

DLJ Mortgage vs. James M. Zelenky et al  
2005-1461-CD

THE LAW OFFICES OF BARBARA A. FEIN, P.C.

File No.05-12767

Barbara A. Fein / I.D. No. 53002  
Kristen D. Little / I.D. No. 79992  
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Fort Washington, PA 19034  
(215) 653-7450  
Attorneys for Plaintiff

DLJ MORTGAGE CAPITAL, INC.,  
Plaintiff,

v.

JAMES M. ZELENKY and  
ROMMA Y. ZELENKY,  
Defendants.

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

NO. 05-1461-CD

**CIVIL ACTION -- COMPLAINT IN MORTGAGE FORECLOSURE**

**NOTICE**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service  
Pennsylvania Lawyer Referral Service  
P.O. Box 186  
Harrisburg, PA 17108  
(800) 692-7375

**NOTICIA**

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTAS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE (20) DIAS DE PLAZO A PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. USTED DEBE PRESENTAR UNA APARIENCIA ESCRITA O EN PERSONA O POR ABOGADO Y ARCHIVAR EN LA CORTE SUS DEFENSAS O SUS OBJECIONES A LAS DEMANDAS ENCONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFIENDE, LA CORTE TOMARA MEDIDAS Y PUEDE ENTRAR UNA ORDEN CONTRA USTED SIN PREVIO AVISO O NOTIFICACION O POR CUALQUIER QUEJA O ALIVIO QUE ESPEDIDO EN LA PETICION DE DEMANDA. USTED PUEDE PERDER DINERO, SUS PROPIEDADES O OTROS DERECHOS IMPORTANTES PARA USTED.

LLERVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE PARA PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE USTED PUEDE CONSEGUIR ASISTENCIA LEGAL.

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SEP 22 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

**NOTICE REQUIRED UNDER THE FAIR  
DEBT COLLECTION PRACTICES ACT,  
15 U.S.C. § 1601 (AS AMENDED) AND  
THE PENNSYLVANIA UNFAIR TRADE PRACTICES  
ACT AND CONSUMER PROTECTION LAW,  
73 PA. CON. STAT. ANN. § 201, *ET SEQ.* ("THE ACTS")**

To the extent the Acts may apply, please be advised of the following:

1. The amount of the original debt is stated in the Complaint attached hereto.
2. The Plaintiff who is named in the attached Complaint and/or its loan servicing agents are Creditors to whom the debt is owed.
3. The debt described in the Complaint attached hereto and evidenced by the copies of the mortgage and note will be assumed to be valid by the Creditor's law firm, unless the Debtors/Mortgagors, within thirty days after receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If the Debtors/Mortgagors notify the Creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt and a copy of the verification will be mailed to the Debtor by the Creditor's law firm.
5. If the Creditor who is named as Plaintiff in the attached Complaint is not the original Creditor, and if the Debtor/Mortgagor makes written request to the Creditor's law firm within thirty days from the receipt of this notice, the name and address of the original Creditor will be mailed to the Debtor by the Creditor's law firm.
6. Written request should be addressed to:

THE LAW OFFICES OF BARBARA A. FEIN, P.C.  
Attention: Kristen D. Little, Esquire  
425 Commerce Drive, Suite 100  
Fort Washington, PA 19034

**\*THIS LETTER MAY BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT  
AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

CIVIL ACTION -- COMPLAINT IN MORTGAGE FORECLOSURE

1. (a) The Plaintiff, DLJ Mortgage Capital, Inc., is the holder of a mortgage as below described.

(b) Select Portfolio Servicing Inc., is a corporation having been organized under the laws of the State of Utah and having its principal place of business at 3815 South West Temple, Salt Lake City, UT 84115.

(c) Select Portfolio Servicing Inc. is the loan servicing agent for Plaintiff, maintaining the business records for the Plaintiff/ Mortgagee in the ordinary course and scope of business.

2. (a) Defendant James M. Zelenky is an individual whose last known address is P.O. Box 148, Drifting, PA 16834.

(b) Defendant Romma Y. Zelenky is an individual whose last known address is P.O. Box 148, Drifting, PA 16834.

(c) Defendant James M. Zelenky holds an interest in the subject property as both a Real Owner and Mortgagor.

(d) Defendant Romma Y. Zelenky holds an interest in the subject property as both a Real Owner and Mortgagor.

(e) If either of the above named Defendants are deceased, this action shall proceed against the deceased Defendant's heirs, assigns, successors, administrators, personal representatives and/or executors through their estate whether the estate is probated.

