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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

James O. Spence, Master-in-Equity

Appellate Case No. 2026-001103

Trial Court Case No. 2024-CP-32-01094

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, Respondents,

v.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; and Timothy Allen Nunally, Defendants,

of which Timothy Allen Nunally and Mark Anthony Nunally are the Appellants.

RECORD ON APPEAL

Volume 5 of 5 - Record pages 1921-2189

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The borrower for each revolving credit loan may draw funds on such revolving credit loan from time to time. The maximum amount of any draw for a revolving credit loan is usually limited to the excess, if any, of the credit limit over the principal balance outstanding under the mortgage note at the time of the draw. Draws will be funded by the servicer or other entity specified in the prospectus supplement.

In most cases, the borrower for a revolving credit loan will be obligated to make monthly payments on the revolving credit loan in a minimum amount which usually will be the finance charge for the billing cycle. A revolving credit loan may have a repayment period, during which the borrower is required to make monthly principal payments to amortize the principal balance. The borrower for each revolving credit loan will be obligated to pay off the remaining account balance on the maturity date of the loan. In most cases, a revolving credit loan may be prepaid in full or in part at any time and without penalty.

The prospective supplement for a series will set forth the terms of the revolving credit loans included in the trust for the series of securities.

The Contracts

Contracts. Contracts in a trust fund will consist of conventional manufactured housing installment sales contracts and installment loan agreements originated by a manufactured housing dealer in the ordinary course of business and purchased by the seller. Each contract will be secured by manufactured homes, each of which will be located in any of the fifty states or the District of Columbia. The contracts will be fully amortizing and will bear interest at a fixed or adjustable annual percentage rate. The seller of the contracts may retain a portion of the interest payments, called a “fixed retained yield.” If the seller retains a fixed retained yield, the trust will be entitled to payments on the contracts after payment of the fixed retained yield.

Manufactured homes, unlike site-built homes, generally depreciate in value. Consequently, at any time after origination it is possible, especially in the case of contracts with high loan-to-value ratios at origination, that the market value of a manufactured home may be lower than the principal amount outstanding under the contract.

Additional Information. The prospectus supplement for a series for which the primary assets include contracts will specify, to the extent relevant and to the extent the information is reasonably available to the depositor and the depositor reasonably believes the information to be reliable:

- the initial aggregate principal balance;
- the range of original terms to maturity;
- the weighted average remaining term to stated maturity;
- the earliest and latest origination dates;
- the range of contract rates and net contract rates;

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- the weighted average net contract rate;
- the geographic distribution of manufactured homes;
- the percentage of any contracts which are secured by manufactured homes which have become permanently affixed to real estate;
- the percentage of the contracts representing the refinancing of existing indebtedness;
- the range of loan-to-value ratios; and
- the highest outstanding principal balance at origination of any contract.

The contracts in a trust fund will generally have monthly payments due on the first of each month and will be fully-amortizing contracts. Contracts may have due dates which occur on a date other than the first of each month. The contracts may include adjustable rate contracts that provide for payment adjustments to be made less frequently than adjustments in the contract rates. Each adjustment in the contract rate which is not made at the time of a corresponding adjustment in payments, and which adjusted amount of interest is not paid currently on a voluntary basis by the obligor, will result in a change in the rate of amortization of the contract. Moreover, payment adjustments on the contracts may be subject to limitations, as specified in the prospectus supplement, which may also affect the rate of amortization on the contract. As a result, the amount of interest accrued in any month may equal or exceed the scheduled monthly payment on the contract. In any such month, no principal would be payable on the contract, and if the accrued interest exceeded the scheduled monthly payment, the excess interest due would become deferred interest that is added to the principal balance of the contract. Deferred interest will bear interest at the contract rate until paid. If the limitations prevent the payments from being sufficient to amortize fully the contract by its stated maturity date, a lump sum payment equal to the remaining unpaid principal balance will be due on the stated maturity date.

Private Securities

Primary assets for a series may consist, in whole or in part, of “private securities” which include pass-through certificates representing beneficial interests in underlying loans of the type that would otherwise be eligible to be loans or collateralized obligations secured by underlying loans. Private securities may have previously been offered to the public and not purchased as part of the original distribution or may be acquired in a private transaction. Although individual underlying loans may be insured or guaranteed by the United States or an agency or instrumentality thereof, they need not be, and private securities themselves will not be so insured or guaranteed.

Private securities will have been issued under a pooling and servicing agreement, a trust agreement or similar agreement. The seller/servicer of the underlying loans will have entered into the underlying agreement with the underlying trustee. The underlying trustee or its agent, or a custodian, will possess the underlying loans. Underlying loans will be serviced by a servicer directly or by one or more sub-servicers who may be subject to the supervision of the underlying servicer.

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The sponsor of the private securities will be a financial institution or other entity engaged generally in the business of lending; a public agency or instrumentality of a state, local or federal government; or a limited purpose corporation organized for the purpose of, among other things, establishing trusts and acquiring and selling loans to trusts, and selling beneficial interests in trusts. The underlying company may be an affiliate of the depositor. The obligations of the underlying sponsor will generally be limited to representations and warranties as to the assets conveyed by it to the trust.

Additionally, although the underlying loans may be guaranteed by an agency or instrumentality of the United States, the private securities themselves will not be so guaranteed.

Distributions of principal and interest will be made on the private securities on the dates specified in the prospectus supplement. The private securities may be entitled to receive nominal or no principal distributions or nominal or no interest distributions. Principal and interest distributions will be made on the private securities by the underlying trustee or the underlying servicer. The underlying company or the underlying servicer may have the right to repurchase the underlying loans after a specified date or under other circumstances specified in the prospectus supplement.

The underlying loans may be fixed rate, level payment, fully amortizing loans or adjustable rate loans or loans having balloon or other irregular payment features. Underlying loans will be secured by mortgages on mortgaged properties.

Credit Support Relating to Private Securities. Credit support in the form of reserve funds, subordination of other private securities issued under the underlying agreement, guarantees, letters of credit, derivative contracts, cash collateral accounts, insurance policies or other types of credit support may be provided with respect to the underlying loans or with respect to the private securities themselves. The type, characteristics and amount of credit support will be a function of characteristics of the underlying loans and other factors and will have been established for the private securities on the basis of requirements of the rating agency that rated the private securities.

Additional Information. The prospectus supplement for a series for which the primary assets include private securities will specify, to the extent relevant and to the extent the information is reasonably available to the depositor and the depositor reasonably believes the information to be reliable:

- the aggregate approximate principal amount and type;
- the maximum original term-to-stated maturity;
- the weighted average term-to-stated maturity;
- the pass-through or certificate rate or ranges thereof;
- the underlying company, the underlying servicer and the underlying trustee;

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- characteristics of credit support relating to the underlying loans or to the private securities;

- the terms on which underlying loans may, or are required to, be purchased prior to their stated maturity or the stated maturity of the private securities;

- the terms on which underlying loans may be substituted for those originally underlying the private securities;

and, as to the underlying loans, the following:

- the payment features, including whether the underlying loans are fixed rate or adjustable rate and whether they provide for fixed level payments or other payment features;

- the approximate aggregate principal balance, if known, of the underlying loans insured or guaranteed by a governmental entity;

- the servicing fee or range of servicing fees;

- the minimum and maximum stated maturities at origination;

- the lien priority; and

- the delinquency status and year of origination.

Accounts

Each trust fund will include one or more accounts. Each account will either be an account maintained at a depository institution, the long-term unsecured debt obligations of which are satisfactory to each rating agency, or an account the deposits in which are insured to the maximum extent available by the Federal Deposit Insurance Corporation or which are secured in a manner meeting requirements established by each rating agency.

The trustee may invest the funds in the accounts in eligible investments maturing, with exceptions, not later than the day preceding the date funds are due to be distributed. Eligible investments include, among other investments, obligations of the United States and agencies thereof, federal funds, certificates of deposit, commercial paper, demand and time deposits and banker’s acceptances, repurchase agreements of United States government securities, guaranteed investment contracts and money market funds, in each case, acceptable to the rating agencies rating the securities.

Collection and Distribution Accounts

A separate collection account will be established in the name of the trustee for receipt of all amounts received from the primary assets. Amounts on deposit in the collection account and amounts available from any credit enhancement will be deposited in a distribution account, which will also be established in the name of the trustee, for distribution to the holders.

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Pre-Funding Account

A trust fund may include a “pre-funding account.” On the closing date, the “pre-funded amount,” which is a portion of the proceeds of the sale of the securities of a series, will be deposited in the pre-funding account and may be used to acquire additional primary assets during a specified “pre-funding period.” If any pre-funded amount remains on deposit in the pre-funding account at the end of the pre-funding period, it will be applied in the manner specified in the prospectus supplement to prepay the bonds and/or the certificates of the applicable series.

If a pre-funding account is established:

- the pre-funding period will generally not exceed one year from the closing date,
- the additional primary assets to be acquired during the pre-funding period will be subject to the same representations and warranties and satisfy the same eligibility requirements as the primary assets included in the trust fund on the closing date, subject to the exceptions stated in the prospectus supplement,
- the pre-funding amount will not exceed 50% of the original principal amount of the securities issued and
- prior to the investment of the pre-funded amount in additional primary assets, the pre-funded amount will be invested in one or more eligible investments.

If a pre-funding account is established, an “interest coverage account” may be established and maintained with the trustee. On the closing date, funds will be deposited in the interest coverage account and used to fund any shortfall in the interest accrued on the securities and fees or expenses during the pre-funding period. Any amounts on deposit in the interest coverage account at the end of the pre-funding period that are not necessary to fund any shortfall will be distributed to the person specified in the prospectus supplement.

If a trust fund includes a pre-funding account and the principal balance of additional primary assets delivered to the trust fund during the pre-funding period is less than the original pre-funded amount, the securityholders will receive a prepayment of principal to the extent described in the prospectus supplement. Any principal prepayment may adversely affect the yield to maturity of the applicable securities. Since prevailing interest rates are subject to fluctuation, there can be no assurance that investors will be able to reinvest a prepayment at yields equaling or exceeding the yields on the securities. It is possible that the yield on any reinvestment will be lower, and may be significantly lower, than the yield on the securities.

CREDIT ENHANCEMENT

The depositor may obtain credit enhancement, which may include overcollateralization, cross-collateralization, subordinated securities, an irrevocable letter of credit, surety bond or insurance policy, or other form of credit enhancement or combination thereof in favor of the trustee on behalf of the holders of a series or designated classes of a series. The depositor may also obtain swap agreements and cap agreements to hedge against interest rate and other risks. The credit enhancement and hedge agreements will support the payment of principal and interest

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on the securities, and may be applied for other purposes to the extent and under the conditions described in the prospectus supplement. Credit enhancement and hedge agreements for a series may include one or more of the following forms, or another form specified in the prospectus supplement, and may be structured so as to protect against losses relating to more than one trust fund.

Over-Collateralization

If specified in the prospectus supplement for a series, a portion of the interest payment on each loan may be applied as an additional distribution in respect of principal to reduce the principal balance of a particular class or classes of securities and, thus, accelerate the rate of principal payments on the specified class or classes. Reducing the principal balance of the securities without a corresponding reduction in the principal balance of the underlying loans will result in over-collateralization. In addition, if specified in the prospectus supplement for a series, the initial aggregate outstanding principal amount of the mortgage loans in a trust plus the principal amount in the pre-funded account for the series may exceed the aggregate principal amount of the securities issued in such series, resulting in initial principal over-collateralization.

Cross-Collateralization

If specified in the related prospectus supplement, the beneficial ownership of separate groups of assets included in a trust fund may be evidenced by separate classes of the related series of securities. In that case, credit support may be provided by a cross-collateralization feature requiring that distributions be made on securities evidencing a beneficial ownership interest in, or secured by, other asset groups within the same trust fund before distributions are made on subordinated securities evidencing a beneficial ownership interest in, or secured by, one or more other asset groups in that trust fund. Cross-collateralization may be provided by:

- allocating specified excess amounts generated by one or more asset groups to one or more other asset groups in the same trust fund, or

- allocating losses with respect to one or more asset groups to one or more other asset groups in the same trust fund.

As described in the related prospectus supplement, these excess amounts or losses, as the case may be, will be allocated to the outstanding class or classes of subordinated securities of the related series having the lowest rating assigned by any rating agency or the lowest payment priority. The prospectus supplement for a series that includes a cross-collateralization feature will describe the manner and conditions for applying the cross-collateralization feature.

If specified in the related prospectus supplement, the coverage provided by one or more forms of credit support may apply concurrently to two or more separate groups in the trust. If applicable, the related prospectus supplement will identify the groups to which the credit support relates and the manner of determining the amount of coverage provided by it and of the application of the coverage to the identified groups.

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Subordination

If specified in the related prospectus supplement, the rights of holders of one or more classes of subordinated securities will be subordinate to the rights of holders of one or more classes of senior securities of the series to distributions of scheduled principal, principal prepayments, interest or any combination of those distributions that otherwise would have been payable to holders of subordinated securities as specified in the related prospectus supplement. If specified in the related prospectus supplement, holders of senior securities also may be protected by a reduction in the ownership interest of the related subordinated securities, or by other methods described in the related prospectus supplement.

If specified in the related prospectus supplement, delays in receiving scheduled payments on the loans and losses on defaulted loans will be borne first by the various classes of subordinated securities and thereafter by the various classes of senior securities, in each case as specified in the related prospectus supplement. The aggregate distributions of delinquent payments on the loans over the lives of the securities or at any time, the aggregate losses on defaulted loans which must be borne by the subordinated securities by virtue of subordination, and the amount of the distributions otherwise distributable to the subordinated securityholders that will be distributable to senior securityholders on any distribution date may be limited as specified in the related prospectus supplement. If aggregate distributions of delinquent payments on the loans or aggregate losses on the loans were to exceed the amount specified in the related prospectus supplement, holders of senior securities would experience losses on their securities.

In addition to or instead of the subordination methods listed above, the prospectus supplement for a series may provide that all or a portion of the distributions otherwise payable to holders of subordinated securities on any distribution date will instead either be deposited into one or more reserve accounts established with the trustee, or distributed to the holders of senior securities. As specified in the related prospectus supplement, deposits into a reserve account may be made on each distribution date, or for specified time periods, or until the balance in the reserve account has reached a specified amount and thereafter, to the extent necessary to maintain the balance in the reserve account at any required level. Amounts on deposit in the reserve account for a series may be released to the holders of certain classes of securities at the times and under the circumstances specified in the related prospectus supplement.

If specified in the related prospectus supplement, various classes of senior securities and subordinated securities may themselves be subordinate in their right to receive certain distributions to other classes of senior and subordinated securities, respectively, through a cross-collateralization mechanism or otherwise.

As between classes of senior securities and as between classes of subordinated securities, distributions may be allocated among such classes in the order of their scheduled final distribution dates, in accordance with a schedule or formula, in relation to the occurrence of events, or otherwise, in each case as specified in the related prospectus supplement. As between classes of subordinated securities, payments to holders of senior securities on account of delinquencies or losses and payments to any reserve account will be allocated as specified in the related prospectus supplement.

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Insurance

Credit enhancement for a series may include a pool insurance policy, private mortgage insurance policies on underlying loans, a special hazard insurance policy, bankruptcy bonds or other types of insurance relating to the primary assets.

Pool Insurance Policy. A pool insurance policy covers, subject to the limitations described in a prospectus supplement, losses resulting from defaults, but generally will not cover the portion of the principal balance of any loan that is required to be covered by any primary mortgage insurance policy.

Private Mortgage Insurance Policy. Certain mortgage loans in the trust may be individually covered by a private mortgage insurance policy, which would insure the mortgage lender. A private mortgage insurance policy insures a portion of the loss on a mortgage loan to the extent that the uninsured exposure of the related mortgage loan is reduced to an amount equal to a certain percentage of the original loan-to-value ratio of such mortgage loan. Private mortgage insurance policies typically do not cover losses caused by physical damage to the mortgaged property, negligence, fraud and certain other risks.

Special Hazard Insurance Policy. A special hazard insurance policy typically provides that, where there has been damage to mortgaged property securing a defaulted or foreclosed mortgage loan or the manufactured home underlying a contract, title to which has been acquired by the insured, and to the extent the damage is not covered by the standard hazard insurance policy or any flood insurance policy, or in connection with partial loss resulting from the application of the coinsurance clause in a standard hazard insurance policy, the special hazard insurer will pay the lesser of (1) the cost of repair or replacement of the mortgaged property or manufactured home or (2) upon transfer of the mortgaged property or manufactured home to the special hazard insurer, the unpaid principal balance of the loan at the time of foreclosure, plus accrued interest to the date of claim settlement and expenses incurred by the servicer. If the unpaid principal balance plus accrued interest and expenses is paid by the special hazard insurer, the amount of further coverage under the special hazard insurance policy will be correspondingly reduced, less any net proceeds from the sale of the mortgaged property or manufactured home. Any amount paid as the cost of repair of a mortgaged property or manufactured home will reduce coverage by the amount paid. Special hazard insurance policies typically do not cover losses occasioned by war, civil insurrection, governmental actions, errors in design, faulty workmanship or materials, except under specified circumstances, nuclear reaction, if the mortgaged property is in a federally designated flood area, flood, chemical contamination and related other risks.

Restoration of the mortgaged property or replacement of the manufactured home with the proceeds described under (1) above is expected to satisfy the condition under any pool insurance policy that the mortgaged property be restored or manufactured home replaced before a claim under the pool insurance policy may be validly presented with respect to the defaulted loan. The payment described under (2) above will render unnecessary presentation of a claim for the loan under any pool insurance policy. Therefore, so long as a pool insurance policy remains in effect, the payment by the special hazard insurer of the cost of repair or of the unpaid principal balance of the loan plus accrued interest and expenses will not affect the total insurance proceeds paid to

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security holders, but will affect the relative amounts of coverage remaining under the special hazard insurance policy and pool insurance policy.

Bankruptcy Bond. In the event of a bankruptcy of a borrower, the bankruptcy court may establish the value of the mortgaged property or manufactured home at an amount less than the then-outstanding principal balance of the loan. The amount of the secured debt could be reduced to the assigned value, and the holder of the loan thus would become an unsecured creditor to the extent the outstanding principal balance of the loan exceeds the assigned value. In addition, other modifications of the terms of a loan can result from a bankruptcy proceeding. See “Legal Aspects of the Loans.” The depositor may obtain a bankruptcy bond or similar insurance contract covering losses resulting from proceedings with respect to borrowers under the federal bankruptcy code. The bankruptcy bond will cover losses resulting from a reduction by a bankruptcy court of scheduled payments of principal and interest on a loan or a reduction by a bankruptcy court of the principal amount of a loan and will cover unpaid interest on the amount of the principal reduction from the date of the filing of a bankruptcy petition.

Reserve Funds

The depositor may deposit into one or more funds to be established with the trustee as part of the trust fund or for the benefit of any credit enhancer, cash, a letter or letters of credit, cash collateral accounts, eligible investments, or other instruments meeting the criteria of the rating agency rating any series. In the alternative or in addition to an initial deposit, a reserve fund may be funded over time through application of all or a portion of the excess cash flow from the primary assets, to the extent described in the prospectus supplement.

Amounts withdrawn from any reserve fund will be applied by the trustee to make payments on the securities of a series, to pay expenses, to reimburse any credit enhancer or for any other purpose.

The trustee will invest amounts deposited in a reserve fund in eligible investments.

Letter Of Credit

Any letter of credit for a series of securities may be issued by the bank or financial institution specified in the related prospectus supplement. The specified bank will be obligated to honor drawings under the letter of credit in an aggregate fixed dollar amount, net of unreimbursed payments under the letter of credit, equal to a specified percentage of the aggregate principal balance of:

- the loans on the related cut-off date, or

- one or more classes of securities.

If specified in the related prospectus supplement, the letter of credit may permit drawings in the event of losses not covered by insurance policies or other credit support, such as losses arising from damage not covered by standard hazard insurance policies, losses resulting from the bankruptcy of a borrower and the application of certain provisions of the Bankruptcy Code, or losses resulting from denial of insurance coverage due to misrepresentations in connection with

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the origination of a loan. The amount available under the letter of credit may be reduced by the amount of unreimbursed payments under the letter of credit. The obligations of the bank issuing a letter of credit for any series of securities will expire at the earlier of the date specified in the related prospectus supplement or the termination of the trust fund. A copy of any letter of credit for a series will be filed with the SEC as an exhibit to a Current Report on Form 8-K to be filed within 15 days of issuance of the securities of that series.

Minimum Principal Payment Agreement

The depositor may enter into a minimum principal payment agreement with an entity specified in the prospectus supplement. The entity would provide payments on the securities of a series in the event that aggregate scheduled principal payments and/or prepayments on the primary assets are not sufficient to make payments on the securities.

Deposit Agreement

The issuer and the trustee for a series may enter into a deposit agreement with the entity specified in the prospectus supplement. The purpose of a deposit agreement is to accumulate available cash for investment so that it, together with income thereon, can be applied to future distributions on one or more classes of securities.

Hedge Agreements

A trust may hold an interest rate swap agreement, an interest rate cap agreement or similar derivative contract providing limited protection against interest rate and other risks. These derivative contracts may provide the trust with additional amounts which will be available to pay interest on the securities, to build up overcollateralization, or both.

SERVICING

The following summaries describe material provisions in the servicing agreements common to each series of securities. The summaries do not purport to be complete and are subject to and qualified by reference to the provisions of the servicing agreements and the prospectus supplements. Where particular provisions or terms used in the servicing agreements are referred to, the actual provisions are incorporated by reference as part of the summaries.

Collection Procedures; Escrow Accounts

The servicer will make reasonable efforts to collect all payments required to be made under the loans and will, consistent with the terms of the servicing agreement and any credit enhancement, follow the collection procedures that it follows with respect to comparable loans held in its own portfolio. The servicer may, in its discretion, waive any assumption fee, late payment charge, or other charge on a loan and to the extent provided in the servicing agreement arrange with an obligor a schedule for the liquidation of delinquencies by extending the dates on which the scheduled payments are due on the loan.

The servicer, to the extent permitted by law and required by the underlying loan documents, will establish and maintain escrow or impound accounts with respect to loans in

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which payments by obligors to pay taxes, assessments, mortgage and hazard insurance premiums, and other comparable items will be deposited. Withdrawals from the escrow accounts are to be made to effect timely payment of taxes, assessments and mortgage and hazard insurance, to refund to obligors amounts determined to be overages, to pay interest to obligors on balances in the escrow account to the extent required by law, to repair or otherwise protect the mortgaged property or manufactured home and to clear and terminate the escrow account. The servicer will be responsible for the administration of the escrow accounts and generally will make advances to the escrow accounts when a deficiency exists.

Deposits To And Withdrawals From The Collection Account

The funds held in the collection account may be invested, pending remittance to the trustee, in eligible investments. The servicer may be entitled to receive as additional compensation any interest or other income earned on funds in the collection account.

The servicer will deposit into the collection account on the business day following the closing date any amounts representing scheduled payments due after the cut-off date but received by the servicer on or before the closing date. Thereafter, the servicer will deposit into the collection account the following:

- All payments on account of principal, including prepayments, on the primary assets;
- All payments on account of interest on the primary assets after deducting, if permitted by the servicing agreement, the servicing fee;
- All amounts received by the servicer in connection with the liquidation of primary assets or property acquired in respect thereof, whether through foreclosure sale, repossession or otherwise, including payments in connection with the primary assets received from the obligor, other than liquidation proceeds, which are amounts required to be paid or refunded to the obligor under the terms of the applicable loan documents or otherwise under law, exclusive of, if permitted by the servicing agreement, the servicing fee;
- All proceeds under any title insurance, hazard insurance or other insurance policy covering any primary asset, other than proceeds to be applied to the restoration or repair of the mortgaged property or manufactured home or released to the obligor;
- All amounts from any reserve fund;
- All advances made by the servicer; and
- All repurchase prices of any primary assets repurchased by the depositor, the servicer or the seller.

The servicer may be permitted, from time to time, to make withdrawals from the collection account for each series for the following purposes:

- to reimburse itself for advances made by it; the servicer’s right to reimburse itself may be limited to amounts received from particular loans, including, for this purpose, liquidation

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proceeds and amounts representing proceeds of insurance policies covering the mortgaged property or manufactured home, which represent late recoveries of scheduled payments respecting which any advance was made;

- to the extent provided in the servicing agreement, to reimburse itself for any advances that the servicer determines in good faith it will be unable to recover from late recoveries or proceeds from the particular loan;
- to reimburse itself from liquidation proceeds for liquidation expenses and for amounts expended by it in good faith in connection with the restoration of a damaged mortgaged property or manufactured home and, in the event deposited in the collection account and not previously withheld, and to the extent that liquidation proceeds after reimbursement exceed the outstanding principal balance of the loan, together with accrued and unpaid interest thereon to the due date for the loan next succeeding the date of its receipt of liquidation proceeds, to pay to itself out of the excess the amount of any unpaid servicing fee and any assumption fees, late payment charges, or other charges on the loan;
- in the event it has elected not to pay itself the servicing fee out of the interest component of any scheduled payment, late payment or other recovery with respect to a particular loan prior to the deposit of the scheduled payment, late payment or recovery into the collection account, to pay to itself the servicing fee, as adjusted under the servicing agreement, from any scheduled payment, late payment or other recovery, to the extent permitted by the servicing agreement;
- to reimburse itself for expenses incurred by and recoverable by or reimbursable to it; to pay to the applicable person with respect to each “REO property,” a primary asset or mortgaged property acquired through or in lieu of foreclosure acquired in respect thereof that has been repurchased or removed from the trust fund by the depositor, the servicer or the seller, all amounts received thereon and not distributed as of the date on which the repurchase price was determined;
- to make payments to the trustee for deposit into the distribution account, if any, or for remittance to the holders in the amounts and in the manner provided for in the servicing agreement; and
- to clear and terminate the collection account.

In addition, the servicer may withdraw at any time from the collection account any amount inadvertently deposited in the collection account.

Advances And Limitations Thereon

The prospectus supplement will describe the circumstances, if any, under which the servicer will make advances with respect to delinquent payments on loans. The servicer may fund an advance from its own corporate funds, advances made by any sub-servicer or funds held in the collection account for future payment or withdrawal. The servicer will be obligated to make advances, and the obligation may be limited in amount, or may not be activated until a

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portion of a specified reserve fund is depleted. Advances are intended to provide liquidity and, except to the extent specified in the prospectus supplement, not to guarantee or insure against losses. Accordingly, any funds advanced are recoverable by the servicer out of amounts received on loans which represent late recoveries of principal or interest, proceeds of insurance policies or liquidation proceeds respecting which any advance was made. If an advance is made and subsequently determined to be nonrecoverable from late collections, proceeds of insurance policies, or liquidation proceeds from the loan, the servicer may be entitled to reimbursement from other funds in the collection account or distribution account, as the case may be, or from a specified reserve fund as applicable, to the extent specified in the prospectus supplement.

Maintenance Of Hazard Insurance Policies

The prospectus supplement will specify the extent to which the servicer will be required to maintain or to cause the obligor on each loan to maintain a standard hazard insurance policy providing coverage of the standard form of fire insurance with extended coverage for other hazards as is customary in the state in which the mortgaged property or manufactured home is located. The standard hazard insurance policies will provide for coverage at least equal to the applicable state standard form of fire insurance policy with extended coverage for property of the type securing the loans. In general, the standard form of fire and extended coverage policy will cover physical damage to or destruction of, the mortgaged property or manufactured home caused by fire, lightning, explosion, smoke, windstorm, hail, riot, strike and civil commotion, subject to the conditions and exclusions particularized in each policy. Because the standard hazard insurance policies relating to the loans will be underwritten by different hazard insurers and will cover mortgaged properties and manufactured homes located in various states, the policies will not contain identical terms and conditions. The basic terms, however, generally will be determined by state law and generally will be similar. Most policies typically will not cover any physical damage resulting from war, revolution, governmental actions, floods and other water-related causes, earth movement, including earthquakes, landslides and mudflows, nuclear reaction, wet or dry rot, vermin, rodents, insects or domestic animals, theft and, in some cases, vandalism. The foregoing list is merely indicative of common kinds of uninsured risks and is not intended to be all-inclusive. Uninsured risks not covered by a special hazard insurance policy or other form of credit enhancement will adversely affect distributions to holders. When a mortgaged property securing a mortgage loan is located in a flood area identified by the Department of Housing and Urban Development under the Flood Disaster Protection Act of 1973, the servicer will be required to cause flood insurance to be maintained with respect to the mortgaged property, to the extent available.

The standard hazard insurance policies covering mortgaged properties securing mortgage loans or manufactured home securing a contract typically will contain a “coinsurance” clause which, in effect, will require the insured at all times to carry hazard insurance of a specified percentage, generally 80% to 90%, of the full replacement value of the mortgaged property or manufactured home, including the improvements on any mortgaged property or manufactured home, in order to recover the full amount of any partial loss. If the insured’s coverage falls below this specified percentage, the clause will provide that the hazard insurer’s liability in the event of partial loss will not exceed the greater of (1) the actual cash value, which is the replacement cost less physical depreciation, of the mortgaged property or manufactured home, including the improvements, if any, damaged or destroyed or (2) the proportion of the loss,

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without deduction for depreciation, as the amount of insurance carried bears to the specified percentage of the full replacement cost of the mortgaged property or manufactured home and improvements. Since the amount of hazard insurance to be maintained on the improvements securing the mortgage loans and manufactured homes declines as the principal balances owing thereon decrease, and since the value of the mortgaged properties or manufactured home will fluctuate in value over time, the effect of this requirement in the event of partial loss may be that hazard insurance proceeds will be insufficient to restore fully the damage to the affected mortgaged property or manufactured home.

Generally, coverage will be in an amount at least equal to the greater of (1) the amount necessary to avoid the enforcement of any co-insurance clause contained in the policy or (2) the outstanding principal balance of the loan. The servicer may also maintain on REO property that secured a defaulted mortgage loan and that has been acquired upon foreclosure, deed in lieu of foreclosure, or repossession, a standard hazard insurance policy in an amount that is at least equal to the maximum insurable value of the REO property. No earthquake or other additional insurance will be required of any obligor or will be maintained on REO property, other than under any applicable laws and regulations as shall at any time be in force and shall require additional insurance.

In the event that the servicer obtains and maintains a blanket policy insuring against hazard losses on all of the loans, written by an insurer then acceptable to each rating agency which assigns a rating to the series, it will conclusively be deemed to have satisfied its obligations to cause to be maintained a standard hazard insurance policy for each loan or REO property. This blanket policy may contain a deductible clause, in which case the servicer may be required, in the event that there has been a loss that would have been covered by the policy absent the deductible clause, to deposit in the collection account the amount not otherwise payable under the blanket policy because of the application of the deductible clause.

Realization Upon Defaulted Mortgage Loans

The servicer shall, or shall direct the related subservicer to, foreclose upon, repossess or otherwise comparably convert the ownership of the mortgaged properties or the manufactured homes as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments. In connection with a foreclosure, repossession or other conversion, the servicer will follow the practices and procedures that it deems necessary or advisable and as are normal and usual in its servicing activities with respect to comparable loans serviced by it. However, the servicer will not be required to expend its own funds in connection with any foreclosure or repossession or towards the restoration of the mortgaged property or manufactured home unless it determines that (1) the restoration, repossession or foreclosure will increase the liquidation proceeds available to the holders after reimbursement to itself for its expenses and (2) its expenses will be recoverable either through liquidation proceeds or the proceeds of insurance. In the case of a trust fund for which a REMIC election has been made, the servicer will be required to liquidate any mortgaged property acquired through foreclosure within two years after the acquisition of the mortgaged property. While the holder of a mortgaged property acquired through foreclosure can often maximize its recovery by providing financing to a new purchaser, the trust fund, if applicable, will have no ability to do so and neither the servicer nor the depositor will be required to do so.

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The servicer may arrange with the obligor on a defaulted loan a modification of the loan. Modifications may only be entered into if they meet the underwriting policies and procedures employed by the servicer in servicing receivables for its own account and meet the other conditions in the servicing agreement.

Enforcement Of Due-On-Sale Clauses

When any mortgaged property is about to be conveyed by the obligor, the servicer may, to the extent it has knowledge of the prospective conveyance and prior to the time of the consummation of the conveyance, exercise its rights to accelerate the maturity of the mortgage loan under the applicable “due-on-sale” clause, if any, unless it reasonably believes that the clause is not enforceable under applicable law or if the enforcement of the clause would result in loss of coverage under any primary mortgage insurance policy. In that event, the servicer is authorized to accept from or enter into an assumption agreement with the person to whom the mortgaged property has been or is about to be conveyed, under which the assuming person becomes liable under the mortgage loan and under which the original obligor is released from liability and the assuming person is substituted as the obligor and becomes liable under the mortgage loan. Any fee collected in connection with an assumption will generally be retained by the servicer as additional servicing compensation. The terms of a mortgage loan may not be changed in connection with an assumption.

Servicing Compensation And Payment Of Expenses

The servicer will be entitled to a periodic servicing fee as servicing compensation in an amount to be determined as specified in the prospectus supplement. The servicing fee may be fixed or variable, as specified in the prospectus supplement. In addition, the servicer may be entitled to servicing compensation in the form of assumption fees, late payment charges and similar items, or excess proceeds following disposition of mortgaged property in connection with defaulted mortgage loans or manufactured homes in connection with a defaulted contract, as will be further specified in the prospectus supplement.

The servicer may pay expenses incurred in connection with the servicing of the mortgage loans, including, without limitation, the payment of the fees and expenses of the trustee and independent accountants, payment of insurance policy premiums and the cost of credit support, if any, and payment of expenses incurred in preparation of reports to holders.

When an obligor makes a principal prepayment in full between due dates on the loan, the obligor will generally be required to pay interest on the amount prepaid only to the date of prepayment. If and to the extent provided in the prospectus supplement in order that one or more classes of the holders of a series will not be adversely affected by any resulting shortfall in interest, the amount of the servicing fee may be reduced to the extent necessary to include in the servicer’s remittance to the trustee for deposit into the distribution account an amount equal to one month’s interest on the loan, less the servicing fee. If the aggregate amount of shortfalls in a month exceeds the servicing fee for a month, a shortfall to holders may occur.

The servicer will be entitled to reimbursement for expenses incurred by it in connection with the liquidation of defaulted loans. The holders will suffer no loss by reason of

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reimbursement of expenses if expenses are covered under insurance policies or from excess liquidation proceeds. If claims are either not made or paid under the applicable insurance policies or if coverage thereunder has been exhausted, the holders will suffer a loss to the extent that liquidation proceeds, after reimbursement of the servicer’s expenses, are less than the outstanding principal balance of and unpaid interest on the loan which would be distributable to holders. In addition, the servicer will be entitled to reimbursement of expenditures incurred by it in connection with the restoration of property securing a defaulted loan, prior to the rights of the holders to receive any proceeds of insurance policies, liquidation proceeds or amounts derived from other credit enhancement.

The prospectus supplement will describe the priority of the servicer’s right, which is typically senior in priority, to receive funds from the collection account for a series, whether as the servicing fee or other compensation, or for the reimbursement of advances, expenses or otherwise, with respect to the rights of the holders.

Evidence As To Compliance

If so specified in the prospectus supplement, each year, a firm of independent public accountants will furnish a statement to the trustee to the effect that it has examined documents and records relating to the servicing of the loans by the servicer and that, on the basis of its examination, it is of the opinion that the servicing has been conducted in compliance with the servicing agreement, except for any exceptions that it believes to be immaterial and any other exceptions identified in the statement.

The servicer for each series will also provide to the trustee an annual statement to the effect that the servicer has fulfilled its obligations under the servicing agreement throughout the preceding calendar year.

Matters Regarding The Servicer

The servicer for each series will be identified in the prospectus supplement. The servicer may be an affiliate of the depositor and may have other business relationships with the depositor and its affiliates. The servicer is expected to be NovaStar Mortgage, the parent of the depositor, to the extent NovaStar Mortgage is not the servicer, the prospectus supplement will describe the entity or entities acting as such.

If an event of default occurs under a servicing agreement, the servicer may be replaced a successor servicer. These events of default and the rights of the controlling party upon a default under the servicing agreement will be substantially similar to those described under “The Agreements—Events of Default; Rights Upon Events of Default—Servicing Agreement.”

The servicing agreement will specify the circumstances under which the servicer may assign its rights and delegate its duties and obligations thereunder for each series, which generally will require that the successor servicer accepting the assignment or delegation:

- services similar loans in the ordinary course of its business,
- is reasonably satisfactory to the trustee,

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- has a net worth of not less than a minimum amount,
- would not cause the securities to be qualified, downgraded or withdrawn, and
- executes and delivers to the trustee an agreement under which it assumes the obligations to act as servicer.

No assignment will become effective until the trustee or a successor servicer has assumed the servicer’s obligations and duties under the servicing agreement. To the extent that the servicer transfers its obligations to a wholly-owned subsidiary or affiliate, the subsidiary or affiliate need not satisfy the above criteria. However, the assigning servicer will remain liable for the servicing obligations under the servicing agreement. Any entity into which the servicer is merged or consolidated or any successor corporation resulting from any merger, conversion or consolidation will succeed to the servicer’s obligations under the servicing agreement provided that the successor or surviving entity meets the above requirements for a successor servicer.

The servicer, and its directors, officers, employees and agents, will not be responsible for any action taken or for failing to take any action in good faith under the servicing agreement, or for errors in judgment. However, neither the servicer nor its directors, officers, employees and agents will be protected against any breach of warranty or representations or the failure to perform its obligations in compliance with the specified standard of care, or liability which would otherwise be imposed by reason of willful misfeasance, bad faith or negligence in the performance of their duties or by reason of reckless disregard of their obligations and duties. Each servicing agreement will further provide that the servicer and any director, officer, employee or agent of the servicer is entitled to indemnification from the trust fund and will be held harmless against any loss, liability or expense incurred in connection with any legal action relating to the servicing agreement or the securities, other than any loss, liability or expense incurred by reason of willful misfeasance, bad faith or negligence in the performance of duties thereunder or by reason of reckless disregard of obligations and duties thereunder. In addition, the servicer is not under any obligation to appear in, prosecute or defend any legal action which is not incidental to its servicing responsibilities under the servicing agreement which, in its opinion, may involve it in any expense or liability. The servicer may, in its discretion, undertake any action which it may deem necessary or desirable with respect to the servicing agreement and the rights and duties of the parties thereto and the interests of the holders thereunder. In that event, the servicer may be entitled to be reimbursed for the legal expenses and costs of the action out of the collection account.

THE AGREEMENTS

The following summaries describe the material provisions of the agreements. The summaries do not purport to be complete and are subject to, and qualified in their entirety by reference to, the provisions of the agreements. Where particular provisions or terms used in the agreements are referred to, the provisions or terms are as specified in the agreements.

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Sale and Assignment Of Primary Assets

At the time of issuance of the securities of a series, pursuant to a mortgage loan purchase agreement the seller will sell, transfer, convey and assign to the depositor, and the depositor will in turn sell, transfer, convey and assign to the trust, all right, title and interest in the primary assets and other property to be transferred to the trust for a series. The sale and assignment will include all principal and interest due on or with respect to the primary assets after the cut-off date specified in the prospectus supplement, except for any interests in the trust retained by the seller, the depositor or its affiliate. The trustee will, concurrently with the assignment, execute and deliver the securities.

Transfer Of Mortgage Loans. The seller will, as to each mortgage loan, deliver or cause to be delivered to the trustee, or, as specified in the prospectus supplement a custodian on behalf of the trustee, the mortgage note endorsed without recourse to the order of the trustee or in blank, the original mortgage with evidence of recording indicated thereon, except for any mortgage not returned from the public recording office, in which case a copy of the mortgage will be delivered, together with a certificate that the original mortgage was delivered to the recording office, and an assignment of the mortgage in recordable form. The trustee or the custodian will hold these documents in trust for the benefit of the holders.

The seller will cause assignments to the trustee of the mortgages to be recorded in the appropriate public office for real property records, except in states where, in the opinion of counsel acceptable to the trustee, recording is not required. If the seller does not cause assignments to be recorded, the agreement may require the seller to repurchase from the trustee the affected mortgage loans, at the price described below with respect to repurchases by reason of defective documentation. The enforcement of the repurchase obligation constitutes the sole remedy available to the holders or the trustee for the failure of a mortgage to be recorded.

Transfer Of Contracts. The seller will transfer physical possession of the contracts to the trustee or a designated custodian or may retain possession of the contracts as custodian for the trustee. In addition, the seller will make an appropriate filing of a financing statement in the appropriate states to give notice of the trustee’s ownership of the contracts. Unless otherwise specified in the prospectus supplement, the contracts will not be stamped or marked otherwise to reflect their assignment from the depositor to the trustee. Therefore, if through negligence, fraud or otherwise, a subsequent purchaser were able to take physical possession of the contracts without notice of assignment, the trustee’s interest in contracts could be defeated.

Transfer Of Private Securities. The depositor will cause private securities to be registered in the name of the trustee or its nominee or correspondent. The trustee, or its nominee or correspondent, will have possession of any certificated private securities. See “The Trust Funds—Private Securities.”

Each loan will be identified in a schedule appearing as an exhibit to the agreements. The schedule will specify with respect to each loan the original principal amount and unpaid principal balance as of the cut-off date, the current interest rate, the current scheduled payment of principal and interest, the maturity date, if any, and if the loan is an adjustable rate loan, the lifetime rate cap, if any, and the current index.

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Repurchase And Substitution Of Non-Conforming Primary Assets. If any document required to be in the file relating to the primary assets is found by the trustee within a specified period to be defective in any material respect and the seller does not cure the defect within a specified period, the seller will be required to repurchase the affected primary asset.

The seller may, rather than repurchase the primary asset as described above, remove the primary asset from the trust fund and substitute in its place one or more other qualifying substitute primary assets. However, (1) with respect to a trust fund for which no REMIC election is made, the substitution must be effected within a specified period after the date of initial issuance of the securities and (2) with respect to a trust fund for which a REMIC election is made, after a specified time period, the trustee must have received a satisfactory opinion of counsel that the substitution will not cause the trust fund to lose its status as a REMIC or otherwise subject the trust fund to a prohibited transaction tax.

Except as otherwise described in the prospectus supplement, any substitute primary asset will have, on the date of substitution, (1) an outstanding principal balance, after deduction of all scheduled payments due in the month of substitution, not in excess of the outstanding principal balance of the deleted primary asset, (2) an interest rate not less than the interest rate of the deleted primary asset, (3) a remaining term-to-stated maturity not greater than that of the deleted primary asset, and will comply with all of the representations and warranties in the applicable agreement as of the date of substitution.

The above-described cure, repurchase or substitution obligations constitute the sole remedies available to the holders or the trustee for a material defect in a document for a primary asset.

The seller will make representations and warranties with respect to primary assets for a series. If the seller cannot cure a breach of the representations and warranties in all material respects within the specified time period after notification by the trustee of the breach, and if the breach is of a nature that materially and adversely affects the value of the primary asset, the seller is obligated to repurchase the affected primary asset or, if provided in the prospectus supplement, provide a substitute primary asset, subject to the same conditions and limitations on purchases and substitutions as described above.

No security holder, solely by virtue of the holder’s status as a holder, will have any right under the applicable agreement for a series to institute any proceeding with respect to that agreement, unless the holder previously has given to the trustee for the series written notice of default and unless the majority holders have made written request upon the trustee to institute a proceeding and have offered to the trustee reasonable indemnity, and the trustee has failed to do so within a specified period.

Reports To Holders

In connection with each payment of the securities, the trustee or other entity specified in the prospectus supplement will prepare and forward to each holder a statement setting forth, to the extent applicable to any series, among other things:

- the amount of principal distributed to the security holders and the outstanding principal balance of the securities following the distribution,

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- the amount of interest distributed to the security holders and the current interest on the securities,

- the amounts of (a) any overdue accrued interest included in the distribution, (b) any remaining overdue accrued interest with respect to the securities or (c) any current shortfall in amounts to be distributed as accrued interest to security holders, .the amounts of (a) any overdue payments of scheduled principal included in the distribution, (b) any remaining overdue principal amounts with respect to the securities, (c) any current shortfall in receipt of scheduled principal payments on the primary assets or (d) any realized losses or liquidation proceeds to be allocated as reductions in the outstanding principal balances of the securities,

- the amount received from credit enhancement, and the remaining amount available under any credit enhancement,

- the amount of any payment delinquencies on the primary assets, and

- the book value of any primary assets or mortgaged properties acquired through or in lieu of foreclosure acquired by the trust.

In addition, within a reasonable period of time after the end of each calendar year, the trustee will furnish to each holder of record at any time during the calendar year the information specified in the agreements to enable holders to prepare their tax returns. Information in the distribution date and annual statements provided to the holders will not have been examined and reported upon by an independent public accountant.

A series of securities or one or more classes of the series may be issued in book-entry form. In that event, owners of beneficial interests in the securities will not be considered holders and will not receive the reports directly from the trustee. The trustee will forward reports only to the entity or its nominee which is the registered holder of the global certificate which evidences the book-entry securities. Beneficial owners will receive reports from the participants and indirect participants of the applicable book-entry system in accordance with their practices and procedures.

Events Of Default; Rights Upon Event Of Default

Servicing Agreement. Except to the extent otherwise stated in the prospectus supplement, events of default under each servicing agreement generally include:

- any failure by the servicer to deposit any required amounts in the collection account, which failure continues unremedied for a specified period after the giving of written notice of the failure to the servicer,

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- any failure by the servicer duly to observe or perform in any material respect any other of its covenants or agreements in the applicable servicing agreement which continues unremedied for the number of days specified in the prospectus supplement after the giving of written notice of the failure to the servicer by the trustee, or to the servicer and the trustee by the holders of the series evidencing not less than a specified percentage of the aggregate voting rights of the securities for that series, and
- events of insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings and actions by the servicer indicating its insolvency, reorganization or inability to pay its obligations.

The servicing agreement or pooling and servicing agreement will specify the circumstances under which the controlling party may remove the servicer upon the occurrence and continuance of an event of default thereunder relating to the servicing of loans, other than its right to recovery of other expenses and amounts advanced under the terms of the servicing agreement which rights the servicer will retain under all circumstances, whereupon a successor servicer will succeed to all the responsibilities, duties and liabilities of the servicer under the servicing agreement and will be entitled to reasonable servicing compensation not to exceed the applicable servicing fee, together with other servicing compensation in the form of assumption fees, late payment charges or otherwise as provided in the servicing agreement.

In the event that the trustee is unwilling or unable so to act as the successor servicer (if the trustee is named as such in the agreements), it may select, or petition a court of competent jurisdiction to appoint, a finance institution, bank or loan servicing institution with a net worth specified in the prospectus supplement to act as successor servicer under the provisions of the applicable servicing agreement. The successor servicer would be entitled to reasonable servicing compensation in an amount not to exceed the servicing fee and the other servicing compensation.

During the continuance of any event of default of a servicer, the trustee will have the right to protect and enforce the rights of the holders, and the controlling party may direct the time, method and place of conducting any proceeding for exercising any trust power. However, the trustee will not be under any obligation to pursue any remedy or to exercise any trusts or powers unless the holders have offered the trustee reasonable security or indemnity against the cost, expenses and liabilities which may be incurred by the trustee. The trustee may decline to follow any direction if the trustee determines that the action or proceeding so directed may not lawfully be taken or would involve it in personal liability or be unjustly prejudicial to the nonassenting holders.

Indenture. Events of default under the indenture for each series of bonds may include:

- a default in the payment of any principal or interest on any bond, which continues for a specified period of time;
- failure to perform any other covenant of the issuer in the indenture which continues for a specified period of time after notice is given;
- any representation or warranty made by the issuer in the indenture having been incorrect in a material respect as of the time made, and the breach is not cured within a specified period of time after notice is given; or

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- events of bankruptcy, insolvency, receivership or liquidation of the issuer.

