of "creditors" (read together with the definition of debt in § 1692a(5)), the purpose of the acquisition matters:

> such term [creditor] does not include any person to the extent that he receives an assignment or transfer of [an obligation or alleged obligation] in default solely for the purpose of facilitating collection of such debt for another.

See 15 U.S.C. § 1692a(4). Under this definition, Fairbanks is not a creditor because it received an assignment of "an alleged obligation in default" solely for the purpose of facilitating collection (or so we could reasonably infer from the allegations of the complaint). If this view of § 1692a(4) is correct, then Fairbanks cannot be right that it is not a debt collector. The structure of the Act suggests that it must be one or the other.[1]

Fairbanks, relying exclusively on its textual argument based on § 1692a(6)(F)(iii), does not attempt to reconcile its interpretation with the definition of creditor in § 1692a(4), nor does it present any evidence that Congress intended an interpretation that creates the implausible results we described earlier. *See Green*, 490 U.S. at 527 (Scalia, J., concurring) (rejecting interpretation based on plain meaning because "counsel have not provided, nor have we discovered, a shred of evidence that anyone has ever proposed or assumed such a bizarre disposition"). We therefore reject Fairbanks's interpretation and hold that, based on the allegations of the complaint, the exclusion in § 1692a(6)(F)(iii) does not apply because Fairbanks attempted to collect on a debt that it asserted to be in default and because that asserted default existed when Fairbanks acquired the debt.

---

[1] If the mistake in this case went the other way, and Fairbanks purchased the loan for the purpose of servicing and treated it as such, but it turned out to actually be in default, then under § 1692a(4) it would be classified as a creditor and therefore outside the scope of the Act.

III. CONCLUSION

The judgment of the district court is REVERSED and the case is REMANDED for further proceedings.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

EXHIBIT C

Residential RealEstate Review, Inc.
320 South Warminster Road
Hatboro, PA 19040

(215) 347-2227
www.rrreview.com
info@rrreview.com

Exterior Broker Price Opinion (BPO) #878430

Client: Acme Mortgage Co.- REO Group
Order #: **863555**
Inspection Type: Exterior
Mortgagor: Mary Doe
Property Address: 123 Tricia Lane

Date Completed: 1/22/2004
Loan #: 8880113355
Inspection Date: 1/22/2004
City, State, ZIP: CHARLOTTE, NC 28275

Subject Property

Style	Location	Condition	Sq. Ft. Living	No Units	Rooms	Bed-rooms	Full Baths	Half Baths	Base-ment	Garages	Lot Size (Sq. ft.)	Lot Size (Acres)	Age (Yrs)
2 Story	Suburban	Good	3,406	1	9	4	3	1	None	2 Attached	14,680	0.337	8

Property Type: Single Family
Purchase Price: $370,000
Currently Listed: No

Occupancy: Occupied - Owner
Purchase Date: 11/5/2003

Listing History	Agency	Phone	Listing Date	Original List. Price	Listing Status
Prior Listing #1	Big City ReMax Associates	(704) 555-5555	4/17/2003	$339,900	Expired at $334,900 on 7/29/2003

Comments: Subject property is a custom built two story brick home located in a semi-private waterfront community on Lake Wylie, south of Charlotte, NC. There are no visible defects from the exterior perspective. This property is not on the water. Comps were selected that were not waterfront in order to stabilize the valuations. There is a large amount of custom interior cabinetry and millwork, stated on the prior MLS description. The current tax value is 344,800.

Comparable Sales

Address	City	Zip	Sq. Ft. Living	No. Units	Rooms	Bed-rooms	Full Baths	Half Baths	Base-ment	Garages	Lot Size (Sq. Ft.)	Lot Size (Acres)	Age (Yrs)	DOM	Prox. to Subject
15527 Eagleview Drive	Charlotte	28278	3,383	1	10	4	3	1	None	2 Attached	15,682	0.360	15	14	Within four blocks
16532 Riverpointe Drive	Charlotte	28278	3,926	1	9	4	3	1	Full	2 Attached	13,983	0.321	1	223	Within four blocks
15618 Eagleview Drive	Charlotte	28278	3,100	1	9	4	3	1	None	2 Attached	12,632	0.290	15	72	Within four blocks

