

## **Mortgage fraud cancellation affidavit**

Testimony in the form of an Affidavit of Mortgage Cancellation & Fraud

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### Identification & Capacity

#### Status of Affiant

1. I, [Full Legal Name, Upper and Lower Case], am a living man/woman, sui juris, operating in propria persona and not subject to any compelled performance under a statutory jurisdiction without my knowing, willing, and intentional consent.

2. I am neither a corporate fiction, artificial person, transmitting utility, nor surety for any trust, estate, or commercial entity created in my name. I stand in my natural capacity as Grantor, Beneficiary, Executor, and Original Creditor of the estate to which my signature and labor are lawfully attached.

3. Any and all references to [NAME IN ALL CAPS] or similar ALL CAPS constructs are recognized by me as separate commercial entities, distinct from my living being, and such entities may not lawfully be presumed to bind me absent a fully disclosed, bilateral, and lawful contract, executed with meeting of the minds, lawful consideration, and full disclosure.

4. I reserve all unalienable rights under Natural Law, the Declaration of Independence (1776), the Constitution for the United States of America (1787), and the Bill of Rights (1791), including but not limited to the rights of life, liberty, property, due process, and trial by jury.

5. I further preserve all rights under UCC § 1-308 (Reservation of Rights Without Prejudice) and UCC § 1-103 (preservation of common law remedies), as well as the maxims of equity:

- o "Equity abhors fraud."
- o "Fraud vitiates everything it touches."

#### Authorities Supporting Status

- 28 U.S.C. § 1746(1): Affidavits made under penalty of perjury stand as evidence equivalent to sworn testimony.
- Norton v. Shelby County, 118 U.S. 425 (1886): Acts void from inception cannot become valid by time or usage.
- Chisholm v. Georgia, 2 U.S. 419 (1793): Sovereignty resides in the people, not artificial constructs.
- UCC § 1-308: Preserves rights without prejudice when compelled to sign.
- UCC § 1-103: Common law and equity remedies supplement the UCC unless displaced by explicit provisions.

### Property & Contractual Capacity

6. I am the original signatory to the alleged Promissory Note and Mortgage/Deed of Trust concerning the property commonly known as:

[Insert Property Address, Legal Description, County, State].

These instruments were executed on or about [insert date] under circumstances of non-disclosure, fraud, and misrepresentation by the alleged lender, trustee, and their successors and assigns.

7. At no point did I knowingly, willingly, and intentionally waive my rights as Grantor, Beneficiary, Executor, or Original Creditor of said property and estate. My signature was procured under color of law, omission, concealment, and fraudulent inducement.

8. The financial institution(s) involved—including but not limited to Raintree mortgage, its successors, assigns, and alleged trustees—never provided a Receipt for my note nor lawful consideration as required by contract law and the Uniform Commercial Code (UCC). Instead, they unlawfully converted my signed promissory note into a negotiable instrument, deposited it as an asset, and generated credit from my signature without disclosure.

9. Said instruments were never bilateral contracts; rather, they lacked:

- o Full Disclosure – I was not informed that my signature alone funded the transaction.
- o Lawful Consideration – The bank risked nothing and provided no substance of its own.
- o Meeting of the Minds – I was deceived into believing the bank lent me its money, when in fact, I was the source of value.
- o Wet Ink Signatures by the Bank – No authorized officer of the bank provided a personal, commercial liability-bearing signature, rendering the contract void ab initio.

10. The mortgage lien claimed against the above-referenced property is therefore null, void, and fraudulent, as it arises entirely from concealment, fraud in the factum, and constructive conversion of my private credit into bank profit.

#### Authorities Supporting Property & Capacity

- 12 U.S.C. § 24 (Seventh): National banks are authorized to lend money, not their credit.
- Howard & Foster Co. v. Citizens Nat. Bank, 130 S.E. 758 (S.C. 1927): A national bank cannot lend its credit by guaranteeing or creating obligations from another's note.
- First Nat. Bank of Tallapoosa v. Monroe, 69 S.E. 1123 (Ga. 1911): Banks may lend money, not credit; contracts lending credit are ultra vires and void.
- Merchants' Bank v. Baird, 160 F. 642 (8th Cir. 1908): Lending credit instead of money is beyond lawful authority.
- UCC § 3-305 (Fraud in the Factum): A defense exists when a party was deceived into signing a negotiable instrument without knowledge of its true nature.
- UCC § 3-302 to 3-308 (Holder in Due Course): Fraud, material alteration, or lack of consideration defeats enforceability of a negotiable instrument.

