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January 26, 2018

Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
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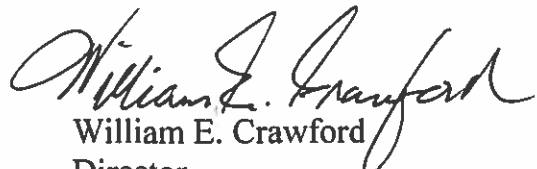
Representative Taylor Barras  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

**RE: SENATE CONCURRENT RESOLUTION NO. 102 OF THE 2015 REGULAR SESSION**

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature relative to the recordation of mortgage assignments.

Sincerely,

  
William E. Crawford  
Director

WEC/puc

Enclosure

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.us](mailto:drplibrary@legis.la.us)  
Secretary of State, Mr. Tom Schedler  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE  
SECURITY DEVICES COMMITTEE**

**REPORT TO THE LEGISLATURE  
IN RESPONSE TO SCR NO. 102 OF THE 2015 REGULAR SESSION**

**Relative to the recordation of assignments of residential mortgages**

Prepared for the  
Louisiana Legislature on  
**January 26, 2018**

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE  
SECURITY DEVICES COMMITTEE**

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L. David Cromwell, Reporter  
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SENATE CONCURRENT RESOLUTION NO. 102

BY SENATOR BROOME

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations regarding whether an assignment or transfer of a mortgage loan on residential real property should be required to be recorded in the appropriate mortgage or conveyance records in order to be effective as to third parties.

WHEREAS, currently Civil Code Article 3338 provides that the rights and obligations established or created by certain written instruments are without effect as to a third person unless the instrument is registered by recording it in the appropriate mortgage or conveyance records; and

WHEREAS, the list of instruments Civil Code Article 3338 requires to be recorded in the appropriate mortgage or conveyance records in order to be effective as to third parties does not include instruments or endorsements that transfer an interest in a note that is secured by a mortgage or a deed of trust on an immovable, nor does it require any instrument reflecting a new assignment of that mortgage to be recorded; and

WHEREAS, currently when a note secured by a residential mortgage is transferred or assigned to a new mortgagee, no instrument reflecting the latest assignment or transfer of that note secured by a residential mortgage is required to be recorded in the appropriate mortgage records; and

WHEREAS, this can create difficulty and confusion for consumers or debtors whose mortgage is sold or otherwise transferred or assigned to a new mortgagee on the secondary market, and who are seeking to ascertain from the public record who the new mortgagee is, potentially causing challenges for mortgagors or debtors in various types of proceedings, including foreclosure proceedings, in properly identifying who the new mortgagee is or which party to pay in order to avoid foreclosure proceedings and keep their mortgage payment schedule in good standing; and

WHEREAS, for such reasons, the Louisiana State Law Institute should study whether requiring, rather than simply permitting, recording of new assignments or transfers of mortgage loans on residential real property may assist mortgagors or debtors to be better advised of the contact information for new mortgagees, including the new mortgagee's name, telephone number, and mailing address to which the mortgagor or debtor may send payments on the mortgage loan.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations regarding whether any assignment or transfer of a mortgage loan on residential real property should be required to be recorded in the appropriate mortgage or conveyance records in order to be effective as to third parties, and further to determine whether there are alternative measures other than such recording in the public record that may assist in ensuring that mortgagors are better advised of the identity and contact information of new mortgagees in successive assignments or transfers of a mortgage loan on residential real property.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

January 26, 2018

To: Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

Representative Taylor F. Barras  
Speaker of the House  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE  
IN RESPONSE TO SCR NO. 102 OF THE 2015 REGULAR SESSION**

1 SCR No. 102 of the 2015 Regular Session urged and requested the Louisiana State Law  
2 Institute "to study and make recommendations regarding whether any assignment or transfer of a  
3 mortgage loan on residential real property should be required to be recorded in the appropriate  
4 mortgage or conveyance records in order to be effective as to third parties, and further to  
5 determine whether there are alternative measures other than such recording in the public record  
6 that may assist in ensuring that mortgagors are better advised of the identity and contact  
7 information of new mortgagees in successive assignments or transfers of a mortgage loan on  
8 residential real property." SCR No. 102 of 2015 was assigned for study to the Security Devices  
9 Committee of the Law Institute.