	Condition	Style	List Price	Sale Price	Sale Date	Location	Concessions/Comments
1	Average	1-1/2 story	$369,900	$340,000	9/25/2003	Same as subject	Comparably sized hardcoat stucco 2-story with compatible room inventory. Custom construction. Boat slip is included with home purchase. Tax value is 333,300. Same realtor as buyer and seller agent as subject property.
2	Excellent	2 Story	$379,900	$399,900	10/8/2003	Same as subject	New construction. 2-story brick home with partially finished basement. Typical lake community home. Same interior room inventory as subject property. Price is reflective of age, and condition. There is no tax value established until first occupancy year. Selling realtor was same as that of subject property.
3	Average	2 Story	$389,900	$360,000	11/12/2003	Same as subject	Hardcoat stucco custom built 2-story. Compatible in room inventory and relative square footage. Boat slip included with home. Current tax value is 370,800. Home was listed and sold by same realtor as subject property.

Competitive Properties

Address	City	Zip	Sq. Ft. Living	No. Units	Rooms	Bed-rooms	Full Baths	Half Baths	Base-ment	Garages	Lot Size (Sq. Ft.)	Lot Size (Acres)	Age (Yrs)	DOM	Prox. to Subject
16531 Plantation Woods Drive	Charlotte	28278	3,490	1	11	5	3	1	None	2 Attached	52,272	1.200	9	15	Within four blocks
16410 Riverpointe Drive	Charlotte	28278	3,011	1	11	4	2	1	None	2 Attached	17,860	0.410	9	17	Within four blocks
15604 Warm Springs Court	Charlotte	28278	3,066	1	9	4	2	1	None	2 Attached	21,780	0.500	12	251	Within two blocks

	Condition	Style	Original List Price	Current List Price	Location	Concessions/Comments
1	Good	2 Story	$324,000	$324,000	Same as subject	Hardcoat stucco 2-story custom home on adjacent street. Higher room inventory, but comparable overall square footage. Custom construction on very large cul-de-sac lot. Tax value is 308,500 due to rear boundary on main highway.
2	Good	2 Story	$359,900	$359,900	Same as subject	Similarly styled two story brick veneer custom home. Similar interior room inventory with many custom upgrades, including marble fireplace. Listed at over 70,000 above current tax value. Tax value is 283,800. Listed by same agent/broker as subject property.
3	Good	2 Story	$306,000	$299,000	Same as subject	Custom brick and hardboard 2-story home. Comparably sized with similar room inventory. Very large cul-de-sac interior lot. Home has closest ratio of tax to market value of all competitive properties. Tax value is 287,600.

Valuation Information

Est. Marketing Time:	Quick Sale 30 Days	90 -120 Days	90 Days
As Is Value:	$315,000	$325,000	$325,000
Repaired Value:	$315,000	$325,000	$325,000

Est. Cost of Repairs: $0 **Est. Days to Repair:** 0 **Land Value:** $60,000

Marketability of Subject

Explain any functional or economic obsolescence factors: None noted.

Will this property be a problem for resale? No

Neighborhood Trend: Stable

Pride of Ownership: Good

Number of Listings in Immediate Area: 10

Neighborhood Low Price: $299,000

Neighborhood High Price: $1,000,000

Describe any negative neighborhood factors that detract from subject's value: There are none. This is an upscale, waterfront/marina community.

Quality Control Review

	Quick Sale 30 Day Value	90 - 120 Day Value	90 Day Value
Field As Is Value:	$362,500	$365,000	$360,000
As Is Value Adjusted by RRReview QC:	$315,000	$325,000	$325,000
Field Repaired Value:	$362,500	$365,000	$360,000
Repaired Value Adjusted by RRReview QC:	$315,000	$325,000	$325,000

RRReview QC comments on Automated Values used: KTN Median $320,000 11% decrease in housing values in six months Subject was last listed for $339,900 from 4/2003 to 7/2003 - listing expired, unsold

RRReview QC comments: In view of last list price, broker value appears high. Adjusted value derived from database and from last list price.

Photo #1: Subject Property Front View

Subject Property Address: 123 Tricia Lane, CHARLOTTE, NC

Contact Info

RRReview Contact:	Tammy Sewell		
RRReview Contact Phone:	(215) 347-2538	**RRReview Contact Email:**	tammys@rrreview.com

Disclaimer

This analysis has *not* been performed in accordance with the Uniform Standards of Professional Appraisal practice, which require valuers to act as unbiased, disinterested third parties with impartiality, objectivity and independence and without accommodation of personal interest. It is not to be construed as an appraisal and may not be used as such for any purpose. (38495)

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