#### Separation of Identities & Fraudulent Alteration of the Note

11. The alleged Promissory Note executed by Affiant was fraudulently altered and treated as a

negotiable instrument under Article 3 of the Uniform Commercial Code. Instead of acting as evidence of a bilateral loan contract, it was deposited and converted into a bank asset, creating credit "out of thin air" through ledger entries. This constitutes fraud in the factum because Affiant was led to believe that money was being lent by the lender, when in fact Affiant's own signature generated the credit used to fund the transaction.

12. Under 12 U.S.C. § 24 (Seventh), national banks are empowered to lend their money, not their credit. Courts have repeatedly held that attempts by banks to lend credit instead of money are ultra vires and void:

- First Nat. Bank of Tallapoosa v. Monroe, 69 S.E. 1123 (Ga. 1911): "A bank can lend its money, not its credit."
- Howard & Foster Co. v. Citizens Nat. Bank, 130 S.E. 758 (S.C. 1927): "Contracts whereby a national bank attempts to lend its credit are ultra vires and not binding."
- Merchants' Bank v. Baird, 160 F. 642 (8th Cir. 1908): A national bank cannot create liability by lending its credit.

13. The bank and its officers failed to disclose the true nature of the transaction, thereby violating essential elements of contract law:

- Full Disclosure – omitted the fact that Affiant's signature alone generated the funds.
- Lawful Consideration – the bank risked nothing of its own assets, in violation of common law and contract principles.
- Meeting of the Minds – there was no genuine understanding between parties because material facts were concealed.
- Wet Ink Signature of Bank Officer – no authorized officer signed the instrument to bind the bank to commercial liability.

14. Under the Uniform Commercial Code, these defects are fatal:

- UCC § 3-305(a)(1)(iii): Fraud in the factum is a complete defense against enforcement of an instrument.
- UCC § 3-407: A material alteration discharges the obligation unless the original terms can be shown, which the bank has failed to do.
- UCC §§ 3-302 to 3-308: Holder in Due Course doctrine does not protect a party acquiring an instrument through fraud, theft, or alteration.

15. The fraudulent endorsement, transfer, and securitization of the note constitute securities fraud under the Securities Exchange Act of 1934 (15 U.S.C. § 78j, Rule 10b-5), as the note was converted into a financial security, assigned CUSIP numbers, and traded on markets without disclosure to or compensation of the original signatory.

16. As a result of this fraudulent scheme:

- The mortgage lien purportedly securing the altered note is null and void ab initio.

- All subsequent assignments, substitutions of trustee, or foreclosure actions relying upon the fraudulent note are equally void.
- The property remains free and clear of all unlawful claims arising from this defective and fraudulent instrument.

#### Trustee/Servicer Fraud & Land Records Concealment

17. The alleged Mortgage/Deed of Trust was separated from the Promissory Note through unlawful assignments, securitization, and the use of private electronic systems (including, but not limited to, Mortgage Electronic Registration Systems, "MERS"). This bifurcation destroys the unity of note and mortgage, rendering both unenforceable in law and equity.

18. It is a long-standing rule of law that the mortgage follows the note. If the note and mortgage are separated, enforcement is impossible:

- Carpenter v. Longan, 83 U.S. (16 Wall.) 271 (1872): "The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity."
- Landmark Nat'l Bank v. Kesler, 216 P.3d 158 (Kan. 2009): MERS cannot transfer interests in notes it does not hold.

19. Trustees and servicers routinely engaged in robo-signing and the filing of fraudulent assignments in county land records. This conduct:

- Creates a clouded title, violating the statutory requirement that land records accurately reflect true ownership.
- Constitutes fraud upon the court and public offices, as assignments were executed by individuals without lawful authority, often holding multiple contradictory "Vice President" or "Assistant Secretary" titles at different institutions simultaneously.
- Violates 18 U.S.C. § 1001 (false statements), 18 U.S.C. § 1341–1344 (mail/wire/bank fraud), and 18 U.S.C. § 241–242 (civil rights conspiracy and deprivation under color of law).