3. (a) The residential mortgage being foreclosed upon is secured by property located at Mine Street, within the Township of Cooper, Clearfield County, Pennsylvania.

(b) All documents evidencing the residential mortgage have been recorded in the Recorder of Deeds' Office in Clearfield County, Pennsylvania.

(c) The Mortgage was executed on September 18, 2001 and was recorded on October 4, 2001 in Mortgage Book Instrument #200115902.

(d) The legal description for this parcel is attached and incorporated as Exhibit "A" (Mortgaged Premises).

(e) The herein named Plaintiff has standing to bring the instant action by virtue of Assignments of Mortgage, duly and publicly recorded as below:

Assignor: Wilmington National Finance, Inc.  
Assignee: Key Bank, USA  
Recording Date: April 3, 2002  
Instrument #: 200205091

Assignor: Key Bank, USA  
Assignee: DLJ Mortgage Capital  
Recording Date: As Recorded  
Instrument #: As Recorded

(f) By virtue of Pennsylvania Rules of Civil Procedure Rule 1147 (1) and 1019(g), and on the basis of environmental responsibility, Plaintiff is not obliged to append copies of the above mentioned publicly recorded documents to this mortgage foreclosure action. These documents are, however, appended hereto and incorporated herein by reference as Exhibit "B".

4. The mortgage is in default because the Defendants above named failed to timely tender the monthly payment of \$617.86 on August 1, 2004, and thereafter failed to make the monthly payments.

5. As authorized under the mortgage instrument, the loan obligation has been accelerated.

6. Plaintiff seeks entry of judgment *in rem* on the following sums:

(a)	Principal balance of mortgage due and owing	\$69,365.33
(b)	Interest due and owing at the rate of 9.99% calculated from the default date above stated through September 30, 2005	8,598.72
	Interest will continue to accrue at the per diem rate of \$18.85 through the date on which judgment <i>in rem</i> is entered in Plaintiff's favor.	
(c)	Late Charges due and owing under the Note in accordance with the Mortgage Instrument	926.70
(d)	Escrow Advances made by Plaintiff Mortgagee on behalf of Defendant mortgage account	6,546.43
(e)	Property inspections as a recoverable expense under the mortgage terms	13.65
(f)	Other fees allowed under the mortgage terms	1,167.56
(g)	Non-Sufficient Funds (NSF Charges)	20.00
(h)	Suspense Balance (Credit)	<220.00>
(i)	Court Costs and fees as recoverable under the mortgage terms, estimated	300.00
(j)	Attorneys' fees Calculated as 5% of the principal balance due, in accordance with the mortgage terms	3,468.26

<b>TOTAL <i>IN REM</i> JUDGMENT SOUGHT BY PLAINTIFF</b>	<b>\$90,186.65</b>
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7. (a) The attorneys' fees set forth as recoverable at Paragraph 6(j) are in conformity with Pennsylvania law and the terms of the mortgage, and will be collected in the event of a third-party purchaser at a Sheriff's Sale only.

(b) If the mortgage arrears are to be reinstated or paid-off prior to the Sheriff's Sale, Plaintiff's actual attorneys' fees (calculated at counsel's hourly rate) will be charged based upon work actually performed.

8. (a) The original principal balance of the Mortgage is more than Fifty Thousand (\$50,000.00) Dollars.

(b) Under ACT 6, 41 P.S. §101, *et seq.*, Plaintiff Mortgagee is not obliged to serve Notice of its Intention to Accelerate the Mortgage by certified mailing prior to its instituting foreclosure proceedings.

9. (a) The subject mortgage is governed by ACT 91 of 1983 35 P.S. § 1840.401C, *et seq.*.

(b) Under Pennsylvania's ACT 91, Plaintiff Mortgagee is obligated to serve the Defendants with notice of their rights under the "Homeowners Emergency Mortgage Assistance Program", by regular mailing, prior to initiating foreclosure proceedings.

(c) Appended hereto and incorporated herein by reference as Exhibit "C" are copies of the Notices required, having been sent on the date set forth on the Notice.

(d) The Defendants have failed to make a timely application for financial assistance with the Pennsylvania Housing Finance Agency.