If an event of default with respect to the bonds of any series at the time outstanding occurs and is continuing, controlling party may declare the bonds to be due and payable immediately. The declaration may, under some circumstances, be rescinded and annulled by the controlling party.

If, following an event of default with respect to any series of bonds, the bonds have been declared due and payable, the controlling party may, in its discretion, notwithstanding the acceleration, elect to maintain possession of the collateral and to continue to apply distributions as if there had been no acceleration if the collateral continues to provide sufficient funds for the payment of principal and interest on the bonds as they would have otherwise become due. In addition, the trustee may not sell or otherwise liquidate the collateral following an event of default other than a default in the payment of any principal or interest on any bond of the series for a specified period, unless all of the holders consent to the sale, the proceeds of the sale are sufficient to pay in full the principal and interest due on the bonds or the trustee determines that the collateral would not be sufficient on an ongoing basis to make all payments on the bonds as those payments would have become due, and the trustee obtains the consent of the holders of a specified amount of the bonds.

In the event that the trustee liquidates the collateral in connection with an event of default involving a payment default, the trustee will have a prior lien on the proceeds of any liquidation for unpaid fees and expenses. As a result, upon the occurrence of an event of default, the amount available for distribution to the holders may be less than would otherwise be the case.

If the principal of the bonds of a series is declared due and payable, the holders of any bonds issued at a discount from par may be entitled to receive no more than an amount equal to the unpaid principal amount thereof less the amount of the discount which is unamortized.

If an event of default shall occur and be continuing, the trustee will not be obligated to exercise any rights or powers under the indenture at the request of the holders, unless the holders provide security satisfactory to the trustee against the expenses and liabilities which might be incurred by it. The controlling party shall have the right to direct the time, method and place of conducting any proceeding for any remedy or exercising any power conferred on the trustee with respect to the bonds. The controlling party may waive the default, except a default in the payment of principal or interest or a default caused by a breach of a covenant or provision of the indenture that cannot be modified without the waiver or consent of all the affected bond holders. The controlling party will be specified in the prospectus supplement, and is generally expected to be either a bond insurer, if there is one, or the majority holders.

The Trustee

The prospectus supplement will identify the trustee for the series. The trustee may have normal banking relationships with the depositor or the servicer. In addition, for the purpose of meeting the legal requirements of local jurisdictions, the trustee will have the power to appoint

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co-trustees or separate trustees of all or any part of the trust fund relating to a series of securities. In the event of an appointment, all rights, powers, duties and obligations conferred or imposed upon the trustee will be conferred or imposed upon the trustee and each separate trustee or co-trustee jointly, or, in any jurisdiction in which the trustee shall be incompetent or unqualified to perform as trustee, singly upon the separate trustee or co-trustee who will exercise and perform solely at the direction of the trustee. The trustee may also appoint agents to perform any of the responsibilities of the trustee, which agents will have any or all of the rights, powers, duties and obligations of the trustee conferred on them by appointment; although the trustee will continue to be responsible for its duties and obligations under the agreement.

Duties Of The Trustee

The trustee will not make any representations as to the validity or sufficiency of the agreements, the securities or of any primary asset or documents. If no event of default as defined in the agreement has occurred, the trustee is required to perform only those duties specifically required of it under the agreement. Upon receipt of the various certificates, statements, reports or other instruments furnished to it, the trustee is required to examine them to determine whether they are in the form required by the agreements. However, the trustee will not be responsible for the accuracy or content of any of the documents furnished to it by the holders or the servicer under the agreement.

The trustee may be held liable for its negligent action or failure to act, or for its misconduct. The trustee will not be liable, however, with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the holders in an event of default. The trustee is not required to expend its own funds or incur any financial liability in the performance of its duties, or in the exercise of any of its rights or powers, if repayment of those funds or adequate indemnity against risk is not reasonably assured to it.

Resignation Of Trustee

The trustee may, upon written notice to the depositor, resign at any time, in which event the depositor will be obligated to use its best efforts to appoint a successor trustee. If no successor trustee has been appointed and has accepted the appointment within 30 days after the giving of a notice of resignation, the resigning trustee may petition any court of competent jurisdiction for appointment of a successor trustee. The trustee may also be removed at any time (1) if the trustee ceases to be eligible to continue as a trustee under the agreement, (2) if the trustee becomes insolvent or (3) by a majority of the holders. Any resignation or removal of the trustee and appointment of a successor trustee will not become effective until acceptance of the appointment by the successor trustee.

Amendment Of Agreement

Each agreement may be amended by the parties to the agreement, without notice to or consent of the holders, to correct any ambiguity or any defective provisions, to supplement any provision, or to comply with any requirements imposed by the Internal Revenue Code. Any amendment will not adversely affect in any material respect the interests of any holders.

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Each agreement may also be amended by the parties with the consent of a specified percentage of the holders, for the purpose of adding, changing or eliminating any provision of the agreement. No amendment may reduce or delay the payments on any security without the consent of the holder of the security.

Voting Rights

The prospectus supplement will state the method of determining allocation of voting rights with respect to a series.

List Of Holders

No agreement will provide for the holding of any annual or other meeting of holders.

REMIC Administrator

For any series with respect to which a REMIC election is made, preparation of reports and other administrative duties with respect to the trust fund may be performed by a REMIC administrator, who may be an affiliate of the depositor or the trustee.

Termination

Pooling And Servicing Agreement; Trust Agreement. The pooling and servicing agreement or trust agreement for a series will terminate upon the distribution to holders of all amounts payable to them after the final payment or liquidation of the primary assets and the disposition of all foreclosure property or the sale by the trustee of the primary assets. For a description of the ways in which securities may be retired early, see “Description of the Securities—Optional Redemption, Purchase or Termination” and “—Mandatory Termination; Auction Sale.”

For each series, the servicer or the trustee, as applicable, will give written notice of termination of the agreement to each holder, and the final distribution will be made only upon surrender and cancellation of the securities at an office or agency specified in the notice of termination.

Indenture. The indenture will be discharged with respect to a series of bonds upon the delivery to the trustee for cancellation of all the bonds or, with limitations, upon deposit with the trustee of funds sufficient for the payment in full of all of the bonds of the series. See “Description of the Securities—Defeasance.”

LEGAL ASPECTS OF LOANS

The following discussion contains summaries of legal aspects of loans, which are general in nature. Because these legal aspects are to a degree governed by state law, the summaries do not purport to be complete, reflect the laws of any particular state, nor encompass the laws of all states in which the properties securing the mortgage loans are situated.

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Mortgage Loans

The mortgage loans will be represented by a note and an accompanying mortgage or deed of trust. The borrower is personally liable to repay the indebtedness evidenced by the mortgage loan under the note. The mortgage creates a lien on the related mortgaged property to secure the indebtedness.

Enforcement Of The Note. Under the note, the borrower is personally liable to repay the indebtedness evidenced by the mortgage loan. In some states, the lender on a note secured by a lien on real property has the option of bringing a personal action against the borrower on the debt without first exhausting the security; however, in some of these states the lender, following judgment on a personal action, may be deemed to have elected a remedy and may be precluded from exercising remedies with respect to the related property security. Consequently, the practical effect of the election requirement, in those states permitting the election, is that lenders will usually proceed against the property first rather than bringing a personal action against the borrower on the note.

Some states have imposed statutory prohibitions that limit the remedies of a beneficiary under a deed of trust or a mortgagee under a mortgage. In some states, including California, statutes limit the right of the beneficiary or mortgagee to obtain a deficiency judgment against the borrower following foreclosure. A deficiency judgment is a personal judgment against the former borrower equal in most cases to the difference between the amount due to the lender and the net amount realized upon the public sales of the real property. Other statutes require the beneficiary or mortgagee to exhaust the security afforded under a deed of trust or mortgage by foreclosure in an attempt to satisfy the full debt before bringing a personal action against the borrower. Finally, in other states, statutory provisions limit any deficiency judgment against the former borrower following a foreclosure to the excess of the outstanding debt over the fair value of the property at the time of the public sale. The purpose of these statutes is generally to prevent a beneficiary or mortgagee from obtaining a large deficiency judgment against the former borrower as a result of low or no bids at the judicial sale.

In addition to laws limiting or prohibiting deficiency judgments, numerous other federal and state statutory provisions, including the federal bankruptcy laws and state laws affording relief to debtors, may interfere with or affect the ability of the secured mortgage lender to realize upon collateral or enforce a deficiency judgment. For example, with respect to federal bankruptcy law, a court with federal bankruptcy jurisdiction may permit a debtor through his or her Chapter 11 or Chapter 13 rehabilitative plan to cure a monetary default on a loan on a debtor’s residence by paying arrearages within a reasonable time period and reinstating the original loan payment schedule even though the lender accelerated the loan and final judgment of foreclosure had been entered in state court, provided no sale of the residence had yet occurred, prior to the filing of the debtor’s petition. Some courts with federal bankruptcy jurisdiction have approved plans, based on the particular facts of the reorganization case, that effected the curing of a loan default by paying arrearages over a number of years.

Federal bankruptcy courts also have indicated that the terms of a loan secured by property of the debtor may be modified. These courts have allowed modifications that include reducing the amount of each monthly payment, changing the rate of interest, altering the repayment

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schedule, forgiving all or a portion of the debt and reducing the lender’s security interest to the value of the residence, thus leaving the lender a general unsecured creditor for the difference between the value of the residence and the outstanding balance of the loan.

Tax liens arising under the Internal Revenue Code may provide priority over the lien of a mortgage or deed of trust. In addition, substantive requirements are imposed upon mortgage lenders in connection with the origination and the servicing of loans by numerous federal and some state consumer protection laws. These laws include, by example, the federal Truth-in-Lending Act, Real Estate Settlement Procedures Act, Equal Credit Opportunity Act, Fair Credit Billing Act, Fair Credit Reporting Act and related statutes and state laws, such as the California Fair Debt Collection Practices Act. These laws and regulations impose specific statutory liabilities upon lenders who originate loans and fail to comply with the provisions of the law. In some cases, this liability may affect assignees of the loans.

Security Interests — Real Estate Mortgages. The mortgage loans for a series will be secured by either mortgages or deeds of trust or deeds to secure debt depending upon the prevailing practice in the state in which the mortgaged property subject to a mortgage loan is located. The filing of a mortgage, deed of trust or deed to secure debt creates a lien or title interest upon the real property covered by the instrument and represents the security for the repayment of an obligation that is customarily evidenced by a promissory note. It is not prior to the lien for real estate taxes and assessments or other charges imposed under governmental police powers and may also be subject to other liens under the laws of the jurisdiction in which the mortgaged property is located. Priority with respect to the instruments depends on their terms, the knowledge of the parties to the mortgage and generally on the order of recording with the applicable state, county or municipal office. There are two parties to a mortgage, the mortgagor, who is the borrower/property owner or the land trustee, and the mortgagee, who is the lender. Under the mortgage instrument, the mortgagor delivers to the mortgagee a note or bond and the mortgage. In the case of a land trust, there are three parties because title to the mortgaged property is held by a land trustee under a land trust agreement of which the borrower/property owner is the beneficiary; at origination of a mortgage loan, the borrower executes a separate undertaking to make payments on the mortgage note. A deed of trust transaction normally has three parties: The trustor, who is the borrower/property owner; the beneficiary, who is the lender; and the trustee, a third-party grantee. Under a deed of trust, the trustor grants the mortgaged property, irrevocably until the debt is paid, in trust, generally with a power of sale, to the trustee to secure payment of the obligation. The mortgagee’s authority under a mortgage and the trustee’s authority under a deed of trust are governed by the law of the state in which the real property is located, the express provisions of the mortgage or deed of trust, and, in some cases, in deed of trust transactions, the directions of the beneficiary.

Foreclosure On Mortgages. Foreclosure of a mortgage is generally accomplished by judicial action. Generally, the action is initiated by the service of legal pleadings upon all parties having an interest of record in the real property. Delays in completion of the foreclosure occasionally may result from difficulties in locating necessary parties defendant. When the mortgagee’s right to foreclosure is contested, the legal proceedings necessary to resolve the issue can be time-consuming and expensive. After the completion of a judicial foreclosure proceeding, the court may issue a judgment of foreclosure and appoint a receiver or other officer to conduct the sale of the mortgaged property. In some states, mortgages may also be foreclosed

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by advertisement, under a power of sale provided in the mortgage. Foreclosure of a mortgage by advertisement is essentially similar to foreclosure of a deed of trust by nonjudicial power of sale.

Foreclosure of a deed of trust is generally accomplished by a nonjudicial trustee’s sale under a specific provision in the deed of trust which authorizes the trustee to sell the mortgaged property upon any default by the borrower under the terms of the note or deed of trust. In some states, foreclosure also may be accomplished by judicial action in the manner provided for foreclosure of mortgages. In some states, the trustee must record a notice of default and send a copy to the borrower-trustor and to any person who has recorded a request for a copy of a notice of default and notice of sale. In addition, the trustee in some states must provide notice to any other individual having an interest in the real property, including any junior lienholders. If the deed of trust is not reinstated within any applicable cure period, a notice of sale must be posted in a public place and, in most states, published for a specified period of time in one or more newspapers. In addition, some state laws require that a copy of the notice of sale be posted on the mortgaged property and sent to all parties having an interest of record in the mortgaged property. The trustor, borrower, or any person having a junior encumbrance on the real estate, may, during a reinstatement period, cure the default by paying the entire amount in arrears plus the costs and expenses incurred in enforcing the obligation. Generally, state law controls the amount of foreclosure expenses and costs, including attorney’s fees, which may be recovered by a lender. If the deed of trust is not reinstated, a notice of sale must be posted in a public place and, in most states, published for a specified period of time in one or more newspapers. In addition, some state laws require that a copy of the notice of sale be posted on the mortgaged property, recorded and sent to all parties having an interest in the real property.

An action to foreclose a mortgage is an action to recover the mortgage debt by enforcing the mortgagee’s rights under the mortgage. It is regulated by statutes and rules and subject throughout to the court’s equitable powers. Generally, a mortgagor is bound by the terms of the related mortgage note and the mortgage as made and cannot be relieved from his default if the mortgagee has exercised his rights in a commercially reasonable manner. However, since a foreclosure action historically was equitable in nature, the court may exercise equitable powers to relieve a mortgagor of a default and deny the mortgagee foreclosure on proof that either the mortgagor’s default was neither willful nor in bad faith or the mortgagee’s action established a waiver, fraud, bad faith, or oppressive or unconscionable conduct warranting a court of equity to refuse affirmative relief to the mortgagee. A court of equity may relieve the mortgagor from an entirely technical default where that default was not willful.

A foreclosure action is subject to most of the delays and expenses of other lawsuits if defenses or counterclaims are interposed, sometimes requiring up to several years to complete. Moreover, a non-collusive, regularly conducted foreclosure sale may be challenged as a fraudulent conveyance, regardless of the parties’ intent, if a court determines that the sale was for less than fair consideration and the sale occurred while the mortgagor was insolvent and within one year, or within the state statute of limitations if the trustee in bankruptcy elects to proceed under state fraudulent conveyance law, of the filing of bankruptcy. Similarly, a suit against the debtor on the related mortgage note may take several years and, generally, is a remedy alternative to foreclosure, the mortgagee being precluded from pursuing both at the same time.

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In the case of foreclosure under either a mortgage or a deed of trust, the sale by the referee or other designated officer or by the trustee is a public sale. However, because of the difficulty third party purchasers have in determining the exact status of title and because the physical condition of the mortgaged property may have deteriorated during the foreclosure proceedings, it is uncommon for a third party to purchase the mortgaged property at a foreclosure sale. Rather, it is common for the lender to purchase the mortgaged property from the trustee or referee for an amount which may be equal to the unpaid principal amount of the mortgage note secured by the mortgage or deed of trust plus accrued and unpaid interest and the expenses of foreclosure, in which event the mortgagor’s debt will be extinguished or the lender may purchase for a lesser amount in order to preserve its right against a borrower to seek a deficiency judgment in states where that judgment is available. Thereafter, subject to the right of the borrower in some states to remain in possession during the redemption period, the lender will assume the burdens of ownership, including obtaining hazard insurance, paying taxes and making repairs at its own expense as are necessary to render the mortgaged property suitable for sale. The lender will commonly obtain the services of a real estate broker and pay the broker’s commission in connection with the sale of the mortgaged property. Depending upon market conditions, the ultimate proceeds of the sale of the mortgaged property may not equal the lender’s investment in the mortgaged property. Any loss may be reduced by the receipt of any mortgage guaranty insurance proceeds.

Mortgage Registration Under MERS. The mortgages for certain mortgage loans may be originally recorded in the name of Mortgage Electronic Registration Systems, Inc. (“MERS”), solely as nominee for the seller, and its successors and assigns. Subsequent assignments of such mortgages may be registered electronically through the MERS system. For other mortgage loans, (i) the mortgage may be originally recorded in the name of the seller, (ii) record ownership may be later assigned to and registered in the name of MERS, solely as nominee for the seller, and its successors and assigns, and (iii) subsequent assignments of the mortgage may be registered electronically through the MERS system. For each of such mortgage loans, MERS serves as mortgagee of record on the mortgage solely as a nominee in an administrative capacity on behalf of the seller, and its successors and assigns, and does not have any beneficial interest in the mortgage loan.

The assignment of mortgages to MERS is a new practice in the mortgage lending industry. The servicer will be able to commence foreclosure proceedings on MERS-registered mortgages when necessary and appropriate. Public recording officers and others, however, may have limited, if any, experience with lenders seeking to foreclose mortgages, assignments of which are registered with MERS. Accordingly, delays and additional costs in commencing, prosecuting and completing foreclosure proceedings, defending litigation commenced by third parties and conducting foreclosure sales of the mortgaged properties could result. Those delays and additional costs could in turn delay the distribution of liquidation proceeds and increase the amount of realized losses on the mortgage loans.

Rights Of Redemption. In some states, after sale under a deed of trust or foreclosure of a mortgage, the trustor or mortgagor and foreclosed junior lienors are given a statutory period in which to redeem the mortgaged property from the foreclosure sale. The right of redemption should be distinguished from the equity of redemption, which is a non-statutory right that must be exercised prior to the foreclosure sale. In some states, redemption may occur only upon

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payment of the entire principal balance of the loan, accrued interest and expenses of foreclosure. In other states, redemption may be authorized if the former borrower pays only a portion of the sums due. The effect of a statutory right of redemption is to diminish the ability of the lender to sell the foreclosed mortgaged property. The exercise of a right of redemption would defeat the title of any purchaser at a foreclosure sale, or of any purchaser from the lender subsequent to foreclosure or sale under a deed of trust. Consequently the practical effect of a right of redemption is to force the lender to retain the mortgaged property and pay the expenses of ownership until the redemption period has run. In some states, there is no right to redeem mortgaged property after a trustee’s sale under a deed of trust.

Junior Mortgages; Rights Of Senior Mortgages. The mortgage loans comprising or underlying the primary assets included in the trust fund for a series will be secured by mortgages or deeds of trust which may be second or more junior mortgages to other mortgages held by other lenders or institutional investors. The rights of the trust, and therefore the holders, as mortgagee under a junior mortgage, are subordinate to those of the mortgagee under the senior mortgage, including the prior rights of the senior mortgagee to receive hazard insurance and condemnation proceeds and to cause the mortgaged property securing the mortgage loan to be sold upon default of the mortgagor, thereby extinguishing the junior mortgagee’s lien unless the junior mortgagee asserts its subordinate interest in the mortgaged property in foreclosure litigation and, possibly, satisfies the defaulted senior mortgage. A junior mortgagee may satisfy a defaulted senior loan in full and, in some states, may cure the default and bring the senior loan current, in either event adding the amounts expended to the balance due on the junior loan. In most states, absent a provision in the mortgage or deed of trust, no notice of default is required to be given to a junior mortgagee.

The standard form of the mortgage used by most institutional lenders confers on the mortgagee the right both to receive all proceeds collected under any hazard insurance policy and all awards made in connection with condemnation proceedings, and to apply the proceeds and awards to any indebtedness secured by the mortgage, in any order as the mortgagee may determine. Thus, in the event improvements on the mortgaged property are damaged or destroyed by fire or other casualty, or in the event the mortgaged property is taken by condemnation, the mortgagee or beneficiary under underlying senior mortgages will have the prior right to collect any insurance proceeds payable under a hazard insurance policy and any award of damages in connection with the condemnation and to apply the same to the indebtedness secured by the senior mortgages. Proceeds in excess of the amount of senior mortgage indebtedness, in most cases, may be applied to the indebtedness of a junior mortgage.

Another provision sometimes found in the form of the mortgage or deed of trust used by institutional lenders obligates the mortgagor to pay before delinquency all taxes and assessments on the mortgaged property and, when due, all encumbrances, charges and liens on the mortgaged property which appear prior to the mortgage or deed of trust, to provide and maintain fire insurance on the mortgaged property, to maintain and repair the mortgaged property and not to commit or permit any waste thereof, and to appear in and defend any action or proceeding purporting to affect the mortgaged property or the rights of the mortgagee under the mortgage. Upon a failure of the mortgagor to perform any of these obligations, the mortgagee is sometimes given the right to perform the obligation itself, at its election, with the mortgagor agreeing to reimburse the mortgagee for any sums expended by the mortgagee on behalf of the mortgagor.

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All sums so expended by the mortgagee become part of the indebtedness secured by the mortgage.

Due-On-Sale Clauses In Mortgage Loans. Due-on-sale clauses permit the lender to accelerate the maturity of the loan if the borrower sells or transfers, whether voluntarily or involuntarily, all or part of the real mortgaged property securing the loan without the lender’s prior written consent. The enforceability of these clauses has been the subject of legislation or litigation in many states, and in some cases, typically involving single family residential mortgage transactions, their enforceability has been limited or denied. In any event, the Garn-St. Germain Depository Institutions Act of 1982 preempts state law that prohibits the enforcement of due-on-sale clauses and permits lenders to enforce these clauses in accordance with their terms, with exceptions. As a result, due-on-sale clauses have become generally enforceable except in those states whose legislatures exercised their authority to regulate the enforceability of the clauses with respect to loans that were (1) originated or assumed during the “window period” under the Garn-St. Germain Act which ended in all cases not later than October 15, 1982, and (2) originated by lenders other than national banks, federal savings institutions and federal credit unions.

In addition, under federal bankruptcy law, due-on-sale clauses may not be enforceable if they result from the bankruptcy proceeding.

Enforceability Of Prepayment And Late Payment Fees. Forms of notes, mortgages and deeds of trust used by lenders may contain provisions obligating the borrower to pay a late charge if payments are not timely made, and in some circumstances may provide for prepayment fees or penalties if the obligation is paid prior to maturity. In some states, there are or may be specific limitations, upon the late charges which a lender may collect from a borrower for delinquent payments. Some states also limit the amounts that a lender may collect from a borrower as an additional charge if the loan is prepaid. Late charges and prepayment fees are typically retained by servicers as additional servicing compensation.

Most conventional single-family loans may be prepaid in full or in part without penalty. The regulations of the Office of Thrift Supervision prohibit the imposition of a prepayment penalty or equivalent fee for or in connection with the acceleration of a loan by exercise of a due-on-sale clause. A mortgagee to whom a prepayment in full has been tendered may be compelled to give either a release of the mortgage or an instrument assigning the existing mortgage. The absence of a restraint on prepayment, particularly with respect to loans having higher mortgage rates, may increase the likelihood of refinancing or other early retirements of the loans.

Equitable Limitations On Remedies. In connection with lenders’ attempts to realize upon their security, courts have invoked general equitable principles. The equitable principles are generally designed to relieve the borrower from the legal effect of his defaults under the loan documents. Examples of judicial remedies that have been fashioned include judicial requirements that the lender undertake affirmative and expensive actions to determine the causes of the borrower’s default and the likelihood that the borrower will be able to reinstate the loan. In some cases, courts have substituted their judgment for the lender’s judgment and have required that lenders reinstate loans or recast payment schedules in order to accommodate borrowers who are suffering from temporary financial disability. In other cases, courts have limited the right of

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a lender to realize upon his security if the default under the security agreement is not monetary, such as the borrower’s failure to adequately maintain the mortgaged property or the borrower’s execution of secondary financing affecting the mortgaged property. Finally, some courts have been faced with the issue of whether or not federal or state constitutional provisions reflecting due process concerns for adequate notice require that borrowers under security agreements receive notices in addition to the statutorily-prescribed minimums. For the most part, these cases have upheld the notice provisions as being reasonable or have found that, in cases involving the sale by a trustee under a deed of trust or by a mortgagee under a mortgage having a power of sale, there is insufficient state action to afford constitutional protections to the borrower.

Applicability Of Usury Laws. Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980, provides that state usury limitations shall not apply to specified types of residential first lien loans originated by specified types of lenders. The Office of Thrift Supervision is authorized to issue rules and regulations and to publish interpretations governing implementation of Title V. Title V authorizes any state to reimpose interest rate limits by adopting, before April 1, 1983, a state law, or by certifying that the voters of a state have voted in favor of any provision, constitutional or otherwise, which expressly rejects an application of the federal law. Fifteen states adopted such a law prior to the April 1, 1983 deadline. In addition, even where Title V is not so rejected, any state is authorized by the law to adopt a provision limiting discount points or other charges on loans covered by Title V.

Security Interests In Personal Property And Fixtures. A portion of each mortgaged property may consist of property which is “personal property” or a “fixture” under local state law. This will most commonly occur when the proceeds of the related mortgage loan were applied to property improvements, although any mortgaged property may have some personal property components. A financing statement generally is not required to be filed to perfect a purchase money security interest in consumer goods. Those purchase money security interests are assignable. In general, a purchase money security interest grants to the holder a security interest that has priority over a conflicting security interest in the same collateral and the proceeds of the collateral. However, to the extent that the collateral subject to a purchase money security interest becomes a fixture, in order for the related purchase money security interest to take priority over a conflicting interest in the fixture, the holder’s interest in the personal property must generally be perfected by a timely fixture filing. In general, a security interest does not exist in ordinary building material incorporated into an improvement on land. Contracts that finance lumber, bricks, other types of ordinary building material or other goods that are deemed to lose their characterization, upon incorporation of the materials into the related property, will not be secured by a purchase money security interest in the personal property being financed.

Enforcement Of Security Interest In Personal Property. So long as the personal property has not become subject to the real estate law, a creditor can repossess the property securing a contract by voluntary surrender, by “self-help” repossession that is peaceful or, in the absence of voluntary surrender and the ability to repossess without breach of the peace, by judicial process. The holder of a contract must give the debtor a number of days’ notice prior to commencement of any repossession. Most states place restrictions on repossession sales, including requiring prior notice to the debtor and commercial reasonableness in effecting the sale. Most states also require that the debtor be given notice of any sale prior to resale of the unit that the debtor may redeem it at or before the resale.

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Under the laws applicable in most states, a creditor is entitled to obtain a deficiency judgment from a debtor for any deficiency on repossession and resale of the property securing the debtor’s loan. However, some states impose prohibitions or limitations on deficiency judgments, and in many cases the defaulting borrower would have no assets with which to pay a judgment.

Other statutory provisions, including federal and state bankruptcy and insolvency laws and general equitable principles, may limit or delay the ability of a lender to repossess and resell collateral or enforce a deficiency judgment.

Contracts

As a result of the assignment of the contracts to the trustee, the trust fund will succeed collectively to all of the rights and will assume the obligations of the obligee under the contracts. Each contract evidences both the obligor’s obligation to repay the loan, and the grant of a security interest in the manufactured home. Aspects of both features of the contracts are described more fully below.

The contracts generally are “chattel paper” as defined in the Uniform Commercial Code in effect in the states in which the manufactured homes initially were registered. The Uniform Commercial Code treats the sale of chattel paper in a manner similar to perfection of a security interest in chattel paper. The seller will transfer physical possession of the contracts to the trustee or a designated custodian or may retain possession of the contracts as custodian for the trustee. In addition, the seller will make an appropriate filing of a financing statement in the appropriate states to give notice of the trustee’s ownership of the contracts. Unless otherwise specified in the prospectus supplement, the contracts will not be stamped or marked otherwise to reflect their assignment from the depositor to the trustee. Therefore, if through negligence, fraud or otherwise, a subsequent purchaser were able to take physical possession of the contracts without notice of the assignment, the trustee’s interest in contracts could be defeated.

Security Interests In The Manufactured Homes

The manufactured homes securing the contracts may be located in all 50 states. Security interests in manufactured homes may be perfected either by notation of the secured party’s lien on the certificate of title or by delivery of the required documents and payment of a fee to the state motor vehicle authority, depending on state law. In some non-title states, perfection is governed by the Uniform Commercial Code. The servicer may effect the notation or delivery of the required documents and fees, and obtain possession of the certificate of title, as appropriate under the laws of the state in which any manufactured home securing a manufactured housing conditional sales contract is registered. In the event the servicer fails, due to clerical errors, to effect the notation or delivery, or files the security interest under the wrong law, the trustee may not have a first priority security interest in the manufactured home securing a contract. As manufactured homes have become larger and often have been attached to their sites without any apparent intention to move them, courts in many states have held that manufactured homes may become subject to real estate title and recording laws. As a result, a security interest in a manufactured home could be rendered subordinate to the interests of other parties claiming an interest in the home under applicable state real estate law. In order to perfect a security interest

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in a manufactured home under real estate laws, the secured party must file either a “fixture filing” under the provisions of the Uniform Commercial Code or a real estate mortgage under the real estate laws of the state where the home is located. These filings must be made in the real estate records office of the county where the home is located. Substantially all of the contracts contain provisions prohibiting the borrower from permanently attaching the manufactured home to its site. So long as the borrower does not violate this agreement, a security interest in the manufactured home will be governed by the certificate of title laws or the Uniform Commercial Code, and the notation of the security interest on the certificate of title or the filing of a financing statement will be effective to maintain the priority of the security interest in the manufactured home. If, however, a manufactured home is permanently attached to its site, other parties could obtain an interest in the manufactured home which is prior to the security interest originally retained by the seller and transferred to the issuer. With respect to a series of securities and if so described in the prospectus supplement, the servicer may be required to perfect a security interest in the manufactured home under applicable real estate laws. The servicer will represent that at the date of the initial issuance of the related securities it has obtained a perfected first priority security interest by proper notation or delivery of the required documents and fees with respect to substantially all of the manufactured homes securing the contracts.

The depositor will cause the security interests in the manufactured homes to be assigned to the trustee on behalf of the holders. Neither the depositor nor the trustee will amend the certificates of title to identify the trustee or the trust fund as the new secured party, and neither the depositor nor the servicer will deliver the securities of title to the trustee or note thereon the interest of the trustee. Accordingly, the servicer, or the seller, continues to be named as the secured party on the certificate of title relating to the manufactured homes. In many states, the assignment is an effective conveyance of the security interest without amendment of any lien noted on the related certificate of title and the new secured party succeeds to the depositor’s rights as the secured party. However, in some states there exists a risk that, in the absence of an amendment to the certificate of title, the assignment of the security interest in the manufactured home might not be effective or perfected or that, in the absence of notation or delivery to the trustee, the assignment of the security interest in the manufactured home might not be effective against creditors of the servicer (or the seller) or a trustee in bankruptcy of the servicer, or the seller.

In the absence of fraud, forgery or permanent affixation of the manufactured home to its site by the manufactured home owner, or administrative error by state recording officials, the notation of the lien of the servicer, or the seller, on the certificate of title or delivery of the required documents and fees will be sufficient to protect the holders against the rights of subsequent purchasers of a manufactured home or subsequent lenders who take a security interest in the manufactured home. If there are any manufactured homes as to which the security interest assigned to the trustee is not perfected, that security interest would be subordinate to, among others, subsequent purchasers for value of manufactured homes and holders of perfected security interests. There also exists a risk in not identifying the trustee as the new secured party on the certificate of title that, through fraud or negligence, the security interest of the holders could be released.

In the event that the owner of a manufactured home moves it to a state other than the state in which that manufactured home initially is registered, under the laws of most states the perfected security interest in the manufactured home would continue for four months after

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relocation and thereafter until the owner re-registers the manufactured home in the state. If the owner were to relocate a manufactured home to another state and not re-register the manufactured home in that state, and if steps are not taken to re-perfect the trustee’s security interest in that state, the security interest in the manufactured home would cease to be perfected. A majority of states generally require surrender of a certificate of title to re-register a manufactured home; accordingly, the trustee must surrender possession if it holds the certificate of title to the manufactured home or, in the case of manufactured homes registered in states which provide for notation of lien, the servicer would receive notice of surrender if the security interest in the manufactured home is noted on the certificate of title. Accordingly, the trustee would have the opportunity to re-perfect its security interest in the manufactured home in the state of relocation. In states which do not require a certificate of title for registration of a manufactured home, re-registration could defeat perfection. In the ordinary course of servicing the manufactured housing conditional sales contracts, the servicer takes steps to effect the re-perfection upon receipt of notice of registration or information from the obligor as to relocation. Similarly, when an obligor under a manufactured housing conditional sales contract sells a manufactured home, the trustee, or its custodian, must surrender possession of the certificate of title or the servicer will receive notice as a result of its lien noted thereon and accordingly will have an opportunity to require satisfaction of the related manufactured housing conditional sales contract before release of the lien. Under the servicing agreement, the servicer is obligated to take steps as are necessary to maintain perfection of security interests in the manufactured homes.

Under the laws of most states, liens for repairs performed on a manufactured home and liens for personal property taxes take priority over a perfected security interest. The seller will represent that it has no knowledge of any liens with respect to any manufactured home securing payment on any contract. However, those liens could arise at any time during the term of a contract. No notice will be given to the trustee or holders in the event that a lien arises.

Enforcement Of Security Interests In Manufactured Homes

The servicer on behalf of the trustee, to the extent required by the related servicing agreement, may take action to enforce the trustee’s security interest with respect to contracts in default by repossession and resale of the manufactured homes securing the defaulted contracts. So long as the manufactured home has not become subject to the real estate law, a creditor can repossess a manufactured home securing a contract by voluntary surrender, by “self-help” repossession that is peaceful or, in the absence of voluntary surrender and the ability to repossess without breach of the peace, by judicial process. The holder of a contract must give the debtor a number of days’ notice prior to commencement of any repossession. The Uniform Commercial Code and consumer protection laws in most states place restrictions on repossession sales, including requiring prior notice to the debtor and commercial reasonableness in effecting the sale. The law in most states also requires that the debtor be given notice of any sale prior to resale of the unit so that the debtor may redeem at or before the resale. In the event of the repossession and resale of a manufactured home, the trustee would be entitled to be paid out of the sale proceeds before those proceeds could be applied to the payment of the claims of unsecured creditors or the holders of subsequently perfected security interests or, thereafter, to the debtor.

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Under the laws applicable in most states, a creditor is entitled to obtain a deficiency judgment from a debtor for any deficiency on repossession and resale of the manufactured home securing that debtor’s loan. However, some states impose prohibitions or limitations on deficiency judgments, and in many cases the defaulting borrower would have no assets with which to pay a judgment.

Other statutory provisions, including federal and state bankruptcy and insolvency laws and general equitable principles, may limit or delay the ability of a lender to repossess and resell collateral or enforce a deficiency judgment.

Consumer Protection Laws

The so-called “holder-in-due-course” rule of the Federal Trade Commission is intended to defeat the ability of the transferor of a consumer credit contract which is the seller of goods which gave rise to the transaction, and related lenders and assignees, to transfer the contract free of notice of claims by the debtor thereunder. The effect of this rule is to subject the assignee of contract to all claims and defenses which the debtor could assert against the seller of goods. Liability under this rule is limited to amounts paid under a contract; however, the obligor also may be able to assert the rule to set off remaining amounts due as a defense against a claim brought by the trustee against the obligor. Numerous other federal and state consumer protection laws impose requirements applicable to the origination of the contracts, including the Truth in Lending Act, the Federal Trade Commission Act, the Fair Credit Billing Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act and the Uniform Consumer Credit Code. In the case of some of these laws, the failure to comply with their provisions may affect the enforceability of the related contract.

Transfers Of Manufactured Homes; Enforceability Of “Due-On-Sale” Clauses

The contracts, in general, prohibit the sale or transfer of the related manufactured homes without the consent of the servicer and permit the acceleration of the maturity of the contracts by the servicer upon any sale or transfer that is not consented to.

In the case of a transfer of a manufactured home after which the servicer desires to accelerate the maturity of the related contract, the servicer’s ability to do so will depend on the enforceability under state law of the “due-on-sale” clause. The Garn-St. Germain Depository Institutions Act of 1982 generally preempts state laws prohibiting enforcement of “due-on-sale” clauses applicable to the manufactured homes, with some exemptions and conditions. Consequently, in some states the servicer may be prohibited from enforcing a “due-on-sale” clause in the contracts.

Applicability Of Usury Laws

Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 provides that, subject to the following conditions, state usury limitations shall not apply to any loan which is secured by a first lien on specified kinds of manufactured housing. The contracts would be covered if they satisfy specified conditions, among other things, governing the terms of any prepayments, late charges and deferral fees and requiring a 30-day notice period prior to instituting any action leading to repossession of the related unit.

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Title V authorized any state to reimpose limitations on interest rates and finance charges by adopting before April 1, 1983 a law or constitutional provision which expressly rejects application of the federal law. Fifteen states adopted such a law prior to the April 1, 1983 deadline. In addition, even where Title V was not so rejected, and state is authorized by the law to adopt a provision limiting discount points or other charges on loans covered by Title V. The seller will represent that all of the contracts comply with applicable usury law.

Servicemembers Civil Relief Act

Under the Servicemembers Civil Relief Act, members of all branches of the military on active duty, including draftees and reservists in military service, (1) are entitled to have interest rates reduced and capped at 6% per annum, on obligations (including mortgage loans) incurred prior to the commencement of military service for the duration of military service, (2) may be entitled to a stay of proceedings on any kind of foreclosure or repossession action in the case of defaults on those obligations entered into prior to military service for the duration of military service and (3) may have the maturity of the obligations incurred prior to military service extended, the payments lowered and the payment schedule readjusted for a period of time after the completion of military service. However, the benefits of (1), (2), or (3) above are subject to challenge by creditors and if, in the opinion of the court, the ability of a person to comply with the obligations is not materially impaired by military service, the court may apply equitable principles accordingly. If a borrower’s obligation to repay amounts otherwise due on a mortgage loan included in a trust fund for a series is relieved under the Servicemembers Civil Relief Act, none of the trust fund, the servicer, the depositor nor the trustee will be required to advance the amounts, and any loss in respect thereof may reduce the amounts available to be paid to the holders of the securities of that series.

MATERIAL FEDERAL INCOME TAX CONSEQUENCES

The following is a general discussion of the material anticipated federal income tax consequences to investors of the purchase, ownership and disposition of the securities offered hereby. The discussion is based upon laws, regulations, rulings and decisions now in effect, all of which are subject to change. The discussion below does not purport to deal with all federal tax consequences applicable to all categories of investors, some of which may be subject to special rules. Investors are urged to consult their own tax advisors in determining the particular federal, state and local tax consequences to them of the purchase, ownership and disposition of the securities. References in this section to “sections” and the “code” refer to the Internal Revenue Code of 1986, as amended.

The following discussion addresses securities of four general types:

- securities representing interests in a grantor trust which the depositor will covenant not to elect to have treated as a REMIC;
- securities representing interests in a trust, or a portion thereof, which the depositor will covenant to elect to have treated as a REMIC under sections 860A through 860G;
- securities that are intended to be treated for federal income tax purposes as indebtedness secured by the underlying loans; and

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- securities representing interests in a trust that is intended to be treated as a partnership under the code.

The prospectus supplement for each series of securities will indicate whether a REMIC election (or elections) will be made for the related trust and, if a REMIC election is to be made, will identify all “regular interests” and “residual interests” in the REMIC.

Grantor Trust Securities

With respect to each series of grantor trust securities, Dewey Ballantine LLP, tax counsel to the depositor, or other nationally recognized counsel as set forth in the prospectus supplement, will deliver its opinion to the depositor that the related grantor trust will be classified as a grantor trust and not as a partnership or an association taxable as a corporation. The opinion shall be attached on Form 8-K to be filed with the Securities and Exchange Commission within fifteen days after the initial issuance of the securities or filed with the Securities and Exchange Commission as a post-effective amendment to the prospectus. Accordingly, each beneficial owner of a grantor trust security will generally be treated as the owner of an interest in the loans included in the grantor trust.

For purposes of the following discussion, a grantor trust security representing an undivided equitable ownership interest in the principal of the loans constituting the related grantor trust, together with interest thereon at a pass-through rate, will be referred to as a “grantor trust fractional interest security.” A grantor trust security representing ownership of all or a portion of the difference between interest paid on the loans constituting the related grantor trust and interest paid to the beneficial owners of grantor trust fractional interest securities issued with respect to the grantor trust will be referred to as a “grantor trust strip security.”

Taxation Of Beneficial Owners Of Grantor Trust Securities. Beneficial owners of grantor trust fractional interest securities generally will be required to report on their federal income tax returns their respective shares of the income from the loans (including amounts used to pay reasonable servicing fees and other expenses but excluding amounts payable to beneficial owners of any corresponding grantor trust strip securities) and, subject to the limitations described below, will be entitled to deduct their shares of any reasonable servicing fees and other expenses. If a beneficial owner acquires a grantor trust fractional interest security for an amount that differs from its outstanding principal amount, the amount includible in income on a grantor trust fractional interest security may differ from the amount of interest distributable thereon. See “Discount and Premium,” below. Individuals holding a grantor trust fractional interest security directly or through pass-through entities will be allowed a deduction for reasonable servicing fees and expenses only to the extent that the aggregate of the beneficial owner’s miscellaneous itemized deductions exceeds 2% of the beneficial owner’s adjusted gross income. Further, beneficial owners (other than corporations) subject to the alternative minimum tax may not deduct miscellaneous itemized deductions in determining alternative minimum taxable income.

Beneficial owners of grantor trust strip securities generally will be required to treat the securities as “stripped coupons” under section 1286. Accordingly, that beneficial owner will be

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required to treat the excess of the total amount of payments on the security over the amount paid for the security as original issue discount and to include the discount in income as it accrues over the life of the security. See “—Discount and Premium,” below.

Grantor trust fractional interest securities may also be subject to the coupon stripping rules if a class of grantor trust strip securities is issued as part of the same series of securities. The consequences of the application of the coupon stripping rules would appear to be that any discount arising upon the purchase of that security (and perhaps all stated interest thereon) would be classified as original issue discount and includible in the beneficial owner’s income as it accrues (regardless of the beneficial owner’s method of accounting), as described below under “—Discount and Premium.” The coupon stripping rules will not apply, however, if (i) the pass-through rate is no more than 100 basis points lower than the gross rate of interest payable on the underlying loans and (ii) the difference between the outstanding principal balance on the security and the amount paid for the security is less than 0.25% of the principal balance times the weighted average remaining maturity of the security.

Sales Of Grantor Trust Securities. Any gain or loss recognized on the sale of a grantor trust security (equal to the difference between the amount realized on the sale and the adjusted basis of the grantor trust security) will be capital gain or loss, except to the extent of accrued and unrecognized market discount, which will be treated as ordinary income. The preceding sentences may not apply in the case of banks and other financial institutions if section 582(c) applies. The adjusted basis of a grantor trust security will generally equal its cost, increased by any income reported by the seller (including original issue discount and market discount income) and reduced (but not below zero) by any previously reported losses, any amortized premium and by any distributions of principal.

Grantor Trust Reporting. The trustee will furnish to each beneficial owner of a grantor trust fractional interest security with each distribution a statement setting forth the amount of the distribution allocable to principal on the underlying loans and to interest thereon at the related interest rate. In addition, within a reasonable time after the end of each calendar year, based on information provided by the servicer, the trustee will furnish to each beneficial owner during the year any customary factual information that the servicer deems necessary or desirable to enable beneficial owners of grantor trust securities to prepare their tax returns and will furnish comparable information to the Internal Revenue Service (the “IRS”) as and when required to do so by law.

REMIC Securities

If provided in a prospectus supplement, an election will be made to treat a trust as one or more REMICs. With respect to each series of securities for which that election is made, Dewey Ballantine LLP, tax counsel to the depositor, or other nationally recognized counsel as set forth in the prospectus supplement, will deliver its opinion to the depositor that, assuming compliance with the related pooling and servicing agreement, the trust will be treated as one or more REMICs for federal income tax purposes. A trust for which a REMIC election is made will be referred to in this prospectus as a “REMIC trust.” The securities of each class will be designated as “regular interests” in the REMIC trust except that a separate class will be designated as the “residual interest” in the REMIC trust. The prospectus supplement for each series of securities

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will state whether securities of each class will constitute a REMIC regular security or a REMIC residual security. The opinion shall be attached on Form 8-K to be filed with the Securities and Exchange Commission within fifteen days after the initial issuance of the securities or filed with the Securities and Exchange Commission as a post-effective amendment to the prospectus.

A REMIC trust will not be subject to federal income tax except with respect to income from prohibited transactions and in other instances described below. See “—Taxes on a REMIC Trust.” Generally, the total income from the mortgage loans in a REMIC trust will be taxable to the beneficial owners of the securities of that series, as described below.

Regulations issued by the Treasury Department on December 23, 1992 (the “REMIC regulations”) provide some guidance regarding the federal income tax consequences associated with the purchase, ownership and disposition of REMIC securities. While material provisions of the REMIC regulations are discussed below, investors should consult their own tax advisors regarding the possible application of the REMIC regulations in their specific circumstances.

Special Tax Attributes. REMIC regular securities and REMIC residual securities will be “regular or residual interests in a REMIC” within the meaning of section 7701(a)(19)(C)(xi) and “real estate assets” within the meaning of section 856(c)(5)(B). If at any time during a calendar year less than 95% of the assets of a REMIC trust consist of “qualified mortgages” (within the meaning of section 860G(a)(3)), then the portion of the REMIC regular securities and REMIC residual securities that are qualifying assets under those sections during the calendar year may be limited to the portion of the assets of the REMIC trust that are qualified mortgages. Similarly, income on the REMIC regular securities and REMIC residual securities will be treated as “interest on obligations secured by mortgages on real property” within the meaning of section 856(c)(3)(B), subject to the same limitation as described in the preceding sentence. For purposes of applying this limitation, a REMIC trust should be treated as owning the assets represented by the qualified mortgages. The assets of the trust fund will include, in addition to the mortgage loans, payments on the mortgage loans held pending distribution on the REMIC regular securities and REMIC residual securities and any reinvestment income thereon. REMIC regular securities and REMIC residual securities held by a financial institution referred to in section 582(c)(2) will be treated as evidences of indebtedness for purposes of section 582(c)(1). REMIC regular securities will also be qualified mortgages with respect to other REMICs.

Tiered REMIC Structures. For a series of REMIC securities, two or more separate elections may be made to treat designated portions of the related trust fund as REMICs for federal income tax purposes, creating a tiered REMIC structure. As to each series of REMIC securities that is a tiered REMIC structure, assuming compliance with all provisions of the related pooling and servicing agreement, each of the REMICs in that series will qualify as a REMIC and the REMIC securities issued by these REMICs will be considered to evidence ownership of REMIC regular securities or REMIC residual securities in the related REMIC within the meaning of the REMIC provisions.

Taxation Of Beneficial Owners Of REMIC Regular Securities. Except as indicated below in this federal income tax discussion, the REMIC regular securities will be treated for federal income tax purposes as debt instruments issued by the REMIC trust on the settlement date and not as ownership interests in the REMIC trust or its assets. Beneficial owners of REMIC regular

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securities that otherwise report income under a cash method of accounting will be required to report income with respect to those securities under an accrual method. For additional tax consequences relating to REMIC regular securities purchased at a discount or with premium, see “—Discount and Premium,” below.

For classes of securities that do not have a principal balance, the code requires the recognition of gain upon the “constructive sale of an appreciated financial position.” A constructive sale of an appreciated financial position occurs if a taxpayer enters into transactions with respect to a financial instrument that have the effect of substantially eliminating the taxpayer’s risk of loss and opportunity for gain with respect to the financial instrument.