10  
11 The study resolution posits that, when a note secured by a residential mortgage is  
12 assigned to a new mortgagee, the law does not require that the assignment be recorded in the  
13 mortgage records. The resolution goes on to suggest that the lack of a recordation requirement  
14 "can create difficulty and confusion for consumers or debtors whose mortgage is sold or  
15 otherwise transferred or assigned to a new mortgagee on the secondary market, and who are  
16 seeking to ascertain from the public record who the new mortgagee is, potentially causing  
17 challenges for mortgagors or debtors in various types of proceedings, including foreclosure  
18 proceedings, in properly identifying who the new mortgagee is or which party to pay in order to  
19 avoid foreclosure proceedings and keep their mortgage payment schedule in good standing."

20  
21 Because the public records are not intended to regulate the effect of instruments between  
22 the parties and because the law already contains adequate safeguards to protect third persons  
23 from the effect of an unrecorded assignment of a mortgage, the Law Institute believes that  
24 legislation altering the well-established rules of the public records doctrine to impose an absolute  
25 requirement of recordation of assignments of residential mortgages is both unwarranted and  
26 inadvisable and therefore recommends against such legislation.

1 **I. OVERVIEW OF THE PUBLIC RECORDS DOCTRINE**

2  
3 Though the public records doctrine has existed in Louisiana for time immemorial, its  
4 current statutory foundation is found in the Civil Code title on Registry, adopted in 2005.<sup>1</sup> The  
5 first article of that title states the fundamental rule of the public records doctrine:

6  
7 **Art. 3338. Instruments creating real rights in immovables; recordation required to**  
8 **affect third persons**

9  
10 The rights and obligations established or created by the following written  
11 instruments are without effect as to a third person unless the instrument is registered by  
12 recording it in the appropriate mortgage or conveyance records pursuant to the provisions  
13 of this Title:

14  
15 (1) An instrument that transfers an immovable or establishes a real right in or over  
16 an immovable.

17  
18 (2) The lease of an immovable.

19  
20 (3) An option or right of first refusal, or a contract to buy, sell, or lease an  
21 immovable or to establish a real right in or over an immovable.

22  
23 (4) An instrument that modifies, terminates, or transfers the rights created or  
24 evidenced by the instruments described in Subparagraphs (1) through (3) of this Article.

25  
26 In *Phillips v. Parker*, 483 So. 2d 972 (La. 1986), a case arising prior to the 2005 revision, the  
27 Louisiana Supreme Court explained the underlying principles of the public records doctrine as  
28 follows:

29  
30 The fundamental principle of the law of registry is that any sale, mortgage,  
31 privilege, contract or judgment affecting immovable property, which is required  
32 to be recorded, is utterly null and void as to third persons unless recorded.  
33 Redmann, *The Louisiana Law of Recordation: Some Principles and Some*  
34 *Problems*, 39 Tul.L.Rev. 491 (1965). When the law of recordation applies, an  
35 interest in immovable property is effective against third persons only if it is  
36 recorded; if the interest is not recorded, it is not effective against third persons,  
37 even if the third person knows of the claim. This principle is traceable to the  
38 decision in *McDuffie v. Walker*, 125 La. 152, 51 So. 100 (1909), in which the  
39 court held that the plaintiff, as purchaser of immovable property by recorded act,  
40 was entitled to recognition as owner in a petitory action against the defendant

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<sup>1</sup> Prior to the 2005 revision, the public records doctrine was embodied in R.S. 9:2721, which provided that "[n]o sale, contract, counter letter, lien, mortgage, judgment, surface lease, oil, gas or mineral lease or other instrument of writing relating to or affecting immovable property shall be binding on or affect third persons or third parties unless and until filed for registry in the office of the parish recorder of the parish where the land or immovable is situated; and neither secret claims or equities nor other matters outside the public records shall be binding on or affect such third parties." R.S. 9:2721 was repealed in the 2005 revision.