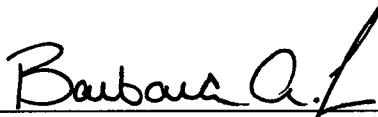
WHEREFORE, the Plaintiff, DLJ Mortgage Capital, Inc., demands:

- Entry of judgment *in rem* against the Defendants above named in the total amount of \$90,186.65 as stated Paragraph 6, plus all additional interest and late charges accruing through date of judgment entry; and
- Foreclosure and Sheriff's Sale of the subject mortgaged property.

Respectfully Submitted,

THE LAW OFFICES OF BARBARA A. FEIN, P.C.

BY:

  
\_\_\_\_\_  
Barbara A. Fein, Esquire  
Attorney for Plaintiff  
Attorney I.D. No. 53002



## DESCRIPTION

ALL THAT CERTAIN lot and tract of land situate, lying and being on the Township of Cooper, County of Clearfield and Commonwealth of Pennsylvania, being bounded and described as follows, to-wit:

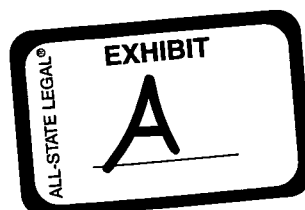
BEGINNING at an iron rail corner on line now or formerly of Clearfield Bituminous Coal Corp. and now or formerly on line of Mary Ann Josefik; thence along line of Mary Ann Josefik, North 52 deg. 41' West a distance of 311.85 feet (95.052 meters) to an iron pin corner on line now or formerly of Michael and Mary Golden; thence along line now or formerly of Michael and Mary Golden North 5 deg. 23' East a distance of 383.03 feet (116.748 meters) to a corner; thence by same North 82 deg. 43' West a distance of 133.96 feet (40.831 meters) to a corner; thence still by same North 6 deg. 46' East a distance of 219.95 feet (67.041 meters) to an old post corner on line now or formerly of Robert Allen; thence along line of Robert Allen South 82 deg. 43' East a distance of 396.00 feet (120.701 meters) to a corner on line now or formerly of Clearfield Bituminous Coal Corp.; thence along line of Clearfield Bituminous Coal corp. South 5 deg. 23' West a distance of 757.60 feet (230.917 meters) to an iron rail corner, the place of beginning.

CONTAINING 4.79 acres (1.937 hectares), as shown on survey of Shope Surveying Company dated September 6, 1978.

EXCEPTING AND RESERVING, however, all coal and other minerals to John G. Redding as set forth in the line of title hereto.

Tax Parcel #110-58-149

TITLE TO SAID PREMISES IS VESTED IN James M. Zelenky and Romma Y. Zelenky, his wife, by Deed from Nancy H. Zelenky, dated 3/27/2001 and recorded 4/2/2001 in Instrument #200104528.



OF THE GREENBACK  
T.A. OF LANDISVILLE  
Stacy & Co.

MORTGAGE

Return To:

**WILMINGTON NATIONAL FINANCE, INC.**

2260 BUTLER PIKE, SUITE 350  
PLYMOUTH MEETING, PA 19462

Parcel Number:

-[Space Above This Line For Recording Data]

LOAN NO.: A0107416

## MORTGAGE

**NOTICE: THIS LOAN CONTAINS PROVISIONS THAT ALLOW FOR A BALLOON PAYMENT AT MATURITY.**

## 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 together with all Riders to this document. SEPTEMBER 18, 2001

(B) "Borrower" is

**JAMES M. ZELINKY AND ROMMA Y. ZELINKY, HUSBAND AND WIFE**

**Borrower is the mortgagor under this Security Instrument.**

(C) "Lender" is

WILMINGTON NATIONAL FINANCE, INC.

**Lender is a CORPORATION**

organized and existing under the laws of **DELAWARE**

**PENNSYLVANIA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT**

**VMP-6(PA) (0008)**

Initials: R.Z  
Form 3039 1/01

Page 1 of 16

LENDER SUPPORT SYSTEMS, INC. 60PA.NEW (12/00)



Lender's address is  
2260 BUTLER PIKE, SUITE 350, PLYMOUTH MEETING, PA 19462

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated SEPTEMBER 18, 2001

The Note states that Borrower owes Lender

SEVENTY THOUSAND FOUR HUNDRED SIXTY FIVE AND NO/100 X X X X X X X X X X Dollars  
(U.S. \$ 70,465.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than OCTOBER 01, 2016

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

(F) "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.