Taxation Of Beneficial Owners Of REMIC Residual Securities

Daily Portions. Except as indicated below, a beneficial owner of a REMIC residual security in a REMIC trust generally will be required to report its daily portion of the taxable income or net loss of the REMIC trust for each day during a calendar quarter that the beneficial owner owned the REMIC residual security. For this purpose, the daily portion shall be determined by allocating to each day in the calendar quarter its ratable portion of the taxable income or net loss of the REMIC trust for the quarter and by allocating the amount so allocated among the beneficial owners of residual securities (on that day) in accordance with their percentage interests on that day. Any amount included in the gross income or allowed as a loss of any beneficial owner of a residual security by virtue of this paragraph will be treated as ordinary income or loss.

The requirement that each beneficial owner of a REMIC residual security report its daily portion of the taxable income or net loss of the REMIC trust will continue until there are no securities of any class outstanding, even though the beneficial owner of the REMIC residual security may have received full payment of the stated interest and principal on its REMIC residual security.

The trustee will provide to beneficial owners of REMIC residual securities of each series of securities (i) any information as is necessary to enable them to prepare their federal income tax returns and (ii) any reports regarding the securities of the series that may be required under the code.

Taxable Income Or Net Loss Of A REMIC Trust. The taxable income or net loss of a REMIC trust will be the income from the qualified mortgages it holds and any reinvestment earnings less deductions allowed to the REMIC trust. The taxable income or net loss for a given calendar quarter will be determined in the same manner as for an individual having the calendar year as the taxable year and using the accrual method of accounting, with the following modifications. The first modification is that a deduction will be allowed for accruals of interest (including any original issue discount, but without regard to the investment interest limitation in section 163(d)) on the REMIC regular securities (but not the REMIC residual securities), even though REMIC regular securities are for non-tax purposes evidences of beneficial ownership rather than indebtedness of a REMIC trust. Second, market discount or premium equal to the difference between the total stated principal balances of the qualified mortgages and the basis to the REMIC trust generally will be included in income (in the case of discount) or deductible (in

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the case of premium) by the REMIC trust as it accrues under a constant yield method, taking into account the “prepayment assumption” (as defined in the prospectus supplement, see “—Discount and Premium—Original Issue Discount,” below). The basis to a REMIC trust in the qualified mortgages is the aggregate of the issue prices of all the REMIC regular securities and REMIC residual securities in the REMIC trust on the settlement date. If, however, a substantial amount of a class of REMIC regular securities or REMIC residual securities has not been sold to the public, then the fair market value of all the REMIC regular securities or REMIC residual securities in that class as of the date of the prospectus supplement should be substituted for the issue price.

Third, no item of income, gain, loss or deduction allocable to a prohibited transaction (see “—Taxes on a REMIC Trust—Prohibited Transactions” below) will be taken into account. Fourth, a REMIC trust generally may not deduct any item that would not be allowed in calculating the taxable income of a partnership by virtue of section 703(a)(2). Finally, the limitation on miscellaneous itemized deductions imposed on individuals by section 67 will not be applied at the REMIC trust level to any servicing or guaranty fees. (See, however, “—Pass-Through of Servicing and Guaranty Fees to Individuals” below.) In addition, under the REMIC regulations, any expenses that are incurred in connection with the formation of a REMIC trust and the issuance of the REMIC regular securities and REMIC residual securities are not treated as expenses of the REMIC trust for which a deduction is allowed. If the deductions allowed to a REMIC trust exceed its gross income for a calendar quarter, the excess will be a net loss for the REMIC trust for that calendar quarter. The REMIC regulations also provide that any gain or loss to a REMIC trust from the disposition of any asset, including a qualified mortgage or “permitted investment” (as defined in section 860G(a)(5)), will be treated as ordinary gain or loss.

A beneficial owner of a REMIC residual security may be required to recognize taxable income without being entitled to receive a corresponding amount of cash. This could occur, for example, if the qualified mortgages are considered to be purchased by the REMIC trust at a discount, some or all of the REMIC regular securities are issued at a discount, and the discount included as a result of a prepayment on a mortgage loan that is used to pay principal on the REMIC regular securities exceeds the REMIC trust’s deduction for unaccrued original issue discount relating to the REMIC regular securities. Taxable income may also be greater in earlier years because interest expense deductions, expressed as a percentage of the outstanding principal amount of the REMIC regular securities, may increase over time as the earlier classes of REMIC regular securities are paid, whereas interest income with respect to any given mortgage loan expressed as a percentage of the outstanding principal amount of that mortgage loan, will remain constant over time.

Basis Rules And Distributions. A beneficial owner of a REMIC residual security has an initial basis in its security equal to the amount paid for that REMIC residual security. That basis is increased by amounts included in the income of the beneficial owner and decreased (but not below zero) by distributions and by any net loss taken into account with respect to the REMIC residual security. A distribution on a REMIC residual security to a beneficial owner is not included in gross income to the extent it does not exceed the beneficial owner’s basis in the REMIC residual security (adjusted as described above) and, to the extent it exceeds the adjusted basis of the REMIC residual security, shall be treated as gain from the sale of the REMIC residual security.

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A beneficial owner of a REMIC residual security is not allowed to take into account any net loss for any calendar quarter to the extent that the net loss exceeds the beneficial owner’s adjusted basis in its REMIC residual security as of the close of the calendar quarter (determined without regard to the net loss). Any loss disallowed by reason of this limitation may be carried forward indefinitely to future calendar quarters and, subject to the same limitation, may be used only to offset income from the REMIC residual security.

Excess Inclusions. Any excess inclusions with respect to a REMIC residual security are subject to special tax rules. With respect to a beneficial owner of a REMIC residual security, the excess inclusion for any calendar quarter is defined as the excess (if any) of the daily portions of taxable income over the sum of the “daily accruals” for each day during a quarter that the REMIC residual security was held by the beneficial owner. The daily accruals are determined by allocating to each day during a calendar quarter its ratable portion of the product of the “adjusted issue price” of the REMIC residual security at the beginning of the calendar quarter and 120% of the “federal long-term rate” in effect on the settlement date, based on quarterly compounding, and properly adjusted for the length of the quarter. For this purpose, the adjusted issue price of a REMIC residual security as of the beginning of any calendar quarter is equal to the issue price of the REMIC residual security, increased by the amount of daily accruals for all prior quarters and decreased (but not below zero) by any distributions made with respect to the REMIC residual security before the beginning of that quarter. The issue price of a REMIC residual security is the initial offering price to the public (excluding bond houses and brokers) at which a substantial number of the REMIC residual securities were sold. The federal long-term rate is a blend of current yields on Treasury securities having a maturity of more than nine years, computed and published monthly by the IRS.

In general, beneficial owners of REMIC residual securities with excess inclusion income cannot offset that income by losses from other activities. For beneficial owners that are subject to tax only on unrelated business taxable income (as defined in section 512), an excess inclusion of a beneficial owner is treated as unrelated business taxable income. With respect to variable contracts (within the meaning of section 817), a life insurance company cannot adjust its reserve to the extent of any excess inclusion, except as provided in regulations. The REMIC regulations indicate that if a beneficial owner of a REMIC residual security is a member of an affiliated group filing a consolidated income tax return, the taxable income of the affiliated group cannot be less than the sum of the excess inclusions attributable to all residual interests in REMICs held by members of the affiliated group. For a discussion of the effect of excess inclusions on foreign investors that own REMIC residual securities, see “—Foreign Investors” below.

The Treasury Department also has the authority to issue regulations that would treat all taxable income of a REMIC trust as excess inclusions if the REMIC residual security does not have “significant value.” Although the Treasury Department did not exercise this authority in the REMIC regulations, future regulations may contain this rule. If that rule were adopted, it is unclear how significant value would be determined for these purposes. If no similar rule is applicable, excess inclusions should be calculated as discussed above.

In the case of any REMIC residual securities that are held by a real estate investment trust, the aggregate excess inclusions with respect to REMIC residual securities reduced (but not below zero) by the real estate investment trust taxable income (within the meaning of section

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857(b)(2), excluding any net capital gain) will be allocated among the shareholders of that trust in proportion to the dividends received by the shareholders from the trust, and any amount so allocated will be treated as an excess inclusion with respect to a REMIC residual security as if held directly by the shareholder. Similar rules will apply in the case of regulated investment companies, common trust funds and cooperatives that hold a REMIC residual security.

Pass-Through Of Servicing And Guaranty Fees To Individuals. A beneficial owner of a REMIC residual security who is an individual will be required to include in income a share of any servicing and guaranty fees. A deduction for these fees will be allowed to a beneficial owner only to the extent that those fees, along with some of the beneficial owner’s other miscellaneous itemized deductions, exceed 2% of the beneficial owner’s adjusted gross income. In addition, a beneficial owner of a REMIC residual security may not be able to deduct any portion of the fees in computing a beneficial owner’s alternative minimum tax liability. A beneficial owner’s share of the fees will generally be determined by (i) allocating the amount of the expenses for each calendar quarter on a pro rata basis to each day in the calendar quarter, and (ii) allocating the daily amount among the beneficial owners in proportion to their respective holdings on that day.

Taxes On A REMIC Trust

Prohibited Transactions. The Code imposes a tax on a REMIC equal to 100% of the net income derived from “prohibited transactions.” In general, a prohibited transaction means the disposition of a qualified mortgage other than under specified exceptions, the receipt of investment income from a source other than a qualified mortgage or other permitted investments, the receipt of compensation for services, or the disposition of an asset purchased with the payments on the qualified mortgages for temporary investment pending distribution on the regular and residual interests other than pursuant to a qualified liquidation.

Contributions To A REMIC After The Startup Day. The Code imposes a tax on a REMIC equal to 100% of the value of any property contributed to the REMIC after the “startup day” (generally the same as the settlement date). Exceptions are provided for cash contributions to a REMIC (i) during the three month period beginning on the startup day, (ii) made to a qualified reserve fund by a beneficial owner of a residual interest, (iii) in the nature of a guarantee, (iv) made to facilitate a qualified liquidation or clean-up call, and (v) as otherwise permitted by Treasury regulations.

Net Income From Foreclosure Property. The Code imposes a tax on a REMIC equal to the highest corporate rate on “net income from foreclosure property.” The terms “foreclosure property” (which includes property acquired by deed in lieu of foreclosure) and “net income from foreclosure property” are defined by reference to the rules applicable to real estate investment trusts. Generally, foreclosure property would be treated as such for a period of three years, with a possible extension. Net income from foreclosure property generally means gain from the sale of foreclosure property that is inventory property and gross income from foreclosure property other than qualifying rents and other qualifying income for a real estate investment trust.

Sales Of REMIC Securities. Except as provided below, if a REMIC regular or residual security is sold, the seller will recognize gain or loss equal to the difference between the amount

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realized in the sale and its adjusted basis in the security. The adjusted basis of a REMIC regular security generally will equal the cost of that security to the seller, increased by any original issue discount or market discount included in the seller’s gross income with respect to the security and reduced by distributions on that security previously received by the seller of amounts included in the stated redemption price at maturity and by any premium that has reduced the seller’s interest income with respect to the security. See “—Discount and Premium.” The adjusted basis of a REMIC residual security is determined as described above under “—Taxation of Beneficial Owners of REMIC Residual Securities—Basis Rules and Distributions.” Except as provided in the following paragraph or under section 582(c) , any gain or loss will be capital gain or loss, provided the security is held as a “capital asset” (generally, property held for investment) within the meaning of section 1221.

Gain from the sale of a REMIC regular security that might otherwise be capital gain will be treated as ordinary income to the extent that the gain does not exceed the excess, if any, of (i) the amount that would have been includible in the income of the beneficial owner of a REMIC regular security had income accrued at a rate equal to 110% of the “applicable federal rate” (generally, an average of current yields on Treasury securities) as of the date of purchase over (ii) the amount actually includible in the beneficial owner’s income. In addition, gain recognized on a sale by a beneficial owner of a REMIC regular security who purchased the security at a market discount would also be taxable as ordinary income in an amount not exceeding the portion of the discount that accrued during the period a security was held by the beneficial owner, reduced by any market discount includible in income under the rules described below under “—Discount and Premium.”

If a beneficial owner of a REMIC residual security sells its REMIC residual security at a loss, the loss will not be recognized if, within six months before or after the sale of the REMIC residual security, the beneficial owner purchases another residual interest in any REMIC or any interest in a taxable mortgage pool (as defined in section 7701(i)) comparable to a residual interest in a REMIC. That disallowed loss would be allowed upon the sale of the other residual interest (or comparable interest) if the rule referred to in the preceding sentence does not apply to that sale. While this rule may be modified by treasury regulations, no such regulations have yet been published.

Transfers Of REMIC Residual Securities. Section 860E(e) imposes a substantial tax, payable by the transferor (or, if a transfer is through a broker, nominee, or other middleman as the transferee’s agent, payable by that agent) upon any transfer of a REMIC residual security to a disqualified organization. For purposes of the preceding sentence, a transfer includes any transfer of record or beneficial ownership, whether by purchase, by default under a secured lending agreement or otherwise.

The term “disqualified organization” includes the United States, any state or political subdivision thereof, any foreign government, any international organization, or any agency or instrumentality of the foregoing (other than certain taxable instrumentalities), any cooperative organization furnishing electric energy or providing telephone service to persons in rural areas, or any organization (other than a farmers’ cooperative) that is exempt from federal income tax, unless the organization is subject to the tax on unrelated business income. Moreover, an entity will not qualify as a REMIC unless there are reasonable arrangements designed to ensure that (i)

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residual interests in the entity are not held by disqualified organizations and (ii) information necessary for the application of the tax on transfers to disqualified organizations will be made available. Restrictions on the transfer of a REMIC residual security and other provisions that are intended to meet this requirement are described in the related pooling and servicing agreement, and will be discussed more fully in the prospectus supplement relating to the offering of any REMIC residual security. A transferor of a REMIC residual security (or an agent of a transferee of a REMIC residual security, as the case may be) will be relieved of that tax liability if (i) the transferee furnishes to the transferor (or the transferee’s agent) an affidavit that the transferee, among other things, (a) is not a disqualified organization, (b) is not acquiring the REMIC residual security for the account of a disqualified organization and (c) will not cause income from the REMIC residual security to be attributable to a foreign permanent establishment or fixed base (within the meaning of an applicable income tax treaty) of the transferee or another U.S. taxpayer, and (ii) the transferor (or the transferee’s agent) does not have actual knowledge that the affidavit is false at the time of the transfer. In addition, a pass-through entity (including regulated investment companies, real estate investment trusts, common trust funds, partnerships, trusts, estates, cooperatives and nominees) that holds a REMIC residual security may be subject to additional taxes under section 860E(e) if a disqualified organization is a recordholder of an interest in that entity. No tax will be imposed on a pass-through entity for a period with respect to which an interest in that entity is owned by a disqualified organization if (i) the record-holder of the interest furnishes to the pass-through entity an affidavit that it is not a disqualified organization, and (ii) during that period, the pass-through entity has no actual knowledge that the affidavit is false.

If an “electing large partnership” holds a REMIC residual security, all interests in the electing large partnership are treated as held by disqualified organizations for purposes of the tax imposed upon a pass-through entity by section 860E(e). An exception to this tax, otherwise available to a pass-through entity that is furnished with affidavits by record holders of interests in the entity and that does not know the affidavits are false, is not available to an electing large partnership.

Under the REMIC regulations, a transfer of a “noneconomic residual interest” to a U.S. Person (as defined below in “—Foreign Investors—grantor trust securities and REMIC regular securities”) will be disregarded for all federal tax purposes if a significant purpose of the transfer is to impede the assessment or collection of tax. A REMIC residual security would be treated as constituting a noneconomic residual interest unless, at the time of the transfer, (i) the present value of the expected future distributions on the REMIC residual security is no less than the product of the present value of the “anticipated excess inclusions” with respect to that security and the highest corporate rate of tax for the year in which the transfer occurs, and (ii) the transferor reasonably expects that the transferee will receive distributions from the applicable REMIC trust in an amount sufficient to satisfy the liability for income tax on any “excess inclusions” at or after the time when the liability accrues. Anticipated excess inclusions are the excess inclusions that are anticipated to be allocated to each calendar quarter (or portion thereof) following the transfer of a REMIC residual security, determined as of the date the security is transferred and based on events that have occurred as of that date and on the prepayment assumption. See “—Discount and Premium” and “—Taxation of Beneficial Owners of REMIC Residual Securities—Excess Inclusions.”

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The REMIC regulations provide that a significant purpose to impede the assessment or collection of tax exists if, at the time of the transfer, a transferor of a REMIC residual security has “improper knowledge” (i.e., the transferor either knew, or should have known, that the transferee would be unwilling or unable to pay taxes due on its share of the taxable income of the REMIC trust). A transferor is presumed not to have improper knowledge if (i) the transferor conducts, at the time of a transfer, a reasonable investigation of the financial condition of the transferee and, as a result of the investigation, the transferor finds that the transferee has historically paid its debts as they come due and finds no significant evidence to indicate that the transferee will not continue to pay its debts as they come due in the future; (ii) the transferee represents to the transferor that it understands that, as a holder of the noneconomic residual interest, it may incur tax liabilities in excess of any cash flows on the residual interest and that the transferee intends to pay taxes associated with holding the residual interest as they become due; (iii) the transferee represents that it will not cause income from the residual interest to be attributed to a foreign permanent establishment or fixed base of the transferee or another taxpayer; and (iv) the transfer satisfies either the “asset test” or the “formula test.”

A transfer satisfies the asset test if (i) at the time of the transfer and at the close of each of the transferee’s two fiscal years preceding the year of transfer, the transferee’s gross assets exceed \$100 million and its net assets exceed \$10 million (excluding from consideration obligations of related persons and any other asset if a principal purpose for holding or acquiring such asset was to permit the corporation to meet the asset test), (ii) the transferee is an “eligible corporation” (within the meaning of the REMIC regulations) and the transferee agrees in writing that any subsequent transfer of the residual interest security will be to an eligible corporation and will comply with the safe harbor and the asset test, and (iii) the facts and circumstances known to the transferor on or before the date of the transfer do not reasonably indicate that the taxes associated with the residual interest will not be paid.

A transfer satisfies the formula test if the present value of the anticipated tax liabilities associated with holding the residual interest is less than or equal to the sum of (i) the present value of any consideration given to the transferee to acquire the residual interest, (ii) the present value of the expected future distributions on the residual interest, and (iii) the present value of the anticipated tax savings associated with holding the residual interest as the related REMIC generates losses. For purposes of the formula test, present value is calculated using a discount rate equal to the short-term applicable federal rate, and the transferee is assumed to pay tax at a rate equal to the highest corporate tax rate.

The Treasury Department recently issued proposed regulations providing that, to clearly reflect income, an inducement fee paid to a transferee of a noneconomic residual interest in a REMIC must be included in income over a period that is reasonably related to the period during which the applicable REMIC is expected to generate taxable income or net loss allocable to the transferee. The proposed regulations set forth two safe harbor methods under which a taxpayer’s accounting for the inducement fee will be considered to clearly reflect income for these purposes. The proposed regulations also provide that an inducement fee shall be treated as income from sources within the United States. If finalized as proposed, the regulations would be effective for taxable years ending on or after the publication of the final regulations in the Federal Register. The proposed regulations contain additional details regarding their application

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and you should consult your own tax advisor regarding the application of the proposed regulations.

The REMIC regulations contain additional details regarding their application, and you should consult your own tax adviser regarding the application of the REMIC regulations to a transfer of a residual interest.

Reporting And Other Administrative Matters. For purposes of the administrative provisions, each REMIC trust will be treated as a partnership and the beneficial owners of REMIC residual securities will be treated as partners. The trustee will prepare, sign and file federal income tax returns for each REMIC trust, which returns are subject to audit by the IRS. Moreover, within a reasonable time after the end of each calendar year, the trustee will furnish to each beneficial owner that received a distribution during that year a statement setting forth the portions of any distributions that constitute interest distributions, original issue discount, and any other information required by Treasury regulations and, with respect to beneficial owners of REMIC residual securities in a REMIC trust, information on a quarterly basis necessary to compute the daily portions of the taxable income (or net loss) of the REMIC trust for each day during the year. The trustee may also act as the tax matters partner for each REMIC trust, either in its capacity as a beneficial owner of a REMIC residual security or in a fiduciary capacity. Each beneficial owner of a REMIC residual security, by the acceptance of its REMIC residual security, agrees that the trustee will act as its fiduciary in the performance of any duties required of it in the event that it is the tax matters partner.

Each beneficial owner of a REMIC residual security is required to treat items on its return consistently with the treatment on the return of the REMIC trust, unless the beneficial owner either files a statement identifying the inconsistency or establishes that the inconsistency resulted from incorrect information received from the REMIC trust and elects to be treated as having informed the IRS of the inconsistency. The IRS may assert a deficiency resulting from a failure to comply with the consistency requirement without instituting an administrative proceeding at the REMIC trust level.

Termination. In general, no special tax consequences will apply to a beneficial owner of a REMIC regular security upon the termination of a REMIC trust by virtue of the final payment or liquidation of the last mortgage loan remaining in the trust fund. If a beneficial owner of a REMIC residual security’s adjusted basis in its REMIC residual security at the time the termination occurs exceeds the amount of cash distributed to the beneficial owner in liquidation of its interest, although the matter is not entirely free from doubt, it would appear that the beneficial owner of the REMIC residual security is entitled to a loss equal to the amount of that excess.

Debt Securities

With respect to each series of debt securities, Dewey Ballantine LLP, tax counsel to the depositor, or other nationally recognized counsel as set forth in the prospectus supplement, will deliver its opinion to the depositor that the securities will be classified as debt secured by the related loans. Consequently, the debt securities will not be treated as ownership interests in the loans or the trust. Beneficial owners will be required to report income received with respect to

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the debt securities in accordance with their normal method of accounting. For additional tax consequences relating to debt securities purchased at a discount or with premium, see “—Discount and Premium,” below. This opinion shall be attached on Form 8-K to be filed with the Securities and Exchange Commission within fifteen days after the initial issuance of the securities or filed with the Securities and Exchange Commission as a post-effective amendment to the prospectus.

Special Tax Attributes. As described above, REMIC securities will possess special tax attributes by virtue of the REMIC provisions. In general, debt securities will not possess these special tax attributes. Investors to whom these attributes are important should consult their own tax advisors regarding investment in debt securities.

Sale Or Exchange. If a beneficial owner of a debt security sells or exchanges the security, the beneficial owner will recognize gain or loss equal to the difference, if any, between the amount received and the beneficial owner’s adjusted basis in the security. The adjusted basis in the security generally will equal its initial cost, increased by any original issue discount or market discount previously included in the seller’s gross income with respect to the security and reduced by the payments previously received on the security, other than payments of qualified stated interest, and by any amortized premium.

In general (except as described in “—Discount and Premium—Market Discount,” below), except for financial institutions subject to section 582(c), any gain or loss on the sale or exchange of a debt security recognized by an investor who holds the security as a capital asset (within the meaning of section 1221), will be capital gain or loss and will be long-term or short-term depending on whether the security has been held for more than one year.

Partnership Interests

With respect to each series of partnership interests, Dewey Ballantine LLP, tax counsel to the depositor, or other nationally recognized counsel as set forth in the prospectus supplement, will deliver its opinion to the depositor that the trust will be treated as a partnership and not an association taxable as a corporation for federal income tax purposes. The opinion shall be attached on Form 8-K to be filed with the Securities and Exchange Commission within fifteen days after the initial issuance of the securities or filed with the Securities and Exchange Commission as a post-effective amendment to the prospectus.

Special Tax Attributes. As described above, REMIC securities will possess special tax attributes by virtue of the REMIC provisions. In general, partnership interests will not possess these special tax attributes. Investors to whom these attributes are important should consult their own tax advisors regarding investment in partnership interests.

Taxation Of Beneficial Owners Of Partnership Interests. If the trust is treated as a partnership for federal income tax purposes, the trust will not be subject to federal income tax. Instead, each beneficial owner of a partnership interest will be required to separately take into account an allocable share of income, gains, losses, deductions, credits and other tax items of the trust. These partnership allocations are made in accordance with the code, Treasury regulations and the partnership agreement (here, the trust agreement and related documents).

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The trust’s assets will be the assets of the partnership. The trust’s income will consist primarily of interest and finance charges earned on the underlying mortgage loans. The trust’s deductions will consist primarily of interest accruing with respect to any indebtedness issued by the trust, servicing and other fees, and losses or deductions upon collection or disposition of the trust’s assets.

The trust could have an obligation to make payments of withholding tax on behalf of a beneficial owner of a partnership interest. (See “Backup Withholding” and “Foreign Investors” below).

Substantially all of the taxable income allocated to a beneficial owner of a partnership interest that is a pension, profit sharing or employee benefit plan or other tax-exempt entity (including an individual retirement account) will constitute “unrelated business taxable income” generally taxable to the holder under the code.

Under section 708, the trust will be deemed to terminate for federal income tax purposes if 50% or more of the capital and profits interests in the trust are sold or exchanged within a 12-month period. Under the final Treasury regulations issued on May 8, 1997, if such a termination occurs, the trust is deemed to contribute all of its assets and liabilities to a newly formed partnership in exchange for a partnership interest. Immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and remaining partners in proportion to their interests in liquidation of the terminated partnership.

Sale Or Exchange Of Partnership Interests. Generally, capital gain or loss will be recognized on a sale or exchange of partnership interests in an amount equal to the difference between the amount realized and the seller’s tax basis in the partnership interests sold. A beneficial owner’s tax basis in a partnership interest will generally equal the beneficial owner’s cost increased by the beneficial owner’s share of trust income (includible in income) and decreased by any distributions received with respect to the partnership interest. In addition, both the tax basis in the partnership interest and the amount realized on a sale of a partnership interest would take into account the beneficial owner’s share of any indebtedness of the trust. A beneficial owner acquiring partnership interests at different prices may be required to maintain a single aggregate adjusted tax basis in the partnership interest, and upon sale or other disposition of some of the partnership interests, allocate a portion of the aggregate tax basis to the partnership interests sold (rather than maintaining a separate tax basis in each partnership interest for purposes of computing gain or loss on a sale of that partnership interest).

Any gain on the sale of a partnership interest attributable to the beneficial owner’s share of unrecognized accrued market discount on the assets of the trust would generally be treated as ordinary income to the holder and would give rise to special tax reporting requirements. If a beneficial owner of a partnership interest is required to recognize an aggregate amount of income over the life of the partnership interest that exceeds the aggregate cash distributions with respect thereto, that excess will generally give rise to a capital loss upon the retirement of the partnership interest. If a beneficial owner sells its partnership interest at a profit or loss, the transferee will have a higher or lower basis in the partnership interest than the transferor had. The tax basis of the trust’s assets will not be adjusted to reflect that higher or lower basis unless the trust files an election under section 754.

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Partnership Reporting Matters. The Owner trustee is required to (i) keep complete and accurate books of the trust, (ii) file a partnership information return (IRS Form 1065) with the IRS for each taxable year of the trust and (iii) report each beneficial owner of a partnership interest’s allocable share of items of trust income and expense to beneficial owners and the IRS on Schedule K-1. The trust will provide the Schedule K-1 information to nominees that fail to provide the trust with the information statement described below and those nominees will be required to forward the information to the beneficial owners of the partnership interests. Generally, beneficial owners of a partnership interests must file tax returns that are consistent with the information return filed by the trust or be subject to penalties unless the beneficial owner of a partnership interest notifies the IRS of all the inconsistencies.

Under section 6031, any person that holds partnership interests as a nominee at any time during a calendar year is required to furnish the trust with a statement containing information on the nominee, the beneficial owners and the partnership interests so held. Required information includes (i) the name, address and taxpayer identification number of the nominee and (ii) as to each beneficial owner (x) the name, address and identification number of the person, (y) whether the person is a United States person, a tax-exempt entity or a foreign government, an international organization, or any wholly owned agency or instrumentality of either of the foregoing, and (z) information on partnership interests that were held, bought or sold on behalf of the person throughout the year. In addition, brokers and financial institutions that hold partnership interests through a nominee are required to furnish directly to the trust information as to themselves and their ownership of partnership interests. A clearing agency registered under section 17A of the Securities Exchange Act of 1934 is not required to furnish any such information statement to the trust. Nominees, brokers and financial institutions that fail to provide the trust with the information described above may be subject to penalties.

The Code provides for administrative examination of a partnership as if the partnership were a separate and distinct taxpayer. Generally, the statute of limitations for partnership items does not expire before three years after the date on which the partnership information return is filed. Any adverse determination following an audit of the return of the trust by the appropriate taxing authorities could result in an adjustment of the returns of the beneficial owner of a partnership interest, and a beneficial owner of a partnership interest may be precluded from separately litigating a proposed adjustment to the items of the trust. An adjustment could also result in an audit of the beneficial owner of a partnership interest’s returns and adjustments of items not related to the income and losses of the trust.

Discount And Premium

A security purchased for an amount other than its outstanding principal amount will be subject to the rules governing original issue discount, market discount or premium. In addition, all grantor trust strip securities and some grantor trust fractional interest securities will be treated as having original issue discount by virtue of the coupon stripping rules in section 1286. In very general terms, (1) original issue discount is treated as a form of interest and must be included in a beneficial owner’s income as it accrues (regardless of the beneficial owner’s regular method of accounting) using a constant yield method; (2) market discount is treated as ordinary income and must be included in a beneficial owner’s income as principal payments are made on the security (or upon a sale of a security); and (3) if a beneficial owner so elects, premium may be amortized

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over the life of the security and offset against inclusions of interest income. These tax consequences are discussed in greater detail below.

Original Issue Discount. In general, a security will be considered to be issued with original issue discount equal to the excess, if any, of its “stated redemption price at maturity” over its “issue price.” The issue price of a publicly offered security that is issued for money is the initial offering price to the public, excluding bond houses and brokers, at which a substantial number of the securities was sold. The issue price also includes any accrued interest attributable to the period between the beginning of the first remittance period and the settlement date. The stated redemption price at maturity of a security that has a notional principal amount or receives principal only or that is or may be an accrual security is equal to the sum of all distributions to be made under the security. The stated redemption price at maturity of any other security is its stated principal amount, plus an amount equal to the excess, if any, of the interest payable on the first distribution date over the interest that accrues for the period from the settlement date to the first distribution date.

Notwithstanding the general definition, original issue discount will be treated as zero if the discount is less than 0.25% of the stated redemption price at maturity multiplied by its weighted average life. The weighted average life of a security is apparently computed for this purpose as the sum, for all distributions included in the stated redemption price at maturity, of the amounts determined by multiplying (1) the number of complete years (rounding down for partial years) from the settlement date until the date on which each distribution is expected to be made under the assumption that the mortgage loans prepay at the rate specified in the prospectus supplement by (2) a fraction, the numerator of which is the amount of the distribution and the denominator of which is the security’s stated redemption price at maturity. If original issue discount is treated as zero under this rule, the actual amount of original issue discount must be allocated to the principal distributions on the security and, when each distribution is received, gain equal to the discount allocated to the distribution will be recognized.

Section 1272(a)(6) contains special original issue discount rules directly applicable to REMIC securities and certain accelerable debt securities. Section 1272(a)(6) applies to grantor trust securities for tax years beginning after August 5, 1997. Under these rules, (1) the amount and rate of accrual of original issue discount on each series of securities will be based on (x) the prepayment assumption, and (y) in the case of a security calling for a variable rate of interest, an assumption that the value of the index upon which the variable rate is based remains equal to the value of that rate on the settlement date, and (2) adjustments will be made in the amount of discount accruing in each taxable year in which the actual prepayment rate differs from the prepayment assumption.

Section 1272(a)(6)(B)(iii) requires that the prepayment assumption used to calculate original issue discount be determined in the manner prescribed in Treasury regulations. To date, no such regulations have been promulgated. The legislative history of this Code provision indicates that the assumed prepayment rate must be the rate used by the parties in pricing the particular transaction. The depositor anticipates that the prepayment assumption for each series of securities will be consistent with this standard. The depositor makes no representation, however, that the mortgage loans for a given series will prepay at the rate reflected in the prepayment assumption for that series or at any other rate. Each investor must make its own

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decision as to the appropriate prepayment assumption to be used in deciding whether or not to purchase any of the securities.

Each beneficial owner must include in gross income the sum of the “daily portions” of original issue discount on its security for each day during its taxable year on which it held the security. For this purpose, in the case of an original beneficial owner, the daily portions of original issue discount will be determined as follows. A calculation will first be made of the portion of the original issue discount that accrued during each “accrual period.” The trustee will supply, at the time and in the manner required by the IRS, to beneficial owners, brokers and middlemen information with respect to the original issue discount accruing on the securities. The trustee will report original issue discount based on accrual periods of no longer than one year either (1) beginning on a distribution date or, in the case of the first accrual period, the settlement date, and ending on the day before the next distribution date or (2) beginning on the next day following a distribution date and ending on the next distribution date.

Under section 1272(a)(6), the portion of original issue discount treated as accruing for any accrual period will equal the excess, if any, of (1) the sum of (A) the present values of all the distributions remaining to be made on the security, if any, as of the end of the accrual period and (B) the distribution made on the security during the accrual period of amounts included in the stated redemption price at maturity, over (2) the adjusted issue price of the security at the beginning of the accrual period. The present value of the remaining distributions referred to in the preceding sentence will be calculated based on (1) the yield to maturity of the security, calculated as of the settlement date, giving effect to the prepayment assumption, (2) events (including actual prepayments) that have occurred prior to the end of the accrual period, (3) the prepayment assumption, and (4) in the case of a security calling for a variable rate of interest, an assumption that the value of the index upon which the variable rate is based remains the same as its value on the settlement date over the entire life of the security. The adjusted issue price of a security at any time will equal the issue price of the security, increased by the aggregate amount of previously accrued original issue discount with respect to that security, and reduced by the amount of any distributions made on the security as of that time of amounts included in the stated redemption price at maturity. The original issue discount accruing during any accrual period will then be allocated ratably to each day during the period to determine the daily portion of original issue discount.

In the case of grantor trust strip securities and some REMIC securities, the calculation described in the preceding paragraph may produce a negative amount of original issue discount for one or more accrual periods. No definitive guidance has been issued regarding the treatment of the negative amounts. The legislative history to section 1272(a)(6) indicates that the negative amounts may be used to offset subsequent positive accruals but may not offset prior accruals and may not be allowed as a deduction item in a taxable year in which negative accruals exceed positive accruals. Beneficial owners of the securities should consult their own tax advisors concerning the treatment of negative accruals.

A subsequent purchaser of a security that purchases the security at a cost less than its remaining stated redemption price at maturity also will be required to include in gross income for each day on which it holds the security, the daily portion of original issue discount with respect to that security, but reduced, if the cost of the security to the purchaser exceeds its adjusted issue

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price, by an amount equal to the product of (1) the daily portion and (2) a constant fraction, the numerator of which is the excess and the denominator of which is the sum of the daily portions of original issue discount on the security for all days on or after the day of purchase.

Market Discount. A beneficial owner that purchases a security at a market discount, that is, at a purchase price less than the remaining stated redemption price at maturity of the security, or, in the case of a security with original issue discount, its adjusted issue price, will be required to allocate each principal distribution first to accrued market discount on the security, and recognize ordinary income to the extent that the distribution does not exceed the aggregate amount of accrued market discount on the security not previously included in income. With respect to securities that have unaccrued original issue discount, the market discount must be included in income in addition to any original issue discount. A beneficial owner that incurs or continues indebtedness to acquire a security at a market discount may also be required to defer the deduction of all or a portion of the interest on the indebtedness until the corresponding amount of market discount is included in income. In general terms, market discount on a security may be treated as accruing either (1) under a constant yield method or (2) in proportion to remaining accruals of original issue discount, if any, or if none, in proportion to remaining distributions of interest on the security, in any case taking into account the prepayment assumption. The trustee will make available, as required by the IRS, to beneficial owners of securities information necessary to compute the accrual of market discount.

Notwithstanding the above rules, market discount on a security will be considered to be zero if that discount is less than 0.25% of the remaining stated redemption price at maturity of the security multiplied by its weighted average remaining life. Weighted average remaining life presumably would be calculated in a manner similar to weighted average life, taking into account payments, including prepayments, prior to the date of acquisition of the security by the subsequent purchaser. If market discount on a security is treated as zero under this rule, the actual amount of market discount must be allocated to the remaining principal distributions on the security and, when each distribution is received, gain equal to the discount allocated to that distribution will be recognized.

Securities Purchased At A Premium. A purchaser of a security that purchases the security at a cost greater than its remaining stated redemption price at maturity will be considered to have purchased that “premium security” at a premium. The purchaser need not include in income any remaining original issue discount and may elect, under section 171(c)(2) to treat the premium as an “amortizable bond premium.” If a beneficial owner makes that election, the amount of any interest payment that must be included in the beneficial owner’s income for each period ending on a distribution date will be reduced by the portion of the premium allocable to each period based on the instrument’s yield to maturity. Further, the beneficial owner must make corresponding reductions in his or her basis in the security. The premium amortization should be made using constant yield principles. If the election is made by the beneficial owner, the election will also apply to all bonds the interest on which is not excludible from gross income held by the beneficial owner at the beginning of the first taxable year to which the election applies and to all the fully taxable bonds thereafter acquired by it, and is irrevocable without the consent of the IRS. If the election is not made, (1) the beneficial owner must include the full amount of each interest payment in income as it accrues, and (2) the premium must be allocated to the principal distributions on the instrument and, when each

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principal distribution is received, a loss equal to the premium allocated to that distribution ordinarily will be recognized. Any tax benefit from the premium not previously recognized will be taken into account in computing gain or loss upon the sale or disposition of the instrument.

Some securities may provide for only nominal distributions of principal in comparison to the distributions of interest thereon. It is possible that the IRS or the Treasury Department may issue guidance excluding some securities from the rules generally applicable to debt instruments issued at a premium. In particular, it is possible that a security will be treated as having original issue discount equal to the excess of the total payments to be received thereon over its issue price. In that event, section 1272(a)(6) would govern the accrual of the original issue discount, but a beneficial owner would recognize substantially the same income in any given period as would be recognized if an election were made under section 171(c)(2). Unless and until the Treasury Department or the IRS publishes specific guidance relating to the tax treatment of these securities, the trustee intends to furnish tax information to beneficial owners of the securities in accordance with the rules described in the preceding paragraph.

Special Election. For any security acquired on or after April 4, 1994, a beneficial owner may elect to include in gross income all “interest” that accrues on the security by using a constant yield method. For purposes of the election, the term “interest” includes stated interest, acquisition discount, original issue discount, de minimis original issue discount, market discount, de minimis market discount and unstated interest as adjusted by any amortizable bond premium or acquisition premium. A beneficial owner should consult its own tax advisor regarding the time and manner of making and the scope of the election and the implementation of the constant yield method.

Backup Withholding

Distributions of interest and principal, as well as distributions of proceeds from the sale of securities, may be subject to the “backup withholding tax” under section 3406, if recipients of the distributions fail to furnish to the payor information, including their taxpayer identification numbers, or otherwise fail to establish an exemption from the tax. Holders that are not exempt recipients must provide Form W-9 or the equivalent to avoid having such amounts withheld. Any amounts deducted and withheld from a distribution to a recipient would be allowed as a credit against that recipient’s federal income tax. Furthermore, penalties may be imposed by the IRS on a recipient of distributions that is required to supply information but that does not do so in the proper manner.

Foreign Investors

General. U.S. withholding regulations require, in the case of securities held by a foreign partnership, that (x) certification of exemption from U.S. tax be provided by the partners rather than by the foreign partnership and (y) the partnership provide information, including a United States taxpayer identification number. A look-through rule would apply in the case of a tiered partnership. Non-U.S. Persons should consult their own tax advisors regarding the application to them of U.S. withholding regulations.

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Grantor Trust Securities And REMIC Regular Securities. Distributions made on a grantor trust security, debt security or a REMIC regular security to, or on behalf of, a beneficial owner that is not a U.S. Person generally will be exempt from U.S. federal income and withholding taxes, provided the requirements set forth below are met. The term “U.S. Person” means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, an estate that is subject to U.S. federal income tax regardless of the source of its income, or a trust if a court within the United States can exercise primary supervision over its administration and at least one United States fiduciary has the authority to control all substantial decisions of the trust. This exemption is applicable provided (a) the beneficial owner is not subject to U.S. tax as a result of a connection to the United States other than ownership of the security, (b) the beneficial owner signs a statement under penalties of perjury that certifies that the beneficial owner is not a U.S. Person, and provides the name, address and taxpayer identification numbers (in certain circumstances) of that beneficial owner, and (c) the last U.S. Person in the chain of payment to the beneficial owner receives a statement from the beneficial owner or a financial institution holding on its behalf and does not have actual knowledge that the statement is false. Beneficial owners should be aware that the IRS might take the position that this exemption does not apply to a beneficial owner that also owns 10% or more of the REMIC residual securities of any REMIC trust, or to a beneficial owner that is a “controlled foreign corporation” described in section 881(c)(3)(C).

REMIC Residual Securities. Amounts distributed to a beneficial owner of a REMIC residual security that is a non-U.S. Person generally will be treated as interest for purposes of applying the 30%, or lower treaty rate, withholding tax on income that is not effectively connected with a U.S. trade or business. In no case will any portion of REMIC income that constitutes an excess inclusion be entitled to any exemption from the withholding tax or a reduced treaty rate for withholding. See “—REMIC Securities—Taxation of Beneficial Owners of REMIC Residual Securities—Excess Inclusions.”

Partnership Interests. Depending upon the particular terms of the trust agreement and servicing agreement, a trust may be considered to be engaged in a trade or business in the United States for purposes of federal withholding taxes with respect to non-U.S. Persons. If the trust is considered to be engaged in a trade or business in the United States for those purposes and the trust is treated as a partnership, the income of the trust distributable to a non-U.S. person would be subject to federal withholding tax. Also, in those cases, a non-U.S. beneficial owner of a partnership interest that is a corporation may be subject to the branch profits tax. If the trust is notified that a beneficial owner of a partnership interest is a foreign person, the trust may withhold as if it were engaged in a trade or business in the United States in order to protect the trust from possible adverse consequences of a failure to withhold. A foreign holder generally would be entitled to file with the IRS a claim for refund with respect to withheld taxes, taking the position that no taxes were due because the trust was not engaged in a U.S. trade or business.

STATE TAX CONSIDERATIONS

In addition to the federal income tax consequences described in “Material Federal Income Tax Consequences,” potential investors should consider the state and local income tax consequences of the acquisition, ownership, and disposition of the securities. State and local

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income tax law may differ substantially from the corresponding federal law, and this discussion does not purport to describe any aspect of the income tax laws of any state or locality. Therefore, potential investors should consult their own tax advisors with respect to the various state and local tax consequences of an investment in the securities.

CONSIDERATIONS FOR BENEFIT PLAN INVESTORS

Investors Affected

A federal law called the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), the Code and a variety of state laws may affect your decision whether to invest in the securities if you are investing for:

- a pension or other employee benefit plan of employers in the private sector that is regulated under ERISA, referred to as an ERISA plan,
- an individual retirement account or annuity, called an IRA, or a pension or other benefit plan for self-employed individuals, called a Keogh plan,
- a pension and other benefit plan for the employees of state and local governments, called a government plan, or
- an insurance company general or separate account, a bank collective investment fund or other pooled investment vehicle which includes the assets of ERISA plans, IRAs, Keogh plans, and/or government plans.

A summary of the effects of those laws follows.

Fiduciary Standards For ERISA Plans And Related Investment Vehicles

ERISA imposes standards of fiduciary conduct on those who are responsible for operating ERISA plans or investing their assets. These standards include requirements that fiduciaries act prudently in making investment decisions and diversify investments so as to avoid large losses unless under the circumstances it is clearly prudent not to do so. If you are a fiduciary of an ERISA plan, you are subject to these standards in deciding whether to invest the plan’s assets in securities. You may find the full text of the applicable standards of fiduciary conduct in section 404 of ERISA. If you are a fiduciary of an ERISA Plan, you should consult with your advisors concerning your investment decision in the context of section 404 of ERISA.

Prohibited Transaction Issues For ERISA Plans, Keogh Plans, IRAs And Related Investment Vehicles

General. Transactions involving the assets of an ERISA plan, a Keogh plan or an IRA, called prohibited transactions, may result in the imposition of excise taxes and, in the case of an ERISA plan, civil money penalties and certain other extraordinary remedies. A prohibited transaction occurs when a person with a pre-existing relationship to an ERISA plan, a Keogh plan or IRA, known as a party in interest or a disqualified person, engages in a transaction involving the assets of the plan or IRA. You may find the laws applicable to prohibited

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transactions in section 406 of ERISA and section 4975 of the Code. There are statutory and regulatory prohibited transaction exemptions, as well as administrative exemptions granted by the United States Department of Labor. Prohibited transaction exemptions waive the excise taxes, civil money penalties and other remedies for certain prohibited transactions which are structured to satisfy prescribed conditions.

Purchase And Sale of Securities. If an ERISA plan, a Keogh plan, an IRA or a related investment vehicle acquires securities from, or sells securities to, a party in interest or a disqualified person, a prohibited transaction may occur. In such a case, the party in interest or disqualified person might be liable for excise taxes unless a prohibited transaction exemption is available. Where a prohibited transaction involves an ERISA plan or related investment vehicle, the fiduciary who causes or permits the prohibited transaction may also be liable for civil money penalties.

Transactions Incidental to The Operation of The Trust. Transactions involving the assets of a trust may also give rise to prohibited transactions to the extent that an investment in securities causes the assets of the trust to be considered assets, commonly known as plan assets, of an ERISA plan, a Keogh plan, an IRA or a related investment vehicle. Whether an investment in securities will cause a trust’s assets to be treated as plan assets depends on whether the securities are debt or equity investments for purposes of ERISA. The United States Department of Labor has issued regulations, commonly known as the plan asset regulations, which define debt and equity investments. The plan asset regulations appear at 29 C.F.R. sections 2510.3-101. Under the plan asset regulations, a trust’s assets will not be plan assets of an ERISA plan, Keogh plan, IRA or related investment vehicle that purchases securities if the securities are considered debt. For this purpose, the securities will be debt only if they are treated as indebtedness under applicable local law and do not have any substantial equity features. The term substantial equity features has no definition under the plan asset regulations. In the absence of such a definition, we cannot assure you that the securities, either when they are issued or at any later date, will have no substantial equity features. The prospectus supplement for a particular offering of securities may tell you whether we believe the securities are debt for ERISA purposes. To the extent that the securities do not constitute debt for purposes of ERISA, they will constitute equity investments. In this case, an ERISA plan, Keogh plan, IRA or related investment vehicle that acquires securities would also acquire an undivided interest in each asset of the trust unless (i) the trust is an operating company or a venture capital operating company as defined in the plan asset regulations, (ii) the securities are publicly offered securities as defined in the plan asset regulations, or (iii) benefit plan investors as defined in the plan asset regulations do not own 25% or more of the securities or any other class of equity security issued by the trust. If the securities may be treated as an equity investment under the plan asset regulations, the prospectus supplement may tell you whether we believe any of these exceptions will apply.

Possible Exemptive Relief

The United States Department of Labor has issued prohibited transaction exemptions, which conditionally waive excise taxes and civil money penalties that might otherwise apply to a type of transaction.

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Class Exemptions. The United States Department of Labor has issued Prohibited Transaction Class Exemptions, or PTCEs, which provide that exemptive relief is available to any party to any transaction which satisfies the conditions of the exemption. A partial listing of the PTCEs which may be available for investments in securities follows. Each of these exemptions is available only if specified conditions are satisfied and may provide relief for some, but not all, of the prohibited transactions that a particular transaction may cause. The prospectus supplement for a particular offering of securities may tell you whether the securities themselves satisfy the conditions of these exemptions. You should consult with your advisors regarding the specific scope, terms and conditions of an exemption as it applies to you, as an investor, before relying on that exemption’s availability.

