Pooling and Servicing Agreements (PSA)
Top Twenty Reasons to Request Production

Kevin Byers and O. Max Gardner III

In no particular order, these are some of reasons you need to request through formal discovery in any mortgage-related case the PSA Agreement and why it is relevant:

1. It is a contractual document naming the parties to any given securitization, important for standing issues. The document will list the Sponsor, the Trustee for the Securitized Trust, the Master Servicer, and all primary and secondary servicers.

2. It provides address for all necessary parties including "notice" addresses for the service of legal process.

3. It outlines the specific duties of the Servicer and/or the Master Servicer as well as the Trustee on behalf of a respective trust.

4. It contains the representations and warranties of all parties to the agreement, including the Servicer and/or Master Servicer.

5. It includes all representations provided by the Depositor of the loans into the trust as the same relate to important consumer protection issues related to the underwriting and origination of the loan, such as conformity with anti-predatory lending laws, full-file credit reporting, title insurance coverage, and validity and content of individual loan files.

6. It gives the conditions under which a prepayment penalty may be waived or modified by the Servicer and/or Master Servicer.

7. It oftentimes will outline specific loss mitigation and foreclosure avoidance measures available to the Servicer, including, for example, forbearance and loan modification, principal reductions, interest reductions and interest changes.

8. It defines a "defective mortgage loan" and describes the circumstances and process by which the lender must repurchase a loan.

9. It establishes the rights of the Trustee under the Trust to force the Depositor/Originator of any loan to repurchase a loan under the recourse provisions.

10. It describes the specific process by which a delinquent loan can be charged off and the subsequent servicing party and procedures that apply to such charged-off loan.

11. It provides guidelines on loan-level advances that must be paid by the servicer.

12. It provides details regarding the mechanics of how the Servicer must go about foreclosing on property, what documents need to be requested and/or recorded and what authorizations need to be granted to foreclose, and in whose name the foreclosure must be filed.

13. It provides guidance on the fees a Servicer may retain as compensation in the administration of the loans, for example, NSF fees, late fees, loan modification or assumption fees.

14. It will contain the Mortgage Loan Schedule, important to verify the ownership of the loan on behalf of the Trust.

15. It details the requirements for mortgage assignments and when these will or will not be recorded and the implications of the failure to record such assignments.

16. It details the specific loan documents contained in each loan file that will be delivered to the Trustee or Document Custodian on behalf of the trust, establishing who holds the original Note and where it may be found.

17. It describes the credit enhancements that have been deployed to enhance the rating of the most secure certificates of investment in the Trust.

18. It provides rules and procedures for the rights of the Master Servicer or the Primary Servicer to accept a deed-in-lieu of foreclosure or a short sale of the property so as to avoid a foreclosure.

19. It describes the rights the Originator/Depositor may retain the Residual Value of the Trust and the extent to which the residuals may be used as credit enhancements.

20. It will name a default servicer and describe when a loan is considered to be in default and outline the process for the transfer of servicing rights.

O. Max Gardner III
Historic Webbley House
PO Box 1000
Shelby NC 28151-1000
704.487.0616 (v)
704.487.0619 (f)
maxgardner@maxgarnder.com
http://www.maxgardnerlaw.com
http://www.maxbankruptcybootcamp.com