(G) "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]:

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Adjustable Rate Rider    | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> 1-4 Family Rider       |
| <input type="checkbox"/> Graduated Payment Rider  | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input checked="" type="checkbox"/> Balloon Rider | <input type="checkbox"/> Rate Improvement Rider         | <input type="checkbox"/> Second Home Rider      |
| <input type="checkbox"/> Other(s) [specify]       |   |   |

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,  
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,  
non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other  
charges that are imposed on Borrower or the Property by a condominium association, homeowners  
association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by  
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic  
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit  
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller  
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse  
transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid  
by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i)  
damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the  
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the  
value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on,  
the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the  
Note, plus (ii) any amounts under Section 3 of this Security Instrument.



(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the COUNTY [Type of Recording Jurisdiction] of CLEARFIELD [Name of Recording Jurisdiction]:

SEE ATTACHED LEGAL DESCRIPTION DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

GRASSFLAT MINE STREET [Street]  
[City], Pennsylvania 16834 [Zip Code]  
("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

**THIS SECURITY INSTRUMENT** combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.**

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be



paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest

shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

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If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.



6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.



Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be

dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the 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 Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to

have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written 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.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or

agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). Lender shall notify Borrower of, among other things: (a) the default; (b) the action required to cure the default; (c) when the default must be cured; and (d) that failure to cure the default as specified may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. Lender shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured as specified, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, attorneys' fees and costs of title evidence to the extent permitted by Applicable Law.

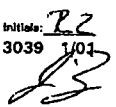
**23. Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument and the estate conveyed shall terminate and become void. After such occurrence, Lender shall discharge and satisfy this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Waivers.** Borrower, to the extent permitted by Applicable Law, waives and releases any error or defects in proceedings to enforce this Security Instrument, and hereby waives the benefit of any present or future laws providing for stay of execution, extension of time, exemption from attachment, levy and sale, and homestead exemption.

**25. Reinstatement Period.** Borrower's time to reinstate provided in Section 19 shall extend to one hour prior to the commencement of bidding at a sheriff's sale or other sale pursuant to this Security Instrument.

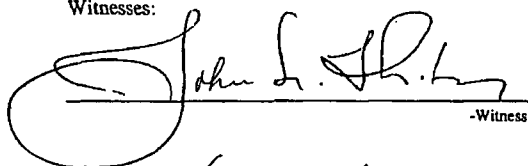
**26. Purchase Money Mortgage.** If any of the debt secured by this Security Instrument is lent to Borrower to acquire title to the Property, this Security Instrument shall be a purchase money mortgage.

**27. Interest Rate After Judgment.** Borrower agrees that the interest rate payable after a judgment is entered on the Note or in an action of mortgage foreclosure shall be the rate payable from time to time under the Note.



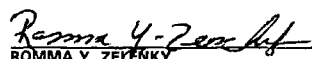
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

  
\_\_\_\_\_  
-Witness

as to both

\_\_\_\_\_  
-Witness

  
ROMMA Y. ZELENKY (Seal)  
\_\_\_\_\_  
-Borrower

  
JAMES M. ZELENKY (Seal)  
\_\_\_\_\_  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

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(Seal)  
-Borrower

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(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower



**Certificate of Residence**

I, \_\_\_\_\_, do hereby certify that  
the correct address of the within-named Mortgagee is 3246 Better Pike Plymouth Meeting, PA 19462  
Witness my hand this 18th day of September, 2001

Abby F. Wenzel  
Agent of Mortgagee

COMMONWEALTH OF PENNSYLVANIA,

Clearfield

County ss:

On this, the 18th day of September, 2001, before me, the  
undersigned officer, personally appeared  
ROMMA Y. ZELENKY, JAMES M. ZELENKY

known to me (or  
satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged that he/she/they executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.  
My Commission Expires:

Gloria J. English

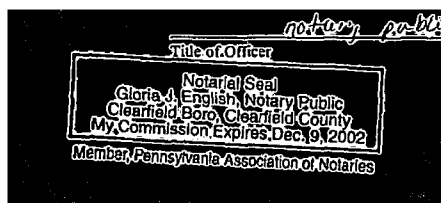


EXHIBIT "A"

ALL THAT CERTAIN lot and tract of land situate, lying and being in the Township of Cooper, County of Clearfield, and Commonwealth of Pennsylvania, being bounded and described as follows, to wit:

BEGINNING at an iron rail corner on line now or formerly of Clearfield Bituminous Coal Corp. and now or formerly on line of Mary Ann Josefik; thence along line of Mary Ann Josefik North 52 degrees 41' West a distance of 311.85 feet (95.052 meters) to an iron pin corner on line now or formerly of Michael and Mary golden; thence along line now or formerly of Michael and Mary golden North 5 degrees 23' East a distance of 383.03 feet (116.748 meters) to a corner; thence by same North 82 degrees 43' West a distance of 133.96 feet (40.831 meters) to a corner; thence still by same North 6 degrees 46' East a distance of 219.95 feet (67.041 meters) to an old post corner on line now or formerly of Robert Allen; thence along line of Robert Allen South 82 degrees 43' East a distance of 396.00 feet (120.70) meters) to a corner on line now or formerly of Clearfield Bituminous Coal Corp; thence along line of Clearfield Bituminous Coal Corp. South 5 degrees 23' West a distance of 757.60 feet (230.917 meters) to an iron rail corner, the place of beginning.

CONTAINING 4.79 acres (1.937 hectares), as shown on survey of Shope Surveying Company dated September 6, 1978.

EXCEPTING AND RESERVING, HOWEVER all coal and other minerals to John G. Redding as set forth in the line of title hereto.

UNDER AND SUBJECT, NEVERTHELESS, to all restrictions, easements and conditions of record.

BEING Parcel # 110-58-149

THE LAW OFFICES OF  
BARBARA A. FEIN, P.C.

NEW JERSEY OFFICE  
20000 Horizon Way, Suite 900  
Mount Laurel, NJ 08054-4318

-----  
(856) 596-5552

425 Commerce Drive  
Suite 100  
Fort Washington, PA 19034

-----  
(215) 653-7450

FAX: (215) 653-7454

e-mail address:  
lobaf@aol.com

PITTSBURGH OFFICE  
110 Atwood Street, PMB No. 680  
Pittsburgh, PA 15213

-----  
(412) 361-8286

File No.05-12767

PLEASE RESPOND TO OUR  
FORT WASHINGTON OFFICE

PHONE EXT. 112  
E-Mail Address: KatrinaB@lobaf.com

Barbara A. Fein, Esquire  
Kristen D. Little, Esquire

*Members of Pennsylvania  
and New Jersey Bars*

August 19, 2005

La notificacion en adjunto es de suma importancia, pues afecta su derecho a continuar viviendo en su casa. Si no comprende el contenido de esta notificacion, obtenga una traduccion inmediatamente llamanda esta agencia (Pennsylvania Housing Finance Agency) sin cargos al numero mencionado arriba. Puedes ser eligible para un prestamo por el programa llamado "Homeowner's Emergency Mortgage Assistance Program" el cual puede salvar su casa de la perdida del derecho a redimir su hipoteca.

**ACT 91 NOTICE**

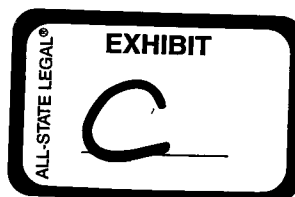
**IMPORTANT: NOTICE OF HOMEOWNERS'  
EMERGENCY MORTGAGE ASSISTANCE ACT OF 1983**

**PLEASE READ THIS NOTICE.**

**YOU MAY BE ELIGIBLE FOR FINANCIAL ASSISTANCE  
TOWARD YOUR MORTGAGE PAYMENTS**

James M. Zelenky and Romma Y Zelenky  
Mine Street, Grassflat, PA 16834  
P.O. Box 148, Drifting, PA 16834

RE: Client: Select Portfolio Servicing, Inc.  
Loan No. 0007146590  
Property Location: Mine Street, Within the Township of Cooper  
Clearfield County, Pennsylvania



**NOTICE REQUIRED UNDER THE FAIR  
DEBT COLLECTION PRACTICES ACT,  
15 U.S.C. § 1601 (AS AMENDED) AND  
THE PENNSYLVANIA UNFAIR TRADE PRACTICES  
ACT AND CONSUMER PROTECTION LAW,  
73 PA. CON. STAT. ANN. §201, *ET SEQ.* ("THE ACTS")**

**INASMUCH AS THE ACTS MAY APPLY, THIS NOTICE  
MAY BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT.  
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Dear James M. Zelenky and Romma Y Zelenky:

**You may be eligible for financial assistance that will prevent foreclosure on your mortgage if you comply with the provisions of the Homeowners' Emergency Mortgage Assistance Act of 1983 (the "Act"). You may be eligible for emergency temporary assistance if your default has been caused by circumstances beyond your control, you have a reasonable prospect of resuming your mortgage payments, and if you meet other eligibility requirements established by the Pennsylvania Housing Finance Agency. Please read all of this Notice. It contains an explanation of your rights.**

Under the Act, you are entitled to a temporary stay of foreclosure on your mortgage for thirty (30) days from the date of this Notice. During that time you must arrange and attend a "face-to-face" meeting with a representative of this lender, or with a designated consumer credit counseling agency. The purpose of this meeting is to attempt to work out a repayment plan, or to otherwise settle your delinquency. This meeting must occur in the next thirty (30) days.