Class Exemptions For Purchases And Sales of Securities. The following exemptions may apply to a purchase or sale of securities between an ERISA plan, a Keogh plan, an IRA or related investment vehicle, on the one hand, and a party in interest or disqualified person, on the other hand:

- PTCE 84-14, which exempts certain transactions approved on behalf of the plan by a qualified professional asset manager, or QPAM.
- PTCE 75-1, which exempts certain transactions between plans and certain broker-dealers.
- PTCE 90-1, which exempts certain transactions entered into by insurance company pooled separate accounts in which plans have made investments.
- PTCE 91-38, which exempts certain transactions entered into by bank collective investment funds in which plans have made investments.
- PTCE 96-23, which exempts certain transactions approved on behalf of a plan by an in-house investment manager, or INHAM.
- PTCE 95-60, which exempts certain transactions involving insurance company general accounts.

These exemptions do not expressly address prohibited transactions that might result from transactions incidental to the operation of a trust. We cannot assure you that a purchase or sale of securities in reliance on one of these exemptions will not give rise to indirect, non-exempt prohibited transactions.

Individual Underwriter Exemptions. The Department of Labor has issued to various underwriters individual prohibited transaction exemptions, which generally exempt from the application of the prohibited transaction provisions of section 406(a), 406(b)(1), 406(b)(2) and 407(a) of ERISA and the excise taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code, transactions with respect to the initial purchase, the holding and the subsequent resale by plans of securities in pass-through trusts that consist of secured receivables, secured loans and other secured obligations that meet the conditions and requirements of the underwriter exemptions, as well as transactions incidental to the operation of the trust.

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Among the conditions that must be satisfied in order for the underwriter exemptions to apply to offered securities are the following:

- the acquisition of the securities by a plan is on terms, including the price for the securities, that are at least as favorable to the plan as they would be in an arm’s-length transaction with an unrelated party;
- the rights and interests evidenced by the securities acquired by the plan are not subordinated to the rights and interests evidenced by other securities of the trust, other than in the case of a “designated transaction”, as defined below;
- the securities acquired by the plan have received a rating at the time of the acquisition that is one of the three (or in the case of a designated transaction, four) highest generic rating categories from Standard & Poor’s, a division of the McGraw-Hill Companies, Inc., Moody’s Investors Service, Inc. or Fitch Ratings (hereinafter called the Rating Agencies);
- the trustee of the trust is not an affiliate of the trust sponsor, any servicer, any insurer, any swap counterparty or any obligor with respect to obligations or receivables constituting more than 5% of the aggregate unamortized principal balance of the assets in the trust, determined on the date of initial issuance of securities, or any affiliate of any of these entities;
- the sum of all payments made to and retained by the underwriters in connection with the distribution of the securities represents not more than reasonable compensation for underwriting the securities; the sum of all payments made to and retained by the originators and the sponsor in exchange for the assignment of the loans to the trust estate represents not more than the fair market value of the loans; the sum of all payments made to and retained by any servicer represents not more than reasonable compensation for that person’s services under the pooling and servicing agreement and reimbursement of that person’s reasonable expenses;
- the plan investing in the securities is an “accredited investor” as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and
- in the event that all of the obligations used to fund the trust have not been transferred to the trust on the closing date, additional obligations of the types specified in the prospectus supplement and/or pooling and servicing agreement having an aggregate value equal to no more than 25% of the total principal amount of the securities being offered by the trust may be transferred to the trust, in exchange for amounts credited to the account funding the additional obligations, within a funding period of no longer than 90 days or 3 months following the closing date. Described below are additional conditions relating to the use of pre-funding accounts.

In addition, one subset of designated transactions, residential (one-to four-family) and home equity loans, may be less than fully secured, provided that the rights and interests

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evidenced by securities issued in such designated transactions are: (a) not subordinated to the rights and interests evidenced by securities of the same trust fund; (b) such securities acquired by the plan have received a rating from the Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (c) any loan included in the corpus or assets of the trust fund is secured by collateral whose fair market value on the closing date of the designated transactions is at least equal to 80% of the sum of: (i) the outstanding principal balance due under the loan which is held by the trust fund and (ii) the outstanding principal balance(s) of any other loan(s) of higher priority (whether or not held by the trust fund) which are secured by the same collateral.

The trust estate must also meet the following requirements:

- the corpus of the trust estate must consist solely of assets of the type that have been included in other investment pools;
- securities in the other investment pools must have been rated in one of the three highest rating categories (or, in the case of a designated transaction, four) of the Rating Agencies for at least one year prior to the plan’s acquisition of securities; and
- securities evidencing interests in other investment pools must have been purchased by investors other than plans for at least one year prior to the plan’s acquisition of securities.

For the purposes of the underwriter exemptions, “designated transactions” include a transaction in which the assets underlying the securities consist of single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by a single-family residential, multi-family, commercial real property or leasehold interests therein.

Moreover, the underwriter exemptions provide relief from self-dealing/conflict of interest prohibited transactions that may occur when the plan fiduciary causes a plan to acquire certificates in a trust in which the fiduciary, or its affiliate, is an obligor on the receivables held in the trust; although, among other requirements, (1) in the case of an acquisition in connection with the initial issuance of securities, at least fifty percent of each class of securities in which plans have invested is acquired by persons independent of the restricted group and at least fifty percent of the aggregate interest in the trust is acquired by persons independent of the restricted group; (2) the fiduciary, or its affiliate, is an obligor with respect to five percent or less of the fair market value of the obligations contained in the trust; (3) the plan’s investment in securities of any class does not exceed twenty-five percent of all of the securities of that class outstanding at the time of the acquisition; and (4) immediately after the acquisition, no more than twenty-five percent of the assets of the plan with respect to which the person is a fiduciary are invested in securities representing an interest in one or more trusts containing assets sold or serviced by the same entity. The underwriter exemptions do not apply to plans sponsored by the “restricted group,” which is the sponsor, the underwriters, the trustee, any servicer, any obligor with respect to mortgage loans included in the trust fund constituting more than five percent of the aggregate unamortized principal balance of the assets in the trust fund, or any affiliate of the parties.

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Conditions For Pre-funding Accounts. If the trust includes a pre-funding account, the following conditions also apply:

- The ratio of the amount allocated to the pre-funding account to the total principal amount of the securities being offered must be less than or equal to 25%.
- All additional obligations transferred to the trust after the closing date of the offering of securities must meet the same terms and conditions of eligibility for inclusion in the trust as the obligations placed in the trust at or prior to the closing date, and these terms and conditions must have been approved by the Rating Agencies. These terms and conditions may be changed if the changes receive prior approval of either a Rating Agency or a majority vote of outstanding certificate holders.
- After the transfer of additional obligations to the trust, the securities must have a credit rating from one of the Rating Agencies at least as high as the rating assigned at the time of the initial issuance of the securities.
- The use of pre-funding does not, in and of itself, cause a reduction of 100 basis points or more in the weighted average annual percentage interest rate of all of the obligations included in the trust between the time of initial issuance of the securities and the end of the pre-funding period.
- Either the characteristics of the obligations added to the trust during the pre-funding period must be monitored by an independent insurer or other independent credit support provider, or an independent accountant must furnish a letter, prepared using the same type of procedures as were applicable to the obligations which were transferred to the trust as of the closing date of the initial offering of securities, stating whether or not the characteristics of the additional obligations conform to the characteristics described in the prospectus or prospectus supplement.
- The pre-funding period must end no later than three months, or 90 days if later, after the closing date of the initial issuance of securities, or earlier in certain circumstances if the unused balance in the pre-funding account falls below a specified minimum level or an event of default occurs.
- Amounts transferred to any pre-funding account and/or capitalized interest account used in connection with the pre-funding may be invested only in investments which are described in the pooling and servicing agreement, are permitted by the Rating Agencies rating the securities and have been rated, or the obligor has been rated, in one of the three highest generic rating categories by one of the Rating Agencies or else are either direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States.
- The prospectus or prospectus supplement must describe the duration of the pre-funding period.

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- The trustee, or any agent with which the trustee contracts to provide trust services, must be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities with ERISA and the trustee, as legal owner of the assets of the trust, must enforce all the rights created in favor of securityholders of the trust, including ERISA plans.

The prospectus supplement will indicate if an underwriter exemption that does not apply to a series of securities during a prefunding period will apply thereafter to permit the securities to be purchased with plan assets after the prefunding period is completed.

Class Exemptions For Purchases And Sales of Securities And Transactions Incidental to The Operation of The Trust. In addition to the underwriter exemptions, the Department of Labor has issued Prohibited Transaction Class Exemption (“PTCE”) 83-1 which provides an exemption for transactions involving the sale or exchange of residential mortgage pool pass-through certificates by plans and for transactions in connection with the servicing and operation of the mortgage pool.

In addition, PTCE 95-60 may provide an exemption for transactions which meet the conditions of the underwriter exemptions other than certain conditions relating to subordination and rating of the securities.

Bonds. Under the plan assets regulation issued by the United States Department of Labor, the assets of the trust would be treated as plan assets of a plan for the purposes of ERISA and the Internal Revenue Code only if the plan acquired an equity interest in the trust and none of the exceptions contained in the plan assets regulation were applicable. An “equity interest” is defined under the plan assets regulation as an interest other than an instrument which is treated as indebtedness under applicable local law and which has no substantial equity features. Accordingly, if the bonds are treated as having substantial equity features, the purchase, holding and resale of the bonds could result in a transaction that is prohibited under ERISA or the Internal Revenue Code. If the bonds are treated as indebtedness without substantial equity features, the trust’s assets would not be deemed assets of a plan. However, in that case, the acquisition or holding of the bonds by or on behalf of a plan could nevertheless give rise to a prohibited transaction if the acquisition and holding of bonds by or on behalf of a plan was deemed to be a prohibited loan to a party in interest with respect to the plan. Exemptions from the prohibited transaction rules could be applicable to the purchase and holding of bonds by a plan, depending on the type and circumstances of the plan fiduciary making the decision to acquire the bonds. Included among these exemptions are: PTCE 84-14, regarding transactions effected by “qualified professional asset managers”; PTCE 90-1, regarding transactions entered into by insurance company pooled separate accounts; PTCE 91-38, regarding transactions entered into by bank collective investment funds; PTCE 95-60, regarding transactions entered into by insurance company general accounts; and PTCE 96-23, regarding transactions effected by “in-house asset managers”. Each purchaser and each transferee of a bond that is treated as debt for purposes of the plan assets regulation may be required to represent and warrant that its purchase and holding of the bond will be covered by one of the exemptions listed above or by another Department of Labor class exemption.

In addition, the underwriter exemptions may be available for the purchase of bonds.

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Consultation With Counsel. The prospectus supplement for each series of securities will provide further information which plans should consider before purchasing the offered securities. A plan fiduciary considering the purchase of securities should consult its tax and/or legal advisors regarding whether the assets of the trust would be considered plan assets, the possibility of exemptive relief from the prohibited transaction rules and other ERISA issues and their potential consequences. Moreover, each plan fiduciary should determine whether under the general fiduciary standards of investment prudence and diversification, an investment in the securities is appropriate for the plan, taking into account the overall investment policy of the plan and the composition of the plan’s investment portfolio. The sale of securities to a plan is in no respect a representation by the company or the underwriters that this investment meets all relevant requirements with respect to investments by plans generally or any particular plan or that this investment is appropriate for plans generally or any particular plan.

LEGAL INVESTMENT

The prospectus supplement for each series of securities will specify which classes of securities of the series, if any, will constitute mortgage related securities for purposes of SMMEA. Any class of securities that is not rated in one of the two highest rating categories by one or more nationally recognized statistical rating agencies, or that represents an interest in a trust fund that includes junior mortgage loans, will not constitute mortgage related securities for purposes of SMMEA. Mortgage related securities are legal investments to the same extent that, under applicable law, obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof constitute legal investments for persons, trusts, corporations, partnerships, associations, business trusts and business entities, including depository institutions, insurance companies and pension funds created pursuant to or existing under the laws of the United States or of any state, the authorized investments of which are subject to state regulation. Under SMMEA, if a state enacted legislation prior to October 3, 1991 specifically limiting the legal investment authority of any entities with respect to mortgage related securities, the securities would constitute legal investments for entities subject to that legislation only to the extent provided in that legislation. SMMEA provides, however, that in no event will the enactment of any legislation of this kind affect the validity of any contractual commitment to purchase, hold or invest in mortgage-related securities, or require the sale or other disposition of such securities, so long as that contractual commitment was made or the securities were acquired prior to the enactment of that legislation.

SMMEA also amended the legal investment authority of federally chartered depository institutions as follows: federal savings and loan associations and federal savings banks may invest in, sell or otherwise deal with mortgage-related securities without limitation as to the percentage of their assets represented thereby, federal credit unions may invest in those securities, and national banks may purchase those securities for their own account without regard to the limitations generally applicable to investment securities set forth in 12 U.S.C. 24 (Seventh), subject in each case to regulations as the applicable federal regulatory authority may prescribe.

On April 23, 1998, the Federal Financial Institutions Examination Council issued a revised supervisory policy statement applicable to all depository institutions, setting forth guidelines for investments in high-risk mortgage securities. The 1998 policy statement has been

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adopted by the Federal Reserve Board, the Office of the Comptroller of the Currency, the FDIC, the National Credit Union Administration and the Office of Thrift Supervision with an effective date of May 26, 1998. The 1998 policy statement rescinds a 1992 policy statement that had required, prior to purchase, a depository institution to determine whether a mortgage derivative product that it is considering acquiring is high-risk, and, if so, that the proposed acquisition would reduce the institution’s overall interest rate risk. The 1998 policy statement eliminates former constraints on investing in certain high-risk mortgage derivative products and substitutes broader guidelines for evaluating and monitoring investment risk.

On December 1, 1998, the Office of Thrift Supervision issued Thrift Bulletin 13a, entitled, “Management of Interest Rate Risk, Investment Securities, and Derivatives Activities,” which is applicable to thrift institutions regulated by the OTS. Thrift Bulletin 13a has an effective date of December 1, 1998. One of the primary purposes of Thrift Bulletin 13a is to require thrift institutions, prior to taking any investment position, to (1) conduct a pre-purchase portfolio sensitivity analysis for any significant transaction involving securities or financial derivatives and (2) conduct a pre-purchase price sensitivity analysis of any complex security or financial derivative. For the purposes of Thrift Bulletin 13a, complex security includes, among other things, any collateralized mortgage obligation or REMIC security, other than any plain vanilla mortgage pass-through security, that is, securities that are part of a single class of securities in the related pool, that are non-callable and do not have any special features. Accordingly, the offered securities may be viewed as complex securities. The OTS recommends that while a thrift institution should conduct its own in-house pre-acquisition analysis, it may rely on an analysis conducted by an independent third-party as long as management understands the analysis and its key assumptions. Further, Thrift Bulletin 13a recommends that the use of complex securities with high price sensitivity be limited to transactions and strategies that lower a thrift institution’s portfolio interest rate risk. Thrift Bulletin 13a warns that an investment in complex securities by thrift institutions that do not have adequate risk measurement, monitoring and control systems may be viewed by the OTS examiners as an unsafe and unsound practice.

Prospective investors in the securities, including in particular the classes of securities that do not constitute mortgage-related securities for purposes of SMMEA, should consider the matters discussed in the following paragraph.

There may be other restrictions on the ability of certain investors, including depository institutions, either to purchase securities or to purchase securities representing more than a specified percentage of the investor’s assets. Investors should consult their own legal advisors in determining whether and to what extent the securities constitute legal investments for those investors or are subject to investment, capital or other restrictions, and, if applicable, whether SMMEA has been overridden in any jurisdiction relevant to that investor.

Investors whose investment authority is subject to legal restrictions should consult their own legal advisors to determine whether and to what extent the securities constitute legal investments for them.

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RATINGS

It is a condition to the issuance of the securities of each series offered by this prospectus and the accompanying prospectus supplement that they shall have been rated in one of the four highest rating categories by the nationally recognized statistical rating agency or agencies specified in the prospectus supplement.

AVAILABLE INFORMATION

The depositor has filed a registration statement with respect to the securities with the Securities and Exchange Commission. This prospectus, which forms a part of the registration statement, and the prospectus supplement relating to each series of securities contain summaries of the material terms of the agreements, but do not contain all of the information in the registration statement. For further information, reference is made to the registration statement and its exhibits. The registration statement and exhibits can be inspected and copied at prescribed rates at the public reference facilities maintained by the Securities and Exchange Commission at its Public Reference Section, 450 Fifth Street, NW, Washington, D.C. 20549, and at its Regional Office located as follows, Midwest Regional Office, 500 West Madison Street, Chicago, Illinois 60661; and Northeast Regional Office, Seven World Trade Center, New York, New York 10048. In addition, the Securities and Exchange Commission maintains a World Wide Web site at <http://www.sec.gov> containing reports, proxy and information statements and other information regarding registrants, including the depositor, that file electronically with the Securities and Exchange Commission.

Each trust will be required to file reports with the Securities and Exchange Commission as required by the Securities Exchange Act of 1934. The depositor intends to cause each trust to suspend filing the reports if and when the reports are no longer required under said act.

No person has been authorized to give any information or to make any representation other than those contained in this prospectus and any prospectus supplement and you must not rely upon such information or representations. This prospectus and any prospectus supplement do not constitute an offer to sell or a solicitation of an offer to buy any securities other than the securities offered hereby and thereby nor an offer of the securities to any person in any state or other jurisdiction in which that offer would be unlawful. You should not assume that information in this prospectus is correct as of any time subsequent to its date.

INCORPORATION OF DOCUMENTS BY REFERENCE

All documents that we subsequently file with the Securities and Exchange Commission under sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, after the date of this prospectus shall be incorporated by reference in this prospectus and be a part of this prospectus. Any statement contained in a document incorporated by reference shall be modified or superseded if a statement contained in this prospectus, the prospectus supplement or in any other document subsequently incorporated by reference modifies or replaces that statement.

The depositor will provide without charge, on request of each person to whom this prospectus is delivered, a copy of any of the documents that are incorporated by reference in this

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prospectus. Requests should be directed to NovaStar Mortgage Funding Corporation, 8140 Ward Parkway, Suite 300, Kansas City, Missouri 64114, telephone (816) 237-7000.

PLAN OF DISTRIBUTION

The depositor may offer each series of securities through one or more firms that may be designated at the time of each offering of the securities. The prospectus supplement will describe the specific terms of the offering of the series and of each class within the series, the names of the underwriters, the purchase price of the securities, the proceeds to the depositor from the sale, any securities exchange on which the securities may be listed, and, if applicable, the initial public offering prices, the discounts and commissions to the underwriters and any discounts and concessions allowed or reallocated to dealers. The place and time of delivery of each series will be stated in the prospectus supplement.

LEGAL MATTERS

Dewey Ballantine LLP, New York, New York, or any other counsel identified in the prospectus supplement, will pass upon legal matters for the depositor.

FINANCIAL INFORMATION

The depositor has determined that its financial statements are not material to the offering made hereby.

A new trust will be formed to own the primary assets and to issue each series of securities. Each new trust will have no assets or obligations prior to the issuance of the securities and will not engage in any activities other than those described in this prospectus. Accordingly, no financial statements with respect to the trusts will be included in this prospectus or any prospectus supplement.

A prospectus supplement and the related Form 8-K may contain financial statements of any credit enhancer.

NovaStar Mortgage Funding Trust, Series 2004-1
NovaStar Mortgage, Inc.
Seller and Servicer

NovaStar Mortgage Funding Corporation
Company
\$1,727,250,100
Asset-Backed Certificates,
Series 2004-1

Prospectus Supplement

Wachovia Securities

RBS Greenwich Capital

(Joint Lead Managers and Joint Book-Runners)

Deutsche Bank Securities

Morgan Stanley

(Co-Managers)

We suggest that you rely on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not authorized anyone to provide you with different information.

We are not offering the securities offered hereby in any state where the offer is not permitted. Dealers will be required to deliver a prospectus supplement and prospectus when acting as underwriters of the securities offered hereby and with respect to their unsold allotments or subscriptions. In addition, all dealers selling the securities, whether or not participating in this offering, may be required to deliver a prospectus supplement and prospectus until ninety days after the date of this prospectus supplement.

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AMENDMENT NO. 1 TO THE POOLING AND SERVICING AGREEMENT

EX-4.1 2 dex41.htm AMENDMENT NUMBER 1 TO THE POOLING AND SERVICING AGREEMENT Amendment Number 1 to the Pooling and Servicing Agreement

**AMENDMENT NO. 1
TO THE
POOLING AND SERVICING AGREEMENT**

Amendment No. 1, dated as of August 1, 2005 (the “Amendment”), to the Pooling and Servicing Agreement (the “Agreement”) dated as of March 1, 2004, by and among NovaStar Mortgage Funding Corporation (the “Company”), NovaStar Mortgage, Inc., as seller and servicer (the “Seller” or “Servicer”), Wachovia Bank, National Association, as custodian (the “Custodian”) and JPMorgan Chase Bank, National Association (formerly known as JPMorgan Chase Bank), as trustee (the “Trustee”). Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement and Appendix A thereto.

WHEREAS the parties hereto have entered into the Agreement;

WHEREAS the parties hereto now wish to amend certain provisions in the Agreement pursuant to Section 12.01 of the Agreement; and

WHEREAS the Trustee shall not consent to this Amendment to the Agreement unless it shall have first received an Opinion of Counsel, to the effect that (a) this Amendment (i) will not result in the imposition of a tax on any REMIC created hereunder constituting part of the Trust Fund pursuant to the REMIC Provisions or (ii) cause any REMIC created hereunder constituting part of the Trust to fail to qualify as a REMIC at any time that any Certificates are outstanding and that the Amendment is being made in accordance with the terms of the Agreement and (b) any applicable requirements and conditions set forth in the Agreement with respect to the adoption of amendments thereto have been complied with.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the parties hereto agree to amend the Agreement pursuant to Section 12.01 of the Agreement and restate certain provisions thereof as follows:

1. The Agreement is hereby amended to add a form of the Advance Facility Notice as Exhibit L (in the form attached hereto as Exhibit L) and a form of the written notice to be provided to the Trustee of an Advance or Servicing Advance pursuant to Section 3.26 of the Agreement as Exhibit M (in the form attached hereto as Exhibit M).

2. MI Claim Payment Advances.

(a) The following paragraph is hereby inserted between the current second and third paragraphs of Section 3.13(a) of the Pooling and Servicing Agreement;

In the event that a Mortgage Loan would be properly classified as a Liquidated Mortgage Loan but for the fact that not all MI Insurance Proceeds claimed under the related MI Policy have been received, the Servicer may, from its own funds, make an advance (an “MI Claim Payment Advance”) to the Collection Account in an

amount not to exceed the claimed amount of such MI Insurance Proceeds not yet received. The Servicer shall not make any MI Claim Payment Advance with respect to a claim under an MI

Policy (i) if an MI Insurer Insolvency Event has occurred and is continuing with respect to the related MI Insurer, or (ii) to the extent that the MI Insurer has indicated it will not pay the full amount of the claim. In the event that the MI Claim Payment Advance equals the claimed amount on such MI Policy, then upon the deposit of such MI Claim Payment Advance into the Collection Account the related Mortgage Loan shall be considered a “Liquidated Mortgage Loan.”

(b) Clause (a)(vi) of Section 3.07(a) of the Pooling and Servicing Agreement is hereby amended to read as follows:

(vi) to reimburse the Servicer or any Subservicer from Insurance Proceeds or Liquidation Proceeds relating to a particular Mortgage Loan for amounts expended by the Servicer or such Subservicer pursuant to Section 3.13, which amounts were expended (x) in good faith in connection with the restoration of the related Mortgaged Property which was damaged by the uninsured cause, (y) in connection with the liquidation of such Mortgage Loan, or (z) with respect to an MI Claim Payment Advance made by the Servicer with respect to such Mortgage Loan; provided, however, that reimbursements pursuant to clause (z) may only be made from MI Insurance Proceeds actually paid by the MI Insurer under the MI Policy related to such Mortgage Loan;

(c) The following definition of MI Claim Payment Advance is hereby added to Appendix A to the Pooling and Servicing Agreement and the definitions of Liquidation Proceeds, Nonrecoverable Advance, Realized Loss and Subsequent Recovery set forth in Appendix A to the Pooling and Servicing Agreement are hereby amended to read as follows:

“Liquidation Proceeds”: Proceeds (including Insurance Proceeds and any MI Claim Payment Advance) received in connection with the liquidation of any Mortgage Loan or related REO Property.

“MI Claim Payment Advance”: As defined in Section 3.13(a).

“Nonrecoverable Advance”: With respect to any Mortgage Loan:

(x) any Advance (other than an MI Claim Payment Advance) (i) which was previously made or is proposed to be made by the Servicer; and (ii) which, in the good faith judgment of the Servicer, will not or, in the case of a proposed Advance, would not, be ultimately recoverable by the Servicer from Liquidation Proceeds, Repurchase Price or future payments on such Mortgage Loan; and

(y) upon the final payment by the MI Insurer under an MI Policy for a Mortgage Loan with respect to which the Servicer has made an MI Claim Payment Advance, the amount, if any, by which an MI Claim Payment Advance made by the Servicer exceeds, the amount actually received as MI Insurance Proceeds from the related MI Insurer on account of the related claim; provided,

however that if an MI Insurer Insolvency Event occurs after the MI Claim Payment Advance has been made by the Servicer and before the full amount thereof has been reimbursed to the

Servicer from the related MI Insurance Proceeds, then any remaining, unreimbursed amount shall be considered a Nonrecoverable Advance as of the date of the MI Insurer Insolvency Event; provided, further, however, that if a Nonrecoverable Advance has been reimbursed to the Servicer and the MI Insurer that was subject to the MI Insurer Insolvency Event thereafter makes payment on account of the applicable MI Policy, such payments shall be deemed Subsequent Recoveries.

“Realized Loss”: With respect to each Mortgage Loan (or REO Property) as to which a Cash Liquidation or REO Disposition has occurred, an amount (not less than zero) equal to (i) the Principal Balance of the Mortgage Loan (or REO Property) as of the date of Cash Liquidation or REO Disposition, plus (ii) interest (and REO Imputed Interest, if any) at the Net Mortgage Rate from the Due Date as to which interest was last paid or advanced to Certificateholders up to the last day of the month in which the Cash Liquidation (or REO Disposition) occurred on the Principal Balance of such Mortgage Loan (or REO Property) outstanding during each Due Period that such interest was not paid or advanced, minus (iii) Net Liquidation Proceeds (after giving effect to coverage provided by any MI Claim Payment Advance and any MI Policy), if any, received with respect to such Cash Liquidation (or REO Disposition), minus the portion thereof reimbursable to the Servicer or any Subservicer with respect to related Advances or expenses as to which the Servicer or Subservicer is entitled to reimbursement thereunder but which have not been previously reimbursed, minus (iv) with respect to a Mortgage Loan on which a MI Claim Payment Advance has been made, the amount, if any, by which the MI Claim Payment Advance exceeds the related amount of MI Insurance Proceeds paid by the MI Insurer on account of the related Mortgage Loan upon the final payment by such MI Insurer (including payments made on or after the date on which such Mortgage Loan became a Liquidated Loan). With respect to each Mortgage Loan which has become the subject of a Deficient Valuation, the difference between the Principal Balance of the Mortgage Loan outstanding immediately prior to such Deficient Valuation and the Principal Balance of the Mortgage Loan as reduced by the Deficient Valuation. With respect to each Mortgage Loan which has become the object of a Debt Service Reduction, the amount of such Debt Service Reduction.

“Subsequent Recovery”: With respect to any Mortgage Loan that had previously been the subject of a Realized Loss, (a) any principal amount subsequently received in connection with such Mortgage Loan, plus (b) with respect to a Mortgage Loan on which a MI Claim Payment Advance has been made, the amount, if any, by which the related amount of MI Insurance Proceeds exceeds such MI Claim Payment Advance, plus (c) with respect to a Nonrecoverable Advance relating to a MI Insurer Insolvency Event, the amount, if any, by which the related MI Insurer subsequently pays in respect of such Nonrecoverable Advance.

3. Condition to effectiveness. As a condition to the effectiveness of this Amendment, an Opinion of Counsel satisfying the requirements of Section 12.01 of the Agreement has been received by the Parties hereto.

4. Effect of Amendment. This Amendment to the Agreement shall be effective and the

Agreement shall be deemed to be modified and amended in accordance herewith on the Distribution Date on the date on which the Trustee receives an executed copy of this Amendment. This Amendment, once effective, shall be effective as of the date first set forth above. The respective rights, limitations, obligations, duties, liabilities and immunities of the Company, the Seller, the Servicer, the Custodian and the Trustee shall hereafter be determined, exercised and enforced subject in all respects to such modifications and amendments, and all the terms and conditions of this Amendment shall be and be deemed to be part of the terms and conditions of the Agreement for any and all purposes. The Agreement, as amended hereby, is hereby ratified and confirmed in all respects.

5. The Agreement in Full Force and Effect as Amended. Except as specifically amended hereby, all the terms and conditions of the Agreement shall remain in full force and effect and, except as expressly provided herein, the effectiveness of this Amendment shall not operate as, or constitute a waiver or modification of, any right, power or remedy of any party to the Agreement. All references to the Agreement in any other document or instrument shall be deemed to mean the Agreement as amended by this Amendment.

6. Counterparts. This Amendment may be executed by the Parties in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. This Amendment shall become effective when counterparts hereof executed on behalf of such Party shall have been received.

7. Governing Law. This Amendment shall be construed in accordance with and governed by the laws of the State of New York applicable to agreements made and to be performed therein.

IN WITNESS WHEREOF, the Seller, the Servicer, the Company, the Trustee and the Custodian, have caused this Amendment to be duly executed by their officers thereunto duly authorized, all as of the day and year first above written.

NOVASTAR MORTGAGE
FUNDING CORPORATION,

as Company

By: /s/ Matt Kaltenrieder

Name Matt Kaltenrieder
:

Title: Vice President

NOVASTAR MORTGAGE, INC.,
as Servicer and as Seller

By: /s/ Matt Kaltenrieder

Name Matt Kaltenrieder
:

Title: Vice President

WACHOVIA BANK, NATIONAL
ASSOCIATION,
as Custodian

By: /s/ Sandy Berry

Name Sandy Berry
:

Title: Vice President

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
as Trustee

By: /s/ Andrew M. Cooper

Name Andrew M. Cooper
:

Title: Assistant Vice President

[Signature Page for Amendment No. 1 to the Pooling and Servicing Agreement]

Exhibit L

FORM OF ADVANCE FACILITY NOTICE

[date]

JPMorgan Chase Bank, National Association

4 New York Plaza, 6th Floor

New York, NY 10004-2477

Attention: Worldwide Securities Services/ Global Debt - NovaStar Series 2004-1

Re: Pooling and Servicing Agreement, dated as of March 1, 2004, by and among NovaStar Mortgage Funding Corporation (the "Company"), NovaStar Mortgage, Inc., as seller and servicer (the "Seller" or "Servicer"), Wachovia Bank, National Association, as custodian (the "Custodian") and JPMorgan Chase Bank, National Association (formerly known as JPMorgan Chase Bank), as trustee (the "Trustee") as amended by Amendment No. 1, dated as of August 1, 2005 (as amended, the "Agreement")

In accordance with Section 3.26(a) of the above-captioned Agreement, the undersigned hereby notifies the Trustee of the following information:

(a) The Servicer has entered into an Advance Facility.

(b) The Advancing Person is [_____].

(c) [_____], as the Servicer's Assignee, has the right to make withdrawals from the Collection Account subject to Section 3.26(b) of the Agreement to reimburse previously unreimbursed Advances and/or Servicing Advances pursuant to Section 3.07 of the Agreement.

[Remainder of Page Intentionally Left Blank]

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the above-captioned Agreement.

NOVASTAR MORTGAGE INC.

as Servicer

By: _____

Name:

Title:

[_____]
as Advancing Person

By: _____

Name:

Title:

The undersigned hereby acknowledges receipt of this notice pursuant to Section 3.26(a) of the Agreement.

ACKNOWLEDGED AND AGREED:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee

By: _____

Name
:

Title:

Exhibit M

FORM OF WRITTEN NOTICE TO THE TRUSTEE

JPMorgan Chase Bank, National Association
4 New York Plaza, 6th Floor
New York, NY 10004-2477
Attention: Worldwide Securities Services/ Global Debt - NovaStar Series 2004-1

Re: Pooling and Servicing Agreement, dated as of March 1, 2004, by and among NovaStar Mortgage Funding Corporation (the "Company"), NovaStar Mortgage, Inc., as seller and servicer (the "Seller" or "Servicer"), Wachovia Bank, National Association, as custodian (the "Custodian") and JPMorgan Chase Bank, National Association (formerly known as JPMorgan Chase Bank), as trustee (the "Trustee") as amended by Amendment No. 1, dated as of August 1, 2005 (as amended, the "Agreement")

In accordance with Section 3.26(a) and (b) of the above-captioned Agreement, [name of Advancing Person] hereby notifies the Trustee that [name of Advancing Person] has [purchased][funded][an Advance]/[a Servicing Advance] and is entitled to reimbursement from the Trustee pursuant to the terms of the Advance Facility.

(a) The amount of the reimbursement owed is an amount equal to \$[_____].

(b) Section [___] of the Agreement permits this [Advance]/[Servicing Advance] to be reimbursed.

(c) Section [] of the Advance Facility entitles [name of Advancing Person] to request reimbursement from the Trust, rather than from the Servicer.

(d) [name of Advancing Person]'s wire transfer instructions are as follows:

[insert wire transfer instructions]

(e) [Proof of Event of Default under the Advance Facility, if applicable.]

[Remainder of the Page Intentionally Left Blank]

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the above-captioned Agreement.

[]

as Advancing Person

By: _____

Name:

Title:

ACKNOWLEDGED AND AGREED:

NOVASTAR MORTGAGE INC.,

as Servicer

By: _____

Name:

Title:

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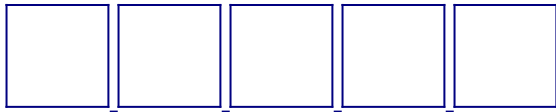
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Plaintiff's Pleaded Claims

Each Must Survive Threshold Foreclosure Elements

Plaintiff asserts the following claims and requests for relief:

- **Declaratory Judgment / Equitable Lien**
 - Seeking to reform or validate a defective mortgage instrument
(Complaint ¶¶ 5–9)1759 Non Foreclosure p4
- **Mortgage Foreclosure**
 - Seeking judgment of foreclosure, sale, bar of equity of redemption
(Complaint ¶¶ 10–24)
- **Lis Pendens**
 - Filed to encumber title pending foreclosure
(Lis Pendens, pp. 1–2)
- **Ancillary Relief**
 - Receiver, rents, fees, ejectment, sheriff removal
(Prayer for Relief)

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

C/A NO.: _____

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,

Plaintiff,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendant(s).

COMPLAINT

(Non-Jury)

DECLARATORY JUDGMENT AND
FORECLOSURE
OF REAL ESTATE
MORTGAGE

(Deficiency Judgment Waived)

The Plaintiff above-named, complaining of the Defendants herein, alleges that:

GENERAL ALLEGATIONS

1. Plaintiff, The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, is a business entity duly authorized to conduct business in the State of South Carolina.
2. Upon information and belief, the Borrower/Mortgagors, Carl A. Nunally and Frankie L. Nunally at the time of their death, may have possessed some interest in the real estate that is the subject of this action, and this Court has proper jurisdiction pursuant to S.C. Code Ann. § 36-2-803.
3. Upon information and belief, the Defendants, Timothy Allen Nunally, as Personal

PLAINTIFF’S SCRCP RULE 16(C)
PRE-TRIAL BRIEF

<p>STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON</p>	<p>The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,</p> <p>Plaintiff,</p> <p>vs.</p> <p>Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,</p> <p>Defendants.</p>	<p>IN THE COURT OF COMMON PLEAS C/A No.: 2024-CP-32-01094</p>	<p>PLAINTIFF’S SCRCP RULE 16(C) PRE-TRIAL BRIEF</p>
<p>The Plaintiff, The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, (hereinafter “Plaintiff”) hereby submits this SCRCP Rule 16(c) Pre-Trial Brief:</p>	<p><u>NON-ARGUMENTATIVE STATEMENT OF FACTS</u></p>	<p>This action is for foreclosure of a mortgage on real property located in Lexington County, South Carolina. The subject property is located at 1759 Willow Creek Drive, Columbia, South Carolina 29212. The Plaintiff’s Lis Pendens, Summons, and Complaint were filed on March 8, 2024. The Defendants were properly served with the pleadings via personal service or via publication. The case was referred to The Honorable James O. Spence, as Master in Equity for Lexington County, on May 23, 2024. Following a denial of a prior motion to dismiss, the Defendants failed to answer or otherwise plead and, as a result, counsel for the Plaintiff filed an Affidavit of Default on March 24, 2025. The payments falling due and owing from and after</p>	<p>Page 1 of 5 B&S No.: 23-28438</p>

PLAINTIFF'S OBJECTIVE STATEMENT OF FACTS IN CONTROVERSY

PLAINTIFF'S SCRPC RULE 16(C)
PRE-TRIAL BRIEF

Page 2 of 5

OBJECTIVE STATEMENT OF FACTS IN CONTROVERSY

The facts in controversy are relatively straightforward. Though they are in default, Defendants disputes the Plaintiff's right to foreclosure. Plaintiff intends to establish the elements of its foreclosure action, including but not limited to: 1) The borrowers entering into the Note, Mortgage, and loan modification, 2) the transfer of the loan to the Plaintiff and Plaintiff's right to enforce the Note and Mortgage, 3) the breach of the terms of the Note, Mortgage, and loan modification, 4) the amount and measure of Plaintiff's damages sustained as a result of breach. Plaintiff disputes all of the Defendants' arguments related to the Plaintiff's standing to bring the foreclosure and securitization of the subject loan as has been fully briefed previously.

4 Intended Elements

1.The borrowers entering into the Note, Mortgage, and loan modification,

Plaintiff intends to establish the elements of its foreclosure action, including but not limited to:

LOAN #: 03-A37223
MIN: 100080190020066015

JANUARY 30, 2004
[Date]

NOTE
CLEVELAND,
[City]
[State]

1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212
[Property Address]

1. **BORROWER'S PROMISE TO PAY**
In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is NOVASTAR HOME MORTGAGE, INC., A CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

2. **INTEREST**
I am entitled to receive payments under this Note as follows:

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.998%.

3. **PAYMENTS**
(A) **Time and Place of Payments**
I will pay principal and interest by making a payment every month.

(B) **Amount of Payments**
I will make these payments each month until I have paid the full amount of Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest first, then to principal, and then to any other charges.

(C) **Prepayment**
I will make my monthly payments at P.O. BOX 809911, KANSAS CITY, MO 64184-9911.

4. **BORROWER'S RIGHT TO PREPAY**
I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a particular date for my prepayment.

5. **LOAN CHARGES**
If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other charges on this loan are more than the amount of interest and other charges that I would have paid if the law had been interpreted that way, then the interest and other charges on this loan shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to reduce the Principal amount of the Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

6. **BORROWER'S FAILURE TO PAY AS REQUIRED**
(A) **Late Charge for Overdue Payments**
If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge of \$941.26.

(B) **Acceleration**
If I fail to make any payment when it is due, or if I fail to pay a late charge when it is due, the Note Holder may choose to declare the entire amount of the Note to be due and payable immediately.

After Recording Return To:
Saxon Mortgage Services, Inc.
[Company Name]
Attn: Loan Closing Department
[Name of Natural Person]
4708 Mercantile Drive North
[Street Address]
Port Worth, Texas 76137
[City, State, Zip]

2004-11-11

MIN: 100080190020066015

MORTGAGE

DEFINITIONS
Words used in multiple sections of this document are defined below and other words are defined in Sections 2, 11, 13, 16, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Borrower" means the person or persons who are obligated to pay the debt described in this document, together with all Ridders to this document.

(B) "Mortgage" is CHAL A. MURALLY AND FRANKIE L. MURALLY.

(C) "Mortgagee" is the Mortgagee designated in the Mortgage as a separate corporation that is acting solely as a mortgagee for the Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument.

(D) "Lender" is NOVASTAR HOME MORTGAGE, INC., organized and existing under the laws of the State of Virginia.

(E) "Note" means the promissory note signed by Borrower and dated JANUARY 30, 2004.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Riders" means all Riders to this Security Instrument, plus interest.

(H) "Adjustable Rate Rider" means the Adjustable Rate Rider attached to this Note as a Rider to this Security Instrument.

After Recording Return To:
Saxon Mortgage Services, Inc.
[Company Name]
Attn: Loan Closing Department
[Name of Natural Person]
4708 Mercantile Drive North
[Street Address]
Port Worth, Texas 76137
[City, State, Zip]

2004-11-11

MIN: 100080190020066015

LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement"), effective this 20th day of August, 2009, between Carl A. Murally and Frankie L. Murally ("Borrower") and JPMorgan Chase Bank, as Trustee for the Novastar Home Equity Loan Asset-Backed Certificates, Series 2004-1 by Saxon Mortgage Services, Inc. as its attorney-in-fact ("Lender"), amends and supplements (1) the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") dated January 30th, 2004, granted or assigned to Mortgage Electronic Registration Systems, Inc. as mortgagee of record (solely as mortgagee for Lender and Lender's successors and assigns), P.O. Box 2026, Flint, Michigan 48501-2026 and recorded on N/A, in Book/Liber N/A, Instrument No. N/A, Official Records of Lexington County, South Carolina, and (2) the Note and any riders thereto made by Borrower to Novastar Home Mortgage, Inc. (the "Original Lender") in the amount of U.S. \$121,500.00, bearing the same date as, and secured by, the Security Instrument, which covers the real and personal property described in said Security Instrument and defined therein as the "Property," located at 1759 Willow Creek Drive, Columbia, South Carolina 29212.

4 Intended Elements

3. the breach of terms of the Note, Mortgage, and loan modification,

LOAN #: 03-A37223
MIS: 100080190020606015

NOTE
CLAYTON,
CLEVELAND,
OH 44114
1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212
(Property Address)

1. BORROWER'S PROMISE TO PAY
In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is NOVASTAR HOME MORTGAGE, INC., A CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.
I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST
Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a year.
The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 4(B) of this Note.

3. PAYMENTS
(A) Time and Place of Payments
I will pay principal and interest by using a payment every month.
I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be pay those amounts in full on that date, which is called the "Maturity Date."
I will make my monthly payments at
KANSAS CITY, MO 64184-5911
or at a different place if required by the Note Holder.
(B) Amount of Monthly Payments
My monthly payment will be in the amount of U.S. \$941.26.

4. BORROWER'S RIGHT TO PREPAY
I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply the amount of my Prepayments to the interest on the Note. If I make a partial Prepayment, there will be no changes in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES
If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to reduce Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED
(A) Late Charge for Overdue Payments
If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay the Note Holder a late charge of up to \$5.00. I will pay this late charge promptly but only once on each late payment.
I will receive payment of Principal and interest and I will pay this late charge promptly but only once on each late payment.

After Recording Return To:
Saxon Mortgage Services, Inc.
(Company Name)
Attn: Loan Closing Department
(Name of Natural Person)
4708 Mercantile Drive North
(Street Address)
Fort Worth, Texas 76137
(City, State, Zip)

LOAN #: 03-A37223
MIS: 100080190020606015

1. BORROWER'S PROMISE TO PAY
In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is NOVASTAR HOME MORTGAGE, INC., A CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.
I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST
Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a year.
The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 4(B) of this Note.

3. PAYMENTS
(A) Time and Place of Payments
I will pay principal and interest by using a payment every month.
I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be pay those amounts in full on that date, which is called the "Maturity Date."
I will make my monthly payments at
KANSAS CITY, MO 64184-5911
or at a different place if required by the Note Holder.
(B) Amount of Monthly Payments
My monthly payment will be in the amount of U.S. \$941.26.

4. BORROWER'S RIGHT TO PREPAY
I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply the amount of my Prepayments to the interest on the Note. If I make a partial Prepayment, there will be no changes in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES
If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to reduce Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED
(A) Late Charge for Overdue Payments
If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay the Note Holder a late charge of up to \$5.00. I will pay this late charge promptly but only once on each late payment.
I will receive payment of Principal and interest and I will pay this late charge promptly but only once on each late payment.

After Recording Return To:
Saxon Mortgage Services, Inc.
(Company Name)
Attn: Loan Closing Department
(Name of Natural Person)
4708 Mercantile Drive North
(Street Address)
Fort Worth, Texas 76137
(City, State, Zip)

LOAN #: 03-A37223
MIS: 100080190020606015

1. BORROWER'S PROMISE TO PAY
In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is NOVASTAR HOME MORTGAGE, INC., A CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.
I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST
Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a year.
The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 4(B) of this Note.

3. PAYMENTS
(A) Time and Place of Payments
I will pay principal and interest by using a payment every month.
I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be pay those amounts in full on that date, which is called the "Maturity Date."
I will make my monthly payments at
KANSAS CITY, MO 64184-5911
or at a different place if required by the Note Holder.
(B) Amount of Monthly Payments
My monthly payment will be in the amount of U.S. \$941.26.

4. BORROWER'S RIGHT TO PREPAY
I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply the amount of my Prepayments to the interest on the Note. If I make a partial Prepayment, there will be no changes in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES
If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to reduce Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED
(A) Late Charge for Overdue Payments
If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay the Note Holder a late charge of up to \$5.00. I will pay this late charge promptly but only once on each late payment.
I will receive payment of Principal and interest and I will pay this late charge promptly but only once on each late payment.

LOAN MODIFICATION AGREEMENT

The Loan Modification Agreement ("Agreement"), effective this 20th day of August, 2009, between Carl A. Nunnally and Frankie L. Nunnally ("Borrower") and PNC Financial Group, Inc. ("Lender"), as Trustee for the Novastar Home Equity Loan Asset-Backed Certificate, Series 2004-1 by Saxon Mortgage Services, Inc. as its attorney-in-fact ("Mortgagee"), and Mortgage Electronic Registration Systems, Inc. ("MERS"), as the "Security Instrument" dated January 30th, 2004, granted or assigned to Mortgage Electronic Registration Systems, Inc. as mortgagee of record (solely as nominee for Lender and Lender's successors and assigns), P.O. Box 2026, Pitt, Michigan 48501, Instrument No. N/A, in Bold/Letter N/A, County, South Carolina, and (2) the Note and any riders thereto made by Borrower to Novastar Home Mortgage, Inc. ("Original Lender") in the amount of U.S. \$121,500.00, bearing the same date as, and secured by, the Security Instrument, which covers the real and personal property described in said Security Instrument and defined therein as the "Property," located at 1759 Willow Creek Drive, Columbia, South Carolina 29212

Page 1 of 5
SOUTH CAROLINA LOAN MODIFICATION AGREEMENT
Sax-Rate-Feed

4 Intended Elements

4. the amount and measure of Plaintiff's damages sustained as a result of breach.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,
Plaintiff,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,
Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2024-CP-32-01094

PLAINTIFF'S
EXHIBIT
17

SUPPLEMENTAL AFFIDAVIT OF
ATTORNEY'S FEES AND COSTS

PERSONALLY APPEARED BEFORE ME, the undersigned attorney for the Plaintiff, who first being duly sworn, deposes and says as follows:

1. I am an attorney for the Plaintiff in the above referenced matter.
2. This case is an action to foreclose a mortgage on real property located in the County listed in the caption above. The subject mortgage specifically provided that the Plaintiff is entitled to the recovery of attorneys' fees and costs associated with the collection of sums due under the promissory Note.
3. I was retained by the Plaintiff to conduct this foreclosure action pursuant to a contractual rate of compensation providing for a flat fee of \$2,355.00 for uncontested matters related to this foreclosure action together with hourly attorney's fees in connection with the litigated/contested portion of the foreclosure action. Plaintiff has incurred 41.9 hours of attorney's fees in connection with the contested nature of this action at the rate of \$330.00 per hour (\$13,812.00), and 12.3 hours at the rate of \$95.00 per hour (\$1,168.50) for a total

Page 1 of 4

B&S No.: 23-28438

Element #1: Plaintiff states Borrowers entered into the Note, Mortgage, and modification.