20. County recorders, under statutory mandate, were deceived into recording instruments that were legally defective and materially false. Such acts taint the land records and deprive Affiant of due process and property rights in violation of:

- Fifth Amendment – property may not be taken without due process.
- 14 Stat. 27 (Civil Rights Act of 1866) – guarantees right to own and convey property free from fraud and discrimination.
- UCC § 9-210 – requires full accounting of collateral obligations, which has never been provided by the alleged lender or trustee.

21. By separating the Note from the Deed of Trust, concealing its securitization, and filing fraudulent assignments, the lender, trustee, and their agents created a non-existent lien on Affiant's property. Any foreclosure action brought under this scheme is void ab initio, being based on a broken chain of title,

false recordation, and absence of standing.

#### Authorities Supporting Trustee & Land Record Fraud

- Carpenter v. Longan, 83 U.S. 271 (1872): Separation of note and mortgage voids enforcement.
- Bellistri v. Ocwen Loan Servicing, LLC, 284 S.W.3d 619 (Mo. Ct. App. 2009): Transfer of deed without note is ineffective.
- In re Veal, 450 B.R. 897 (9th Cir. BAP 2011): A servicer must prove ownership of note to enforce mortgage.
- 18 U.S.C. § 1001: False statements in any matter within U.S. jurisdiction are criminal.
- 18 U.S.C. § 1341–1344: Mail/wire/bank fraud statutes apply to fraudulent foreclosure processes.
- 18 U.S.C. § 241–242: Criminal liability for conspiracy or deprivation of property rights under color of law.

#### Historical & Statutory Foundations

22. The original legal framework for banking in the United States is rooted in the National Bank Act of 1864 (13 Stat. 99, enacted June 3, 1864). This Act granted national banks limited powers:

- To lend money,
- To receive deposits, and
- To deal in bills of exchange.

At no point did the Act authorize banks to lend credit or to monetize private notes into securities. Any such activity is ultra vires (beyond granted authority) and void.

23. The Federal Reserve Act of 1913 (38 Stat. 251, December 23, 1913) created the Federal Reserve System, transferring issuance of national currency to a private central banking structure. This resulted in the substitution of private credit instruments (Federal Reserve Notes) for lawful money, in direct conflict with the Constitution's requirement that only gold and silver coin constitute tender in payment of debts (Article I, Section 10).

24. Following the banking collapse of the Great Depression, House Joint Resolution 192 (HJR-192), Public Law 73-10 (June 5, 1933, 48 Stat. 112), declared that no creditor may require payment in gold, and all obligations may be discharged in "legal tender." This resolution effectively recognized that the people became the credit of the system, and thus any mortgage contract demanding repayment in "dollars" (unbacked credit instruments) is void for impossibility, failure of consideration, and statutory fraud.

25. The Truth in Lending Act (TILA), 15 U.S.C. § 1601 et seq. (1968) requires full disclosure of credit terms. By failing to disclose that the borrower's promissory note funded the loan, banks violated TILA and engaged in fraud in the factum.

26. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248, 96 Stat. 324 and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101-73, 103 Stat.

183, both restructured banking oversight, creating mechanisms for securitization of mortgages and systemic concealment of off-balance-sheet profits. These laws, while intended to stabilize financial institutions, enabled the packaging and selling of mortgage-backed securities without borrower disclosure, thereby violating securities laws and fiduciary duties.

27. In addition, 12 U.S.C. § 83 expressly prohibits a national bank from making "any loan or discount on the security of the shares of its own capital stock." By monetizing private promissory notes as assets and creating credit against them, banks in effect hypothecate their own credit against private signatures, a practice barred by statute and condemned by courts.

28. These historical enactments and prohibitions demonstrate conclusively that:

- Banks have no lawful authority to create money or lend credit.
- The substitution of private credit (FRNs) for lawful money invalidates mortgage contracts for want of lawful consideration.
- Post-1933, the people's labor and signatures became the collateral for all public debt, making any alleged mortgage repayment a double-charge and constructive fraud.

Maxims of Law & Equity Reinforcing This

- "Fraud vitiates everything it touches." (Broom's Maxims of Law)
- "Ex dolo malo non oritur actio" – No right of action arises from fraud.
- "Consent makes the law." – Without informed consent, no contract is binding.
- "He who comes into equity must come with clean hands." – A lender concealing material facts cannot seek equitable foreclosure.