If you attend a face-to-face meeting with this lender, or with a consumer credit counseling agency identified in this notice, no further proceeding in mortgage foreclosure may take place for thirty (30) days after the date of this meeting. The name, address and telephone number of our representative is:

Julie A. Peck, Paralegal - ext. 122  
Katrina Booker, Paralegal - ext. 112  
425 Commerce Drive, Suite 100  
Fort Washington, PA 19034  
(215) 653-7450

The names and addresses of designated consumer credit counseling agencies are shown on the attached sheet. It is only necessary to schedule one face-to-face meeting. You should advise this lender immediately of your intentions.

Your mortgage is in serious default because you have failed to pay promptly installments of principal and interest, as required, for a period of at least sixty (60) days. The total amount of the delinquency is \$10,415.96. That total includes the following:

<b>Payments of \$617.86 per month due from August 1, 2004, through the date of this letter (a total of 13 months) and each month thereafter.</b>	<b>\$8,032.18</b>
<b>Accrued Late Charges due after the fifteenth day of the month through the date of this letter and each month thereafter</b>	<b>926.70</b>
<b>Non-Sufficient Funds Fee (NSF Fees)</b>	<b>20.00</b>
<b>Other fees due and owing under the loan documents</b>	<b>1,257.08</b>
<b>Suspense Balance (Credit)</b>	<b>&lt;220.00&gt;</b>
<b>Other: Preliminary Title Report</b>	<b>350.00</b>
<b>Attorney's Fees Permitted under the Statute</b>	<b>50.00</b>
<b>TOTAL AMOUNT DUE:</b>	<b>\$10,415.96</b>

If you have tried and are unable to resolve this problem at or after your face-to-face meeting, you have the right to apply for financial assistance from the Homeowners' Emergency Assistance Fund. In order to do this, you must fill out, sign and file a completed Homeowners' Emergency Assistance Application with one of the designated consumer credit counseling agencies listed on the attachment. An application for assistance may only be obtained from a consumer credit counseling agency. The consumer credit counseling agency will assist you in filling out your application and will submit your completed application to the Pennsylvania Housing Finance Agency. Your application must be filed or postmarked within thirty (30) days of your face-to-face meeting.

*It is extremely important that you file your application promptly. If you do not do so, or if you do not follow the other time periods set forth in this letter, foreclosure may proceed against your home immediately.*

August 19, 2005

Page 4

Available funds for emergency mortgage assistance are very limited. They will be disbursed by the Agency under the eligibility criteria established by the Act.

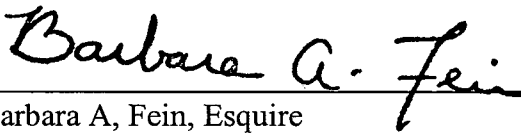
It is extremely important that your application is accurate and complete in every respect. The Pennsylvania Housing Finance Agency has sixty (60) days to make a decision after it receives your application. During that additional time, no foreclosure proceedings will be pursued against you if you have met the time requirements set forth above. You will be notified directly by that Agency of its decision on your application.

The Pennsylvania Housing Finance Agency is located at 211 North Front Street, P.O. Box 15530, Harrisburg, PA 17105-5530. Its telephone numbers are: (717) 780-3800 or 1-800-342-2397 (toll free number). Persons with impaired hearing can call 1-800-342-2397.

In addition you may receive another notice from this lender under ACT 6 of 1974. That Notice is called a "Notice of Intention to Foreclosure". You must read both notices since they both explain rights that you now have under Pennsylvania law. However, if you choose to exercise your rights described in this notice, you cannot be foreclosed upon while you are receiving assistance.

Sincerely,

THE LAW OFFICES OF BARBARA A. FEIN, P.C.