1 who had purchased the property seven years earlier and had immediately gone  
2 into possession, but had not recorded the deed. In response to the defendant's  
3 argument that the plaintiff had knowledge of the prior unrecorded sale, the court  
4 reiterated its decision in *Harang v. Plattsmier*, 21 La. Ann. 426 (1869) that actual  
5 knowledge is not the equivalent of registry, which is absolutely required in order  
6 for the sale to affect third persons.

7  
8 Thus, the law of registry does not create rights in a positive sense, but rather has  
9 the negative effect of denying the effectiveness of certain rights unless they are  
10 recorded. The essence of the public records doctrine is that recordation is an  
11 essential element for the *effectiveness* of a right, and it is important to distinguish  
12 between *effectiveness* of a right against third persons and *knowledge* of a right by  
13 third persons. An unrecorded interest is not effective against anyone (except the  
14 parties). A recorded interest, however, is *effective* both against those third persons  
15 who have *knowledge* and those who do not have *knowledge* of the presence of the  
16 interest in the public records. From the standpoint of the operation of the public  
17 records doctrine, knowledge is an irrelevant consideration. Any theory of  
18 constructive knowledge which imputes knowledge of the contents of the public  
19 records to third persons forms no part of the public records doctrine.

20  
21 Another element of the public records doctrine is the protection of third persons.  
22 La. R.S. 9:2722 provides that a third person is entitled to rely on the law of  
23 registry and is protected thereby. This protection of third parties has significance  
24 only when an interest which is required to be recorded is *not recorded*, because a  
25 third person under such circumstances can deal with the property in *reliance on*  
26 *the absence* of the interest from the public records, even if the third person has  
27 actual knowledge of the interest. Thus, the primary concern of the public records  
28 doctrine is the protection of third persons against *unrecorded* interests. The public  
29 records doctrine therefore has little applicability in the present case in which the  
30 claim of plaintiff's ancestor in title was recorded.

31  
32 483 So. 2d at 975-76. Citing its decision in the *Phillips* case, the Court took the opportunity in  
33 the later case of *Cimarex Energy Co. v. Mauboules*, 40 So. 3d 931 (La. 2010) to explain the  
34 public policy reasons behind the public records doctrine:

35  
36 The Louisiana Public Records doctrine generally expresses a public policy that  
37 interest in real estate must be recorded in order to affect third persons. Simply  
38 put, an instrument in writing affecting immovable property which is not recorded  
39 is null and void except between the parties. See Peter S. Title, *Louisiana Real*  
40 *Estate Transactions*, § 8.1 (2009). The public records doctrine is founded upon  
41 our public policy and social purpose of assuring stability of land titles. *Camel v.*  
42 *Waller*, 526 So.2d 1086, 1089 (La.1988). . . . The public records doctrine is now  
43 generally set forth in La. C.C. art. 3338. . . .

44  
45 The public records doctrine has been described as a negative doctrine because it  
46 does not create rights, but, rather, denies the effect of certain rights unless they



1 are recorded. Title, *supra* at § 8.16; *Camel*, 526 So.2d at 1089–1090; *Phillips v.*  
2 *Parker*, 483 So.2d 972, 975 (La.1986). In explaining the negative nature of the  
3 doctrine, this Court has stated that third persons are not allowed to rely on what is  
4 contained in the public records, but can rely on the absence from the public  
5 records of those interests that are required to be recorded. *Camel*, 526 So.2d at  
6 1090 [citing Redmann, *The Louisiana Law of Recordation: Some Principles and*  
7 *Some Problems*, 39 Tul. L. Rev. 491 (1965) ]. The primary focus of the public  
8 records doctrine is the protection of third persons against unrecorded interests.  
9 *Camel*, 526 So.2d at 1090; *Phillips*, 483 So.2d at 976.

10  
11 40 So. 3d at 943-44.