- **Execution alone does not confer standing**
- **Mortgage execution is admitted defective**
- **Declaratory relief still pending**
- **No competent instrument at inception**

Execution $\neq$ Enforceability

[illegible]

ATCH: Recording Bearer To:
 ATCH: COLLATERAL CUSTODIAN
 3200 ONE TREE HAV. 3RD FLOOR
 COLUMBIA, SC 29111

(Space Above This Line For Payment Data)
MORTGAGE

MIN 1008831902564515
 18, 20 and 21. Certain rules regarding the usage of words used below and other words are defined in Sections 3, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 8

After Recording Return To:
 Secor Mortgage Services, Inc.
 (Company Name)
 Attn: Legal Department
 (Name of Internal Department)
 4708 Merasalle Drive North
 (Street Address)
 Fort Worth, Texas 76137
 (City, State, Zip)

Loan No.: 200-0332326
 SECOR FILE NO.: 100080190/200066015

[Type Above This Line For Recording Date]

LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement"), effective this 20th day of August, 2009 between Carl A. Naudaly and Franklin L. Naudaly ("Borrower") and PJM/Kang Clear Bank, as Trustee for the NewStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 by Secor Mortgage Services, Inc. as its attorney-in-fact and Mortgage Electronic Registration Systems, Inc. (MERS) ("Lender"), amends and supplements (1) the Mortgage, Deed of Trust, or Security Instrument ("Security Instrument") dated January 30th, 2004, granted or assigned to Mortgage Electronic Registration Systems, Inc. as assignee of record (collectively) as nominee for Lender and Lender's successors and assigns), P.O. Box 2026, Flint, Michigan 48801-0206 and recorded on N/A, (2) in Book 1/87 N/A, (3) the Note and any riders thereto made by Borrower to Newstar Home Mortgage, Inc. ("Original Lender") in the amount of U.S. \$ 121,500.00 which covers the real and personal property described in said Security Instrument and defined therein as the "Property," located at 1759 Willow Creek Drive, Columbia, South Carolina 29212 bearing the same date as, and secured by, the Security Instrument, which covers the real and personal property described in said Security Instrument and defined therein as the "Property," located at 1759 Willow Creek Drive, Columbia, South Carolina 29212

Anchor Authorities

- **SCRCP Rule 56(e)** — requires competent, admissible evidence before reliance.
- **SCRCP Rule 901 / 902** — authentication prerequisites.

Anchor Case Law

- **Dawkins v. Fields** — “A party seeking to foreclose must demonstrate that it owns the note and mortgage at the time the action is commenced”.

Anchored Evidence

- **SE-15 & SE-16**— MSJ and Amended MSJ (offered as authenticated notice instruments)

THRESHOLD ISSUES

LOAN #: 03-A37223
MIR: 100080190020066015

JANUARY 30, 2004
[Date]

NOTE
CLEVELAND, OHIO
[City] [State]

1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212
[Property Address]

1. BORROWER'S PROMISE TO PAY
In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **ROYALSTAR HOME MORTGAGE, INC., A CORPORATION**.

I will make all payments under this Note in the form of cash, check or money order.
I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST
Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **6.99%**.
The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS
(A) **Time and Place of Payments**
I will pay principal and interest on the **15th** day of each month beginning on **MARCH 1, 2004**.
I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **FEBRUARY 1, 2024**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."
I will make my monthly payments at **P.O. BOX 8093
KANSAS CITY, MO 64184-8911**
or at a different place if required by the Note Holder.

(B) **Amount of Monthly Payments**
My monthly payment will be in the amount of U.S. **\$941.26**.

4. BORROWER'S RIGHT TO PREPAY
I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.
I may make a full Prepayment or partial Prepayments without paying a prepayment charge. The Note Holder will use my Prepayment to pay down the principal of the loan and to pay any interest that has accrued to the Note Holder. I will use my Prepayment to the extent of the unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES
If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED
(A) **Late Charge for Overdue Payments**
If the Note Holder has not received the full amount of any monthly payment by the end of **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.00%** of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

LOAN #: 03-A37223

(E) Payment of Note Holder's Costs and Expenses
If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES
Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.
Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE
If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS
I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE
This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises made in this Note. The Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all or any part of the Property or any interest in the Property. Some of those conditions are described as follows:
If all or any part of the Property or any interest in the Property is sold or transferred without Lender's consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.
If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED


CARL A. MURALLY (Seal)


Dwight A. Pagan, Sec. Vice President
Wilmington Chase Bank, as Trustee*

Element #2:

Transfer of the loan and right to enforce. Standing Must Exist When Suit Is Filed

• **Corrective assignment**
dated 2023

• Suit filed March 2024

• Trust claims 2004 closing

- **Retroactive repair is impermissible**

202303265987 BR: 12007 PG: 4146- 4146
 Date: 5/1/00 Cntry: 50100 State: 50100
 FILED IN LEXINGTON COUNTY SC

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STATE OF SOUTH CAROLINA	
COUNTY OF LEXINGTON	
<p>The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A., as Trustee for NovusStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,</p>	<p>C/A NO. _____</p> <p>COMPLAINT</p> <p>(Non-Jury)</p> <p>DECLARATORY JUDGMENT AND FORECLOSURE OF REAL ESTATE MORTGAGE</p> <p>(Deficiency Judgment Waived)</p>
<p>Plaintiff,</p> <p>vs.</p> <p>Timothy Allen Nunnally, as Personal Representative for the Estate of Carl Alvin Nunnally, Sr., deceased; Timothy Allen Nunnally, as Trustee for the CAN Irrevocable Trust, Carl Alvin Nunnally, Trust, Mark Anthony Nunnally; Timothy Allen Nunnally,</p>	<p>Defendant(s).</p>
<p>The Plaintiff above-named, complaining of the Defendants herein, alleges that:</p> <p><u>GENERAL ALLEGATIONS</u></p> <p>1. Plaintiff, The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovusStar Mortgage Funding Trust, Series 2004-1, NovusStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, is a business entity duly authorized to conduct business in the State of South Carolina.</p> <p>2. Upon information and belief the Borrower/Mortgagors, Carl A. Nunnally and Frankie L. Nunnally at the time of their death may have possessed some interest in the real estate that is the subject of this action, and this Court has proper jurisdiction pursuant to S.C. Code Ann. § 36-2-803.</p> <p>3. Upon information and belief, the Defendants, Timothy Allen Nunnally, as Personal</p>	

[illegible]

- Foreclosure Necessity:** To foreclose, the assignee must typically show they hold the mortgage, often requiring a recorded assignment to prove authority.

- Plaintiff can't record on a Saturday
- Plaintiff can't transfer into a trust that closed nineteen years earlier
- Plaintiff can't cure fiction with a clerk's stamp.

Anchored Evidence

SE-3 — 2023 MERS Assignment
SE-5 — PSA / Trust Closing-Date
Packet (NovaStar 2004-1)

[illegible]

THRESHOLD ISSUES

- **SCRCP Rule 77(c)** — clerks act only on lawful business
- **SCRCP Rule 56(e)** — documents must be produced, not implied.
- **New York EPTL § 7-2.4** — acts contrary to trust are void, not voidable.

Anchored Evidence

- **SE-3** — 2023 MERS Assignments
 - **SE-5** — PSA / Trust Closing-Date Packet (NovaStar 2004)
 - **SE-7** — Affidavit of Standing
- Defects
- **SE-8** — Required vs. Produced Documents Chart

[illegible]

2/8/2025, 12:25 AM

EDGAR Filing Documents for 000193125-06-071988

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SEC Accession No. 000193125-06-071988

Form 8-K - Current report

Filing Date
2006-04-03

Accepted
2006-04-03 17:00:00

Documents
3

Period of Report
2006-03-27

Items
Item 2.01: Completion of Acquisition or Disposition of Assets
Item 9.01: Financial Statements and Exhibits

Document Format Files

Seq	Description	Document	Type	Size
1	FORM 8-K	form8k.htm	8-K	17201
2	AMENDMENT NUMBER 1 TO THE POOLING AND SERVICING AGREEMENT	form8k1.htm	EX-4.1	35515
3	AMENDMENT NUMBER 2 TO THE POOLING AND SERVICING AGREEMENT	form8k2.htm	EX-4.2	66531
Complete submission text file				120836

NOVASTAS MORTGAGE FUNDING TRUST SERIES 2004-1 (Filer) CJK

0001283150 (see all company filings)

URL: 0000000000 | State of Incorporation: DE | Fiscal Year End: 1231
Type: 8-K | Act: 34 | File No: 333-108264-02 | Film No: 06734258
SIC: 6199 Asset-Backed Securities

Business Address
4 NEW YORK PLAZA
6TH FLOOR
NEW YORK
NY
10004
2106235237

Mailing Address
8140 WARD PARKWAY
SUITE 300
KANSAS CITY
MO
64114

https://www.sec.gov/Archives/edgar/data/1283150/00019312506071988/000193125-06-071988-index.htm

- Only a party entitled to enforce may claim breach

- Standing unresolved
→ breach analysis
premature

- Court cannot skip threshold defects

LOAN #: 03-A37223
MIN: 100000150020060015

NOTE
CLEVELAND,
[City] OHIO
[State]

1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212
[Property Address]

JANUARY 30, 2004
[Date]

1. BORROWER'S PROMISE TO PAY
In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is ROYALSTAR HOME MORTGAGE, INC., a CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST
Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.99%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS
(A) Time and Place of Payments
I will pay principal and interest on the 1st day of each month.

I will make my monthly payment by making a payment every month.

I will make my monthly payments every month until I have paid all of the principal and interest and any other charges described in this Note. Each month, I will make a payment to the principal and interest and any other charges described in this Note applied to my loan before Principal is paid.

I will make my monthly payments every month until I have paid all of the principal and interest and any other charges described in this Note. Each month, I will make a payment to the principal and interest and any other charges described in this Note applied to my loan before Principal is paid.

I will make my monthly payments at P.O. BOX 808911 KANSAS CITY, MO 64184-8911

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments
My monthly payment will be in the amount of U.S. \$941.26.

4. BORROWER'S RIGHT TO PREPAY
I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "prepayment." I may make prepayments at any time before they are due. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES
If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any such amount collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make a partial Prepayment or a full Prepayment, but I am not making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED
(A) Late Charge for Overdue Payments
If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date that principal and interest is due, I will pay this late charge promptly, but only once each late payment.

After Recording Return To:
ROVASTAR MORTGAGE, INC.
ATTN: COLLATERAL CONTROL
6200 OAK TREE BLVD. FLOOR
CLEVELAND, OH 44131

REC-14748
FEB 1988
ST. FRANCIS
COUNTY, MISSOURI
NOTICE BY MAIL

14748
2007

This instrument was prepared by:

Title Order No.: MURALLY
Escrow No.: MURALLY
Loan #: 03-A37233

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100080190020066015

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JANUARY 30, 2004, together with all riders to this document.

(B) "Borrower" is CARL A. MURALLY AND FRANKIE L. MURALLY.

Borrower is the mortgagor under this Security Instrument.

The Mortgagee is ROVASTAR HOME MORTGAGE, INC., a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument.

MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 20326, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is ROVASTAR HOME MORTGAGE, INC..

Lender is a CORPORATION,
THE STATE OF VIRGINIA,
LEXINGTON, SC 29073.

Lender is the mortgagee under this Security Instrument.

(E) "Note" means the promissory note signed by Borrower and dated JANUARY 30, 2004, as amended or supplemented by any rider attached to this Security Instrument that is executed by Borrower. The following Riders are to be plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full no later than FEBRUARY 1, 2024.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Rider" means all changes to this Security Instrument that are executed by Borrower. The following Riders are to be plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full no later than FEBRUARY 1, 2024.

(I) "Adjustable Rate Rider"
☐ Continuum Rider
☐ Second Hour Rider

Lender is organized and existing under the laws of
The State of Virginia,
Lexington, SC 29073.

Lender's address is 104 ROBIN ROAD,
JANUARY 30, 2004.
The Note shall be RETURNED TO LENDER AT THE FOLLOWING ADDRESS:
\$121,500.00 Dollars (US)

Anchor Case Law

- BAC Home Loan Servicing, L.P.
v. Kinder
398 S.C. 619, 731 S.E.2d 547 (2012)

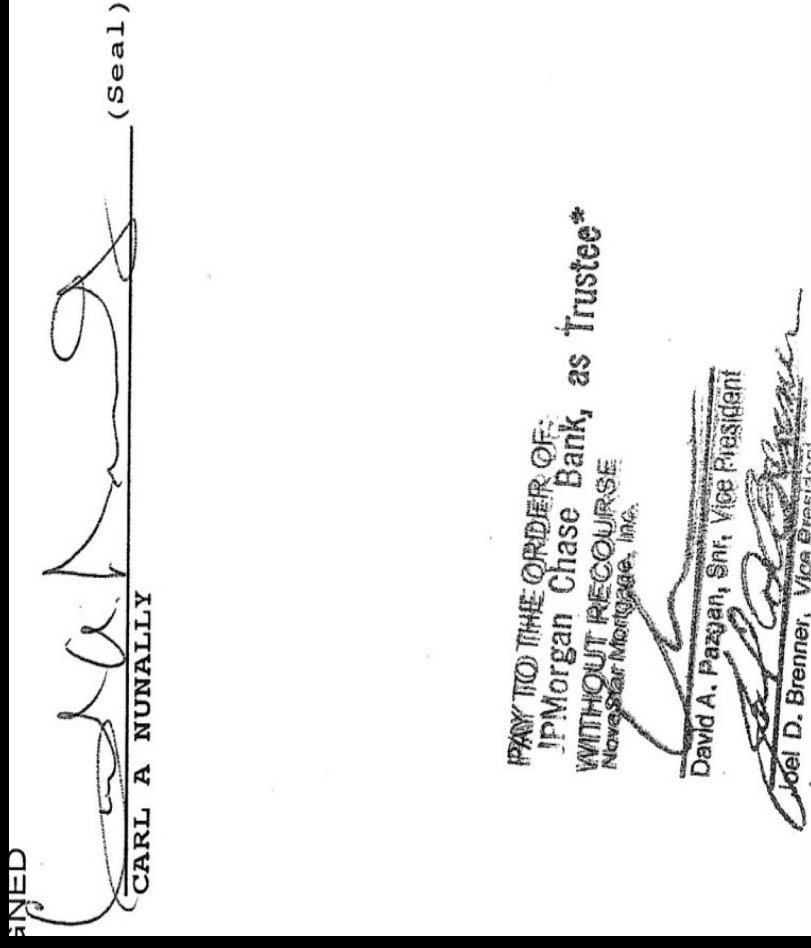
Kinder stands for:

- the Note governs enforcement
- but only where the mortgage is otherwise valid

Kinder **does not** bless enforcement based on:

- a defective mortgage
- a mortgage requiring judicial correction
- or retroactive validation

THRESHHOLD ISSUES NOTE



Anchor Case Law

- BAC Home Loan Servicing, L.P.
v. Kinder
398 S.C. 619, 731 S.E.2d 547 (2012)

Kinder stands for:

- the Note governs enforcement
- but only where the mortgage is otherwise valid

Kinder **does not** bless enforcement based on:

- a defective mortgage
- a mortgage requiring judicial correction
- or retroactive validation

THRESHHOLD ISSUES

MORTGAGE

7. Due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed by the Notary as the notary lists himself as the party acknowledging the signatures instead of the Mortgagors, Carl A. Nunally and Frankie L. Nunally.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

[Signature]

[Signature] (Seal)
CARL A. NUNALLY

[Signature]

[Signature] (Seal)
FRANKIE L. NUNALLY

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 13 day (date)
by Brian L. Bager

(name of person acknowledged).

[Signature]

Signature of Person Taking Acknowledgement

My commission expires: 2/21/05

[Signature]
witness

Anchor Case Law

- BAC Home Loan Servicing, L.P.
v. Kinder
398 S.C. 619, 731 S.E.2d 547 (2012)

Kinder stands for:

- the Note governs enforcement
- but only where the mortgage is otherwise valid

Kinder **does not** bless enforcement based on:

- a defective mortgage
- a mortgage requiring judicial correction
- or retroactive validation

THRESHHOLD ISSUES

7. Due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed by the Notary as the notary lists himself as the party acknowledging the signatures instead of the Mortgagors, Carl A. Nunally and Frankie L. Nunally.

Where Plaintiff seeks declaratory relief to correct a Mortgage, that Mortgage cannot establish standing prior to correction.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Carl A. Nunally (Seal)
CARL A. NUNALLY

Frankie L. Nunally (Seal)
FRANKIE L. NUNALLY

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 13 day (date)
by Carl A. Nunally

(name of person acknowledged).

Richard K. C. O.
witness

Richard K. C. O.
Signature of Person Taking Acknowledgement
My commission expires: 2/2/05

Anchor Authorities

- S.C. Code § 30-5-30 — two disinterested witnesses required.
- **Declaratory Judgment Act** – S.C. Code Ann. § 15-53-10 et seq.

Anchor Case Law

- Lewis v. Lewis
- Riddle v. Riddle
- Viera v. Peoples Fed. Sav. & Loan
- Dawkins v. Fields

Anchored Evidence

- SE-1 — Certified original mortgage
- SE-2 — SC Case Law Packet

Why this matters

- the original instrument is, by definition, legally uncertain.
- Uncertainty = incompetence for standing purposes

THRESHOLD ISSUES

After Recording Return To:
ROVASTAR MORTGAGE, INC.
ATTN: COUNTERS
6200 OAK TREE BLVD., 3RD FLOOR
CLEVELAND, OH 44131

REC-115-08 31 Feb 15, 08
Do Fee \$15.00
Lexington County 600 Bebra H. Gunter
NOTARISE REC# 364114

2004
14 Feb 15

This instrument was prepared by:

Title Order No.: MURALLY
Escrow No.: MURALLY
LOAN #: 03-A37223

(Space Above This Line For Recording Data)

MORTGAGE

MIN 10008019002066015

DEFINITIONS
Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.
(A) "Security Instrument" means this document, which is dated JANUARY 30, 2004, together with all Riders to this document.
(B) "Borrower" is CARL A. MURALLY AND FRANKIE L. MURALLY.

Borrower is the mortgagor under this Security Instrument.
(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 678-MERS.
(D) "Lender" is ROVASTAR HOME MORTGAGE, INC..

Lender is a CORPORATION,
THE STATE OF VIRGINIA,
LEXINGTON, SC 29073.

Lender's address is 104 ROBIN ROAD,
organized and existing under the laws of

The Note
states that Borrower owes Lender *****ONE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND NO/100 ***** Dollars (U.S. \$121,500.00)
plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 1, 2024.
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:
☐ Adjustable Rate Rider
☐ Condominium Rider
☐ Second Home Rider

APPRaisal RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.
26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

[Signature]
CARL A. MURALLY (Seal)

[Signature]
FRANKIE L. MURALLY (Seal)

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 13 day (date)
by Brian L. Roper
(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement
My commission expires: 2/1/15

[Signature]
witness

* APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.

26. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

[Signature]
CARL A. MUMALLY (Seal)

[Signature]
FRANKIE L. MUMALLY (Seal)

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 11/20/04 (date)
by Brian L. Bragg

(name of person acknowledged).

[Signature]
witness

Signature of Person Taking Acknowledgment
My commission expires: 2/2/05

Element #4: Damages

Damages Presume Jurisdiction

- Damages flow from va enforcement
- No enforcement = no damages
- Math cannot cure legal absence

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
C/A NO.: _____

COMPLAINT
(Non-Jury)
DECLARATORY JUDGMENT AND
FORECLOSURE
OF REAL ESTATE
MORTGAGE
(Deficiency Judgment Waived)

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Plaintiff,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendant(s).

The Plaintiff above-named, complaining of the Defendants herein, alleges that:

GENERAL ALLEGATIONS

1. Plaintiff, The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, is a business entity duly authorized to conduct business in the State of South Carolina.

2. Upon information and belief, the Borrower/Mortgagors, Carl A. Nunally and Frankie L. Nunally at the time of their death, may have possessed some interest in the real estate that is the subject of this action, and this Court has proper jurisdiction pursuant to S.C. Code Ann. § 36-2-803.

3. Upon information and belief, the Defendants, Timothy Allen Nunally, as Personal

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
C/A NO.: 2024-CP-32-01094

PLAINTIFF'S
EXHIBIT
17

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,

Plaintiff,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants.

SUPPLEMENTAL AFFIDAVIT OF ATTORNEY'S FEES AND COSTS

PERSONALLY APPEARED BEFORE ME, the undersigned attorney for the Plaintiff, who first being duly sworn, deposes and says as follows:

1. I am an attorney for the Plaintiff in the above referenced matter.

2. This case is an action to foreclose a mortgage on real property located in the County listed in the caption above. The subject mortgage specifically provided that the Plaintiff is entitled to the recovery of attorneys' fees and costs associated with the collection of sums due under the promissory Note.

3. I was retained by the Plaintiff to conduct this foreclosure action pursuant to a contractual rate of compensation providing for a flat fee of \$2,355.00 for uncontested matters related to this foreclosure action together with hourly attorney's fees in connection with the litigated/contested portion of the foreclosure action. Plaintiff has incurred 41.9 hours of attorney's fees in connection with the contested nature of this action at the rate of \$330.00 per hour (\$13,812.00), and 12.3 hours at the rate of \$95.00 per hour (\$1,168.50) for a total

Page 1 of 4

B&S No.: 23-28438

Element #4: Damages

Damages Presume Jurisdiction

PLAINTIFF’S FRAME

“The facts are straightforward.

Defendants are in default.

Standing has been fully briefed.

Trial concerns breach and damages.”

Direct paraphrase from Plaintiff’s

Rule 16(c) Brief)

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON		IN THE COURT OF COMMON PLEAS C/A No.: 2024-CP-32-01094	
The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,		PLAINTIFF'S SCRPC RULE 16(C) PRE-TRIAL BRIEF	
Plaintiff,			
vs.			
Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,			
Defendants.			
The Plaintiff, The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, (hereinafter "Plaintiff") hereby submits this SCRPC Rule 16(c) Pre-Trial Brief:			
NON-ARGUMENTATIVE STATEMENT OF FACTS			
This action is for foreclosure of a mortgage on real property located in Lexington County, South Carolina. The subject property is located at 1759 Willow Creek Drive, Columbia, South Carolina 29212. The Plaintiff's Lis Pendens, Summons, and Complaint were filed on March 8, 2024. The Defendants were properly served with the pleadings via personal service or via publication. The case was referred to The Honorable James O. Spence, as Master in Equity for Lexington County, on May 23, 2024. Following a denial of a prior motion to dismiss, the Defendants failed to answer or otherwise plead and, as a result, counsel for the Plaintiff filed an Affidavit of Default on March 24, 2025. The payments falling due and owing from and after			
Page 1 of 5		B&S No.: 23-28438	

THRESHOLD ISSUES

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, Plaintiff,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally, Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2024-CP-32-01094

PLAINTIFF'S EXHIBIT

17

SUPPLEMENTAL AFFIDAVIT OF ATTORNEY'S FEES AND COSTS

PERSONALLY APPEARED BEFORE ME, the undersigned attorney for the Plaintiff, who first being duly sworn, deposes and says as follows:

1. I am an attorney for the Plaintiff in the above referenced matter.
2. This case is an action to foreclose a mortgage on real property located in the County listed in the caption above. The subject mortgage specifically provided that the Plaintiff is entitled to the recovery of attorneys' fees and costs associated with the collection of sums due under the promissory Note.
3. I was retained by the Plaintiff to conduct this foreclosure action pursuant to a contractual rate of compensation providing for a flat attorneys' flat fee of \$2,355.00 for uncontested matters related to this foreclosure action together with hourly attorney's fees in connection with the litigated/contested portion of the foreclosure action. Plaintiff has incurred 41.9 hours of attorney's fees in connection with the contested nature of this action at the rate of \$330.00 per hour (\$13,812.00), and 12.3 hours at the rate of \$95.00 per hour (\$1,168.50) for a total

Page 1 of 4

B&S No.: 23-28438

Anchor Authorities

- S.C. Code § 30-5-30 — two disinterested witnesses required.

Anchor Case Law

- Lewis v. Lewis
- Riddle v. Riddle
- Viera v. Peoples Fed. Sav. & Loan
- Dawkins v. Fields

Anchored Evidence

- SE-1 — Certified original mortgage
- SE-2 — SC Case Law Packet

LEGAL REALITY

- This framing presumes unresolved issues
- Default does not waive:
 - a. standing,
 - b. subject-matter jurisdiction,
 - c. competency of evidence

- Trial cannot skip threshold proof

Key Point:

Foreclosure is not automatic —it must be proven in sequence.

ASSIGNMENT VOID AB INITIO

Anchor Authorities

- **SCRPC Rule 77(c)** — clerks act only on lawful business days.
- **New York EPTL § 7-2.4** — acts contrary to trust are *void*, not voidable.

MORTGAGE VOID AB INITIO

Anchor Authorities

- **Declaratory Judgment Act** — S.C. Code Ann. § 15-53-10 et seq.
- **Dawkins v. Fields** 354 S.C. 58, 580 S.E.2d 433 (2003) “A party seeking to foreclose must demonstrate that it owns the note and mortgage **at the time the action is commenced.**”

SEQUENCING PLAINTIFF’S POSITION

Assignments are unnecessary

Any challenge Defendants could make to the assignment of mortgage into Plaintiff is misplaced. While the assignment of mortgage are cogent evidence of the transfer of the Mortgage to the Plaintiff, it is unnecessary to assert Plaintiff’s right to enforce the Note and Mortgage.

Plaintiff is holder of the Note.

Specifically, regarding Plaintiff’s standing to bring the foreclosure action, on its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank.

Enforcement is a matter of law.

As the holder of the Note, Plaintiff is a “person entitled to enforce” the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

JANUARY 30, 2004
[Date]

NOTE

CLEVELAND,
[City]

1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212
[Property Address]

LOAN #: 03-A37223
MIN: 100080190020066015

After Recording Return To:
HOVASTAR MORTGAGE, INC.
ATTN: COLLATERAL CONTROL
P.O. BOX 98411-A
Lexington, KY 40508-0411

2007-2008
114x2008

MIN 100080190020066015

MORTGAGE

[Space Above This Line For Recording Data]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is HOVASTAR HOME MORTGAGE, INC., A CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.
I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.99%.
The interest rate required is 6.99% per year.
6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments
I will pay principal and interest by making a payment every month.
I will make my monthly payment on the 1st day of each month beginning on the date of the first payment due.
I will make these payments every month until I have paid all of the principal and interest.
below that I may owe under this Note. If, on the date of the last payment due, there is still principal outstanding, I will apply to interest before Principal. If, on the date of the last payment due, there is still principal outstanding, I will pay those amounts in full on that date.
I will make my monthly payments at P.O. BOX 908911 KANSAS CITY, MO 6418

(B) Amount of Monthly Payment
My monthly payment will be \$1,000.00 or at a different place if required by law.

4. BORROWER'S RIGHT TO PREPAY
I have the right to make payments of Principal as a "Prepayment." When I make a Prepayment, I will make it as follows:
a. I may make a full Prepayment or partial Prepayments without paying a Prepayment fee.
b. My Prepayments to reduce the amount of Principal that I owe under this Note. However, my Prepayments to the accrued and unpaid interest on the Prepayment amount, before I can make a full Prepayment, there will be no reduction of the Principal amount of the Note. If I make a partial Prepayment, there will be no reduction of the Principal amount of the Note.
c. The amount of my monthly payment unless the Note Holder agrees in writing to those changes.

1. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003)

"A party seeking to foreclose must demonstrate that it owns the note and mortgage at the time the action is commenced."

NOTE
WELAND,
City]JANUARY 30, 2004
[Date]

1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$121,500. plus interest, to the order of the Lender. The Lender is NOVASTAR HOME MORTGAGE

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and with intent to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **6.990%**.
The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 2(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments
I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on MARCH 1, 2004. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on FEBRUARY 1, 2024, I still owe amounts under this Note, I will pay these amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. BOX 808911
KANSAS CITY, MO 64184-8911

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a "Prepayment" if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may use my Prepayment to the accrued and unpaid interest on the Prepayment amount. Before applying my Prepayment to reduce the Principal amount of the Note, if I make a partial Prepayment, there will be no changes in the due date or the amount of my monthly payment less the Note Holder's pregress in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then, (a) such loan charges shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) the sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) **Late Charge for Overdue Payments**
If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

Threshold Issues the

Plaintiff Must Prove Before Trial (March 8, 2023)

er No.: NUNALLY
.: NUNALLY
3-A37223

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100080190020066015

• Standing

DEFINITIONS

(A) "Security Instrument" means this document, which is dated **JANUARY 30, 2004**, together with all amendments, supplements, modifications, and extensions to this document.

(B) "Borrower" is CARL A. HUNALLY AND FRANKIE L. HUNALLY.

- **Valid Mortgage**

Borrower is the mortgagor under this Security Instrument.

ent MERS® is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as the servicer for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 342000, Atlanta, Georgia 30384-0200. (D) "Lender" is NOVASTAR HOME MORTGAGE, INC..

• Authority to Enforce

FORCE
CORPORATION,
THE STATE OF VIRGINIA,
LEXINGTON, SC 29073.

organized and existing under the laws of
Lender's address is 104 ROBIN ROAD.

Competent Evidence

[illegible]

(конец)

(G) "Loan" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

☐ Adjustable Rate Rider ☐ Condominium Rider☐ Second Home Rider

MISSING SECOND WITNESS (FATAL DEFECT)

Mortgage Execution Defect

- South Carolina law requires **proper execution**, including subscribing witnesses and valid acknowledgment
- Mortgage contains **only one witness**
- **Plaintiff admits** the acknowledgment was *improperly executed*
- *Notary falsely identified himself as the acknowledging party*
- *Defect appears on the face of the instrument*
- **A facially defective mortgage is void and unenforceable**

7. Due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed by the Notary as the notary lists himself as the party acknowledging the signatures instead of the Mortgagors, Carl A. Nunally and Frankie L. Nunally.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

[Signature]

[Signature] (Seal)
CARL A. NUNALLY

[Signature]

[Signature] (Seal)
FRANKIE L. NUNALLY

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 13 day (date)
by Brian L. Boyer

(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement

[Signature]
witness

My commission expires: 2/2/05

Paragraph 7 Triggers

~~Rule 56 Failure~~ Because Under Rule 56:

- South Carolina Courts accept **judicial admissions** as established facts
- Established facts that show **legal invalidity** end the inquiry
- There is **no genuine issue of material fact** to send to trial

7. Due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed by the Notary as the notary lists himself as the party acknowledging the signatures instead of the Mortgagors, Carl A. Nunally and Frankie L. Nunally.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

[Signature]

[Signature]

[Signature] (Seal)
CARL A NUNALLY

[Signature] (Seal)
FRANKIE L NUNALLY

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 13 day (date)
by Brian L. Boyer

(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement
My commission expires: 2/2/05

[Signature]
witness

Rule 56 asks...

If all admitted facts are true,
the plaintiff can not win as a matter of
law?

- A void mortgage confers **no enforceable rights**
- Standing cannot be manufactured with testimony
- No amount of discovery fixes a document that never legally existed

7. Due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed by the Notary as the notary lists himself as the party acknowledging the signatures instead of the Mortgagors, Carl A. Nunally and Frankie L. Nunally.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

[Signature]

[Signature] (Seal)
CARL A NUNALLY

[Signature]

[Signature] (Seal)
FRANKIE L NUNALLY

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 13 day (date)
by Brian L. Boyer

(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement
My commission expires: 2/2/05

[Signature]
witness

S.C. Code Ann. § 30-5-30(A)

→ Requires two subscribing witnesses for a mortgage to be validly executed and recorded.

South Carolina Supreme Court / Court of Appeals:

- **Lewis v. Lewis**, 392 S.C. 381, 709 S.E.2d 650 (2011)
→ Failure to comply with statutory witnessing requirements renders the mortgage **not entitled to recordation and void as a matter of law**.
- **Riddle v. George**, 181 S.C. 360, 187 S.E. 524 (1936)
→ Recording statutes are strictly construed; defects are **fatal**, not curable.
- **Viera v. Gasque**, 295 S.C. 202, 367 S.E.2d 742 (Ct. App. 1988)

7. Due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed by the Notary as the notary lists himself as the party acknowledging the signatures instead of the Mortgagors, Carl A. Nunally and Frankie L. Nunally.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

[Signature]

[Signature] (Seal)
CARL A NUNALLY

[Signature]

[Signature] (Seal)
FRANKIE L NUNALLY

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 13 day 04 (date)
by Brian L. Boyer

(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement

My commission expires: 2/2/05

[Signature]
witness

Rule / Holding

A mortgage executed without two subscribing witnesses and a valid acknowledgment is not entitled to recordation, imparts no constructive notice, and is void ab initio.

Statutes

- S.C. Code Ann. § 30-5-30

Cases

- *Lewis v. Lewis*
- *Franklin Sav. & Loan Co. v. Riddle*
- *Vieira v. McGrath*
- *J.W. Dillon & Son Co. v. Oliver*

Record Anchors

- Filed MSJ: pp. 10–14
- Amended MSJ: pp. 14–18

Note of Emphasis:

This defect is statutory, fatal, and non-curable.

A void mortgage cannot be enforced or assigned as a matter of law.

MORTGAGE VOID AB INITIO (MISSING SECOND

WITNESSES) 13' MISSING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

[Signature]

[Signature] (Seal)
CARL A NUNALLY

[Signature]

[Signature] (Seal)
FRANKIE L NUNALLY

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 11/30/04 (date),
by Brian L. Roper

(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement

My commission expires: 2/21/05

[Signature]
witness

Rule / Holding

A void instrument conveys no rights whatsoever and cannot be cured by re-recording or later assignments.

Cases

- *In re Amtron, Inc.*
- *J.W. Dillon & Son Co. v. Oliver*

Record Anchors

- Filed MSJ: pp. 11–14
- Amended MSJ: pp. 16–19

Note of Emphasis:

This Court does not reach equity where the instrument is void.
There is nothing to rehabilitate.

VOID ≠ VOIDABLE (NO CURATIVE DOCTRINE)

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

[Signature]

[Signature] (Seal)
CARL A. NUNALLY

[Signature]

[Signature] (Seal)
FRANKIE L. NUNALLY

State of SOUTH CAROLINA
County of Richland

The foregoing instrument was acknowledged before me this 13 day of October (date)
by Brian L. Boer

(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement

My commission expires: 2/2/05

[Signature]
witness

LIS PENDENS

SE#2024CP3201094

LXINGTON

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendants for the foreclosure of a certain mortgage of real estate given by Carl A. Nunally and Frankie L. Nunally to Mortgage Electronic Registration Systems, Inc., as mortgagee, as nominee for NovaStar Home Mortgage, Inc., dated January 30, 2004, and recorded on February 28, 2004, in Book 9041 at Page 4 in the Lexington County Registry (hereinafter, "Mortgage"). Thereafter, the Mortgage was transferred to the Plaintiff herein by assignment.

13. Said Mortgage was recorded on February 28, 2004, in Book 9041 at Page 4 in the Lexington County Registry.

CORPORATE STRANGER
ENDORSEMENT

UCC § 3-301 Failure

• *Originator:*
NovaStar Home Mortgage, Inc.

• *Endorser:*
NovaStar Mortgage, Inc.

- Endorser is not the originating lender
- Breaks chain of negotiation

• No holder or bearer status under UCC 3-301

10/6/25, 8:34 AM



NovaStar Home Mortgage, Inc. | Mass.gov

OFFERED BY Division of Banks

CONSENT ORDER

NovaStar Home Mortgage, Inc.

Novastar Mortgage, Inc.



AMBIGUOUS / MULTI-PAYEE ENDORSEMENTS

Rule / Holding

Endorsements naming multiple payees or transferring 'without recourse' destroy negotiability and standing.

Statutes

- UCC §§ 3-110, 3-204, 3-301

Cases

- *BAC Home Loans v. Kinder*
- *Seven Lakes Inv. Grp. v. Crowe*

R. 2033

Record Anchors

- Filed MSJ: pp. 12-13
- Amended MSJ: pp. 20-21

Note of Emphasis:

If the Court cannot identify the person entitled to enforce, standing fails as a jurisdictional matter.

11. Heretofore, Carl A. Nunally (hereinafter, "Borrower") made, executed, and delivered to NovaStar Home Mortgage, Inc. (hereinafter, "Lender"), a certain Fixed Rate Note dated January 30, 2004, in writing (hereinafter, "Note"), wherein and whereby Borrower promised to pay to Lender the principal sum of \$121,500.00, together with interest at the rate of 6.99% per annum on the unpaid balance; said principal and interest being payable in monthly installments thereafter until the said Note is fully paid.

NovaStar Home Mortgage, Inc. v. NovaStar Mortgage, Inc

PROMISSORY NOTE

JANUARY 30, 2004 [Date]
LOAN #: 03-A37223
MIN: 100080190020066015
NOTE
CLEVELAND, [City] OHIO [State]
1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is NOVASTAR HOME MORTGAGE, INC., A CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED


CARL A. NUNALLY (Seal)

PAY TO THE ORDER OF:
Morgan Chase Bank, as Trustee*
WITHOUT RECOURSE
NovaStar Mortgage, Inc.


David A. Pragan, Sr., Vice President


Neil D. Brenner, Vice President

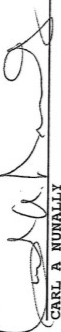
1st NOTE TRANSFERS/ NOTE ENDORSEMENTS

PROMISSORY NOTE

1ST ENDORSEMENT

notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED


CARL A. NUNALLY (Seal)

LOAN #: 03-A37223
MIN: 100080190020066015

NOTE

JANUARY 30, 2004
[Date]

CLEVELAND,
[City]

OHIO
[State]

1759 MILLON CREEK DRIVE, COLUMBIA, SC 29212
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is HOVASTAR HOME MORTGAGE, INC., A CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

PAY TO THE ORDER OF:
JPMorgan Chase Bank, as Trustee*
WITHOUT RECOURSE
Hovastar Mortgage, Inc.


David A. Pagan, Sr., Vice President


Joel D. Brenner, Vice President

An endorsement by a corporate stranger — one never the payee or aproven successor — is a nullity.

In re Veal, 450 B.R. at 911. See also *Kinder*, 398 S.C. at 316
(standing requires valid negotiation and possession of the note).

PAY TO THE ORDER OF:
JP Morgan Chase Bank, as Trustee*
WITHOUT RECOURSE
NewStar Mortgage, Inc.

David A. Pazvan, Sinf, Vice President

Joel D. Brenner, Vice President

Payee

Corporate Stranger

CORPORATE STRANGER
ENDORSEMENT (UCC FAILURE)

Rule / Holding

Only the original payee or a proven successor may endorse or negotiate a note. An endorsement by a corporate stranger is a legal nullity.

Statutes

- UCC §§ 3-201, 3-203, 3-301
- S.C. Code Ann. § 36-3-301

Cases

- *In re Veal*
- *BAC Home Loans Servicing v. Kinder*
- *Beaumont v. Bank of New York Mellon*
- *Arkison v. Griffin*

Record Anchors

- **Filed MSJ:** pp. 12–15
- **Amended MSJ:** pp. 19–21

Note of Emphasis:
NovaStar Mortgage, Inc. was never the lender. A stranger cannot create standing by endorsement.

SUBSIDIARIES OF THE REGISTRANT

NovaStar Financial, Inc., a Maryland corporation, and its subsidiaries

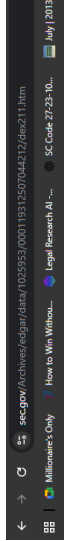
- g. NovaStar Mortgage, Inc., a Virginia corporation, and its subsidiaries
 - 1. NovaStar Mortgage Funding Corporation, a Delaware corporation
 - 2. NovaStar Mortgage Funding Corporation II, a Delaware corporation
 - 3. NovaStar Mortgage Funding Corporation III, a Delaware corporation
 - 4. NovaStar REMIC Financing Corporation, a Delaware corporation
 - 5. NMI Repurchase Corporation, a Delaware corporation
 - 6. NMI Repurchase Corporation II, a Delaware corporation
 - 7. NovaStar Mortgage Financing Corporation, a Delaware corporation
 - 8. NovaStar Certificates Financing LLC, a Delaware corporation
 - 9. NovaStar Capital Trust I
 - 10. NovaStar Capital Trust II
 - 11. NovaStar Mortgage SPV I
 - 12. NMI Property Financing, Inc., a Delaware corporation
 - 13. NMI REO Financing, Inc., a Delaware corporation
- h. NovaStar Home Mortgage, Inc., a Delaware corporation, and its subsidiary
 - 1. NovaStar Home Mortgage of South Carolina, Inc., a Delaware corporation

SEC Filings: SEC Exhibit

21.1 to Form 10-K

SEC Exhibit 21.1 to Form 10-K confirms that NovaStar Home Mortgage, Inc. and NovaStar Mortgage, Inc. were distinct subsidiaries of NovaStar Financial, Inc., a Maryland corporation.

An endorsement by a corporate stranger — one never the payee or a proven successor — is a nullity. *In re Veal*, 450 B.R. at 911. See also *Kinder*, 398 S.C. at 316 (standing requires valid negotiation and possession of the note).



EX-21.1.3 dec211.htm SUBSIDIARIES OF THE REGISTRANT

SUBSIDIARIES OF THE REGISTRANT

- NovaStar Financial, Inc., a Maryland corporation, and its subsidiaries
 - NovaStar Assets Corporation, a Delaware corporation
 - NovaStar Certificates Financing Corporation, a Delaware corporation
 - NovaStar Capital Access Corporation, a Delaware corporation
 - NTF Repurchase Corporation, a Delaware corporation
 - NovaStar ABS CDO 1, Ltd., a Cayman Islands corporation, and its subsidiary
 - NovaStar ABS CDO 1, Inc., a Delaware corporation
 - NTF Holding Corporation, a Delaware corporation, and its subsidiaries
 - WarehouseUSA Capital Corporation, a Delaware corporation
 - Ampro Financial Services, Inc., a Delaware corporation
 - Acceleron Lending, Inc., a Delaware corporation
 - NovaStar Real Estate Holdings, Inc., a Delaware corporation
 - Homeview Lending, Inc., a Delaware corporation, and its subsidiaries
 - 1. HVL Repurchase Corporation, a Delaware corporation
 - 2. HVL Repurchase Corporation II, a Delaware corporation
 - NovaStar Credit Services, Inc., a Delaware corporation
 - NovaStar Mortgage, Inc., a Virginia corporation, and its subsidiaries
 - 1. NovaStar Mortgage Funding Corporation, a Delaware corporation
 - 2. NovaStar Mortgage Funding Corporation II, a Delaware corporation
 - 3. NovaStar Mortgage Funding Corporation III, a Delaware corporation
 - 4. NovaStar REMIC Financing Corporation, a Delaware corporation
 - 5. NMF Repurchase Corporation, a Delaware corporation
 - 6. NMF Repurchase Corporation II, a Delaware corporation
 - 7. NovaStar Mortgage Financing Corporation, a Delaware corporation
 - 8. NovaStar Certificates Financing LLC, a Delaware corporation
 - 9. NovaStar Capital Trust I
 - 10. NovaStar Capital Trust II
 - 11. NovaStar Mortgage SPV I
 - 12. NMF Property Financing, Inc., a Delaware corporation
 - 13. NMF REO Financing, Inc., a Delaware corporation
 - NovaStar Home Mortgage, Inc., a Delaware corporation, and its subsidiary
 - NovaStar CDO Holdings, Inc., a Delaware corporation

EX-21.1.3 dec211.htm SUBSIDIARIES OF THE REGISTRANT

SUBSIDIARIES OF THE REGISTRANT

- NovaStar Financial, Inc., a Maryland corporation, and its subsidiaries
 - NovaStar Assets Corporation, a Delaware corporation
 - NovaStar Certificates Financing Corporation, a Delaware corporation
 - NovaStar Capital Access Corporation, a Delaware corporation
 - NTF Repurchase Corporation, a Delaware corporation
 - NovaStar ABS CDO 1, Ltd., a Cayman Islands corporation, and its subsidiary
 - NovaStar ABS CDO 1, Inc., a Delaware corporation
 - NTF Holding Corporation, a Delaware corporation, and its subsidiaries
 - WarehouseUSA Capital Corporation, a Delaware corporation
 - Ampro Financial Services, Inc., a Delaware corporation
 - Acceleron Lending, Inc., a Delaware corporation
 - NovaStar Real Estate Holdings, Inc., a Delaware corporation
 - Homeview Lending, Inc., a Delaware corporation, and its subsidiaries
 - 1. HVL Repurchase Corporation, a Delaware corporation
 - 2. HVL Repurchase Corporation II, a Delaware corporation
 - NovaStar Credit Services, Inc., a Delaware corporation
 - NovaStar Mortgage, Inc., a Virginia corporation, and its subsidiaries
 - 1. NovaStar Mortgage Funding Corporation, a Delaware corporation
 - 2. NovaStar Mortgage Funding Corporation II, a Delaware corporation
 - 3. NovaStar Mortgage Funding Corporation III, a Delaware corporation
 - 4. NovaStar REMIC Financing Corporation, a Delaware corporation
 - 5. NMF Repurchase Corporation, a Delaware corporation
 - 6. NMF Repurchase Corporation II, a Delaware corporation
 - 7. NovaStar Mortgage Financing Corporation, a Delaware corporation
 - 8. NovaStar Certificates Financing LLC, a Delaware corporation
 - 9. NovaStar Capital Trust I
 - 10. NovaStar Capital Trust II
 - 11. NovaStar Mortgage SPV I
 - 12. NMF Property Financing, Inc., a Delaware corporation
 - 13. NMF REO Financing, Inc., a Delaware corporation
 - NovaStar Home Mortgage, Inc., a Delaware corporation, and its subsidiary
 - NovaStar CDO Holdings, Inc., a Delaware corporation

NO POOLING & SERVICING AGREEMENT

No Trust Authority

14. Thereafter, the Mortgage was assigned to The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 by Corrective Assignment recorded on October 3, 2023, in Book 21076 at Page 4337.

- Plaintiff claims status as **Trustee**
- Trustee authority derives from the **PSA**
- PSA has **not been produced**
- Trustee status is **unsupported**

Plaintiff pled a statute that only applies if the note was dishonored.

20. The Plaintiff herein is entitled to enforce said Note and has the right to foreclose by virtue of the Plaintiff's status as holder of the instrument, a nonholder in possession of the instrument who has the rights of a holder, or person not in possession of the instrument who is entitled to enforce the instrument pursuant to S.C. Code Ann. §§ 36-3-309 or 36-3-418(d) (2008).

- **Plaintiff has offered no evidence of lawful entitlement following dishonor.**
- **Therefore, Paragraph 20 defeats standing rather than establishing it.**

Email text reproduction

Date: Tue, 10 Feb 2026 21:12:58 +0000

From: "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

To: Chad Burgess <chad.burgess@brockandscott.com>, Lauren Browder <lauren.browder@brockandscott.com>

Cc: Mark Nunnally <markanunnally@gmail.com>, Tim Nunally <timznice83@gmail.com>

Subject: Bank of New York Mellon vs Timothy Nunally 2024-1094

Attachments: SKM_360i26021016410.pdf; Nun.docx

Hello,

Attached please find the trial order process from Judge Spence.

