

Does This Look Defective?

Donald R. Lassman, Moderator

Law Office of Donald R. Lassman; Needham, Mass.

Hon. Edward A. Godoy

U.S. Bankruptcy Court (D. P.R.); Ponce

Sarah A. Smegal

Bartlett Hackett Feinberg PC; Boston

Douglas J. Wolinsky

Primmer Piper Eggleston & Cramer PC; Burlington, Vt.



DISCOVER



AMERICAN BANKRUPTCY INSTITUTE
JOURNAL
journal.abi.org

ABI's Flagship Publication






***Delivering Expert Analysis
to Members***

With *ABI Journal* Online:

- Read the current issue before it mails
- Research more than 10 years of insolvency articles
- Search by year, issue, keyword, author or column
- Access when and where you want – even on your mobile device
- Receive it **FREE** as an ABI member

Find the Answers You Need
journal.abi.org

66 Canal Center Plaza • Suite 600 • Alexandria, VA 22314-1583 • phone: 703.739.0800 • abi.org

Join our networks to expand yours:   

© 2014 American Bankruptcy Institute All Rights Reserved.

DOES THIS LOOK DEFECTIVE?

Mortgages, Deeds & Trust Instruments Subject to Challenge: A First Circuit Overview

By Sarah A. Smegal

I. Section 544(a) Lien Avoidance Powers

A trustee in bankruptcy may “avoid any transfer of property of the debtor or any obligation incurred by the debtor that is avoidable by” a judicial lien creditor or bona fide purchaser of real property pursuant to the “strong-arm” clause of the Bankruptcy Code.¹ 11 U.S.C. § 544(a). Though the trustee’s avoidance power is created by federal law, “Section 544(a) does not give the [t]rustee any greater rights than he, or any person, would have as a bona fide purchaser or judicial lien creditor under applicable state law.” In re Trask, 462 B.R. 268, 273 (1st Cir. B.A.P. 2011) (citation omitted). See In re Kelley, 498 B.R. 392, 397 (1st Cir. B.A.P. 2013) (“The extent of the [t]rustee’s avoidance powers are determined by state law.”) (citations omitted). The trustee’s avoidance power is not subject to any actual knowledge or notice the trustee or any creditor possesses. 11 U.S.C. § 544(a). However, the trustee’s power is subject to any limitations that state law places upon the ability of a bona fide purchaser or lien creditor to avoid a transfer of an unperfected security interest in real property where such person has constructive knowledge or notice of a creditor’s interest.² In re Kelley, 498 B.R. at 397. See In re Adams, 462 B.R. 1, 5 (Bankr. D. Mass. 2011) (noting that “the phrase ‘knowledge of the trustee’ [as set forth in Section 544(a)] has been interpreted to exclude constructive knowledge”) (citation omitted).

¹ Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Pub.L. No. 109–8.

² Note that cases sometimes refer to “inquiry notice” as a third type of notice, but the First Circuit has explained that “‘inquiry notice’ is [not] a type of notice separate from ‘actual’ or ‘constructive’ notice. Rather, it is a corollary of both types. Inquiry notice follows from the duty of a purchaser, when he has actual or constructive knowledge of facts which would lead a prudent person to suspect that another person might have an interest in the property, to conduct a further investigation into the facts.” In re Ryan, 851 F.2d 502, 507 (1st Cir. 1988) (citations omitted). See In re Trask, 462 B.R. 268, 275 n8 (1st Cir. B.A.P. 2011) (citing In re Ryan).

Once a lien is avoided under Section 544(a), Section 551 comes into play. As explained by the court in In re Nistad, Bankr. No. 10-17453-WCH, Adv. No. 11-1179, 2012 WL 272750 (Bankr. D. Mass. Jan. 30, 2012):

Section 551 of the Bankruptcy Code automatically preserves for the benefit of the estate any transfer avoided under 11 U.S.C. § 544. The purpose of 11 U.S.C. § 551 is to allow a trustee to preserve the avoided interest for the estate so that junior interest holders do not benefit from the avoidance to the detriment of the estate and its creditors. Preservation of the avoided interest “simply puts the estate in the shoes of the creditor whose lien is avoided. It does nothing to enhance or detract from the rights of that creditor viz-a-viz other creditors.”

In re Nistad, 2012 WL 272750 at *5 (footnotes omitted). Just as a junior lienholder cannot improve its position by avoidance of the lien, the debtor also cannot exempt the equity realized by the avoidance of the lien. Id. (holding that the trustee’s preserved lien took priority over the debtor’s homestead filing just as the mortgagee’s avoided lien had priority over it). The trustee can then seek to sell the asset (assuming the creditor whose lien was avoided would have had such a right) for the benefit of the estate.