BY:   
Barbara A, Fein, Esquire  
Attorney for Plaintiff

BAF/knr

cc: Select Portfolio Servicing, Inc.  
Loan Reference No.0007146590

**SENT BY CERTIFICATE OF REGULAR MAILING  
AND BY CERTIFIED MAIL RECEIPT NO.7004 2890 0000 3190 5439, 7004 2890 0000 3190  
5446, 7004 2890 0000 3190 5453, and 7004 2890 0000 3190 5460**

# Homeowners' Emergency Mortgage Assistance Program Counseling Agencies

[« Previous](#)[Next »](#)

## CLEARFIELD COUNTY

### **CCCS of Northeastern PA**

202 W. Hamilton Avenue

State College, PA 16801

(814) 238-3668

### **CCCS of Western PA**

219-A College Park Plaza

Johnstown, PA 15904

888-511-2227

### **CCCS of Western PA, Inc.**

Royal Remax Plaza

917 A Logan Boulevard

Altoona, PA 16602

888-511-2227

### **Indiana Co. Community Action Program**

827 Water Street

Box 187

Indiana, PA 15701

(724) 465-2657

### **Keystone Economic Development Corp.**

1954 Mary Grace Lane

Johnstown, PA 15901

(814) 535-6556

Effective 8/19/2005 at 10:05:01 AM

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- MAP -

7004 2890 0000 3190 5439

U.S. Postal Service™ 13767 ACT 91 KR  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)  
**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$4.65

Postmark  
Here

Sent To James M. Zelenky  
 Street, Apt. No., or PO Box No. Mine Street  
 City, State, ZIP+4 Grassflat, PA 16834  
 PS Form 3800, June 2002 See Reverse for Instructions

7004 2890 0000 3190 5460

U.S. Postal Service™ 13767 ACT 91 KR  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)  
**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$4.65

Postmark  
Here

Sent To James M. Zelenky  
 Street, Apt. No., or PO Box No. P.O. Box 148  
 City, State, ZIP+4 Drifting, PA 16834  
 PS Form 3800, June 2002 See Reverse for Instructions

7004 2890 0000 3190 5446

U.S. Postal Service™ 13767 ACT 91 KR  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)  
**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$4.65

Postmark  
Here

Sent To Romma Y. Zelenky  
 Street, Apt. No., or PO Box No. Mine Street  
 City, State, ZIP+4 Grassflat, PA 16834  
 PS Form 3800, June 2002 See Reverse for Instructions

7004 2890 0000 3190 5455

U.S. Postal Service™ 13767 ACT 91 KR  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)  
**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$4.65

Postmark  
Here

Sent To Romma Y. Zelenky  
 Street, Apt. No., or PO Box No. P.O. Box 148  
 City, State, ZIP+4 Drifting, PA 16834  
 PS Form 3800, June 2002 See Reverse for Instructions



Affix fee here in stamps or meter postage and post mark. Inquire of Postmaster for current fee.

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
THE LAW OFFICES OF BARBARA A. FEIN 425 COMMERCE DRIVE FORT WASHINGTON, PA 19034	
One piece of ordinary mail addressed to:	
Romma Y. Zelenky P.O. Box 148 Drifting, PA 16834	

PS Form 3817, January 2001

Zelenky 12767 ACT91 KR

Affix fee here in stamps or meter postage and post mark. Inquire of Postmaster for current fee.

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
THE LAW OFFICES OF BARBARA A. FEIN 425 COMMERCE DRIVE FORT WASHINGTON, PA 19034	
One piece of ordinary mail addressed to:	
James M. Zelenky P.O. Box 148 Drifting, PA 16834	

PS Form 3817, January 2001

Zelenky 12767 ACT91 KR

Affix fee here in stamps or meter postage and post mark. Inquire of Postmaster for current fee.

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
THE LAW OFFICES OF BARBARA A. FEIN 425 COMMERCE DRIVE FORT WASHINGTON, PA 19034	
One piece of ordinary mail addressed to:	
Romma Y. Zelenky Mine Street Grassflat, PA 16834	

PS Form 3817, January 2001

Zelenky 12767 ACT91 KR

Affix fee here in stamps or meter postage and post mark. Inquire of Postmaster for current fee.

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
THE LAW OFFICES OF BARBARA A. FEIN 425 COMMERCE DRIVE FORT WASHINGTON, PA 19034	
One piece of ordinary mail addressed to:	
James M. Zelenky Mine Street Grassflat, PA 16834	

PS Form 3817, January 2001

Zelenky 12767 ACT91 KR

## VERIFICATION

The undersigned, an officer of Fidelity National Foreclosure Duly authorized Officers on Behalf of Select Portfolio Servicing, Inc. the instant Plaintiff, or its servicing agent, being authorized to make this Verification on behalf of Plaintiff, hereby verifies that the facts set forth in the foregoing Complaint in Mortgage Foreclosure are taken from the records maintained by persons supervised by the undersigned who maintain the business records of the Mortgage held by Plaintiff in the ordinary course of business and that those facts are true and correct to the best of the knowledge, information and belief of the undersigned.