Joy Davidson

Docket Manager

Lexington County

Master-In-Equity Court

205 E. Main St., Suite 204

Lexington, SC 29072

Office: 803-785-8291

Email: jfdavidson@lexingtoncounty.sc.gov

Please note the new Email address

Important note:

Please e-file the notice of hearing/status conference/notice/RTSC/Scheduling Order along with your certificate of service/ mailing and email a filed copy to MasterInEquity@LexingtonCounty.sc.gov at least ten business days prior to the hearing. If we do not receive these, your hearing/status conference will be cancelled.

Send notice to attorneys of record and pro se defendants unless otherwise instructed by the court.

[cid:5962ca63-dc74-417e-a671-0ba12f430cd7]

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please notify the sender and delete this message

immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

REMEMBER-

1. Maximum Ten (10) page Order! Equity Court does not have law clerk or staff attorney to assist in Order review/preparations.
2. Make sure WORD version court gets can be edited and does not have your changes or comment blocks on side.
3. Following is template –not engraved in stone. If changes to be made, both parties discuss and uniformly address in proposed Orders.
4. Y'all spend time before transcript receipt working together to hone specific dispute fact questions/legal issues wording.
5. This disputed family estate/conservator case, with family dynamics, and with multiple issues, especially this time of year, is very complex and now after a day and a half trial, I am more conflicted, rather than clearer as how issues to play out.
6. If all facts and crystal clear, it would not have come trial. If you deem advisable, discuss with clients any further discussions.
7. I appreciate how in the midst of a very disputed matter that you both exhibited such professionalism and civility during this matter
8. Nice trial preparation and trial work!

CASE CAPTION

SUMMARY

The parties tried this contested mortgage foreclosure case on February 10, 2026. The court reporter was

Plaintiff argues it is entitled to foreclose their mortgage since the mortgage has not been paid timely. Defendants' are heirs of the original mortgagor and raise standing and or mortgage loan defenses (assignment – real party in interest etc) and race/notice recordation defenses.

The parties presented various witnesses and evidence and argued their claims and defenses. For the reasons stated below, the court rules:

THE COURT FINDS THE FOLLOWING UNDISPUTED FACTS

1. May 23, 2024 Order of Reference filed.
2. List relevant court filings Summons Complaint, Service, Default, Trial Schedule Orders, filed Motion Orders etc.
3. List property address.
4. List Mortgage loan chronology.

5. Mortgage Debt evidence
6. How to determine attorney fees/costs process if Plaintiff prevails
7. Other relevant undisputed facts history of legal filings ...

DISPUTED FACTS----please use the following introduction for each disputed fact—

- 1.The parties dispute -----, P argues----Defendant argues----Ct finds—because --- use this analysis for each disputed facts
2. Other disputed facts.-

LEGAL ISSUES:

1. Is there a valid Mortgage?
2. Is Mortgage in default?
3. Does P have standing to foreclose?
4. Does D have any valid defenses? List pleadings, default etc, motion rulings etc—language in Trial Schedule Order etc.
5. Does Defendant have a valid Race-Notice Defense based on Deed of Distribution.

CONCLUSIONS OF LAW

1. Jurisdiction pursuant to Order of Reference Case referred to Equity Court

2. Appellate court scope of review for legal action is-----
3. Appellate court scope of review for equitable action is-----
4. Evidence issues
5. Court concludes-----

IT IS ORDERED THAT:

- 1.
- 2.

Email text reproduction

Date: Fri, 3 Apr 2026 20:35:40 +0000

From: "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

To: Chad Burgess <chad.burgess@brockandscott.com>, Lauren Browder <lauren.browder@brockandscott.com>

Cc: Mark Nunnally <markanunnally@gmail.com>, Tim Nunally <timznice83@gmail.com>

Subject: Re: Bank of New York Mellon vs Timothy Nunally 2024-1094

Hello,

Just a reminder that parties are to email proposed order to each other today. Hope you have a great rest of your day.

Joy Davidson

Docket Manager

Lexington County

Master-In-Equity Court

205 E. Main St., Suite 204

Lexington, SC 29072

Office: 803-785-8291

Email: jfdavidson@lexingtoncounty.sc.gov

Please note the new Email address

Important note:

Please e-file the notice of hearing/status conference/notice/RTSC/Scheduling Order along with your certificate of service/ mailing and email a filed copy to MasterInEquity@LexingtonCounty.sc.gov at least ten business days prior to the hearing. If we do not receive these, your hearing/status conference will be cancelled.

Send notice to attorneys of record and pro se defendants unless otherwise instructed by the court.

[cid:96f5ec0a-8e10-454e-aa0a-133c3963242b]

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forwarding, printing, or copying of this e-mail is strictly prohibited.

From: Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>
Sent: Tuesday, February 10, 2026 4:12 PM
To: Chad Burgess <chad.burgess@brockandscott.com>; Lauren Browder <lauren.browder@brockandscott.com>
Cc: Mark Nunnally <markannally@gmail.com>; Tim Nunally <timznice83@gmail.com>
Subject: Bank of New York Mellon vs Timothy Nunally 2024-1094

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[cid:5962ca63-dc74-417e-a671-0ba12f430cd7]

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Date: Fri, 3 Apr 2026 16:56:41 -0400

From: Mark Nunnally <markannally@gmail.com>

To: "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Chad Burgess <chad.burgess@brockandscott.com>, Lauren Browder <lauren.browder@brockandscott.com>, Tim Nunally <timznice83@gmail.com>

Subject: Re: Bank of New York Mellon vs Timothy Nunally 2024-1094

Ms. Davidson,

Thank you for the Court's reminder.

Defendants transmitted their Proposed Order to Plaintiff's counsel earlier today at 9:12 AM and have followed up this afternoon but have not yet received any response.

Defendants remain available to confer and will proceed in good faith consistent with the Court's directive.

Respectfully,

Mark-Anthony Nunnally

<https://www.avast.com/sig-email?utm_medium=email&utm_source=link&utm_campaign=sig-email&utm_content=webmail>

Virus-free.www.avast.com

<https://www.avast.com/sig-email?utm_medium=email&utm_source=link&utm_campaign=sig-email&utm_content=webmail>

<#DAB4FAD8-2DD7-40BB-A1B8-4E2AA1F9FDF2>

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> *Cc:* Mark Nunnally <markannally@gmail.com>; Tim Nunally <
> timznice83@gmail.com>
> *Subject:* Bank of New York Mellon vs Timothy Nunally 2024-1094
>
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Email text reproduction

Date: Fri, 3 Apr 2026 21:02:15 +0000

From: Chad Burgess <chad.burgess@brockandscott.com>

To: Mark Nunnally <markanunnally@gmail.com>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Lauren Guy <Lauren.Guy@brockandscott.com>, Tim Nunally <timznice83@gmail.com>

Subject: RE: Bank of New York Mellon vs Timothy Nunally 2024-1094

Thanks, Everyone,

I have received Mr. Nunally's proposed order and provided him with the Plaintiff's proposed order. In reviewing Mr. Nunally's proposed order, I have no objection to the parties presenting their respective orders to the Court for consideration.

Thanks,

Chad

Chad Burgess
Senior Associate
Foreclosure
803-454-3540

From: Mark Nunnally <markanunnally@gmail.com>

Sent: Friday, April 3, 2026 4:57 PM

To: Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>

Cc: Chad Burgess <chad.burgess@brockandscott.com>; Lauren Guy <lauren.browder@brockandscott.com>; Tim Nunally <timznice83@gmail.com>

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Virus-free.www.avast.com<https://www.avast.com/sig-email?utm_medium=email&utm_source=link&utm_campaign=sig-email&utm_content=webmail>

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[cid:image001.png@01DCC38B.4D127D00]

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Cc: Mark Nunnally

<markanunnally@gmail.com<mailto:markanunnally@gmail.com>>; Tim

Nunally <timznice83@gmail.com<mailto:timznice83@gmail.com>>

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FDCPA: This firm is a debt collector. This is an attempt to collect a debt, and any information obtained will be used for that purpose. If you are a debtor in an active bankruptcy case, are under the protection of a bankruptcy stay or your personal liability for this debt has been discharged in a bankruptcy proceeding and you have not reaffirmed the debt, this communication is for informational and compliance purposes only, and we are not attempting to collect the debt from you personally.

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IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Case No.: 2024-CP-32-01094

THE BANK OF NEW YORK MELLON,
Plaintiff,

v.

TIMOTHY A. NUNALLY, et al.,
Defendants.

SUMMARY

This contested mortgage foreclosure action came before the Court for trial on February 10, 2026, before the Honorable James O. Spence, Master-in-Equity for Lexington County.

Plaintiff seeks to foreclose upon the subject mortgage, alleging default under the loan documents. Defendants, as heirs of the original mortgagor, assert defenses including lack of standing at commencement, defects in assignment and chain of title, and failure to establish entitlement to enforce the Note and Mortgage.

The Court heard testimony, received exhibits into evidence, assessed witness credibility, and considered the arguments of the parties. Based upon the record and applicable law, the Court makes the following findings and conclusions.

UNDISPUTED FACTS

This action was commenced on March 8, 2024.

The matter was referred to the Master-in-Equity pursuant to Order of Reference.

The case proceeded to trial on February 10, 2026.

Plaintiff seeks foreclosure of real property located in Lexington County, South Carolina.

Defendants are heirs of the original mortgagor.

DISPUTED FACTS AND FINDINGS

A. Standing at Commencement

The parties dispute whether Plaintiff had standing at the time the action was commenced.

Plaintiff asserts it was entitled to enforce the Note.

Defendants contend Plaintiff failed to establish holder status or other entitlement to enforce at the time of filing.

The Court finds that Plaintiff did not present sufficient evidence establishing that it was the holder of the Note or otherwise a person entitled to enforce the instrument as of March 8, 2024.

Standing must exist at the inception of the action and cannot be established retroactively.

B. Possession and Enforcement of the Note

The parties dispute whether Plaintiff established possession and entitlement to enforce the Note.

Plaintiff presented testimony regarding possession.

Defendants argue such testimony lacked specificity.

The Court finds that the testimony presented was generalized and did not sufficiently establish the manner, timing, or continuity of possession necessary to demonstrate entitlement to enforce.

Testimony regarding servicing practices or document custody, without competent evidentiary foundation or documentary corroboration, is insufficient.

C. Assignment and Chain of Title (Race-Notice Considerations)

The parties dispute the validity of the assignment and chain of title.

Plaintiff relies on recorded assignments.

Defendants challenge inconsistencies in execution, timing, and recording.

The Court finds that inconsistencies in the record raise substantial concerns regarding the reliability and legal sufficiency of the assignment chain.

South Carolina is a race-notice jurisdiction. Priority depends upon the proper recording of validly executed instruments. Defects in execution or irregularities in timing undermine the legal effect of recorded instruments.

The Court finds that Plaintiff failed to establish a clear, continuous, and legally sufficient chain of title.

D. Mortgage Execution

The parties dispute whether the mortgage was properly executed.

Plaintiff asserts the mortgage is valid.

Defendants challenge compliance with statutory requirements.

The Court finds that Plaintiff did not sufficiently establish compliance with South Carolina statutory requirements governing execution and recordation of mortgage instruments, including required formalities for validity.

E. Authority to Enforce

The parties dispute whether Plaintiff established authority to enforce.

Plaintiff asserts authority through agents and assignments.

Defendants challenge the absence of competent supporting evidence.

The Court finds that Plaintiff did not present sufficient evidence establishing the authority of the individuals or entities involved in the transfer or enforcement of the Note and Mortgage.

Assertions of authority, absent competent proof of agency or corporate capacity, are insufficient.

LEGAL ISSUES

The Court considers the following issues:

- Whether Plaintiff had standing at commencement;
- Whether Plaintiff established entitlement to enforce the Note;
- Whether Plaintiff established a valid chain of title;
- Whether the mortgage was properly executed under South Carolina law;
- Whether Plaintiff established authority to enforce.

CONCLUSIONS OF LAW

Plaintiff bears the burden of proving its right to enforce the Note and foreclose the mortgage at the time the action was commenced.

Foreclosure is an equitable remedy requiring strict proof of entitlement.

The Court concludes that Plaintiff failed to establish:

- Standing at commencement;
- Entitlement to enforce the Note;
- A reliable and legally sufficient chain of title;
- Proper execution of the mortgage; and
- Authority to enforce.

Accordingly, Plaintiff has failed to meet its burden of proof.

ORDER

IT IS HEREBY ORDERED that Plaintiff has failed to establish standing at the time the action was commenced.

IT IS FURTHER ORDERED that Plaintiff has failed to establish entitlement to enforce the Note and Mortgage.

IT IS FURTHER ORDERED that Plaintiff has failed to meet its burden of proof.

Accordingly, the foreclosure action is DENIED.

IT IS FURTHER ORDERED that this action is DISMISSED.

IT IS SO ORDERED.

The Honorable James O. Spence Master-in-Equity Lexington County, South Carolina

Dated: _____

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Proposed Order was served upon all parties of record via electronic mail and/or U.S. Mail on this _____ day of _____, 2026.

Mark-A Nunnally

5681 Grande River Rd.

College Park, GA 30349

404-980-4488

markanunnally@gmail.com

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,

Plaintiff,

v.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants

IN THE COURT OF COMMON PLEAS

CASE NO.: 2024-CP-32-01094

**MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE AND REFORMATION OF
MORTGAGE**

DEFICIENCY WAIVED

Hearing Date: February 10, 2026

Appearances: Chad W. Burgess, Esquire for Plaintiff and Defendants Timothy Allen Nunally and MarkAnthony Nunally (self-represented).

Court Reporter: Kathryn Bostrom

INTRODUCTION:

The instant action is one for foreclosure of property located in Lexington County, South Carolina. The Lis Pendens, Summons and Complaint were filed March 8, 2024. On May 23, 2024, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), this matter was referred to the undersigned Master In Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the case. Any appeal from this decision shall be directly to the South Carolina Court of Appeals. A bench trial was held on February 10, 2026. Present at the hearing was Chad W. Burgess of the firm of Brock & Scott, PLLC and appearing self-represented were

Defendants Timothy Allen Nunally and MarkAnthony Nunally. Present and testifying on behalf of the Plaintiff were Brian L. Boger and Louise Plasse.

Based upon the arguments, testimony, and evidence presented at trial, I find and conclude as follows:

FINDINGS OF FACT:

The following events and dates are undisputed and relevant to the case:

1. Service was made upon the Defendants as shown by the filed proofs of service.
2. The Defendants are in default as shown by the affidavit of default filed March 24, 2025 and the order denying the Defendants' motions to dismiss and to set aside default filed September 30, 2025.
3. According to a filed Affidavit, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
4. All Defendants were notified of the time, date and place of the trial.
5. For value received, Carl A. Nunally made, executed and delivered a note, dated January 30, 2004, payable to the order of NovaStar Home Mortgage, Inc. in the principal amount of \$121,500.00 with interest at the rate of 6.99% per annum. The original Note was presented at trial and extensive testimony was taken regarding the Note with a copy being admitted into evidence. See Plaintiff's Exhibit 4.
6. To secure the payment of the Note, Carl A. Nunally and Frankie L. Nunally made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc., as mortgagee, as nominee for NovaStar Home Mortgage, Inc., dated January 30, 2004, encumbering real property in

Lexington County, (“Mortgage”), more fully described below (“Property”). The Mortgage was recorded on February 28, 2004, in the Lexington County Registry in Book 9041 at Page 4. The original Mortgage was presented at trial and extensive testimony was taken regarding the Mortgage and a copy was admitted into evidence. *See* Plaintiff’s Exhibit 5.

7. Thereafter, the Mortgage was assigned to The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 by assignment recorded on July 28, 2023 in Book 21067 at Page 4146. Thereafter, a Corrective Assignment of Mortgage to The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 was recorded on October 3, 2023 in Book 21076 at Page 4337. *See* Plaintiff’s Exhibits 9 and 10.

8. Carl A. Nunally, Sr. and Frankie L. Nunally did make, execute and deliver to JPMorgan Chase Bank, as Trustee for the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, its successors and assigns, a certain Loan Modification Agreement, dated September 2, 2009, amending and supplementing the Note and Mortgage described above. By virtue of the Loan Modification Agreement, the unpaid principal balance was modified to \$104,168.2, together with interest at the rate of 1.5% per annum on the unpaid balance. *See* Plaintiff’s Exhibit 8.

9. Frankie L. Nunally passed away on January 14, 2019, as evidenced by the information found in Estate File 2019-ES-32-01345 in the probate records for Lexington County, South Carolina, indicating the heirs/devisees of the Property as Carl Alvin Nunally, Sr., Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally. Carl A. Nunally, Sr., passed away on

September 4, 2021, as evidenced by the information found in Estate File 2022-ES-32-01253 in the probate records for Lexington County, South Carolina, indicating the heirs/devisees of the Property as Timothy Allen Nunally as Trustee of the CAN Irrevocable Trust.

10. The titleholders of record of the Property as of the filing of the Lis Pendens was/were Carl Alvin Nunally, Jr., Mark Anthony Nunally and Timothy Allen Nunally.

11. Based on the evidence presented, I find that payment due on the Note has not been made, and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney for collection.

12. Plaintiff seeks recovery of attorney's fees and court costs in this matter. As outlined at trial, a hearing regarding an award of attorney's fees will be held at a later date if necessary.

13. Based on the testimony and evidence presented, the amount due on the Note and Mortgage, with interest under the terms provided in the Note, as modified, and other costs and expenses of collection, excluding attorney's fees and court costs, secured by the Note and Mortgage, is as follows:

Principal Due as of Today's Date:	02/10/2026		\$6,345.74
Deferred Principal Balance:			\$12,076.10
Accrued Interest From:	04/01/2023	to: 02/10/2026	\$271.97
Accruing at:	1.5% per annum		
Late Charges:			\$66.98
Escrow Advance Amt:			\$7,114.84
Title Search:			\$250.00
Property Inspections			\$600.00
BPO			\$250.00

14. Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is \$26,975.09. Interest on the total debt shall accrue at the rate stated above until the judicial sale. Additional interest after the date of the judicial sale will be governed by the terms set forth below.

15. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b), SCRCF.

16. The Defendant(s), below listed, claim or may claim liens upon or interests in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCF. The said Defendants and such claims or liens are as follows:

A. The Defendants, Timothy Allen Nunally and Mark Anthony Nunnally, have or may claim to have some interest in the Property by virtue of a certain deed of the Estate of Carl Alvin Nunally, Sr., purporting to convey an interest in the Property to aforementioned Defendants. Said deed was recorded on September 6, 2023, in the Lexington County Records in Book 21073 at Page 1408. Any interest that this Defendant received in the Property is "subject to" Plaintiff's Mortgage and this interest should be eliminated through a properly completed foreclosure sale.

B. The Defendants, Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally, have or may claim to have some interest in the Property by virtue of being heirs to or devisees of Frankie L. Nunally as shown in Estate File 2019-ES-32-01345 in the Lexington County Probate Records. Any interest that these Defendants would have received in the Property would have been "subject to" Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

C. The Defendant, Timothy Allen Nunally, as Trustee of the CAN Irrevocable Trust, have or may claim to have some interest in the Property by virtue of being an heir to or devisee of Carl A. Nunally, Sr., as shown in Estate File 2022-ES-32-01253 in the Lexington County Probate Records. Any interest that this Defendant would have received in the Property would have been "subject to" Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

D. The Defendant, Timothy Allen Nunally, as Personal Representative of the Estate of Carl A. Nunally, Sr., has or may claim to have some interest in the Property by virtue of being the Personal Representative as shown in the Estate File 2022-ES-32-01253. Any interest that this Defendant has in the Property would be "subject to" Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

There are a number of relevant and disputed facts:

1. Defendants challenge Plaintiff's standing to bring the suit. This dispute includes Defendant's assertions regarding Race-Notice Considerations. Plaintiff asserts that it is the real party in interest with standing to bring the instant foreclosure action based upon the testimony and evidence presented at trial. Plaintiff further asserts that its standing has been established by this Court's order entered September 30, 2025, which denied several motions filed by the Defendant.
2. Plaintiff's complaint includes a cause of action pursuant to the South Carolina Uniform Declaratory Judgments Act S.C. Code Ann. § 15-53-10, et. seq., and involves an actual, justiciable controversy between the parties as described therein. Plaintiff alleges that, due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed by the Notary as the notary lists himself as the party whose signature was being acknowledged instead of the Mortgagors, Carl A. Nunally, Sr. and Frankie L. Nunally. Plaintiff alleges that the notary intended to properly execute the Acknowledgment Section, and that the clear intent of the parties to the Mortgage was to execute and record a valid Mortgage to secure repayment of the Note described herein. The Defendant's contest the Plaintiff's entitlement to declaratory judgment.

ISSUES:

1. Is the Plaintiff the real party in interest with standing to bring this foreclosure?
2. Is the Plaintiff entitled to the relief sought in its declaratory judgment action?

CONCLUSIONS OF LAW AND DISCUSSION:**Plaintiff's standing to bring the foreclosure action**

The Plaintiff's arguments related to standing are well taken. The Plaintiff's standing to bring the foreclosure was addressed in this Court's September 30, 2025 order. The evidence presented at trial is consistent with the September 30, 2025 order. For finality, the findings regarding standing are incorporated below.

SCRCP Rule 17(a) provides that, "[e]very action shall be prosecuted in the name of the real party in interest" and further sets forth that, "[n]o actions shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until such time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest". In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the Court of Appeals took up the issue of standing in the context of a mortgage foreclosure and noted, "[t]he requirement of Standing is not an inflexible one." *Id.* at 220 (quoting *Sloan v. Sch. Dist. Of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000)). The Court of Appeals further noted the following regarding transfers of Notes and Mortgages:

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. §36-3-203(b) (Supp. 2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but...the assignment of the mortgage alone does not carry with it an assignment of the note." *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1710, 176, 20 S.E. 84, 85 (1984) ("The Transfer of a note carries with it a mortgage given to secure payment of such note."). *Id.* at 220.

Thus, a holder of a note has standing as the real party in interest to bring a foreclosure action. In *Draper*, the Court of Appeals also acknowledged that a mortgage servicer has standing to initiate a foreclosure action. “Several bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure. We agree with this view.” *Id.* at 223.

I find and conclude that the Note was properly endorsed. The Note is endorsed on its face and there are two allonges affixed to the document. Despite the Defendants’ assertions to the contrary, on its face, the Note was endorsed from Novastar Home Mortgage, Inc. to Novastar Mortgage, Inc. The Note is further endorsed from Novastar Mortgage, Inc. to JPMorgan Chase Bank, as Trustee of the NovaStar Mortgage Funding Trust, Series 2004-1, relating to the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1. Each of the Novastar endorsements note the same trust which is consistent with the Plaintiff in this action. Finally, the Note is endorsed in blank by JPMorgan Case Bank N.A. f/k/a JPMorgan Chase Bank, as Trustee of the NovaStar Mortgage Funding Trust, Series 2004-1, relating to the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1. On its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a “person entitled to enforce” the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

I find and conclude that the chain of assignments of the Mortgage to the Plaintiff is valid. While cogent evidence of the transfer of the Mortgage to the Plaintiff, the assignments are unnecessary to assert Plaintiff’s right to enforce the Note and Mortgage. As noted in *BAC Home Loan servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549, “[t]he assignment of a

mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee”. Quoting *Singleton v. Singleton*, 60 S.C. 216, 235, 38 S.E. 462, 469 (1901). Because it is the transfer of the Note that carries with it the transfer of the Mortgage, the recordation of the assignment simply puts the world on notice of the assignment, and the timing of its recording has no impact on Plaintiff’s standing to bring the instant foreclosure action.

Further, the Defendants lack standing to challenge the transfer of the Note and Mortgage because they were not parties to said transfer. *In Re McFadden*, 471 BR 136 (2012); *see also Reese v. United States Bank Nat’l Ass’n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012)(“Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity”); *see also Windsor Green Owners Ass’n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). (“Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract.”). The Defendants were not parties to the subject Note and Mortgage as they were named to foreclose any ownership interest they may have in the property.

A brief discussion of the race-notice considerations raised by the Defendants is warranted here. The common law holds that an unrecorded mortgage is valid against the world entire. *South Carolina Nat. Bank v. Guest*, 232 S.C. 367, 102 S.E.2d 215 (1958). South Carolina has adopted the common law in full except to the point modified by South Carolina Code Annotated § 30-7-10.¹ However, this modification only protects *bona fide* purchasers for value **without notice**. In all applications other than in regard to *bona fide* purchasers for value without notice, the common

¹ South Carolina Code Annotated § 14-1-50 states:

all, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

law rule remains effective. See *United States v. Anders Contracting Co.*, 111 F.Supp. 700 (D.S.C. 1953) stating that (“[u]nder the South Carolina law, **the common law rule that a ...mortgage over real estate is good against the world, though unrecorded, remains in effect except as changed by the Recording Act.**” (all emphasis added).

The recordation statutes have **modified** the common law rule, but have not done away with it. The relevant enactment is found at South Carolina Code Annotated § 30-7-10. This provision states in relevant portion:

All ... mortgages or instruments in writing in the nature of a mortgage of any real property ... **are valid so as to affect the rights of subsequent ... purchasers for valuable consideration without notice**, only from the day and hour when they are recorded in the office of the register of deeds or clerk of court of the county in which the real property affected is situated... . (Emphasis added)

Thus, it is clear from this provision that the race-notice statute does not abrogate the common law rule entirely. It modifies it only to the degree of protecting subsequent purchasers for valuable consideration without notice. *Goodrich Silvertown, Inc. v. Rogers*, 189 S.C. 101, 200 S.E. 91 (1938). Here, the evidence establishes that the Defendants took title to the subject property from the estates of their parents, the mortgagors herein, Carl Alvin Nunally, Sr. and Frankie Nunally. At the time the Defendants received their respective interests in the Subject Property, the Mortgage was recorded in the Lexington County Registry. Defendant Timothy Allen Nunally testified that, as Personal Representative of the Estate of Carl Alvin Nunally, Sr. that he made a number of payments on the subject Mortgage following his father’s passing. Indeed, no defendant has denied actual knowledge of the Mortgage, but rather the Defendants rely on their belief that the Mortgage should not have been recorded to argue that the Mortgage should not constitute record notice of the Plaintiff’s lien. The Defendant’s position is untenable and would not erase their actual knowledge of the Mortgage as a means of avoiding foreclosure. I find and conclude

that the Defendants had both actual and record/inquiry notice of the Mortgage and, therefore, their race-notice considerations do not affect the enforceability of the Mortgage.

Finally, I find and conclude that the Defendants are protected from potential double-liability from any party other than the Plaintiff attempting to enforce the Note and Mortgage because, based on the testimony and evidence presented, no such party exists. Based on the foregoing, all issues related to standing and enforceability of the Note and Mortgage are hereby resolved in favor of the Plaintiff.

Plaintiff's request for declaratory relief

Attorney Brian L. Boger testified at trial regarding his role as the attorney who supervised the closing of the loan as well as his serving as a witness and notary regarding the signatures of Carl A. Nunally, Sr. and Frankie L. Nunally on the Mortgage. Mr. Boger testified that, due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed as he inadvertently listed himself as the party whose signature was being acknowledged instead of the Mortgagors, Carl A. Nunally, Sr. and Frankie L. Nunally. Mr. Boger testified that he intended to properly execute the Acknowledgment Section, and that the clear intent of the parties to the Mortgage was to execute and record a valid Mortgage to secure repayment of the Note described herein. Mr. Boger's testimony was unrefuted and unequivocal. Therefore, I find and conclude that the Plaintiff is entitled to an order declaring that the Mortgage is an equitable lien or equitable mortgage on the subject property as of the date of its execution and that the Mortgage represents a valid and subsisting first lien on the subject property.

FURTHER CONCLUSIONS OF LAW:

1. The Plaintiff is entitled to judgment as to all causes of action, including foreclosure of its Mortgage.
2. The Property should be sold at public auction after statutory advertisement.
3. The Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is \$26,975.09. An additional hearing on the amount and measure of the Plaintiff's attorney's fees and court costs will be scheduled if necessary.
4. Interest should continue to accrue on the Total Debt. Costs incurred after the entry of this Order up to the date of judicial sale may be added to the Total Debt.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff is hereby granted judgment as to all causes of action, including foreclosure of its Mortgage.
2. The Property should be sold at public auction after statutory advertisement.
3. The Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is ordered and established at \$26,975.09. An additional hearing on the amount and measure of the Plaintiff's attorney's fees and court costs will be scheduled if necessary.
4. Interest shall accrue continue to accrue on the Total Debt, including any attorney's fees and court costs awarded to the Plaintiff. Costs incurred after the entry of this Order up to the date of judicial sale may be added to the Total Debt
5. That the Defendant(s) liable for the Total Debt shall, prior to the judicial sale pay to the Plaintiff, or the Plaintiff's attorney, the Total Debt including accrued interest, costs, and disbursements.

6. That on default of payment, the Property shall be sold at public auction at the Lexington County Judicial Center, City of Lexington, County and State aforesaid, on some convenient sales day on the following terms:
 - A. The selling officer shall require a deposit of 5% of the bid (in cash or its equivalent) to be applied to the purchase price upon compliance, but in case of non-compliance within thirty (30) days, the deposit shall be forfeited and applied to the Plaintiff's costs of sale and the balance then applied to the Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 1.5%.
 - C. The sale shall be subject to taxes and assessments, easements and restrictions of record, and any senior encumbrances.
 - D. The Purchaser shall pay for the deed and the cost of recording.
7. If the Plaintiff is the successful bidder for less than the total debt at the time of sale, the Plaintiff shall pay only the amount of the Court's costs and expenses.
8. No personal or deficiency judgment being demanded, the bidding shall be final on the sale date and the successful bidder may comply immediately.
9. Notice of the time, date, and place of the sale and the terms thereof will be advertised according to law
10. The selling officer will execute to the purchaser(s) a deed of the Property. If any successful bidder, other than the Plaintiff or its assignee, fails to comply with the terms of sale within thirty (30) days, the Property may be re-advertised for sale according to the same terms set forth herein until full compliance.
11. If an agent of the Plaintiff does not appear at the sale, the Property shall be withdrawn from sale and sold at the next available sales date upon the same terms.

12. The selling officer shall apply the proceeds of the sale as follows:

FIRST: To the payment of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of the Court; and

NEXT: To the payment of the Total Debt, interest, and costs as defined above; and

NEXT: Any surplus will be held pending further Order pursuant to Rule 71(c), SCRC.

13. That it is further ORDERED that each named Defendant, and all persons claiming under him, them or it, be forever barred and foreclosed of all right, title, interest, lien, and equity of redemption in the Property, or any part thereof.

14. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, the Sheriff of Lexington County is hereby ordered and directed to eject and remove from the premises the named Defendants holding record title to the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

15. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, and the property remains occupied by a person or persons holding or claiming to hold the property under lease from the record title holders, or who otherwise may have rights or protections under Federal or State statutes protecting such lessees, the Sheriff of Lexington County shall only be ordered and directed to eject and remove from the premises those occupants under the terms stated above, after a hearing as

directed by this court and under such order or writ as may be issued by this court as deemed equitable under the circumstances.

16. That it is further ORDERED that after the Order Confirming Sale and Disbursements has been filed, the undersigned Master In Equity shall direct the Register of Deeds to release the lien(s) being foreclosed.

17. That it is further ORDERED that the following is a description of the Property to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF LEXINGTON, STATE OF SOUTH CAROLINA, THE SAME BEING SHOWN AND DESIGNATED AS LOT NO. 283, BLOCK W, ON A PLAT OF MURRAYWOOD II BY HEANER ENGINEERING CO., DATED OCTOBER 27, 1972, REVISED JULY 1, 1975, AND RECORDED IN THE OFFICE OF THE ROD FOR LEXINGTON COUNTY IN PLAT BOOK 139-G AT PAGE 23. ALSO BEING SHOWN ON A PLAT PREPARED FOR DANE C. FROST AND TERRI L. FROST BY BELTER & ASSOCIATES, INC., DATED JUNE 14, 1993, AND RECORDED IN PLAT BOOK 262 AT PAGE 70. REFERENCE BEING MADE TO SAID LATTER PLAT WHICH IS INCORPORATED HEREIN FOR A MORE COMPLETE AND ACCURATE DESCRIPTION; ALL MEASUREMENTS BEING A LITTLE MORE OR LESS.

THIS BEING THE SAME PROPERTY CONVEYED TO CARL A. NUNALLY AND FRANKIE L. NUNALLY BY DEED OF DANE C. FROST AND TERRI L. FROST DATED AUGUST 8, 1994, AND RECORDED MARCH 12, 1999, IN BOOK 5145 AT PAGE 97 IN THE OFFICE OF THE REGISTER OF DEEDS FOR LEXINGTON COUNTY, SOUTH CAROLINA. THEREAFTER, FRANKIE L. NUNALLY PASSED AWAY ON JANUARY 14, 2019, LEAVING THE SUBJECT PROPERTY TO HER HEIRS CARL ALVIN NUNALLY, SR., CARL ALVIN NUNALLY, JR., MARK ANTHONY NUNALLY, AND TIMOTHY ALLEN NUNALLY, AS IS MORE FULLY PRESERVED IN PROBATE FILE NO. 2019-ES-32-01345 IN SAID RECORDS. SUBSEQUENTLY, CARL A. NUNALLY PASSED AWAY ON SEPTEMBER 4, 2021, LEAVING THE SUBJECT PROPERTY TO HIS DEVISEE, TIMOTHY ALLEN NUNALLY, AS TRUSTEE OF THE CAN IRREVOCABLE TRUST, AS IS MORE FULLY PRESERVED IN PROBATE FILE NO. 2022-ES-32-01253. SEE ALSO THE DEED OF DISTRIBUTION DATED MAY 30, 2023, AND RECORDED SEPTEMBER 6, 2023, IN BOOK 21073 AT PAGE 1408 AND RE-RECORDED SEPTEMBER 27, 2023, IN BOOK 21075 AT PAGE 5539 IN SAID RECORDS.

CURRENT ADDRESS OF PROPERTY: 1759 Willow Creek Drive, Columbia, SC 29212

TMS: 002734-01-003

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COMMON PLEAS COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2024-CP-32-01094

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1

PLAINTIFF(S)

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally
DEFENDANT(S)

Submitted by:

Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court.
The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK**

APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the
Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of	Judgment Against	Judgment Amount To be
----------------------	------------------	-----------------------

(List name(s) below)	(List name(s) below)	Enrolled (List amount(s) below)
		N/A
<p>If applicable, describe the property, including tax map information and address, referenced in the order:</p> <p>All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W, on a plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975, and recorded in the Office of the ROD for Lexington County in Plat Book 139-G at Page 23. Also being shown on a plat prepared for Dane C. Frost and Terri L. Frost by Belter & Associates, Inc., dated June 14, 1993, and recorded in Plat Book 262 at Page 70. Reference being made to said latter plat which is incorporated herein for a more complete and accurate description; all measurements being a little more or less.</p> <p>This being the same property conveyed to Carl A. Nunally and Frankie L. Nunally by deed of Dane C. Frost and Terri L. Frost dated August 8, 1994, and recorded March 12, 1999, in Book 5145 at Page 97 in the Office of the Register of Deeds for Lexington County, South Carolina. Thereafter, Frankie L. Nunally passed away on January 14, 2019, leaving the subject property to her heirs Carl Alvin Nunally, Sr., Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally, as is more fully preserved in Probate File No. 2019-ES-32-01345 in said Records. Subsequently, Carl A. Nunally passed away on September 4, 2021, leaving the subject property to his devisee, Timothy Allen Nunally, as Trustee of the CAN Irrevocable Trust, as is more fully preserved in Probate File No. 2022-ES-32-01253. See also the Deed of Distribution dated May 30, 2023, and recorded September 6, 2023, in Book 21073 at Page 1408 and re-recorded September 27, 2023, in Book 21075 at Page 5539 in said Records.</p>		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 2026 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2026 to attorneys of record
or
to parties (when appearing pro se) as follows:

Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED
ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Email text reproduction

Date: Wed, 15 Apr 2026 00:09:16 -0400

From: Mark Nunnally <markanunnally@gmail.com>

To: Judge James Spence <jspence@lexingtoncounty.sc.gov>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Chad Burgess <Chad.Burgess@brockandscott.com>, Tim Nunally <timznice83@gmail.com>, Mark Nunnally <Markanunnally@gmail.com>

Subject: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Attachments: 2024-CP-32-01094_Short-Form_Proposed_Order.docx;
2024-CP-32-01094_Long-Form_Proposed_Order.docx;
2024-CP-32-01094_Summary_Sheet.pdf;
2024-CP-32-01094_Defendants_Proposed_Order_Packet_pdf.pdf

Judge Spence / Chambers,

Pursuant to the Court's post-trial order process, attached please find Defendants' final proposed orders in editable Word format for the Court's consideration.

Defendants have filed and served the corresponding packet, and these Word versions are submitted for the Court's convenience and review.

Respectfully submitted,

Nunnally: Mark-Anthony
Defendant, Pro Se

**IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON**

Case No.: 2024-CP-32-01094

THE BANK OF NEW YORK MELLON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
TIMOTHY A. NUNALLY, et al.,	)	
	)	
Defendants.	)	

I. SUMMARY

This matter came before the Court for trial on February 10, 2026, before the Honorable James O. Spence, Master-in-Equity for Lexington County.

The court reporter was present.

Plaintiff asserts it is entitled to foreclose based upon an alleged default under a mortgage loan. Defendants, as heirs of the original mortgagor, challenge Plaintiff's standing, the validity of the mortgage and assignments, and assert race-notice and recordation defenses.

The parties presented testimony, documentary evidence, and argument. After consideration of the record, the Court rules as follows:

II. FINDINGS OF FACT

THE COURT FINDS THE FOLLOWING UNDISPUTED FACTS

1. This action was filed on March 8, 2024.
2. The subject property is located at 1759 Willow Creek Drive, Columbia, South Carolina.
3. The mortgage was executed on January 30, 2004 and recorded on February 20, 2004.
4. Plaintiff relies on assignments recorded in 2023, including a corrective assignment.
5. Defendants' Deeds of Distribution were recorded prior to Plaintiff's corrective assignment.
6. A trial was conducted on February 10, 2026 pursuant to the Court's Trial Scheduling Order.

A. VALIDITY OF THE MORTGAGE AND ACKNOWLEDGMENT

The parties dispute whether the mortgage is valid.

Plaintiff argues the mortgage is valid and any defect is clerical.
Defendants argue the acknowledgment is defective and renders the mortgage not entitled to recordation.

The Court finds the acknowledgment is defective on its face and Plaintiff presented no evidence establishing that such defect may be cured. The Court further finds the mortgage was not entitled to recordation as a matter of law.

B. STANDING AT COMMENCEMENT

The parties dispute whether Plaintiff has standing.

Plaintiff argues the mortgage is valid and any defect is clerical.
Defendants argue the acknowledgment is defective and renders the mortgage not entitled to recordation.

The Court finds the acknowledgment is defective on its face and Plaintiff presented no evidence establishing that such defect may be cured. The Court further finds the mortgage was not entitled to recordation as a matter of law.

C. VALIDITY OF ASSIGNMENTS

The parties dispute the validity of the assignments.

Plaintiff argues the assignments validly transfer the mortgage.
Defendants argue the assignments misidentify the mortgage and are void.

The Court finds the assignments reference a mortgage recorded on February 28, 2004, a date not supported by the record, and further contain inconsistent recording information. Plaintiff presented no evidence reconciling these discrepancies. The Court finds the assignments fail to identify a valid instrument and are ineffective.

D. CHAIN OF TITLE AND TRUST AUTHORITY

The parties dispute whether Plaintiff established a valid chain of title and trust authority.

Plaintiff asserts authority as trustee.
Defendants argue no evidence establishes transfer into the trust.

The Court finds Plaintiff presented no admissible evidence establishing transfer of the loan into the trust or authority to enforce it. The Court finds a material gap in the chain of title.

E. PROOF OF DEFAULT AND INDEBTEDNESS

The parties dispute whether the mortgage is in default and the amount owed.
Plaintiff relies on a payment history and loan balance.
Defendants challenge the admissibility and foundation of such evidence.

The Court finds that Plaintiff failed to present competent, admissible evidence establishing the essential elements required for foreclosure.

The testimony of Plaintiff's witness, Louise Plasse, established only that she reviews and has access to certain business records maintained by third-party servicers and did not establish the foundational requirements necessary for admission of business records under Rule 803(6), SCRE.

The Court finds that Ms. Plasse did not testify as a records custodian and failed to establish the creation, maintenance, accuracy, or reliability of the records relied upon, including any payment history or default calculations.

The Court further finds that testimony that payments were "not all made" constitutes a conclusory statement and does not establish the amount owed, the method of calculation, or the existence of a default supported by admissible evidence.

The testimony of Plaintiff's witness, Brian L. Boger, was limited to loan origination and did not establish Plaintiff's possession of the Note at commencement, the existence of a default, or the amount owed.

The Court finds that no witness presented by Plaintiff provided competent testimony sufficient to establish default, indebtedness, or entitlement to foreclosure.

Accordingly, the Court finds that default and indebtedness were not proven and that Plaintiff failed to meet its burden of proof.

F. PRIORITY AND RACE-NOTICE

The parties dispute whether Plaintiff has priority under race-notice principles.

Plaintiff asserts its interest is superior.

Defendants argue no constructive notice exists due to defective recordation.

The Court finds that an improperly acknowledged mortgage is not entitled to recordation and does not impart constructive notice. The Court finds Plaintiff failed to establish priority over Defendants' recorded interests.

III. LEGAL ISSUES

The Court considered:

- (1) Whether there is a valid mortgage
- (2) Whether the mortgage is in default
- (3) Whether Plaintiff has standing at commencement
- (4) Whether Plaintiff established a valid chain of title and authority
- (5) Whether Defendants established a valid race-notice defense

IV. CONCLUSIONS OF LAW

1. The Court has jurisdiction pursuant to the Order of Reference.

2. Standing must exist at the time an action is commenced and cannot be established retroactively.
3. A mortgage must be properly acknowledged to be entitled to recordation, and an improperly acknowledged instrument does not provide constructive notice.
4. Assignments must identify a valid instrument and cannot transfer rights in a non-existent or misidentified mortgage.
5. A party seeking foreclosure must establish ownership of the debt and default through admissible evidence.
6. Plaintiff failed to establish standing, a valid enforceable mortgage, a valid chain of title, or default.

V. ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff has failed to establish standing at the commencement of this action;
2. Plaintiff has failed to establish a valid and enforceable mortgage entitled to recordation or enforcement;
3. Plaintiff has failed to establish a valid chain of title or authority to enforce the loan;
4. Plaintiff has failed to present competent, admissible evidence of default, amount owed, or entitlement to foreclosure;
5. Plaintiff has failed to meet its burden of proof as a matter of law;
6. Plaintiff's claims are hereby DISMISSED WITH PREJUDICE;
7. The Court declines to grant equitable or declaratory relief to cure defects in proof or statutory compliance;
8. All remaining relief requested by Plaintiff is DENIED.

This ruling is based upon Plaintiff's failure of proof on essential elements required for foreclosure, as established by the evidentiary record presented at trial, and not upon procedural or technical grounds.

IT IS SO ORDERED.

James O. Spence

Master-in-Equity

Lexington County, South Carolina

Dated: _____

**IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON**

Case No.: 2024-CP-32-01094

THE BANK OF NEW YORK MELLON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
TIMOTHY A. NUNALLY, et al.,	)	
	)	
Defendants.	)	

I. SUMMARY

This matter came before the Court for trial on February 10, 2026, before the Honorable James O. Spence, Master-in-Equity for Lexington County.

Plaintiff seeks foreclosure of a mortgage loan. Defendants, as heirs of the original mortgagor, challenge Plaintiff's standing, the validity of the mortgage and assignments, and assert recordation and race-notice defenses.

The Court considered testimony, documentary evidence, and argument. Based upon the record, the Court makes the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

A. MORTGAGE INSTRUMENT AND ACKNOWLEDGEMENT

1. The mortgage was executed on January 30, 2004.
2. The acknowledgment appearing on the mortgage does not properly identify the mortgagor and instead reflects a self-acknowledgment by the notary.
3. Plaintiff presented no legal authority establishing that such a defect constitutes a clerical error.
4. Plaintiff presented no admissible evidence demonstrating that the defect may be cured through testimony or equitable reformation.
5. The Court finds the acknowledgment is defective on its face.

B. RECORDATION AND CONSTRUCTIVE NOTICE

6. The mortgage was recorded on February 20, 2004.

7. Plaintiff's assignments and arguments reference a mortgage recorded on February 28, 2004.
8. The Court finds no evidence establishing that February 28, 2004 was a valid recording date for the subject instrument.
9. The Court finds that the record contains inconsistencies as to the identity and recording of the mortgage.
10. Plaintiff presented no evidence establishing that the mortgage was properly recorded in compliance with statutory requirements.

C. ASSIGNMENTS OF MORTGAGE

11. Plaintiff relies on assignments recorded in 2023, including a corrective assignment.
12. The assignments identify a mortgage recorded on February 28, 2004.
13. The corrective assignment repeats the same incorrect recording date and contains inconsistent recording references.
14. Plaintiff presented no evidence reconciling these discrepancies.
15. The Court finds that the assignments reference a mortgage instrument that does not exist as described.

D. CHAIN OF TITLE

16. The record reflects no assignment into Plaintiff's claimed trust until 2023.
17. Plaintiff presented no admissible evidence establishing a continuous chain of title from origination in 2004 to the 2023 assignment.
18. The Court finds a material break in the chain of title.

E. TRUST AUTHORITY

19. Plaintiff asserts authority as trustee of a securitized trust.
20. Plaintiff presented no Pooling and Servicing Agreement, custodial records, or other admissible evidence establishing transfer of the loan into the trust.
21. Plaintiff presented no evidence establishing the authority of the trustee to enforce the loan.
22. The Court finds no evidence that the loan was transferred into the trust.

F. STANDING AT COMMENCEMENT

23. This action was filed on March 8, 2024.
24. Plaintiff bore the burden of establishing standing at the time of filing.
25. Plaintiff presented no evidence establishing possession of the original note as of March 8, 2024.
26. Evidence presented addressed possession at or near the time of trial.
27. The Court finds Plaintiff failed to establish standing at commencement.

G. PROOF OF DEBT AND DEFAULT

28. Plaintiff presented a payment history and loan balance summary.
29. The Court finds that Plaintiff failed to present competent, admissible evidence establishing the essential elements required for foreclosure.
30. The testimony of Plaintiff's witness, Louise Plasse, established only that she reviews and has access to certain business records maintained by third-party servicers.
31. Ms. Plasse did not testify as a custodian of records and failed to establish the foundational requirements necessary for admission of business records under Rule 803(6), SCRE, including testimony regarding the creation, maintenance, accuracy, or reliability of the records relied upon.
32. Although Ms. Plasse asserted familiarity with the servicing system and payment history, she did not establish who created the records, when they were created, or whether they were made in the regular course of business at or near the time of the events recorded.
33. Her testimony that payments were "not all made" constituted a conclusory statement and did not establish the amount owed, the method of calculation, or the existence of a default supported by admissible evidence.
34. The testimony of Plaintiff's witness, Brian L. Boger, was limited to his involvement in the origination of the loan and did not establish Plaintiff's possession of the Note at the time the action was commenced, the existence of a default, or the amount allegedly owed.
35. Mr. Boger further testified that he did not witness the execution of the Note and relied on inference rather than personal knowledge regarding its execution.
36. His testimony additionally confirmed defects in the execution of the Mortgage acknowledgment, including his role as both notary and witness, raising substantial questions as to the validity of the instrument.
37. The Court finds that no witness presented by Plaintiff provided competent testimony sufficient to establish:
 - (1) possession of the Note at commencement of the action;
 - (2) the existence of a default; or
 - (3) the amount owed.
38. Accordingly, the Court finds that Plaintiff failed to meet its burden of proof.