12  
13 Three preliminary observations about the workings of the public records doctrine are in  
14 order. First, as the Supreme Court observed in the two cases cited above, the focus of the public  
15 records doctrine is on the protection of *third persons*, not the parties themselves. Indeed, this is  
16 clear from the text of Article 3338 itself. Secondly, the public records doctrine applies to  
17 immovables only, and not movables. Finally, the public records doctrine does not include a  
18 statutory *mandate* that instruments affecting immovables be recorded; instead the doctrine  
19 simply assigns a *consequence* to the failure of recordation: ineffectiveness against third persons.

20  
21 **II. APPLICATION OF THE PUBLIC RECORDS DOCTRINE TO MORTGAGE**  
22 **ASSIGNMENTS**

23  
24 **A. *The mortgagor is a party to the mortgage transaction, and not a third person, and***  
25 ***accordingly is not entitled to the benefit of the public records doctrine.***

26  
27 It is readily apparent that the mortgagor, as the grantor of the mortgage, is a party to the  
28 mortgage and is not a third person insofar as the mortgage transaction is concerned. The  
29 mortgage is effective against him whether or not it is ever recorded and, if recorded, whether or  
30 not it is reinscribed within the time required by law.<sup>2</sup> As pointed out above, the purpose of the  
31 laws of registry is to protect third persons, not the parties themselves. Accordingly, if a  
32 mortgage is not recorded and the mortgagor later mortgages, sells or grants other rights in the  
33 mortgaged property to a third person, that third person will acquire those rights in the property  
34 free from the effect of the mortgage. The reason is that, since the mortgage was not recorded, it  
35 is ineffective *against third persons*. The mortgagor himself is not a third person, and the  
36 mortgage remains effective against him.

37  
38 **B. *A mortgage note is a movable to which the laws of registry do not directly apply.***

39  
40 There is no doubt that a promissory note, even if secured by a mortgage, is a movable.<sup>3</sup>  
41 As pointed out above, the laws of registry apply only to immovables, not to movables.

---

<sup>2</sup> For a recent application of this rule, see *In re 800 Bourbon Street, LLC*, 541 B. R. 616 (Bankr. E.D. La. 2015), holding that a mortgage is effective between the parties from the time of its execution, regardless of whether it is recorded or timely reinscribed.

<sup>3</sup> See C.C. Art. 475.

1 Accordingly, if a third person desires to acquire a mortgage note by assignment, he cannot  
2 simply examine the public records in order to satisfy himself as to whether the proposed assignor  
3 actually owns the mortgage note or has the power to transfer rights in it to him. Indeed, if the  
4 public records doctrine did apply to mortgage notes, the proposed transferee would be *required*  
5 to examine the public records in order to assure himself of the power of his transferor to transfer  
6 the note to him, rather than being able to rely on his transferor's possession of the note and the  
7 presence of prior endorsements on the note in the favor of his transferor. Such a rule would  
8 have the undesirable effect of making all mortgage loans in Louisiana insusceptible, as a  
9 practical matter, of transfer on the secondary mortgage market, thus almost certainly causing  
10 Louisiana residents to encounter immense difficulty in obtaining credit for purchases of homes.

11  
12 **C. *The public records doctrine already protects third persons acquiring an interest in an***  
13 ***immovable against the effect of an unrecorded transfer of a mortgage.***  
14

15 It is true, of course, that the mortgage securing a mortgage note creates a real right in the  
16 immovable property subject to the mortgage.<sup>4</sup> As an accessory obligation, the mortgage will be  
17 automatically transferred along with a transfer of the mortgage note, even without a special  
18 stipulation to that effect.<sup>5</sup>  
19

20 As mentioned above, the transfer of the mortgage note is the transfer of a movable and is  
21 therefore outside the scope of the public records doctrine. The transferee of the *note* is not  
22 protected by the public records doctrine. This is not to suggest, however, that the public records  
23 doctrine has no applicability at all where transfers of mortgage notes are concerned. Mortgages  
24 are frequently released, in whole or in part, amended or otherwise modified. Although the  
25 transferee of a mortgage note is not protected by the public records doctrine against adverse  
26 claims to the *note itself*, he is nonetheless protected against unrecorded instruments affecting the  
27 *mortgage*. Accordingly, Civil Code Article 3356(A) provides that the transferee of an obligation  
28 secured by a mortgage is not bound by any unrecorded act releasing, amending, or otherwise  
29 modifying the mortgage if he is a third person with respect to that unrecorded act.  
30