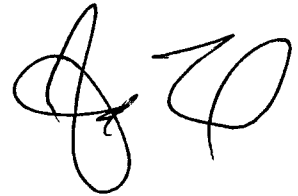
I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE MADE SUBJECT TO THE PENALTIES OF 18 P.A.C.S. SECTION 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

Sworn to and subscribed  
before me this 18th day of August, 2005.

NAME: Joe Edlund

TITLE: Officer

Company: Fidelity National Foreclosure Duly  
Authorized Officers on Behalf of  
Select Portfolio Servicing, Inc.

A handwritten signature in black ink, appearing to be "Joe Edlund", written over the printed name and title.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

DOCKET # 100844  
NO: 05-1461-CD  
SERVICE # 1 OF 2  
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: DLJ MORTGAGE CAPITAL INC.  
vs.  
DEFENDANT: JAMES M. ZELINKY and ROMMA Y. ZELINKY

**SHERIFF RETURN**

NOW, October 11, 2005 AT 3:27 PM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON JAMES M. ZELINKY DEFENDANT AT 121 MINI ST., GRASSFLAT, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JAMES ZELINKY, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

**FILED**  
01/10/49/01  
FEB 03 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

DOCKET # 100844  
NO: 05-1461-CD  
SERVICE # 2 OF 2  
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: DLJ MORTGAGE CAPITAL INC.  
vs.  
DEFENDANT: JAMES M. ZELENY and ROMMA Y. ZELENY

**SHERIFF RETURN**

---

NOW, October 11, 2005 AT 3:27 PM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON ROMMA Y. ZELENY DEFENDANT AT 121 MINI ST., GRASSFLAT, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JAMES ZELENY, HUSBAND A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100844  
NO: 05-1461-CD  
SERVICES 2  
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: DLJ MORTGAGE CAPITAL INC.  
vs.  
DEFENDANT: JAMES M. ZELENKY and ROMMA Y. ZELENKY

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	FEIN	46491	20.00
SHERIFF HAWKINS	FEIN	46491	66.68

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2006

So Answers,



Chester A. Hawkins  
Sheriff

THE LAW OFFICES OF BARBARA A. FEIN, P.C.  
Barbara A. Fein, Esquire / I.D. No. 53002  
Kristen D. Little, Esquire / I.D. No. 79992  
Jacqueline F. McNally, Esquire / I.D. No. 201332  
425 Commerce Drive, Suite 100  
Fort Washington, PA 19034  
(215) 653-7450  
Attorneys for Plaintiff

05-12767

DLJ MORTGAGE CAPITAL, INC.  
Plaintiff,

v.

JAMES M. ZELENKY and  
ROMMA Y. ZELENKY  
Defendants.

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

NO. 05-1461-CD

FILED  
m/2:42 Lm  
FEB 13 2006  
ICC & Cert of  
disc to Atty  
B Fein and  
copy to C/A

PRAECIPE TO DISCONTINUE CIVIL ACTION

William A. Shaw  
Prothonotary

TO THE PROTHONOTARY:

Kindly mark the above referenced matter discontinued without prejudice to Plaintiff.

February 9, 2006

THE LAW OFFICES OF BARBARA A. FEIN, P.C.

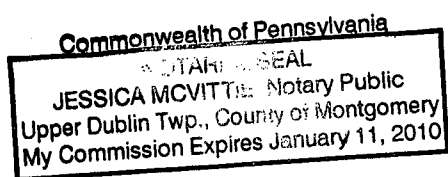
BY:

Barbara A. Fein  
Barbara A. Fein, Esquire  
Attorney for Plaintiff  
Attorney I.D. No. 53002

Sworn to before me this

8th day of February 2006.

J. McVittie  
Notary Public



IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DLJ Mortgage Capital, Inc.

Vs.

James M. Zelenky  
Romma Y. Zelenky

No. 2005-01461-CD

COPY

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 13, 2006, marked:

Discontinued without prejudice

Record costs in the sum of \$85.00 have been paid in full by Barbara A. Fein Esq. .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 13th day of February A.D. 2006.



William A. Shaw, Prothonotary