H. DEFENDANTS' RECORDED INTEREST

- 39. Defendants' Deeds of Distribution were recorded prior to Plaintiff's corrective assignment.
- 40. Plaintiff presented no evidence establishing that its interest was properly recorded so as to impart constructive notice.

III. CONCLUSIONS OF LAW

A. STANDING

- 41. Standing is a jurisdictional requirement that must exist at the time an action is commenced.
- 42. A party must demonstrate entitlement to enforce the note at the time of filing.
- 43. Standing cannot be established retroactively by later-acquired evidence or assignments.
- 44. The Court declines to treat prior interlocutory rulings as dispositive of standing.
- 45. Plaintiff failed to establish standing as a matter of law.

B. DEFECTIVE ACKNOWLEDGMENT

- 46. A mortgage must be properly acknowledged to be entitled to recordation.
- 47. A defective acknowledgment renders the instrument not entitled to recordation.
- 48. Recordation of an improperly acknowledged instrument does not provide constructive notice.
- 49. Such defect cannot be cured by testimony or equitable reformation.

C. ASSIGNMENTS

- 50. An assignment must identify a valid, existing instrument.
- 51. An assignment referencing a non-existent or materially misidentified instrument is void.
- 52. Corrective instruments that repeat material defects do not cure such defects.
- 53. The assignments in this case fail as a matter of law.

D. TRUST AUTHORITY

- 54. A trustee must demonstrate authority to act on behalf of the trust.
- 55. Transfers into a securitized trust must comply with governing trust requirements.
- 56. Acts in contravention of trust requirements are void.
- 57. Plaintiff failed to establish authority to enforce the loan.

E. RACE-NOTICE

- 58. South Carolina is a race-notice jurisdiction.
- 59. Only properly recorded instruments impart constructive notice.
- 60. A mortgage not entitled to recordation cannot establish priority.
- 61. Plaintiff failed to establish priority over Defendants' recorded interests.

F. PROOF OF DEBT

62. A plaintiff must establish the existence of the debt and default through admissible evidence.

63. Unsupported summaries or unverified records are insufficient.

64. Plaintiff failed to meet its burden of proof.

IV. ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff has failed to establish standing at the time of commencement of this action, a jurisdictional prerequisite which cannot be cured retroactively;
2. Plaintiff has failed to establish the existence of a valid, enforceable mortgage lien entitled to recordation or enforcement under South Carolina law;
3. Plaintiff has failed to establish a valid chain of title or authority to enforce the subject loan;
4. Plaintiff has failed to present competent, admissible evidence establishing default, the amount owed, or entitlement to foreclosure;
5. Accordingly, Plaintiff has failed to meet its burden of proof as a matter of law;
6. Plaintiff's claims for foreclosure are hereby **DISMISSED WITH PREJUDICE**;
7. The Court declines to grant declaratory, equitable, or remedial relief to cure statutory, evidentiary, or jurisdictional defects;
8. All other claims, defenses, and requests for relief not expressly granted herein are **DENIED**.

The Court's ruling is based upon Plaintiff's failure to meet its burden of proof on essential elements required for foreclosure, independent of any procedural or technical defects, and is supported by the evidentiary record presented at trial.

IT IS SO ORDERED.

James O. Spence

Master-in-Equity

Lexington County, South Carolina

Dated: _____

SUMMARY SHEET

DEFENDANTS' SUMMARY SHEET FOR PROPOSED ORDER

(For Court Review – April 17, 2026)

Case: The Bank of New York Mellon v. Nunally, et al.

Case No.: 2024-CP-32-01094

Trial Date: February 10, 2026

CORE ISSUE SNAPSHOT

1. Standing at filing (March 8, 2024)
2. Valid enforceable mortgage
3. Valid assignment of identifiable instrument
4. Admissible proof of default and debt

Record Answer: Plaintiff failed to establish each required element.

TIMELINE (CONDENSED)

2004 – Mortgage executed (defective acknowledgment); recorded Feb 20; later misidentified as Feb 28

2009 – Loan modification (no authentication or authority)

2019–2023 – Estate transfers; Deeds of Distribution recorded

2023 – Assignments (wrong date; wrong book; no authority)

2024 – Foreclosure filed; no proof of note possession at filing

2026 – Trial; no admissible proof of default or debt

CHAIN OF TITLE

No continuous chain from 2004 to 2023.

Assignments reference non-existent instrument.

No proof of transfer into trust.

KEY FINDINGS

- 1) Plaintiff failed to establish standing at commencement
- 2) The mortgage is not entitled to recordation due to defective acknowledgment
- 3) Assignments fail to identify a valid instrument and are ineffective
- 4) Plaintiff failed to establish transfer into the trust or authority to enforce
- 5) Plaintiff failed to present admissible evidence of default or indebtedness
- 6) Plaintiff failed to establish priority under race-notice principles

LEGAL RESULT

Plaintiff failed to meet its burden of proof on all essential elements required for foreclosure.
No evidentiary or legal basis exists to grant foreclosure or equitable relief.

REQUESTED DISPOSITION

Dismissal with prejudice.

No equitable cure.

All other relief denied.

COURT ACTION REQUESTED

Entry of Order dismissing Plaintiff's claims with prejudice.

Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

Judge James Spence <jspence@lexingtoncounty.sc.gov>

Wed, Apr 15, 2026 at 7:37 AM

To: Mark Nunnally <markannally@gmail.com>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Chad Burgess <Chad.Burgess@brockandscott.com>, Tim Nunally <timznice83@gmail.com>

April 1, 2026

Proposed Order received yesterday as described,; please serve P with clocked copy.

Court awaits Plaintiff proposed WORD Order.

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email: jspence@lexingtoncounty.sc.gov

Please note the new Email address

South Carolina
County of Lexington

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From: Mark Nunnally <markannally@gmail.com>**Sent:** Wednesday, April 15, 2026 12:09 AM**To:** Judge James Spence <jspence@lexingtoncounty.sc.gov>; Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>**Cc:** Chad Burgess <Chad.Burgess@brockandscott.com>; Tim Nunally <timznice83@gmail.com>; Mark Nunnally <Markannally@gmail.com>**Subject:** Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

[Quoted text hidden]

Email text reproduction

Date: Wed, 15 Apr 2026 13:28:54 +0000

From: Chad Burgess <Chad.Burgess@brockandscott.com>

To: Judge James Spence <jspence@lexingtoncounty.sc.gov>, Mark Nunnally <markannally@gmail.com>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Tim Nunally <timznice83@gmail.com>, Lauren Guy <Lauren.Guy@brockandscott.com>

Subject: RE: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Attachments: 23-28438 - Plaintiff's Proposed Order (3-31-26) CWB.docx

Good morning, Everyone,

Attached is the Plaintiff's proposed order which was previously provided to the Defendants. I am confused by the "long form" and "short form" documents provided by the Defendants as they provided one proposed order on April 3, 2026 with no indication that they would be submitting different orders to the Court.

Thanks so much,

Chad

Chad Burgess
Senior Associate
Foreclosure
803-454-3540

From: Judge James Spence <jspence@lexingtoncounty.sc.gov>

Sent: Wednesday, April 15, 2026 7:37 AM

To: Mark Nunnally <markannally@gmail.com>; Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>

Cc: Chad Burgess <Chad.Burgess@brockandscott.com>; Tim Nunally <timznice83@gmail.com>

Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

April 1, 2026

Proposed Order received yesterday as described,; please serve P with clocked copy.

Court awaits Plaintiff proposed WORD Order.

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email:

jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>

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[cid:image001.png@01DCCCB8.ABA8AFC0]

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From: Mark Nunnally

<markannally@gmail.com<mailto:markannally@gmail.com>>

Sent: Wednesday, April 15, 2026 12:09 AM

To: Judge James Spence

<jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>>;

Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov<mailto:jfdavidson@lexingtoncounty.sc.gov>>

Cc: Chad Burgess <Chad.Burgess@brockandscott.com<mailto:Chad.Burgess@brockandscott.com>>; Tim Nunally

<timznice83@gmail.com<mailto:timznice83@gmail.com>>; Mark Nunnally

<Markannally@gmail.com<mailto:Markannally@gmail.com>>

Subject: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Judge Spence / Chambers,

Pursuant to the Court's post-trial order process, attached please find Defendants' final proposed orders in editable Word format for the Court's consideration.

Defendants have filed and served the corresponding packet, and these Word versions are submitted for the Court's convenience and review.

Respectfully submitted,

Nunnally: Mark-Anthony
Defendant, Pro Se

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From: Chad Burgess <Chad.Burgess@brockandscott.com>

To: Judge James Spence <jspence@lexingtoncounty.sc.gov>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Mark Nunnally <markanunnally@gmail.com>, Tim Nunally <timznice83@gmail.com>, Lauren Guy <Lauren.Guy@brockandscott.com>

Subject: FW: Defendants' Proposed Order - Nunally v. Bank of New York Mellon (2024-CP-32-01094)

Attachments:

Defendants_Proposed_Order_Nunally_v_BONY_2024-CP-32-01094.docx;

Defendants_Proposed_Order_Nunally_v_BONY_2024-CP-32-01094.pdf

Good morning,

For reference, I wanted to pass along the proposed order that was circulated to me from the Defendants on April 3rd. It differs from the documents submitted this morning. I stand by the Plaintiff's proposed order circulated to the Defendants on April 3rd and to the Court this morning.

Please let us know if anything further is needed from the parties.

Thanks so much,

Chad

Chad Burgess
Senior Associate
Foreclosure
803-454-3540

From: Mark Nunnally <markanunnally@gmail.com>

Sent: Friday, April 3, 2026 9:12 AM

To: Chad Burgess <Chad.Burgess@brockandscott.com>

Cc: Mark Nunnally <Markanunnally@gmail.com>; Tim Nunally <timznice83@gmail.com>

Subject: Defendants' Proposed Order - Nunally v. Bank of New York Mellon (2024-CP-32-01094)

Good morning Counsel,

Attached please find Defendants' Proposed Order submitted for your review in accordance with the Court's instruction.

The proposed order follows the structure outlined by the Court. Please advise if you believe any formatting issues require uniform adjustment.

Respectfully,

Mark-A Nunnally

[<https://s-install.avcdn.net/ipm/preview/icons/icon-envelope-tick-round-orange-animated-no-repeat-v1.gif>]<https://www.avast.com/sig-email?utm_medium=email&utm_source=link&utm_campaign=sig-email&utm_content=webmail>

Virus-free.[www.avast.com](https://www.avast.com/sig-email?utm_medium=email&utm_source=link&utm_campaign=sig-email&utm_content=webmail)<https://www.avast.com/sig-email?utm_medium=email&utm_source=link&utm_campaign=sig-email&utm_content=webmail>

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Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

Judge James Spence <jspence@lexingtoncounty.sc.gov>

Wed, Apr 15, 2026 at 10:52 AM

To: Chad Burgess <Chad.Burgess@brockandscott.com>, Mark Nunnally <markannally@gmail.com>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Tim Nunally <timznice83@gmail.com>, Lauren Guy <Lauren.Guy@brockandscott.com>

The Court understands the confusion.

(1)The Court asks Plaintiff to submit revised proposed Order to Court and Defendant responding to Defendant's argument that Plaintiff witness Louise Plasse did not properly establish the debt.

(2) Note that in record/notice argument the controlling documents are (1) Date of Mortgage (list when recorded and (2) date of deed of distribution (list when recorded).

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email: jspence@lexingtoncounty.sc.gov

Please note the new Email address



South Carolina

County of Lexington

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From: Chad Burgess <Chad.Burgess@brockandscott.com>

Sent: Wednesday, April 15, 2026 9:28 AM

To: Judge James Spence <jspence@lexingtoncounty.sc.gov>; Mark Nunnally <markannally@gmail.com>; Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>

Cc: Tim Nunally <timznice83@gmail.com>; Lauren Guy <Lauren.Guy@brockandscott.com>

Subject: RE: Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

[Quoted text hidden]

Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

Judge James Spence <jspence@lexingtoncounty.sc.gov>

Wed, Apr 15, 2026 at 11:48 AM

To: Chad Burgess <Chad.Burgess@brockandscott.com>, Mark Nunnally <markannally@gmail.com>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Tim Nunally <timznice83@gmail.com>, Lauren Guy <Lauren.Guy@brockandscott.com>

Please also address relevant holdings of prior orders .

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email: jspence@lexingtoncounty.sc.gov

Please note the new Email address



South Carolina

County of Lexington

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From: Judge James Spence <jspence@lexingtoncounty.sc.gov>**Sent:** Wednesday, April 15, 2026 10:52 AM**To:** Chad Burgess <Chad.Burgess@brockandscott.com>; Mark Nunnally <markannally@gmail.com>; Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>**Cc:** Tim Nunally <timznice83@gmail.com>; Lauren Guy <Lauren.Guy@brockandscott.com>**Subject:** Re: Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

[Quoted text hidden]

Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

Chad Burgess <Chad.Burgess@brockandscott.com>

Wed, Apr 15, 2026 at 4:43 PM

To: Judge James Spence <jspence@lexingtoncounty.sc.gov>, Mark Nunnally <markanunnally@gmail.com>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Tim Nunally <timznice83@gmail.com>, Lauren Guy <Lauren.Guy@brockandscott.com>

Good afternoon, Everyone,

The Plaintiff's revised proposed order is attached.

[Quoted text hidden]

[Quoted text hidden]

 **23-28438 - Plaintiff's Proposed Order (4-15-26) CWB.docx**
73K

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,

Plaintiff,

v.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants

IN THE COURT OF COMMON PLEAS

CASE NO.: 2024-CP-32-01094

**MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE AND REFORMATION OF
MORTGAGE**

DEFICIENCY WAIVED

Hearing Date: February 10, 2026

Appearances: Chad W. Burgess, Esquire for Plaintiff and Defendants Timothy Allen Nunally and MarkAnthony Nunally (self-represented).

Court Reporter: Kathryn Bostrom

INTRODUCTION:

The instant action is one for foreclosure of property located in Lexington County, South Carolina. The Lis Pendens, Summons and Complaint were filed March 8, 2024. On May 23, 2024, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), this matter was referred to the undersigned Master In Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the case. Any appeal from this decision shall be directly to the South Carolina Court of Appeals. A bench trial was held on February 10, 2026. Present at the hearing was Chad W. Burgess of the firm of Brock & Scott, PLLC and appearing self-represented were

Defendants Timothy Allen Nunally and MarkAnthony Nunally. Present and testifying on behalf of the Plaintiff were Brian L. Boger and Louise Plasse.

Based upon the arguments, testimony, and evidence presented at trial, I find and conclude as follows:

FINDINGS OF FACT:

The following events and dates are undisputed and relevant to the case:

1. Service was made upon the Defendants as shown by the filed proofs of service.
2. The Defendants are in default as shown by the affidavit of default filed March 24, 2025 and the order denying the Defendants' motions to dismiss and to set aside default filed September 30, 2025.
3. According to a filed Affidavit, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
4. All Defendants were notified of the time, date and place of the trial.
5. For value received, Carl A. Nunally made, executed and delivered a note, dated January 30, 2004, payable to the order of NovaStar Home Mortgage, Inc. in the principal amount of \$121,500.00 with interest at the rate of 6.99% per annum. The original Note was presented at trial and extensive testimony was taken regarding the Note with a copy being admitted into evidence. See Plaintiff's Exhibit 4.
6. To secure the payment of the Note, Carl A. Nunally and Frankie L. Nunally made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc., as mortgagee, as nominee for NovaStar Home Mortgage, Inc., dated January 30, 2004, encumbering real property in

Lexington County, (“Mortgage”), more fully described below (“Property”). The Mortgage was recorded on February 28, 2004, in the Lexington County Registry in Book 9041 at Page 4. The original Mortgage was presented at trial and extensive testimony was taken regarding the Mortgage and a copy was admitted into evidence. *See* Plaintiff’s Exhibit 5.

7. Thereafter, the Mortgage was assigned to The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 by assignment recorded on July 28, 2023 in Book 21067 at Page 4146. Thereafter, a Corrective Assignment of Mortgage to The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 was recorded on October 3, 2023 in Book 21076 at Page 4337. *See* Plaintiff’s Exhibits 9 and 10.

8. Carl A. Nunally, Sr. and Frankie L. Nunally did make, execute and deliver to JPMorgan Chase Bank, as Trustee for the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, its successors and assigns, a certain Loan Modification Agreement, dated September 2, 2009, amending and supplementing the Note and Mortgage described above. By virtue of the Loan Modification Agreement, the unpaid principal balance was modified to \$104,168.2, together with interest at the rate of 1.5% per annum on the unpaid balance. *See* Plaintiff’s Exhibit 8.

9. Frankie L. Nunally passed away on January 14, 2019, as evidenced by the information found in Estate File 2019-ES-32-01345 in the probate records for Lexington County, South Carolina, indicating the heirs/devisees of the Property as Carl Alvin Nunally, Sr., Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally. Carl A. Nunally, Sr., passed away on

September 4, 2021, as evidenced by the information found in Estate File 2022-ES-32-01253 in the probate records for Lexington County, South Carolina, indicating the heirs/devisees of the Property as Timothy Allen Nunally as Trustee of the CAN Irrevocable Trust.

10. The titleholders of record of the Property as of the filing of the Lis Pendens was/were Carl Alvin Nunally, Jr., Mark Anthony Nunally and Timothy Allen Nunally.

11. Based on the evidence presented, I find that payment due on the Note has not been made, and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney for collection.

12. Plaintiff seeks recovery of attorney's fees and court costs in this matter. As outlined at trial, a hearing regarding an award of attorney's fees will be held at a later date if necessary.

13. Plaintiff's witness, Louise Plasse testified regarding the amount of the debt owed to the Plaintiff. Business records related to Plaintiff's calculation of the debt, Plaintiff's exhibits 11 through 15, were admitted into evidence without objection by the Defendants. *See* Transcript, pp. 59-74. Based on the testimony of Louise Plasse, and evidence presented, the amount due on the Note and Mortgage, with interest under the terms provided in the Note, as modified, and other costs and expenses of collection, excluding attorney's fees and court costs, secured by the Note and Mortgage, is as follows:

Principal Due as of Today's Date:	02/10/2026	\$6,345.74
Deferred Principal Balance:		\$12,076.10
Accrued Interest From:	04/01/2023 to: 02/10/2026	\$271.97
Accruing at:	1.5% per annum	
Late Charges:		\$66.98
Escrow Advance Amt:		\$7,114.84
Title Search:		\$250.00
Property Inspections		\$600.00
BPO		\$250.00

14. Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is \$26,975.09. Interest on the total debt shall accrue at the rate stated above until the judicial sale. Additional interest after the date of the judicial sale will be governed by the terms set forth below.

15. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b), SCRCF.

16. On September 30, 2025 this court issued an order on several motions filed by the Defendants including a motion to set aside default. The September 30, 2025, order contained rulings on, inter alia, subject matter jurisdiction, Plaintiff's standing to bring this foreclosure action as a real party in interest, and the Defendants' default for failure to respond to the Plaintiff's Complaint. Entry of default as to the Defendants constitutes an admission by the Defendants as to the allegations of the Complaint. *State ex rel. Medlock v. Love Shop, Ltd.* 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985). Notwithstanding, issues raised by the Defendants at trial will be addressed as set forth below.

17. The Defendant(s), below listed, claim or may claim liens upon or interests in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCF. The said Defendants and such claims or liens are as follows:

A. The Defendants, Timothy Allen Nunally and Mark Anthony Nunnally, have or may claim to have some interest in the Property by virtue of a certain deed of the Estate of Carl Alvin Nunally, Sr., purporting to convey an interest in the Property to aforementioned Defendants. Said deed was recorded on September 6, 2023, in the Lexington County Records in Book 21073 at Page 1408. Any interest that this Defendant received in the Property is "subject to" Plaintiff's Mortgage and this

interest should be eliminated through a properly completed foreclosure sale.

B. The Defendants, Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally, have or may claim to have some interest in the Property by virtue of being heirs to or devisees of Frankie L. Nunally as shown in Estate File 2019-ES-32-01345 in the Lexington County Probate Records. Any interest that these Defendants would have received in the Property would have been “subject to” Plaintiff’s Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

C. The Defendant, Timothy Allen Nunally, as Trustee of the CAN Irrevocable Trust, have or may claim to have some interest in the Property by virtue of being an heir to or devisee of Carl A. Nunally, Sr., as shown in Estate File 2022-ES-32-01253 in the Lexington County Probate Records. Any interest that this Defendant would have received in the Property would have been “subject to” Plaintiff’s Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

D. The Defendant, Timothy Allen Nunally, as Personal Representative of the Estate of Carl A. Nunally, Sr., has or may claim to have some interest in the Property by virtue of being the Personal Representative as shown in the Estate File 2022-ES-32-01253. Any interest that this Defendant has in the Property would be “subject to” Plaintiff’s Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

There are a number of relevant and disputed facts:

1. Defendants challenge Plaintiff’s standing to bring the suit. This dispute includes Defendant’s assertions regarding Race-Notice Considerations. Plaintiff asserts that it is the real party in interest with standing to bring the instant foreclosure action based upon the testimony and evidence presented at trial. Plaintiff further asserts that its standing has been established by this Court’s order entered September 30, 2025, which denied several motions filed by the Defendant.
2. Plaintiff’s complaint includes a cause of action pursuant to the South Carolina Uniform Declaratory Judgments Act S.C. Code Ann. § 15-53-10, et. seq., and involves an actual, justiciable controversy between the parties as described therein. Plaintiff alleges that, due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly

executed by the Notary as the notary lists himself as the party whose signature was being acknowledged instead of the Mortgagors, Carl A. Nunally, Sr. and Frankie L. Nunally. Plaintiff alleges that the notary intended to properly execute the Acknowledgment Section, and that the clear intent of the parties to the Mortgage was to execute and record a valid Mortgage to secure repayment of the Note described herein. The Defendant's contest the Plaintiff's entitlement to declaratory judgment.

ISSUES:

1. Is the Plaintiff the real party in interest with standing to bring this foreclosure?
2. Is the Plaintiff entitled to the relief sought in its declaratory judgment action?

CONCLUSIONS OF LAW AND DISCUSSION:

Plaintiff's standing to bring the foreclosure action

The Plaintiff's arguments related to standing are well taken. The Plaintiff's standing to bring the foreclosure was addressed in this Court's September 30, 2025 order discussed above. The evidence presented at trial is consistent with the September 30, 2025 order. For finality, the findings regarding standing are incorporated below.

SCRCP Rule 17(a) provides that, "[e]very action shall be prosecuted in the name of the real party in interest" and further sets forth that, "[n]o actions shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until such time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest". In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the Court of Appeals took up the issue of standing in the context of a mortgage foreclosure and noted, "[t]he requirement of Standing is not an inflexible one." *Id* at 220 (quoting *Sloan v.*

Sch. Dist. Of Greenville Cnty., 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000)). The Court of Appeals further noted the following regarding transfers of Notes and Mortgages:

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. §36-3-203(b) (Supp. 2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had). “[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but...the assignment of the mortgage alone does not carry with it an assignment of the note.” *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1710, 176, 20 S.E. 84, 85 (1984) (“The Transfer of a note carries with it a mortgage given to secure payment of such note.”).
Id. at 220.

Thus, a holder of a note has standing as the real party in interest to bring a foreclosure action. In *Draper*, the Court of Appeals also acknowledged that a mortgage servicer has standing to initiate a foreclosure action. “Several bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure. We agree with this view.” *Id.* at 223.

I find and conclude that the Note was properly endorsed. The Note is endorsed on its face and there are two allonges affixed to the document. Despite the Defendants’ assertions to the contrary, on its face, the Note was endorsed from Novastar Home Mortgage, Inc. to Novastar Mortgage, Inc. The Note is further endorsed from Novastar Mortgage, Inc. to JPMorgan Chase Bank, as Trustee of the NovaStar Mortgage Funding Trust, Series 2004-1, relating to the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1. Each of the Novastar endorsements note the same trust which is consistent with the Plaintiff in this action. Finally, the Note is endorsed in blank by JPMorgan Case Bank N.A. f/k/a JPMorgan Chase Bank, as Trustee of the NovaStar Mortgage Funding Trust, Series 2004-1, relating to the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1. On its face, the Note is a negotiable instrument as defined in S.C.

Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a “person entitled to enforce” the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

I find and conclude that the chain of assignments of the Mortgage to the Plaintiff is valid. While cogent evidence of the transfer of the Mortgage to the Plaintiff, the assignments are unnecessary to assert Plaintiff’s right to enforce the Note and Mortgage. As noted in *BAC Home Loan servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549, “[t]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee”. Quoting *Singleton v. Singleton*, 60 S.C. 216, 235, 38 S.E. 462, 469 (1901). Because it is the transfer of the Note that carries with it the transfer of the Mortgage, the recordation of the assignment simply puts the world on notice of the assignment, and the timing of its recording has no impact on Plaintiff’s standing to bring the instant foreclosure action.

Further, the Defendants lack standing to challenge the transfer of the Note and Mortgage because they were not parties to said transfer. *In Re McFadden*, 471 BR 136 (2012); *see also Reese v. United States Bank Nat’l Ass’n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012)(“Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity”); *see also Windsor Green Owners Ass’n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). (“Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract.”). The Defendants were not parties to the subject Note and Mortgage as they were named to foreclose any ownership interest they may have in the property.

A brief discussion of the race-notice considerations raised by the Defendants is warranted here. The common law holds that an unrecorded mortgage is valid against the world entire. *South Carolina Nat. Bank v. Guest*, 232 S.C. 367, 102 S.E.2d 215 (1958). South Carolina has adopted the common law in full except to the point modified by South Carolina Code Annotated § 30-7-10.¹ However, this modification only protects *bona fide* purchasers for value **without notice**. In all applications other than in regard to *bona fide* purchasers for value without notice, the common law rule remains effective. See *United States v. Anders Contracting Co.*, 111 F.Supp. 700 (D.S.C. 1953) stating that (“[u]nder the South Carolina law, **the common law rule that a ...mortgage over real estate is good against the world, though unrecorded, remains in effect except as changed by the Recording Act.**” (all emphasis added).

The recordation statutes have **modified** the common law rule, but have not done away with it. The relevant enactment is found at South Carolina Code Annotated § 30-7-10. This provision states in relevant portion:

All ... mortgages or instruments in writing in the nature of a mortgage of any real property ... **are valid so as to affect the rights of subsequent ... purchasers for valuable consideration without notice**, only from the day and hour when they are recorded in the office of the register of deeds or clerk of court of the county in which the real property affected is situated... . (Emphasis added)

Thus, it is clear from this provision that the race-notice statute does not abrogate the common law rule entirely. It modifies it only to the degree of protecting subsequent purchasers for valuable consideration without notice. *Goodrich Silvertown, Inc. v. Rogers*, 189 S.C. 101, 200 S.E. 91 (1938).

¹ South Carolina Code Annotated § 14-1-50 states:

all, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

Here, the evidence establishes that the Defendants took title to the subject property from the estates of their parents, the mortgagors herein, Carl Alvin Nunally, Sr. and Frankie Nunally. Carl Alvin Nunally, Sr. passed away September 4, 2021. A Deed of Distribution into the Defendants was signed by Timothy Nunally as Personal Representative of the Estate of Carl Alvin Nunally, Sr. on May 30, 2023, and recorded in the Lexington County Registry on September 6, 2023, in Book 21073 at Page 1408. At the time the Defendants received their respective interests in the Subject Property, the Mortgage was present in the Lexington County land records, having been recorded in the Lexington County Registry on February 28, 2004, in Book 9041 at Page 4. Therefore, the Defendants had record notice of the subject Mortgage prior to receiving their interests in the Subject Property.

Defendant Timothy Allen Nunally testified that, as Personal Representative of the Estate of Carl Alvin Nunally, Sr. he made a number of payments on the subject Mortgage following his father's passing. Indeed, no defendant has denied actual knowledge of the Mortgage, but rather the Defendants rely on their belief that the Mortgage should not have been recorded to argue that the Mortgage should not constitute record notice of the Plaintiff's lien. The Defendants' position is untenable and would not erase their actual knowledge of the Mortgage as a means of avoiding foreclosure. I find and conclude that the Defendants had both actual and record/inquiry notice of the Mortgage and, therefore, their race-notice considerations do not affect the enforceability of the Mortgage.

Finally, I find and conclude that the Defendants are protected from potential double-liability from any party other than the Plaintiff attempting to enforce the Note and Mortgage because, based on the testimony and evidence presented, no such party exists. Based on the

foregoing, all issues related to standing and enforceability of the Note and Mortgage are hereby resolved in favor of the Plaintiff.

Plaintiff's request for declaratory relief

Attorney Brian L. Boger testified at trial regarding his role as the attorney who supervised the closing of the loan as well as his serving as a witness and notary regarding the signatures of Carl A. Nunally, Sr. and Frankie L. Nunally on the Mortgage. Mr. Boger testified that, due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed as he inadvertently listed himself as the party whose signature was being acknowledged instead of the Mortgagors, Carl A. Nunally, Sr. and Frankie L. Nunally. Mr. Boger testified that he intended to properly execute the Acknowledgment Section, and that the clear intent of the parties to the Mortgage was to execute and record a valid Mortgage to secure repayment of the Note described herein. Mr. Boger's testimony was unrefuted and unequivocal. Therefore, I find and conclude that the Plaintiff is entitled to an order declaring that the Mortgage is an equitable lien or equitable mortgage on the subject property as of the date of its execution and that the Mortgage represents a valid and subsisting first lien on the subject property.

FURTHER CONCLUSIONS OF LAW:

1. The Plaintiff is entitled to judgment as to all causes of action, including foreclosure of its Mortgage.
2. The Property should be sold at public auction after statutory advertisement.
3. The Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is \$26,975.09. An additional hearing on the amount and measure of the Plaintiff's attorney's fees and court costs will be scheduled if necessary.

4. Interest should continue to accrue on the Total Debt. Costs incurred after the entry of this Order up to the date of judicial sale may be added to the Total Debt.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff is hereby granted judgment as to all causes of action, including foreclosure of its Mortgage.
2. The Property should be sold at public auction after statutory advertisement.
3. The Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is ordered and established at \$26,975.09. An additional hearing on the amount and measure of the Plaintiff's attorney's fees and court costs will be scheduled if necessary.
4. Interest shall accrue continue to accrue on the Total Debt, including any attorney's fees and court costs awarded to the Plaintiff. Costs incurred after the entry of this Order up to the date of judicial sale may be added to the Total Debt
5. That the Defendant(s) liable for the Total Debt shall, prior to the judicial sale pay to the Plaintiff, or the Plaintiff's attorney, the Total Debt including accrued interest, costs, and disbursements.
6. That on default of payment, the Property shall be sold at public auction at the Lexington County Judicial Center, City of Lexington, County and State aforesaid, on some convenient sales day on the following terms:
 - A. The selling officer shall require a deposit of 5% of the bid (in cash or its equivalent) to be applied to the purchase price upon compliance, but in case of non-compliance within thirty (30) days, the deposit shall be forfeited and applied to the Plaintiff's costs of sale and the balance then applied to the Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 1.5%.

C. The sale shall be subject to taxes and assessments, easements and restrictions of record, and any senior encumbrances.

D. The Purchaser shall pay for the deed and the cost of recording.

7. If the Plaintiff is the successful bidder for less than the total debt at the time of sale, the Plaintiff shall pay only the amount of the Court's costs and expenses.
8. No personal or deficiency judgment being demanded, the bidding shall be final on the sale date and the successful bidder may comply immediately.
9. Notice of the time, date, and place of the sale and the terms thereof will be advertised according to law
10. The selling officer will execute to the purchaser(s) a deed of the Property. If any successful bidder, other than the Plaintiff or its assignee, fails to comply with the terms of sale within thirty (30) days, the Property may be re-advertised for sale according to the same terms set forth herein until full compliance.
11. If an agent of the Plaintiff does not appear at the sale, the Property shall be withdrawn from sale and sold at the next available sales date upon the same terms.
12. The selling officer shall apply the proceeds of the sale as follows:
 - FIRST: To the payment of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of the Court; and
 - NEXT: To the payment of the Total Debt, interest, and costs as defined above; and
 - NEXT: Any surplus will be held pending further Order pursuant to Rule 71(c), SCRPC.
13. That it is further ORDERED that each named Defendant, and all persons claiming under him, them or it, be forever barred and foreclosed of all right, title, interest, lien, and equity of redemption in the Property, or any part thereof.

14. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, the Sheriff of Lexington County is hereby ordered and directed to eject and remove from the premises the named Defendants holding record title to the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.
15. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, and the property remains occupied by a person or persons holding or claiming to hold the property under lease from the record title holders, or who otherwise may have rights or protections under Federal or State statutes protecting such lessees, the Sheriff of Lexington County shall only be ordered and directed to eject and remove from the premises those occupants under the terms stated above, after a hearing as directed by this court and under such order or writ as may be issued by this court as deemed equitable under the circumstances.
16. That it is further ORDERED that after the Order Confirming Sale and Disbursements has been filed, the undersigned Master In Equity shall direct the Register of Deeds to release the lien(s) being foreclosed.
17. That it is further ORDERED that the following is a description of the Property to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF LEXINGTON, STATE OF SOUTH CAROLINA, THE SAME BEING SHOWN AND DESIGNATED AS LOT NO. 283, BLOCK W, ON A

PLAT OF MURRAYWOOD II BY HEANER ENGINEERING CO., DATED OCTOBER 27, 1972, REVISED JULY 1, 1975, AND RECORDED IN THE OFFICE OF THE ROD FOR LEXINGTON COUNTY IN PLAT BOOK 139-G AT PAGE 23. ALSO BEING SHOWN ON A PLAT PREPARED FOR DANE C. FROST AND TERRI L. FROST BY BELTER & ASSOCIATES, INC., DATED JUNE 14, 1993, AND RECORDED IN PLAT BOOK 262 AT PAGE 70. REFERENCE BEING MADE TO SAID LATTER PLAT WHICH IS INCORPORATED HEREIN FOR A MORE COMPLETE AND ACCURATE DESCRIPTION; ALL MEASUREMENTS BEING A LITTLE MORE OR LESS.

THIS BEING THE SAME PROPERTY CONVEYED TO CARL A. NUNALLY AND FRANKIE L. NUNALLY BY DEED OF DANE C. FROST AND TERRI L. FROST DATED AUGUST 8, 1994, AND RECORDED MARCH 12, 1999, IN BOOK 5145 AT PAGE 97 IN THE OFFICE OF THE REGISTER OF DEEDS FOR LEXINGTON COUNTY, SOUTH CAROLINA. THEREAFTER, FRANKIE L. NUNALLY PASSED AWAY ON JANUARY 14, 2019, LEAVING THE SUBJECT PROPERTY TO HER HEIRS CARL ALVIN NUNALLY, SR., CARL ALVIN NUNALLY, JR., MARK ANTHONY NUNALLY, AND TIMOTHY ALLEN NUNALLY, AS IS MORE FULLY PRESERVED IN PROBATE FILE NO. 2019-ES-32-01345 IN SAID RECORDS. SUBSEQUENTLY, CARL A. NUNALLY PASSED AWAY ON SEPTEMBER 4, 2021, LEAVING THE SUBJECT PROPERTY TO HIS DEVISEE, TIMOTHY ALLEN NUNALLY, AS TRUSTEE OF THE CAN IRREVOCABLE TRUST, AS IS MORE FULLY PRESERVED IN PROBATE FILE NO. 2022-ES-32-01253. SEE ALSO THE DEED OF DISTRIBUTION DATED MAY 30, 2023, AND RECORDED SEPTEMBER 6, 2023, IN BOOK 21073 AT PAGE 1408 AND RE-RECORDED SEPTEMBER 27, 2023, IN BOOK 21075 AT PAGE 5539 IN SAID RECORDS.

CURRENT ADDRESS OF PROPERTY: 1759 Willow Creek Drive, Columbia, SC 29212

TMS: 002734-01-003

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COMMON PLEAS COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2024-CP-32-01094

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1

PLAINTIFF(S)

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally
DEFENDANT(S)

Submitted by:

Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court.
The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK**

APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the
Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of	Judgment Against	Judgment Amount To be
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(List name(s) below)	(List name(s) below)	Enrolled (List amount(s) below)
		N/A
<p>If applicable, describe the property, including tax map information and address, referenced in the order:</p> <p>All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W, on a plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975, and recorded in the Office of the ROD for Lexington County in Plat Book 139-G at Page 23. Also being shown on a plat prepared for Dane C. Frost and Terri L. Frost by Belter & Associates, Inc., dated June 14, 1993, and recorded in Plat Book 262 at Page 70. Reference being made to said latter plat which is incorporated herein for a more complete and accurate description; all measurements being a little more or less.</p> <p>This being the same property conveyed to Carl A. Nunally and Frankie L. Nunally by deed of Dane C. Frost and Terri L. Frost dated August 8, 1994, and recorded March 12, 1999, in Book 5145 at Page 97 in the Office of the Register of Deeds for Lexington County, South Carolina. Thereafter, Frankie L. Nunally passed away on January 14, 2019, leaving the subject property to her heirs Carl Alvin Nunally, Sr., Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally, as is more fully preserved in Probate File No. 2019-ES-32-01345 in said Records. Subsequently, Carl A. Nunally passed away on September 4, 2021, leaving the subject property to his devisee, Timothy Allen Nunally, as Trustee of the CAN Irrevocable Trust, as is more fully preserved in Probate File No. 2022-ES-32-01253. See also the Deed of Distribution dated May 30, 2023, and recorded September 6, 2023, in Book 21073 at Page 1408 and re-recorded September 27, 2023, in Book 21075 at Page 5539 in said Records.</p>		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 2026 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2026 to attorneys of record
or
to parties (when appearing pro se) as follows:

Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED
ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

Mark Nunnally <markannally@gmail.com>

Fri, Apr 17, 2026 at 3:51 PM

To: Chad Burgess <Chad.Burgess@brockandscott.com>

Cc: Judge James Spence <jspence@lexingtoncounty.sc.gov>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>, Tim Nunally <timznice83@gmail.com>,
Lauren Guy <Lauren.Guy@brockandscott.com>

Bcc: ndacha nkonjera <nndacha@gmail.com>

Dear Judge Spence and Counsel:

Pursuant to the Court's April 15, 2026 instruction, Defendants submit the attached Revised Proposed Order in editable Word format addressing: (1) the debt testimony of Louise Plasse; (2) the relevant mortgage and deed-of-distribution dates for the record/notice issue; and (3) the effect of prior orders.

Defendants respectfully withdraw and supersede all previously submitted proposed orders, including the prior long-form and short-form versions.

This Revised Proposed Order is submitted in response to the Court's narrowing instruction and in accordance with the Court's guidance concerning length and format.

Defendants have filed and served the corresponding packet on April 14, 2026 , and this Word version is provided for the Court's convenience.

Respectfully submitted,

Timothy Allen Nunally
Mark Anthony Nunally
Defendants, Pro Se

[Quoted text hidden]

 **2024-CP-32-01094 DEFENDANTS_REVISED_PROPOSED_ORDER.docx**
22K

**IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON**

THE BANK OF NEW YORK MELLON,	)	Case No.: 2024-CP-32-01094
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
TIMOTHY A. NUNALLY, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' REVISED PROPOSED ORDER

SUMMARY

The parties tried this contested mortgage foreclosure case on February 10, 2026, before the Honorable James O. Spence, Master-in-Equity for Lexington County. The court reporter was Kathryn Bostrom. Plaintiff argues it is entitled to foreclose because the mortgage debt has not been paid timely. Defendants, who are heirs and claimed successors to the original mortgagors, dispute Plaintiff's entitlement to final foreclosure relief and raise debt-proof, standing, and record-notice defenses. This revised proposed order is submitted in response to the Court's April 15, 2026 instruction to address the debt testimony of Louise Plasse, the relevant mortgage and deed-of-distribution dates for the record/notice issue, and the relevant effect of prior orders.

THE COURT FINDS THE FOLLOWING UNDISPUTED FACTS

1. On March 8, 2024, Plaintiff filed the Lis Pendens, Summons, and Complaint.
2. On May 23, 2024, the Court entered its Order of Reference referring this matter to the Master-in-Equity pursuant to Rule 53, SCRPC.

3. Service was made and the case later proceeded through default-related motion practice, trial scheduling, and a bench trial on February 10, 2026.
4. On September 30, 2025, the Court entered an order denying Defendants' motions to dismiss and to set aside default.
5. Present at trial were Chad W. Burgess, Esquire, for Plaintiff, and Timothy Allen Nunally and Mark Anthony Nunally, self-represented, for Defendants. Plaintiff presented testimony from Brian L. Boger and Louise Plasse.
6. The subject property is 1759 Willow Creek Drive, Columbia, South Carolina 29212.
7. The Note and Mortgage are dated January 30, 2004.
8. Plaintiff contends the Mortgage was recorded on February 28, 2004, in Book 9041 at Page 4 in the Lexington County records.
9. The Deed of Distribution on which Defendants claim an interest is dated May 30, 2023, and was recorded on September 6, 2023, and re-recorded on September 27, 2023.
10. Plaintiff offered debt testimony through Louise Plasse and introduced Exhibits 11 through 15 regarding the alleged indebtedness.
11. Plaintiff argues prior orders should be incorporated into final findings; Defendants contend prior orders should be acknowledged only for their procedural effect.

DISPUTED FACTS

1. The parties dispute whether Plaintiff's witness Louise Plasse properly established the mortgage debt for entry of final foreclosure judgment. Plaintiff argues Ms. Plasse authenticated the servicing records and proved the amount due through Exhibits 11 through 15. Defendants argue Ms. Plasse testified as a reviewer of business records for litigation purposes, not as the person who created the account entries, performed the payoff calculation, or independently audited the final judgment figures. Ms. Plasse described her role as a "senior loan analyst" who "review[s]" business records for foreclosure trials, depositions, mediations, and eviction hearings. Defendants further contend that Plaintiff's debt proof consisted largely of counsel reading numbers from the exhibits and Ms. Plasse agreeing with them, without a meaningful explanation of the calculation methodology for interest, late charges, escrow advances, property-inspection charges, corporate advances, or the final total sought to be fixed in judgment. The Court finds this dispute material because final foreclosure relief requires competent proof of the indebtedness the Court is being asked to judicially fix.

2. The parties dispute the significance of the mortgage and deed-of-distribution dates for record/notice purposes. Plaintiff argues the Mortgage date and its asserted recording date precede the Deed of Distribution and therefore defeat any race-notice defense. Defendants argue the Court should not treat a narrow chronology summary as resolving preserved objections concerning acknowledgment, recordability, or the legal effect of later assignment instruments. The Court finds the dates should be stated clearly for chronology, but the legal effect of disputed instrument defects is not resolved in Plaintiff's favor by chronology alone.

3. The parties dispute how prior orders should be treated in the final order. Plaintiff argues prior orders, especially the September 30, 2025 order, support its present request for final relief. Defendants argue prior interlocutory rulings remain part of the procedural history but should not be used as automatic substitutes for the final findings now required after trial. The Court finds prior orders may be acknowledged for their procedural effect, but final judgment must rest on the evidence admitted at trial and the findings made in this order.

LEGAL ISSUES

1. Whether Plaintiff presented competent debt evidence sufficient for entry of final foreclosure judgment.
2. Whether the Court's narrowed April 15, 2026 instruction requires only a chronology ruling on the mortgage and deed-of-distribution dates for the record/notice issue.
3. Whether prior orders should be acknowledged as part of the procedural history without being treated as automatic final merits findings.

CONCLUSIONS OF LAW

1. Jurisdiction is proper pursuant to the May 23, 2024 Order of Reference entered under Rule 53, SCRCP.

2. This foreclosure action seeks legal and equitable relief. The Court therefore enters the present order on the evidence admitted at trial and the limited post-trial issues identified in its April 15, 2026 instruction.

3. Plaintiff bears the burden of proving with competent evidence the debt it asks the Court to fix in a final foreclosure judgment. On the present trial record, Plaintiff did not present sufficiently competent testimony through Louise Plasse to establish the indebtedness for that purpose. Ms. Plasse testified that her role was to review servicing records for litigation matters, and Plaintiff did not establish that she personally created the relevant entries, performed the payoff calculation, or independently verified the final figures sought in judgment. When addressing the alleged indebtedness, Plaintiff's examination proceeded chiefly by reading figures from Exhibits 13 through 15 and obtaining Ms. Plasse's agreement, rather than eliciting a clear explanation of the underlying calculation methodology. For example, when asked about late charges, Ms. Plasse had to search the document before identifying the figure; when asked about property-inspection totals, she responded only that counsel's arithmetic "sounds about right"; and when asked about corporate advances, she described them only in generalized terms such as inspections and "any other fees that have accrued over the life of the foreclosure." The same pattern appeared with respect to the escrow advances, where Plaintiff elicited two tax-payment figures and their sum, but did not develop a detailed witness-level explanation of how the account history, summary figures, and final amount due were derived and reconciled. On this record, Plaintiff's debt proof remained summary-driven, witness-light, and insufficiently explained for the Court to reliably fix the indebtedness amount necessary for final foreclosure relief.

4. The Court therefore declines to adopt Plaintiff's proposed debt findings or to fix the indebtedness amount asserted in Plaintiff's revised proposed order.

5. For the limited record/notice clarification requested by the Court, the relevant dates are: Mortgage dated January 30, 2004; Plaintiff's asserted mortgage recording date of February 28, 2004; Deed of Distribution dated May 30, 2023; Deed of Distribution recorded September 6, 2023; and Deed of Distribution re-recorded September 27, 2023.

6. This date recitation is made solely for chronology and record/notice clarification. It does not constitute adoption of Plaintiff's position that the Mortgage or later assignment instruments were legally sufficient, properly recordable, or effective as against Defendants' preserved objections,

including the disputed acknowledgment issue and the repeated reference in the recorded chain to the asserted February 28, 2004 recording date.

7. Plaintiff's request for declaratory judgment seeking to reform the Mortgage as an "equitable lien" or "equitable mortgage" must be denied. While Plaintiff's witness Brian L. Boger testified that the acknowledgment defect was "inadvertent," no legal authority was presented establishing that a notary's self-acknowledgment—wherein the notary listed himself as the party whose signature was being acknowledged instead of the mortgagors—constitutes a mere "clerical error" curable through equitable reformation. Under S.C. Code Ann. § 30-5-30, an acknowledgment must identify the signatory whose signature is being acknowledged. A notary cannot acknowledge himself as the executing party, as this defeats the essential purpose of the acknowledgment: to verify the identity of the executing party and confirm execution occurred. The defect here is not ancillary or typographical; it strikes at the validity of the instrument's execution and recordation.

8. The Court in *Hunt v. Parker*, 209 S.C. 52, 58, 42 S.E.2d 627, 630 (1947), held that a mortgage not properly acknowledged "cannot be recorded and is entitled to no protection as against subsequent bona fide encumbrancers for value." Defendants are such encumbrancers. Plaintiff seeks to transform an acknowledgment that fails to acknowledge the actual mortgagors into an equitable lien, but equity does not cure a statutory defect that defeats the instrument's validity from inception. Mr. Boger, who supervised the loan closing, served as the notary on the Mortgage, and has a clear interest in validating the instrument he notarized improperly, now seeks retrospective validation of his acknowledged acknowledgment defect through his testimony of "inadvertent" intent. The Court should decline to declare the Mortgage an equitable lien and should find that the acknowledgment defect remains unresolved by Boger's testimony regarding his subjective intent.

9. Prior orders, including the September 30, 2025 order, are acknowledged as part of the procedural history and record of this case. They are not incorporated herein as automatic substitutes for the final trial findings required for entry of final foreclosure judgment.

10. Because Plaintiff did not properly establish the debt on the present record, Plaintiff has not established entitlement to final judgment of foreclosure and sale.

11. Alternatively, even if the Court were to find that Plaintiff sufficiently established the indebtedness, Plaintiff still has not established entitlement to final judgment of foreclosure and sale because Defendants' preserved standing, enforcement, acknowledgment, and record/notice objections were not independently resolved in Plaintiff's favor on the present record.