31 Similarly, third persons who intend to acquire an interest *in the immovable burdened by a*  
32 *mortgage* have an interest in knowing whether a transfer, modification, amendment, or release of  
33 a mortgage executed by a person purporting to be the mortgagee was in fact executed by the  
34 proper person. Accordingly, Civil Code Article 3356(B) provides that a recorded transfer,  
35 modification, amendment, or release of a mortgage made by the *obligee of record* is effective as  
36 to third persons notwithstanding the fact that the obligation secured by the mortgage has been  
37 transferred to another. The obligee of record is defined to be the person identified by the  
38 mortgage records as the obligee of the secured obligation. By operation of this rule, if the person  
39 who appears of record to be the holder of the obligation secured by a mortgage executes a  
40 transfer, modification, amendment, or release of the mortgage, and if that instrument is recorded,  
41 it is effective against third persons even though the person executing the instrument had actually

---

<sup>4</sup> C.C. Art. 3278 defines a mortgage to be a nonpossessory right created over property to secure performance of an obligation. See also C.C. Art. 3280, providing that a mortgage is an indivisible real right that follows the encumbered property into whatever hands it may pass.

<sup>5</sup> See C.C. Arts. 3136 and 3282.

1 already transferred the mortgage obligation to another person by virtue of an unrecorded act.

2  
3 These rules are complemented by Subparagraph (4) of Civil Code Article 3338, which  
4 provides that an instrument that modifies, terminates or transfers any of the instruments  
5 described earlier in the article (such as a mortgage, which is within the scope of Subparagraph  
6 (1) of the article) is also without effect as to a third person unless properly filed for record. Thus,  
7 to the extent that the study resolution suggests that Article 3338 does not require mortgage  
8 assignments to be recorded in order to be effective against third persons, it appears to overlook  
9 Subparagraph (4) of the article. However, the resolution is correct that the article does not  
10 *absolutely require* that an instrument transferring a mortgage be recorded. As is the case with  
11 the mortgage itself, there is no statutory edict mandating the filing of the assignment of a  
12 mortgage, but there are consequences attendant to a failure to record: Specifically, the mortgage  
13 assignment is without effect as to third persons.

14  
15 Thus, existing law already operates to protect third persons against the ill effects of  
16 unrecorded transfers of obligations secured by mortgages.

17  
18 ***D. The interests of the mortgagor are protected by state and federal law other than the***  
19 ***laws of registry.***

20  
21 From the proposition that the public records are designed to protect only third persons, it  
22 follows that the public records are not a registry that can be consulted by the mortgagor to  
23 determine who, at any moment, holds the promissory note secured by his mortgage. Indeed, the  
24 public records were not designed with that purpose in mind. Nevertheless, there are other laws  
25 that protect the mortgagor against assignments of which he has no knowledge. For instance,  
26 Civil Code Article 2643, which deals with assignment of rights, provides that the assignment of a  
27 right is effective against the debtor only from the time the debtor has actual knowledge or has  
28 been given notice of the assignment. Civil Code Article 2644 provides that when the debtor,  
29 without knowledge or notice of the assignment, renders performance to the assignor, this  
30 performance extinguishes the debtor's obligation and is effective against the assignee.

31  
32 A case could be made that mortgagors would be better protected if the law mandated that  
33 they be given notice of an assignment of their mortgage notes. Actually, federal law already  
34 does precisely that in the case of most residential mortgage transactions. Federal regulations<sup>6</sup>  
35 issued under the Real Estate Settlement Procedures Act require that each transferor, servicer and  
36 transferee servicer of a mortgage loan<sup>7</sup> must provide to the borrower a notice of transfer of any  
37 assignment of the servicing of the mortgage loan. This notice must contain certain prescribed  
38 information, such as the effective date of the transfer, contact information of the transferee  
39 servicer, contact information of the transferor servicer, and the date on which the transferor  
40 servicer will cease to accept payments on the loan. The transferor servicer must give this notice  
41 not less than fifteen days before the effective date of the transfer.<sup>8</sup>

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<sup>6</sup> 12 C.F.R. § 1024.33.