12. This Order addresses the issues identified in the Court's April 15, 2026 instruction. No argument, objection, or issue previously raised by Defendants at trial or in prior proceedings shall be deemed waived, conceded, or resolved adversely to Defendants except as expressly stated herein.

13. In the alternative, even if the debt were established, the Court does not find that Plaintiff's requested chronology finding alone cures or overcomes Defendants' preserved objections concerning the acknowledgment defect, recordability, or legal effect of the Mortgage and later assignment instruments.

14. Accordingly, even under an alternative assumption that the debt was sufficiently proven, Plaintiff still did not establish entitlement to final judgment of foreclosure and sale on the present record.

IT IS ORDERED THAT:

1. Plaintiff's revised proposed order is DENIED to the extent it seeks findings and relief beyond the narrowed scope identified by the Court in its April 15, 2026 instruction.

2. The Court finds that Plaintiff did not properly establish the debt through competent witness testimony sufficient to support entry of final foreclosure judgment.

3. The Court declines to fix or adopt the indebtedness amount asserted by Plaintiff on the present trial record.

4. For purposes of the record/notice issue identified by the Court, the relevant dates are recognized as follows:

- 1) Mortgage dated January 30, 2004;
- 2) Plaintiff's asserted mortgage recording date of February 28, 2004;
- 3) Deed of Distribution dated May 30, 2023;
- 4) Deed of Distribution recorded September 6, 2023; and
- 5) Deed of Distribution re-recorded September 27, 2023.

5. The foregoing date recitation is made solely for chronology and record/notice clarification and does not constitute adoption of Plaintiff's position as to the legal sufficiency, recordability, or legal effect of the Mortgage or any later assignment instrument as against Defendants' preserved objections.

6. Prior orders entered in this case, including the September 30, 2025 order, are acknowledged as part of the procedural history and record of this matter, but are not incorporated herein as automatic substitutes for final trial findings beyond their proper procedural effect.

7. Plaintiff has not established entitlement to final judgment of foreclosure and sale on the present record.

8. Alternatively, even if the Court were to find that Plaintiff sufficiently established the indebtedness, Plaintiff still has not established entitlement to final judgment of foreclosure and sale because Defendants' preserved standing, enforcement, acknowledgment, and record/notice objections were not independently resolved in Plaintiff's favor on the present record.

9. This Order addresses only the issues identified in the Court's April 15, 2026 instruction. No other issue preserved in the trial record or prior proceedings is resolved by implication except as expressly stated herein.

10. All relief not expressly granted herein is denied.

11. Plaintiff's request for final foreclosure relief is denied on the present record, without prejudice to such further application, if any, as may be supported by competent proof and otherwise permitted by law.

AND IT IS SO ORDERED.

James O. Spence

Master-in-Equity for Lexington County

Date: _____

Email text reproduction

Date: Mon, 20 Apr 2026 11:49:49 +0000

From: Judge James Spence <jspence@lexingtoncounty.sc.gov>

To: Mark Nunnally <markannally@gmail.com>, Chad Burgess
<Chad.Burgess@brockandscott.com>

Cc: "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>, Tim Nunally
<timznice83@gmail.com>, Lauren Guy <Lauren.Guy@brockandscott.com>

Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

April 20, 2026

Hope all well home and work.

Am awaiting Plaintiff's revised proposed WORD ORDER addressing all raised issues.

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email: jspence@lexingtoncounty.sc.gov

Please note the new Email address

[cid:2d738cde-5140-466f-95c6-35ae01f08374]

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From: Mark Nunnally <markannally@gmail.com>

Sent: Friday, April 17, 2026 3:51 PM

To: Chad Burgess <Chad.Burgess@brockandscott.com>

Cc: Judge James Spence <jspence@lexingtoncounty.sc.gov>; Joy F. Davidson
<jfdavidson@lexingtoncounty.sc.gov>; Tim Nunally <timznice83@gmail.com>;
Lauren Guy <Lauren.Guy@brockandscott.com>

Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Dear Judge Spence and Counsel:

Pursuant to the Court's April 15, 2026 instruction, Defendants submit the attached Revised Proposed Order in editable Word format addressing: (1) the debt testimony of Louise Plasse; (2) the relevant mortgage and deed-of-distribution dates for the record/notice issue; and (3) the effect of prior orders.

Defendants respectfully withdraw and supersede all previously submitted proposed orders, including the prior long-form and short-form versions.

This Revised Proposed Order is submitted in response to the Court's narrowing instruction and in accordance with the Court's guidance concerning length and format.

Defendants have filed and served the corresponding packet on April 14, 2026 , and this Word version is provided for the Court's convenience.

Respectfully submitted,

Timothy Allen Nunally
Mark Anthony Nunally
Defendants, Pro Se

On Wed, Apr 15, 2026 at 4:43 PM Chad Burgess <Chad.Burgess@brockandscott.com<mailto:Chad.Burgess@brockandscott.com>> wrote:

Good afternoon, Everyone,

The Plaintiff's revised proposed order is attached.

Thanks so much,

Chad

Chad Burgess
Senior Associate
Foreclosure
803-454-3540

From: Judge James Spence
<jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>>
Sent: Wednesday, April 15, 2026 11:49 AM
To: Chad Burgess <Chad.Burgess@brockandscott.com<mailto:Chad.Burgess@brockandscott.com>>; Mark Nunnally
<markanunnally@gmail.com<mailto:markanunnally@gmail.com>>; Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov<mailto:jfdavidson@lexingtoncounty.sc.gov>>
Cc: Tim Nunally <timznice83@gmail.com<mailto:timznice83@gmail.com>>; Lauren Guy
<Lauren.Guy@brockandscott.com<mailto:Lauren.Guy@brockandscott.com>>
Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Please also address relevant holdings of prior orders .

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email:

jspence@lexingtoncounty.sc.gov<<mailto:jspence@lexingtoncounty.sc.gov>>

Please note the new Email address

[cid:ii_19d9c6ef7324cff311]

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From: Judge James Spence

<jspence@lexingtoncounty.sc.gov<<mailto:jspence@lexingtoncounty.sc.gov>>>

Sent: Wednesday, April 15, 2026 10:52 AM

To: Chad Burgess <Chad.Burgess@brockandscott.com<<mailto:Chad.Burgess@brockandscott.com>>>; Mark Nunnally

<markanunnally@gmail.com<<mailto:markanunnally@gmail.com>>>; Joy F.

Davidson <jfdavidson@lexingtoncounty.sc.gov<<mailto:jfdavidson@lexingtoncounty.sc.gov>>>

Cc: Tim Nunally <timznice83@gmail.com<<mailto:timznice83@gmail.com>>>;

Lauren Guy

<Lauren.Guy@brockandscott.com<<mailto:Lauren.Guy@brockandscott.com>>>

Subject: Re: Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

The Court understands the confusion.

(1)The Court asks Plaintiff to submit revised proposed Order to Court and Defendant responding to Defendant's argument that Plaintiff witness Louise Plasse did not properly establish the debt.

(2) Note that in record/notice argument the controlling documents are (1) Date of Mortgage (list when recorded and (2) date of deed of distribution (list when recorded).

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email:

jspence@lexingtoncounty.sc.gov<<mailto:jspence@lexingtoncounty.sc.gov>>

Please note the new Email address

[cid:ii_19d9c6ef7324cff311]

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From: Chad Burgess <Chad.Burgess@brockandscott.com<<mailto:Chad.Burgess@brockandscott.com>>>

Sent: Wednesday, April 15, 2026 9:28 AM

To: Judge James Spence

<jspence@lexingtoncounty.sc.gov<<mailto:jspence@lexingtoncounty.sc.gov>>>;

Mark Nunnally

<markanunnally@gmail.com<<mailto:markanunnally@gmail.com>>>; Joy F.

Davidson <jfdavidson@lexingtoncounty.sc.gov<<mailto:jfdavidson@lexingtoncounty.sc.gov>>>

Cc: Tim Nunally <timznice83@gmail.com<<mailto:timznice83@gmail.com>>>;

Lauren Guy

<Lauren.Guy@brockandscott.com<<mailto:Lauren.Guy@brockandscott.com>>>

Subject: RE: Defendants' Final Proposed Orders – Case No. 2024-CP-32-01094

Good morning, Everyone,

Attached is the Plaintiff's proposed order which was previously provided to the Defendants. I am confused by the "long form" and "short form" documents provided by the Defendants as they provided one proposed order on April 3, 2026 with no indication that they would be submitting different orders to the Court.

Thanks so much,

Chad

Chad Burgess

Senior Associate

Foreclosure

803-454-3540

From: Judge James Spence

<jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>>

Sent: Wednesday, April 15, 2026 7:37 AM

To: Mark Nunnally

<markanunnally@gmail.com<mailto:markanunnally@gmail.com>>; Joy F.

Davidson <jfdavidson@lexingtoncounty.sc.gov<mailto:jfdavidson@lexingtoncounty.sc.gov>>

Cc: Chad Burgess <Chad.Burgess@brockandscott.com<mailto:Chad.Burgess@brockandscott.com>>; Tim Nunally

<timznice83@gmail.com<mailto:timznice83@gmail.com>>

Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

April 1, 2026

Proposed Order received yesterday as described,; please serve P with clocked copy.

Court awaits Plaintiff proposed WORD Order.

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email:

jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>

Please note the new Email address

[cid:ii_19d9c6ef7324cff311]

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From: Mark Nunnally

<markanunnally@gmail.com<mailto:markanunnally@gmail.com>>

Sent: Wednesday, April 15, 2026 12:09 AM

To: Judge James Spence
<jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>>;
Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov<mailto:jfdavidson@lexingtoncounty.sc.gov>>
Cc: Chad Burgess <Chad.Burgess@brockandscott.com<mailto:Chad.Burgess@brockandscott.com>>; Tim Nunnally
<timznice83@gmail.com<mailto:timznice83@gmail.com>>; Mark Nunnally
<Markanunnally@gmail.com<mailto:Markanunnally@gmail.com>>
Subject: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Judge Spence / Chambers,

Pursuant to the Court's post-trial order process, attached please find Defendants' final proposed orders in editable Word format for the Court's consideration.

Defendants have filed and served the corresponding packet, and these Word versions are submitted for the Court's convenience and review.

Respectfully submitted,

Nunnally: Mark-Anthony
Defendant, Pro Se

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Date: Mon, 20 Apr 2026 08:57:19 -0400

From: Mark Nunnally <markanunnally@gmail.com>

To: Judge James Spence <jspence@lexingtoncounty.sc.gov>, "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

Cc: Chad Burgess <Chad.Burgess@brockandscott.com>, Mark Nunnally <markanunnally@gmail.com>, Tim Nunally <timznice83@gmail.com>

Subject: Fwd: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Attachments: 2024-CP-32-01094

DEFENDANTS_REVISED_PROPOSED_ORDER.docx

----- Forwarded message -----

From: Mark Nunnally <markanunnally@gmail.com>

Date: Fri, Apr 17, 2026, 3:51 PM

Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

To: Chad Burgess <Chad.Burgess@brockandscott.com>

Cc: Judge James Spence <jspence@lexingtoncounty.sc.gov>, Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>, Tim Nunally <timznice83@gmail.com>, Lauren Guy <Lauren.Guy@brockandscott.com>

Dear Judge Spence and Counsel:

Pursuant to the Court's April 15, 2026 instruction, Defendants submit the attached Revised Proposed Order in editable Word format addressing: (1) the debt testimony of Louise Plasse; (2) the relevant mortgage and deed-of-distribution dates for the record/notice issue; and (3) the effect of prior orders.

Defendants respectfully withdraw and supersede all previously submitted proposed orders, including the prior long-form and short-form versions.

This Revised Proposed Order is submitted in response to the Court's narrowing instruction and in accordance with the Court's guidance concerning length and format.

Defendants have filed and served the corresponding packet on April 14, 2026, and this Word version is provided for the Court's convenience.

Respectfully submitted,

Timothy Allen Nunally
Mark Anthony Nunally
Defendants, Pro Se

On Wed, Apr 15, 2026 at 4:43 PM Chad Burgess
<Chad.Burgess@brockandscott.com>
wrote:

> Good afternoon, Everyone,
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>
> The Plaintiff's revised proposed order is attached.
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>
> Thanks so much,
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> Chad
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>
> Chad Burgess
>
> Senior Associate
>
> Foreclosure
>
> 803-454-3540
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>
> *From:* Judge James Spence <jspence@lexingtoncounty.sc.gov>
> *Sent:* Wednesday, April 15, 2026 11:49 AM
> *To:* Chad Burgess <Chad.Burgess@brockandscott.com>; Mark Nunnally <
> markanunnally@gmail.com>; Joy F. Davidson <
> jfdavidson@lexingtoncounty.sc.gov>
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> *Subject:* Re: Defendants' Final Proposed Orders - Case No.
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> Please also address relevant holdings of prior orders .
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> Respectfully to all,
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>
> James O. Spence
>
> Lexington County Master-in-Equity
>
> Office: 803-785-8291
>
> *Email: jspence@lexingtoncounty.sc.gov
> <jspence@lexingtoncounty.sc.gov> *
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> James O. Spence
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> Lexington County Master-in-Equity
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> Office: 803-785-8291
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> *Email: jspence@lexingtoncounty.sc.gov
> <jspence@lexingtoncounty.sc.gov> *
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 > *From:* Mark Nunnally <markanunnally@gmail.com>
 > *Sent:* Wednesday, April 15, 2026 12:09 AM
 > *To:* Judge James Spence <jspence@lexingtoncounty.sc.gov>; Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>
 > *Cc:* Chad Burgess <Chad.Burgess@brockandscott.com>; Tim Nunally <timznice83@gmail.com>; Mark Nunnally <Markanunnally@gmail.com>
 > *Subject:* Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094
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 > Defendants have filed and served the corresponding packet, and these Word
 > versions are submitted for the Court's convenience and review.
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 > Nunnally: Mark-Anthony
 > Defendant, Pro Se
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 > debt, and any information obtained will be used for that purpose. If you
 > are a debtor in an active bankruptcy case, are under the protection of a
 > bankruptcy stay or your personal liability for this debt has been
 > discharged in a bankruptcy proceeding and you have not reaffirmed the debt,
 > this communication is for informational and compliance purposes only, and
 > we are not attempting to collect the debt from you personally.*
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>

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Date: Mon, 20 Apr 2026 13:01:42 +0000

From: "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

To: Mark Nunnally <markanunnally@gmail.com>

Cc: Chad Burgess <Chad.Burgess@brockandscott.com>, Tim Nunally
<timznice83@gmail.com>

Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Thank you attorney Burgess and Nunnally family. I have printed both parties revised orders and have them with Judge Spence for review.

Attorney Burgess final order from 4/15/26 and Nunnally final order from 4/17/2026.

Joy Davidson

Docket Manager

Lexington County

Master-In-Equity Court

205 E. Main St., Suite 204

Lexington, SC 29072

Office: 803-785-8291

Email: jfdavidson@lexingtoncounty.sc.gov

Please note the new Email address

Important note:

Please e-file the notice of hearing/status conference/notice/RTSC/Scheduling Order along with your certificate of service/mailing and email a filed copy to MasterInEquity@LexingtonCounty.sc.gov at least ten business days prior to the hearing. If we do not receive these, your hearing/status conference will be cancelled.

Send notice to attorneys of record and pro se defendants unless otherwise instructed by the court.

[cid:82462db9-e0ff-4d85-ad1f-ed73cdc7f28d]

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immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

From: Mark Nunnally <markanunnally@gmail.com>
Sent: Monday, April 20, 2026 8:57 AM
To: Judge James Spence <jspence@lexingtoncounty.sc.gov>; Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>
Cc: Chad Burgess <Chad.Burgess@brockandscott.com>; Mark Nunnally <markanunnally@gmail.com>; Tim Nunally <timznice83@gmail.com>
Subject: Fwd: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

----- Forwarded message -----

From: Mark Nunnally
<markanunnally@gmail.com<mailto:markanunnally@gmail.com>>
Date: Fri, Apr 17, 2026, 3:51 PM
Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094
To: Chad Burgess <Chad.Burgess@brockandscott.com<mailto:Chad.Burgess@brockandscott.com>>
Cc: Judge James Spence
<jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>>, Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov<mailto:jfdavidson@lexingtoncounty.sc.gov>>, Tim Nunally
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Mark Anthony Nunally
Defendants, Pro Se

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The Plaintiff's revised proposed order is attached.

Thanks so much,

Chad

Chad Burgess

Senior Associate

Foreclosure

803-454-3540

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Sent: Wednesday, April 15, 2026 11:49 AM

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Lauren Guy

<Lauren.Guy@brockandscott.com<mailto:Lauren.Guy@brockandscott.com>>

Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Please also address relevant holdings of prior orders .

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email:

jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>

Please note the new Email address

[cid:ii_19d9c6ef7324cff311]

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Lauren Guy

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The Court understands the confusion.

(1)The Court asks Plaintiff to submit revised proposed Order to Court and Defendant responding to Defendant's argument that Plaintiff witness Louise Plasse did not properly establish the debt.

(2) Note that in record/notice argument the controlling documents are (1) Date of Mortgage (list when recorded and (2) date of deed of distribution (list when recorded).

Respectfully to all,

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Attached is the Plaintiff's proposed order which was previously provided to the Defendants. I am confused by the "long form" and "short form" documents provided by the Defendants as they provided one proposed order on April 3, 2026 with no indication that they would be submitting different orders to the Court.

Thanks so much,

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April 1, 2026

Proposed Order received yesterday as described,; please serve P with clocked copy.

Court awaits Plaintiff proposed WORD Order.

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email:

jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>

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Defendants have filed and served the corresponding packet, and these Word versions are submitted for the Court's convenience and review.

Respectfully submitted,

Nunnally: Mark-Anthony

Defendant, Pro Se

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Date: Mon, 20 Apr 2026 17:42:25 +0000

From: "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>

To: Chad Burgess <Chad.Burgess@brockandscott.com>, Mark Nunnally
<markannally@gmail.com>

Cc: Tim Nunally <timznice83@gmail.com>, Lauren Guy
<Lauren.Guy@brockandscott.com>

Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Hello attorney Burgess,
Judge Spence has asked that you please confirm that you have addressed his questions

(1)The Court asks Plaintiff to submit revised proposed Order to Court and Defendant responding to Defendant's argument that Plaintiff witness Louise Plasse did not properly establish the debt.

(2) Note that in record/notice argument the controlling documents are (1) Date of Mortgage (list when recorded and (2) date of deed of distribution (list when recorded).

3.Please also address relevant holdings of prior orders .

Joy Davidson

Docket Manager

Lexington County

Master-In-Equity Court

205 E. Main St., Suite 204

Lexington, SC 29072

Office: 803-785-8291

Email: jfdavidson@lexingtoncounty.sc.gov

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From: Judge James Spence <jspence@lexingtoncounty.sc.gov>
Sent: Wednesday, April 15, 2026 11:49 AM
To: Chad Burgess <Chad.Burgess@brockandscott.com>; Mark Nunnally <markannally@gmail.com>; Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>
Cc: Tim Nunally <timznice83@gmail.com>; Lauren Guy <Lauren.Guy@brockandscott.com>
Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Please also address relevant holdings of prior orders .

Respectfully to all,

James O. Spence

Lexington County Master-in-Equity

Office: 803-785-8291

Email:

jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>

Please note the new Email address

[cid:image001.png@01DCCCF6.C4840600]

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Lauren Guy

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The Court understands the confusion.

(1)The Court asks Plaintiff to submit revised proposed Order to Court and Defendant responding to Defendant's argument that Plaintiff witness Louise Plasse did not properly establish the debt.

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Thanks so much,

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Chad Burgess

Senior Associate

Foreclosure

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brockandscott.com>>; Tim Nunally
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Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

April 1, 2026

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Court awaits Plaintiff proposed WORD Order.

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<markanunnally@gmail.com<mailto:markanunnally@gmail.com>>
Sent: Wednesday, April 15, 2026 12:09 AM
To: Judge James Spence
<jspence@lexingtoncounty.sc.gov<mailto:jspence@lexingtoncounty.sc.gov>>;
Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov<mailto:jfdavidson@lexingt
oncounty.sc.gov>>

Cc: Chad Burgess <Chad.Burgess@brockandscott.com<mailto:Chad.Burgess@brockandscott.com>>; Tim Nunally <timznice83@gmail.com<mailto:timznice83@gmail.com>>; Mark Nunnally <Markanunnally@gmail.com<mailto:Markanunnally@gmail.com>>
Subject: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Judge Spence / Chambers,

Pursuant to the Court's post-trial order process, attached please find Defendants' final proposed orders in editable Word format for the Court's consideration.

Defendants have filed and served the corresponding packet, and these Word versions are submitted for the Court's convenience and review.

Respectfully submitted,

Nunnally: Mark-Anthony
Defendant, Pro Se

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Email text reproduction

Date: Mon, 20 Apr 2026 18:06:04 +0000

From: Chad Burgess <Chad.Burgess@brockandscott.com>

To: "Joy F. Davidson" <jfdavidson@lexingtoncounty.sc.gov>, Mark Nunnally <markannally@gmail.com>

Cc: Tim Nunally <timznice83@gmail.com>, Lauren Guy <Lauren.Guy@brockandscott.com>

Subject: RE: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Attachments: 23-28438 - Plaintiff's Proposed Order (4-15-26) CWB.docx

Good afternoon, Ms. Davidson,

Yes, I believe each of those were addressed. I've outlined where those revisions are located in the order below:

1. Louise Plasse's testimony - Page 4, Paragraph 13 of the revised order with citations to the transcript and exhibits admitted at trial without objection.
2. Record notice argument - Page 11, First Paragraph.
3. Prior orders - Page 5, Paragraph 16.

Please let me know if anything further is needed from the Plaintiff.

Thanks so much,

Chad

Chad Burgess
Senior Associate
Foreclosure
803-454-3540

From: Joy F. Davidson <jfdavidson@lexingtoncounty.sc.gov>

Sent: Monday, April 20, 2026 1:42 PM

To: Chad Burgess <Chad.Burgess@brockandscott.com>; Mark Nunnally <markannally@gmail.com>

Cc: Tim Nunally <timznice83@gmail.com>; Lauren Guy <Lauren.Guy@brockandscott.com>

Subject: Re: Defendants' Final Proposed Orders - Case No. 2024-CP-32-01094

Hello attorney Burgess,

Judge Spence has asked that you please confirm that you have addressed his questions

(1)The Court asks Plaintiff to submit revised proposed Order to Court and Defendant responding to Defendant's argument that Plaintiff witness Louise Plasse did not properly establish the debt.

(2) Note that in record/notice argument the controlling documents are (1) Date of Mortgage (list when recorded and (2) date of deed of distribution (list when recorded).

3. Please also address relevant holdings of prior orders .

Joy Davidson

Docket Manager

Lexington County

Master-In-Equity Court

205 E. Main St., Suite 204

Lexington, SC 29072

Office: 803-785-8291

Email:

jfdavidson@lexingtoncounty.sc.gov<mailto:jfdavidson@lexingtoncounty.sc.gov>

Please note the new Email address

Important note:

Please e-file the notice of hearing/status conference/notice/RTSC/Scheduling Order along with your certificate of service/ mailing and email a filed copy to MasterInEquity@LexingtonCounty.sc.gov<mailto:MasterInEquity@LexingtonCounty.sc.gov> at least ten business days prior to the hearing. If we do not receive these, your hearing/status conference will be cancelled.

Send notice to attorneys of record and pro se defendants unless otherwise instructed by the court.

[cid:image001.png@01DCD0CC.A175F400]

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Sent: Wednesday, April 15, 2026 4:43 PM

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Thanks so much,

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Defendant, Pro Se

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,

Plaintiff,

v.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants

IN THE COURT OF COMMON PLEAS

CASE NO.: 2024-CP-32-01094

**MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE AND REFORMATION OF
MORTGAGE**

DEFICIENCY WAIVED

Hearing Date: February 10, 2026

Appearances: Chad W. Burgess, Esquire for Plaintiff and Defendants Timothy Allen Nunally and MarkAnthony Nunally (self-represented).

Court Reporter: Kathryn Bostrom

INTRODUCTION:

The instant action is one for foreclosure of property located in Lexington County, South Carolina. The Lis Pendens, Summons and Complaint were filed March 8, 2024. On May 23, 2024, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), this matter was referred to the undersigned Master In Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the case. Any appeal from this decision shall be directly to the South Carolina Court of Appeals. A bench trial was held on February 10, 2026. Present at the hearing was Chad W. Burgess of the firm of Brock & Scott, PLLC and appearing self-represented were

Defendants Timothy Allen Nunally and MarkAnthony Nunally. Present and testifying on behalf of the Plaintiff were Brian L. Boger and Louise Plasse.

Based upon the arguments, testimony, and evidence presented at trial, I find and conclude as follows:

FINDINGS OF FACT:

The following events and dates are undisputed and relevant to the case:

1. Service was made upon the Defendants as shown by the filed proofs of service.
2. The Defendants are in default as shown by the affidavit of default filed March 24, 2025 and the order denying the Defendants' motions to dismiss and to set aside default filed September 30, 2025.
3. According to a filed Affidavit, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
4. All Defendants were notified of the time, date and place of the trial.
5. For value received, Carl A. Nunally made, executed and delivered a note, dated January 30, 2004, payable to the order of NovaStar Home Mortgage, Inc. in the principal amount of \$121,500.00 with interest at the rate of 6.99% per annum. The original Note was presented at trial and extensive testimony was taken regarding the Note with a copy being admitted into evidence. See Plaintiff's Exhibit 4.
6. To secure the payment of the Note, Carl A. Nunally and Frankie L. Nunally made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc., as mortgagee, as nominee for NovaStar Home Mortgage, Inc., dated January 30, 2004, encumbering real property in

Lexington County, (“Mortgage”), more fully described below (“Property”). The Mortgage was recorded on February 28, 2004, in the Lexington County Registry in Book 9041 at Page 4. The original Mortgage was presented at trial and extensive testimony was taken regarding the Mortgage and a copy was admitted into evidence. *See* Plaintiff’s Exhibit 5.

7. Thereafter, the Mortgage was assigned to The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 by assignment recorded on July 28, 2023 in Book 21067 at Page 4146. Thereafter, a Corrective Assignment of Mortgage to The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 was recorded on October 3, 2023 in Book 21076 at Page 4337. *See* Plaintiff’s Exhibits 9 and 10.

8. Carl A. Nunally, Sr. and Frankie L. Nunally did make, execute and deliver to JPMorgan Chase Bank, as Trustee for the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, its successors and assigns, a certain Loan Modification Agreement, dated September 2, 2009, amending and supplementing the Note and Mortgage described above. By virtue of the Loan Modification Agreement, the unpaid principal balance was modified to \$104,168.2, together with interest at the rate of 1.5% per annum on the unpaid balance. *See* Plaintiff’s Exhibit 8.

9. Frankie L. Nunally passed away on January 14, 2019, as evidenced by the information found in Estate File 2019-ES-32-01345 in the probate records for Lexington County, South Carolina, indicating the heirs/devisees of the Property as Carl Alvin Nunally, Sr., Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally. Carl A. Nunally, Sr., passed away on

September 4, 2021, as evidenced by the information found in Estate File 2022-ES-32-01253 in the probate records for Lexington County, South Carolina, indicating the heirs/devisees of the Property as Timothy Allen Nunally as Trustee of the CAN Irrevocable Trust.

10. The titleholders of record of the Property as of the filing of the Lis Pendens was/were Carl Alvin Nunally, Jr., Mark Anthony Nunally and Timothy Allen Nunally.

11. Based on the evidence presented, I find that payment due on the Note has not been made, and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney for collection.

12. Plaintiff seeks recovery of attorney's fees and court costs in this matter. As outlined at trial, a hearing regarding an award of attorney's fees will be held at a later date if necessary.

13. Plaintiff's witness, Louise Plasse, testified regarding the amount of the debt owed to the Plaintiff. Business records related to Plaintiff's calculation of the debt, Plaintiff's exhibits 11 through 15, were admitted into evidence without objection by the Defendants. *See* Transcript, pp. 59-74. Based on the testimony of Louise Plasse, and evidence presented, the amount due on the Note and Mortgage, with interest under the terms provided in the Note, as modified, and other costs and expenses of collection, excluding attorney's fees and court costs, secured by the Note and Mortgage, is as follows:

Principal Due as of Today's Date:	02/10/2026	\$6,345.74
Deferred Principal Balance:		\$12,076.10
Accrued Interest From:	04/01/2023 to: 02/10/2026	\$271.97
Accruing at:	1.5% per annum	
Late Charges:		\$66.98
Escrow Advance Amt:		\$7,114.84
Title Search:		\$250.00
Property Inspections		\$600.00
BPO		\$250.00

14. Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is \$26,975.09. Interest on the total debt shall accrue at the rate stated above until the judicial sale. Additional interest after the date of the judicial sale will be governed by the terms set forth below.

15. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b), SCRCF.

16. On September 30, 2025 this court issued an order on several motions filed by the Defendants including a motion to set aside default. The September 30, 2025, order contained rulings on, inter alia, subject matter jurisdiction, Plaintiff's standing to bring this foreclosure action as a real party in interest, and the Defendants' default for failure to respond to the Plaintiff's Complaint. Entry of default as to the Defendants constitutes an admission by the Defendants as to the allegations of the Complaint. *State ex rel. Medlock v. Love Shop, Ltd.* 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985). Notwithstanding, issues raised by the Defendants at trial will be addressed as set forth below.

17. The Defendant(s), below listed, claim or may claim liens upon or interests in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCF. The said Defendants and such claims or liens are as follows:

A. The Defendants, Timothy Allen Nunally and Mark Anthony Nunnally, have or may claim to have some interest in the Property by virtue of a certain deed of the Estate of Carl Alvin Nunally, Sr., purporting to convey an interest in the Property to aforementioned Defendants. Said deed was recorded on September 6, 2023, in the Lexington County Records in Book 21073 at Page 1408. Any interest that this Defendant received in the Property is "subject to" Plaintiff's Mortgage and this

interest should be eliminated through a properly completed foreclosure sale.

B. The Defendants, Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally, have or may claim to have some interest in the Property by virtue of being heirs to or devisees of Frankie L. Nunally as shown in Estate File 2019-ES-32-01345 in the Lexington County Probate Records. Any interest that these Defendants would have received in the Property would have been “subject to” Plaintiff’s Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

C. The Defendant, Timothy Allen Nunally, as Trustee of the CAN Irrevocable Trust, have or may claim to have some interest in the Property by virtue of being an heir to or devisee of Carl A. Nunally, Sr., as shown in Estate File 2022-ES-32-01253 in the Lexington County Probate Records. Any interest that this Defendant would have received in the Property would have been “subject to” Plaintiff’s Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

D. The Defendant, Timothy Allen Nunally, as Personal Representative of the Estate of Carl A. Nunally, Sr., has or may claim to have some interest in the Property by virtue of being the Personal Representative as shown in the Estate File 2022-ES-32-01253. Any interest that this Defendant has in the Property would be “subject to” Plaintiff’s Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

There are a number of relevant and disputed facts:

1. Defendants challenge Plaintiff’s standing to bring the suit. This dispute includes Defendant’s assertions regarding Race-Notice Considerations. Plaintiff asserts that it is the real party in interest with standing to bring the instant foreclosure action based upon the testimony and evidence presented at trial. Plaintiff further asserts that its standing has been established by this Court’s order entered September 30, 2025, which denied several motions filed by the Defendant.
2. Plaintiff’s complaint includes a cause of action pursuant to the South Carolina Uniform Declaratory Judgments Act S.C. Code Ann. § 15-53-10, et. seq., and involves an actual, justiciable controversy between the parties as described therein. Plaintiff alleges that, due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly

executed by the Notary as the notary lists himself as the party whose signature was being acknowledged instead of the Mortgagors, Carl A. Nunally, Sr. and Frankie L. Nunally. Plaintiff alleges that the notary intended to properly execute the Acknowledgment Section, and that the clear intent of the parties to the Mortgage was to execute and record a valid Mortgage to secure repayment of the Note described herein. The Defendant's contest the Plaintiff's entitlement to declaratory judgment.

ISSUES:

1. Is the Plaintiff the real party in interest with standing to bring this foreclosure?
2. Is the Plaintiff entitled to the relief sought in its declaratory judgment action?

CONCLUSIONS OF LAW AND DISCUSSION:

Plaintiff's standing to bring the foreclosure action

The Plaintiff's arguments related to standing are well taken. The Plaintiff's standing to bring the foreclosure was addressed in this Court's September 30, 2025 order discussed above. The evidence presented at trial is consistent with the September 30, 2025 order. For finality, the findings regarding standing are incorporated below.

SCRCP Rule 17(a) provides that, "[e]very action shall be prosecuted in the name of the real party in interest" and further sets forth that, "[n]o actions shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until such time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest". In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the Court of Appeals took up the issue of standing in the context of a mortgage foreclosure and noted, "[t]he requirement of Standing is not an inflexible one." *Id* at 220 (quoting *Sloan v.*

Sch. Dist. Of Greenville Cnty., 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000)). The Court of Appeals further noted the following regarding transfers of Notes and Mortgages:

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. §36-3-203(b) (Supp. 2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had). “[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but...the assignment of the mortgage alone does not carry with it an assignment of the note.” *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1710, 176, 20 S.E. 84, 85 (1984) (“The Transfer of a note carries with it a mortgage given to secure payment of such note.”).
Id. at 220.

Thus, a holder of a note has standing as the real party in interest to bring a foreclosure action. In *Draper*, the Court of Appeals also acknowledged that a mortgage servicer has standing to initiate a foreclosure action. “Several bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure. We agree with this view.” *Id.* at 223.

I find and conclude that the Note was properly endorsed. The Note is endorsed on its face and there are two allonges affixed to the document. Despite the Defendants’ assertions to the contrary, on its face, the Note was endorsed from Novastar Home Mortgage, Inc. to Novastar Mortgage, Inc. The Note is further endorsed from Novastar Mortgage, Inc. to JPMorgan Chase Bank, as Trustee of the NovaStar Mortgage Funding Trust, Series 2004-1, relating to the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1. Each of the Novastar endorsements note the same trust which is consistent with the Plaintiff in this action. Finally, the Note is endorsed in blank by JPMorgan Case Bank N.A. f/k/a JPMorgan Chase Bank, as Trustee of the NovaStar Mortgage Funding Trust, Series 2004-1, relating to the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1. On its face, the Note is a negotiable instrument as defined in S.C.

Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201(b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a “person entitled to enforce” the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

I find and conclude that the chain of assignments of the Mortgage to the Plaintiff is valid. While cogent evidence of the transfer of the Mortgage to the Plaintiff, the assignments are unnecessary to assert Plaintiff’s right to enforce the Note and Mortgage. As noted in *BAC Home Loan servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549, “[t]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee”. Quoting *Singleton v. Singleton*, 60 S.C. 216, 235, 38 S.E. 462, 469 (1901). Because it is the transfer of the Note that carries with it the transfer of the Mortgage, the recordation of the assignment simply puts the world on notice of the assignment, and the timing of its recording has no impact on Plaintiff’s standing to bring the instant foreclosure action.

Further, the Defendants lack standing to challenge the transfer of the Note and Mortgage because they were not parties to said transfer. *In Re McFadden*, 471 BR 136 (2012); *see also Reese v. United States Bank Nat’l Ass’n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012)(“Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity”); *see also Windsor Green Owners Ass’n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). (“Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract.”). The Defendants were not parties to the subject Note and Mortgage as they were named to foreclose any ownership interest they may have in the property.

A brief discussion of the race-notice considerations raised by the Defendants is warranted here. The common law holds that an unrecorded mortgage is valid against the world entire. *South Carolina Nat. Bank v. Guest*, 232 S.C. 367, 102 S.E.2d 215 (1958). South Carolina has adopted the common law in full except to the point modified by South Carolina Code Annotated § 30-7-10.¹ However, this modification only protects *bona fide* purchasers for value **without notice**. In all applications other than in regard to *bona fide* purchasers for value without notice, the common law rule remains effective. See *United States v. Anders Contracting Co.*, 111 F.Supp. 700 (D.S.C. 1953) stating that (“[u]nder the South Carolina law, **the common law rule that a ...mortgage over real estate is good against the world, though unrecorded, remains in effect except as changed by the Recording Act.**” (all emphasis added).

The recordation statutes have **modified** the common law rule, but have not done away with it. The relevant enactment is found at South Carolina Code Annotated § 30-7-10. This provision states in relevant portion:

All ... mortgages or instruments in writing in the nature of a mortgage of any real property ... **are valid so as to affect the rights of subsequent ... purchasers for valuable consideration without notice**, only from the day and hour when they are recorded in the office of the register of deeds or clerk of court of the county in which the real property affected is situated... . (Emphasis added)

Thus, it is clear from this provision that the race-notice statute does not abrogate the common law rule entirely. It modifies it only to the degree of protecting subsequent purchasers for valuable consideration without notice. *Goodrich Silvertown, Inc. v. Rogers*, 189 S.C. 101, 200 S.E. 91 (1938).

¹ South Carolina Code Annotated § 14-1-50 states:

all, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

Here, the evidence establishes that the Defendants took title to the subject property from the estates of their parents, the mortgagors herein, Carl Alvin Nunally, Sr. and Frankie Nunally. Carl Alvin Nunally, Sr. passed away September 4, 2021. A Deed of Distribution into the Defendants was signed by Timothy Nunally as Personal Representative of the Estate of Carl Alvin Nunally, Sr. on May 30, 2023, and recorded in the Lexington County Registry on September 6, 2023, in Book 21073 at Page 1408. At the time the Defendants received their respective interests in the Subject Property, the Mortgage was present in the Lexington County land records, having been recorded in the Lexington County Registry on February 28, 2004, in Book 9041 at Page 4. Therefore, the Defendants had record notice of the subject Mortgage prior to receiving their interests in the Subject Property.

Defendant Timothy Allen Nunally testified that, as Personal Representative of the Estate of Carl Alvin Nunally, Sr. he made a number of payments on the subject Mortgage following his father's passing. Indeed, no defendant has denied actual knowledge of the Mortgage, but rather the Defendants rely on their belief that the Mortgage should not have been recorded to argue that the Mortgage should not constitute record notice of the Plaintiff's lien. The Defendants' position is untenable and would not erase their actual knowledge of the Mortgage as a means of avoiding foreclosure. I find and conclude that the Defendants had both actual and record/inquiry notice of the Mortgage and, therefore, their race-notice considerations do not affect the enforceability of the Mortgage.

Finally, I find and conclude that the Defendants are protected from potential double-liability from any party other than the Plaintiff attempting to enforce the Note and Mortgage because, based on the testimony and evidence presented, no such party exists. Based on the

foregoing, all issues related to standing and enforceability of the Note and Mortgage are hereby resolved in favor of the Plaintiff.

Plaintiff's request for declaratory relief

Attorney Brian L. Boger testified at trial regarding his role as the attorney who supervised the closing of the loan as well as his serving as a witness and notary regarding the signatures of Carl A. Nunally, Sr. and Frankie L. Nunally on the Mortgage. Mr. Boger testified that, due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed as he inadvertently listed himself as the party whose signature was being acknowledged instead of the Mortgagors, Carl A. Nunally, Sr. and Frankie L. Nunally. Mr. Boger testified that he intended to properly execute the Acknowledgment Section, and that the clear intent of the parties to the Mortgage was to execute and record a valid Mortgage to secure repayment of the Note described herein. Mr. Boger's testimony was unrefuted and unequivocal. Therefore, I find and conclude that the Plaintiff is entitled to an order declaring that the Mortgage is an equitable lien or equitable mortgage on the subject property as of the date of its execution and that the Mortgage represents a valid and subsisting first lien on the subject property.

FURTHER CONCLUSIONS OF LAW:

1. The Plaintiff is entitled to judgment as to all causes of action, including foreclosure of its Mortgage.
2. The Property should be sold at public auction after statutory advertisement.
3. The Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is \$26,975.09. An additional hearing on the amount and measure of the Plaintiff's attorney's fees and court costs will be scheduled if necessary.

4. Interest should continue to accrue on the Total Debt. Costs incurred after the entry of this Order up to the date of judicial sale may be added to the Total Debt.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff is hereby granted judgment as to all causes of action, including foreclosure of its Mortgage.
2. The Property should be sold at public auction after statutory advertisement.
3. The Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is ordered and established at \$26,975.09. An additional hearing on the amount and measure of the Plaintiff's attorney's fees and court costs will be scheduled if necessary.
4. Interest shall accrue continue to accrue on the Total Debt, including any attorney's fees and court costs awarded to the Plaintiff. Costs incurred after the entry of this Order up to the date of judicial sale may be added to the Total Debt
5. That the Defendant(s) liable for the Total Debt shall, prior to the judicial sale pay to the Plaintiff, or the Plaintiff's attorney, the Total Debt including accrued interest, costs, and disbursements.
6. That on default of payment, the Property shall be sold at public auction at the Lexington County Judicial Center, City of Lexington, County and State aforesaid, on some convenient sales day on the following terms:
 - A. The selling officer shall require a deposit of 5% of the bid (in cash or its equivalent) to be applied to the purchase price upon compliance, but in case of non-compliance within thirty (30) days, the deposit shall be forfeited and applied to the Plaintiff's costs of sale and the balance then applied to the Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 1.5%.

C. The sale shall be subject to taxes and assessments, easements and restrictions of record, and any senior encumbrances.

D. The Purchaser shall pay for the deed and the cost of recording.

7. If the Plaintiff is the successful bidder for less than the total debt at the time of sale, the Plaintiff shall pay only the amount of the Court's costs and expenses.
8. No personal or deficiency judgment being demanded, the bidding shall be final on the sale date and the successful bidder may comply immediately.
9. Notice of the time, date, and place of the sale and the terms thereof will be advertised according to law
10. The selling officer will execute to the purchaser(s) a deed of the Property. If any successful bidder, other than the Plaintiff or its assignee, fails to comply with the terms of sale within thirty (30) days, the Property may be re-advertised for sale according to the same terms set forth herein until full compliance.
11. If an agent of the Plaintiff does not appear at the sale, the Property shall be withdrawn from sale and sold at the next available sales date upon the same terms.
12. The selling officer shall apply the proceeds of the sale as follows:
 - FIRST: To the payment of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of the Court; and
 - NEXT: To the payment of the Total Debt, interest, and costs as defined above; and
 - NEXT: Any surplus will be held pending further Order pursuant to Rule 71(c), SCRCP.
13. That it is further ORDERED that each named Defendant, and all persons claiming under him, them or it, be forever barred and foreclosed of all right, title, interest, lien, and equity of redemption in the Property, or any part thereof.

14. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, the Sheriff of Lexington County is hereby ordered and directed to eject and remove from the premises the named Defendants holding record title to the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.
15. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, and the property remains occupied by a person or persons holding or claiming to hold the property under lease from the record title holders, or who otherwise may have rights or protections under Federal or State statutes protecting such lessees, the Sheriff of Lexington County shall only be ordered and directed to eject and remove from the premises those occupants under the terms stated above, after a hearing as directed by this court and under such order or writ as may be issued by this court as deemed equitable under the circumstances.
16. That it is further ORDERED that after the Order Confirming Sale and Disbursements has been filed, the undersigned Master In Equity shall direct the Register of Deeds to release the lien(s) being foreclosed.
17. That it is further ORDERED that the following is a description of the Property to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF LEXINGTON, STATE OF SOUTH CAROLINA, THE SAME BEING SHOWN AND DESIGNATED AS LOT NO. 283, BLOCK W, ON A

PLAT OF MURRAYWOOD II BY HEANER ENGINEERING CO., DATED OCTOBER 27, 1972, REVISED JULY 1, 1975, AND RECORDED IN THE OFFICE OF THE ROD FOR LEXINGTON COUNTY IN PLAT BOOK 139-G AT PAGE 23. ALSO BEING SHOWN ON A PLAT PREPARED FOR DANE C. FROST AND TERRI L. FROST BY BELTER & ASSOCIATES, INC., DATED JUNE 14, 1993, AND RECORDED IN PLAT BOOK 262 AT PAGE 70. REFERENCE BEING MADE TO SAID LATTER PLAT WHICH IS INCORPORATED HEREIN FOR A MORE COMPLETE AND ACCURATE DESCRIPTION; ALL MEASUREMENTS BEING A LITTLE MORE OR LESS.

THIS BEING THE SAME PROPERTY CONVEYED TO CARL A. NUNALLY AND FRANKIE L. NUNALLY BY DEED OF DANE C. FROST AND TERRI L. FROST DATED AUGUST 8, 1994, AND RECORDED MARCH 12, 1999, IN BOOK 5145 AT PAGE 97 IN THE OFFICE OF THE REGISTER OF DEEDS FOR LEXINGTON COUNTY, SOUTH CAROLINA. THEREAFTER, FRANKIE L. NUNALLY PASSED AWAY ON JANUARY 14, 2019, LEAVING THE SUBJECT PROPERTY TO HER HEIRS CARL ALVIN NUNALLY, SR., CARL ALVIN NUNALLY, JR., MARK ANTHONY NUNALLY, AND TIMOTHY ALLEN NUNALLY, AS IS MORE FULLY PRESERVED IN PROBATE FILE NO. 2019-ES-32-01345 IN SAID RECORDS. SUBSEQUENTLY, CARL A. NUNALLY PASSED AWAY ON SEPTEMBER 4, 2021, LEAVING THE SUBJECT PROPERTY TO HIS DEVISEE, TIMOTHY ALLEN NUNALLY, AS TRUSTEE OF THE CAN IRREVOCABLE TRUST, AS IS MORE FULLY PRESERVED IN PROBATE FILE NO. 2022-ES-32-01253. SEE ALSO THE DEED OF DISTRIBUTION DATED MAY 30, 2023, AND RECORDED SEPTEMBER 6, 2023, IN BOOK 21073 AT PAGE 1408 AND RE-RECORDED SEPTEMBER 27, 2023, IN BOOK 21075 AT PAGE 5539 IN SAID RECORDS.

CURRENT ADDRESS OF PROPERTY: 1759 Willow Creek Drive, Columbia, SC 29212

TMS: 002734-01-003

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COMMON PLEAS COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2024-CP-32-01094

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1

PLAINTIFF(S)

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally
DEFENDANT(S)

Submitted by:

Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court.
The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK**

APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the
Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of	Judgment Against	Judgment Amount To be
----------------------	------------------	-----------------------

(List name(s) below)	(List name(s) below)	Enrolled (List amount(s) below)
		N/A
<p>If applicable, describe the property, including tax map information and address, referenced in the order:</p> <p>All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W, on a plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975, and recorded in the Office of the ROD for Lexington County in Plat Book 139-G at Page 23. Also being shown on a plat prepared for Dane C. Frost and Terri L. Frost by Belter & Associates, Inc., dated June 14, 1993, and recorded in Plat Book 262 at Page 70. Reference being made to said latter plat which is incorporated herein for a more complete and accurate description; all measurements being a little more or less.</p> <p>This being the same property conveyed to Carl A. Nunally and Frankie L. Nunally by deed of Dane C. Frost and Terri L. Frost dated August 8, 1994, and recorded March 12, 1999, in Book 5145 at Page 97 in the Office of the Register of Deeds for Lexington County, South Carolina. Thereafter, Frankie L. Nunally passed away on January 14, 2019, leaving the subject property to her heirs Carl Alvin Nunally, Sr., Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally, as is more fully preserved in Probate File No. 2019-ES-32-01345 in said Records. Subsequently, Carl A. Nunally passed away on September 4, 2021, leaving the subject property to his devisee, Timothy Allen Nunally, as Trustee of the CAN Irrevocable Trust, as is more fully preserved in Probate File No. 2022-ES-32-01253. See also the Deed of Distribution dated May 30, 2023, and recorded September 6, 2023, in Book 21073 at Page 1408 and re-recorded September 27, 2023, in Book 21075 at Page 5539 in said Records.</p>		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 2026 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2026 to attorneys of record
or
to parties (when appearing pro se) as follows:

Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED
ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