<sup>7</sup> Defined by 12 C.F.R. § 1024.31 to include each "federally related mortgage loan," as that term is defined in 12 C.F.R. § 1024.2.

<sup>8</sup> The transferor and transferee servicers are permitted to provide a single notice, in which case the notice must be provided not less than fifteen days before the effective date of the transfer.

1 Not only does federal law require these notices, it also preempts conflicting state law, by  
2 providing that a lender shall be considered to have complied with the provisions of any state law  
3 or regulation requiring notice to the borrower at the time of transfer of servicing of a loan if the  
4 lender or servicer complies with the requirements of the federal regulation.<sup>9</sup> Moreover, any state  
5 law requiring notice to the borrower at the time of the transfer of servicing of the loan is  
6 preempted, and the federal regulations specifically provide that there shall be no additional  
7 borrower disclosure requirements.<sup>10</sup> Thus, not only does federal law already require that a  
8 residential borrower be given specific notices of the transfer of servicing of his mortgage loan,  
9 federal law also preempts other state law notification requirements. For these reasons, imposing  
10 any additional state law requirement would not only be unnecessary but would also be preempted  
11 and rendered ineffective by the federal regulation.

12  
13 **III. CONCLUSION**  
14

15 The laws of registry are designed to protect third persons against the effect of unrecorded  
16 agreements affecting immovables. Even where the rights of third persons are concerned,  
17 however, the law does not actually mandate that instruments affecting immovables be recorded.  
18 Instead, the law simply assigns a consequence to the failure to record an instrument affecting an  
19 immovable: The instrument is without effect as to third persons.

20  
21 The public records are not designed to protect mortgagors, who are parties to the  
22 mortgage transaction, nor to create a readily available index through which a mortgagor can  
23 determine who, at any time, holds his mortgage obligation. Federal law, with preemptive effect,  
24 already mandates that specific notices be given whenever the servicing of most residential  
25 mortgage loans is assigned. Attempting to prescribe additional notices under state law is  
26 therefore both inadvisable and unwarranted.

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<sup>9</sup> 12 C.F.R. § 1024.33(d).

<sup>10</sup> *Id.*

**APPENDIX**  
**12 C.F.R. § 1024.33**

**§ 1024.33 Mortgage servicing transfers.**

(a) Servicing disclosure statement. Within three days (excluding legal public holidays, Saturdays, and Sundays) after a person applies for a reverse mortgage transaction, the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan shall provide to the person a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. Appendix MS-1 of this part contains a model form for the disclosures required under this paragraph (a). If a person who applies for a reverse mortgage transaction is denied credit within the three-day period, a servicing disclosure statement is not required to be delivered.

(b) Notices of transfer of loan servicing.

(1) Requirement for notice. Except as provided in paragraph (b)(2) of this section, each transferor servicer and transferee servicer of any mortgage loan shall provide to the borrower a notice of transfer for any assignment, sale, or transfer of the servicing of the mortgage loan. The notice must contain the information described in paragraph (b)(4) of this section. Appendix MS-2 of this part contains a model form for the disclosures required under this paragraph (b).

(2) Certain transfers excluded.

(i) The following transfers are not assignments, sales, or transfers of mortgage loan servicing for purposes of this section if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A) A transfer between affiliates;

(B) A transfer that results from mergers or acquisitions of servicers or subservicers;

(C) A transfer that occurs between master servicers without changing the subservicer;

(ii) The Federal Housing Administration (FHA) is not required to provide to the borrower a notice of transfer where a mortgage insured under the National Housing Act is assigned to the FHA.

(3) Time of notice.

(i) In general. Except as provided in paragraphs (b)(3)(ii) and (iii) of this section, the transferor servicer shall provide the notice of transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan. The transferee servicer shall provide the notice of transfer to the borrower not more than 15

1 days after the effective date of the transfer. The transferor and transferee servicers may  
2 provide a single notice, in which case the notice shall be provided not less than 15 days  
3 before the effective date of the transfer of the servicing of the mortgage loan.  
4

5 (ii) Extended time. The notice of transfer shall be provided to the borrower by the  
6 transferor servicer or the transferee servicer not more than 30 days after the effective date  
7 of the transfer of the servicing of the mortgage loan in any case in which the transfer of  
8 servicing is preceded by:  
9

10 (A) Termination of the contract for servicing the loan for cause;

11 (B) Commencement of proceedings for bankruptcy of the servicer;

12 (C) Commencement of proceedings by the FDIC for conservatorship or receivership  
13 of the servicer or an entity that owns or controls the servicer; or  
14

15 (D) Commencement of proceedings by the NCUA for appointment of a conservator  
16 or liquidating agent of the servicer or an entity that owns or controls the servicer.  
17

18 (iii) Notice provided at settlement. Notices of transfer provided at settlement by the  
19 transferor servicer and transferee servicer, whether as separate notices or as a combined  
20 notice, satisfy the timing requirements of paragraph (b)(3) of this section.  
21  
22

23 (4) Contents of notice. The notices of transfer shall include the following information:  
24

25 (i) The effective date of the transfer of servicing;  
26

27 (ii) The name, address, and a collect call or toll-free telephone number for an employee  
28 or department of the transferee servicer that can be contacted by the borrower to obtain  
29 answers to servicing transfer inquiries;  
30

31 (iii) The name, address, and a collect call or toll-free telephone number for an employee  
32 or department of the transferor servicer that can be contacted by the borrower to obtain  
33 answers to servicing transfer inquiries;  
34

35 (iv) The date on which the transferor servicer will cease to accept payments relating to  
36 the loan and the date on which the transferee servicer will begin to accept such payments.  
37 These dates shall either be the same or consecutive days;  
38

39 (v) Whether the transfer will affect the terms or the continued availability of mortgage  
40 life or disability insurance, or any other type of optional insurance, and any action the  
41 borrower must take to maintain such coverage; and  
42

43 (vi) A statement that the transfer of servicing does not affect any term or condition of the  
44 mortgage loan other than terms directly related to the servicing of the loan.  
45  
46

1 (c) Borrower payments during transfer of servicing.  
2

3 (1) Payments not considered late. During the 60-day period beginning on the effective date of  
4 transfer of the servicing of any mortgage loan, if the transferor servicer (rather than the  
5 transferee servicer that should properly receive payment on the loan) receives payment on or  
6 before the applicable due date (including any grace period allowed under the mortgage loan  
7 instruments), a payment may not be treated as late for any purpose.  
8

9 (2) Treatment of payments. Beginning on the effective date of transfer of the servicing of any  
10 mortgage loan, with respect to payments received incorrectly by the transferor servicer  
11 (rather than the transferee servicer that should properly receive the payment on the loan), the  
12 transferor servicer shall promptly either:  
13

14 (i) Transfer the payment to the transferee servicer for application to a borrower's  
15 mortgage loan account, or  
16

17 (ii) Return the payment to the person that made the payment and notify such person of the  
18 proper recipient of the payment.  
19

20 (d) Preemption of State laws. A lender who makes a mortgage loan or a servicer shall be  
21 considered to have complied with the provisions of any State law or regulation requiring notice  
22 to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender  
23 or servicer complies with the requirements of this section. Any State law requiring notice to the  
24 borrower at the time of application or at the time of transfer of servicing of the loan is  
25 preempted, and there shall be no additional borrower disclosure requirements. Provisions of State  
26 law, such as those requiring additional notices to insurance companies or taxing authorities, are  
27 not preempted by section 6 of RESPA or this section, and this additional information may be  
28 added to a notice provided under this section, if permitted under State law.