A. Defective Deeds and Mortgages

In the First Circuit, an unrecorded deed or mortgage is easily avoided by a trustee under Section 544(a) as such an instrument fails to afford constructive notice to third parties (you will recall that the trustee’s actual notice is of no effect). See In re Trask, 462 B.R. 268, 275 (1st Cir. B.A.P. 2011) (Maine law); In re Sullivan, 387 B.R. 353, 358 (1st Cir. B.A.P. 2008) (Massachusetts law); In re Garrido Jimenez, 370 B.R. 878, 881 (1st Cir. B.A.P. 2007) (Puerto Rico law); In re Corse, 486 B.R. 241, 246 (Bankr. D.R.I. 2013) (Rhode Island law); Hawthorne Trust v. Maine Sav. Bank, 618 A.2d 828, 831 (N.H. 1992) (New Hampshire law). But what effect does a recorded deed or mortgage have upon a trustee’s bona fide purchaser or lien creditor status where the deed or mortgage is defective? Does the recording of a defective

instrument constitute constructive notice of the creditor's claim, thereby defeating a trustee's avoidance power under Section 544(a)?

1. Defective Property Description

A mortgage may be rendered defective by a faulty property description that fails to describe the property the mortgage is intended to encumber.³ If the mortgage, by its faulty description, fails to provide constructive notice to bona fide purchasers that the mortgage encumbers a certain parcel or parcels, the trustee may step in and avoid the mortgagee's lien and then preserve the lien on the property for the benefit of the estate. See 11 U.S.C. §§ 544(a), 551. In the First Circuit, whether a properly-recorded mortgage with a faulty property description affords constructive notice depends upon the information provided in the property description set forth in, or attached to, the mortgage (often Exhibit A to the mortgage). Courts have not given weight to additional information set forth in other parts of the mortgage instrument like the property address. With the exception of Rhode Island, courts also have not looked to other documents of record within the chain of title in order to determine the extent of the mortgagee's lien unless the documents of record are expressly referenced in the mortgage's property description. Interestingly, where a property description employs more than one method in describing the property encumbered (e.g. a metes and bounds description and a prior deed reference) and one of the methods results in a description broader than the other, courts have found the broader description to be the controlling description where it is not inconsistent with the more narrow description. The following cases illustrate the foregoing conclusions.

³ Reference is made only to mortgages as the recent cases discussing faulty property descriptions relate to mortgages. Faulty property descriptions in deeds would likely be treated in the same manner. See 54A Am.Jur.2d *Mortgages* § 32 ("Generally, the rules as to descriptions of real estate in mortgages conform to those prevailing with respect to descriptions in deeds.").

In the Maine case of In re Trask, 462 B.R. 268 (1st Cir. B.A.P. 2011), the debtors owned two lots: an unimproved 16-acre lot and an abutting 1.74-acre lot on which their house stood. In re Trask, 462 B.R. at 271-72. The debtors had a mortgage on the house lot, which they refinanced. Id., at 272. The new mortgage was also supposed to encumber the house lot, but the property description set forth in the mortgage mistakenly described the unimproved lot. Id. Like the old mortgage, the new mortgage referenced the street address shared by both lots in the body of the document. Id., at 276. The mortgagee filed an action to reform the mortgage and the trustee sought to intervene and avoid the mortgagee's interest as a hypothetical intervening lien holder. Id., at 272, 274.

The court agreed with the trustee that the reference to the street address in the body of the mortgage was ineffective to place a purchaser or lien creditor on constructive notice of an error in the property description that would have lead a reasonable person to investigate further and discover that the new mortgage was intended to encumber a parcel other than the one described. Id., at 274, 276. The mortgagee was limited to the property description attached to the mortgage, which only described the unimproved lot, so the mortgagee's claim to the house lot was subordinated to the trustee's interest pursuant to Section 544(a). Id.

In the case of In re Adams, 462 B.R. 1 (Bankr. D. Mass. 2011), the debtor owned real estate comprised of Lots 30, 31, and 32. In re Adams, 462 B.R. at 3. The debtor mortgaged the entire property and the mortgage's property description included a legal description that only described one of the lots and a reference to a prior deed conveyance. Id. The deed referenced conveyed title to all three lots. Id., at 5. The court noted that "referencing a title deed in a property conveyance has the 'same effect as if the entire description in that deed had been copied into [the] conveyance' where the deed's description is not inconsistent with other descriptions in

the mortgage.” Id. As a result, the court found that “[a]lthough the Deed’s property description enlarges the Mortgage’s property description beyond Lot 32, the descriptions are not inconsistent, because both can be given effect at the same time—they are not mutually exclusive. Accordingly, the Deed’s property description was effectively incorporated by reference into the Mortgage and the entire Property is encumbered.” Id. The trustee was deemed to have constructive notice of the contents of the prior deed as incorporated by reference in the property description and was unable to avoid the mortgagee’s interest under Section 544(a). Id.

In In re Prescott, 402 B.R. 494 (Bankr. N.H. 2009), the legal description and reference to deed (which were more limited in scope) set forth in the mortgage’s property description were disregarded by the court, which relied instead upon the broader plan reference in ruling that the trustee had constructive notice of the mortgagee’s interest. In re Prescott, 402 B.R. at 500. The debtors owned two parcels of property (parcels A and B), which they mortgaged. Id., at 497. Parcel B was combined with parcel A such that both parcels together were known as Map 62, Lot 58 on a certain plan. Id. The property description attached to the mortgage referred to Map 62, Lot 58, set forth a metes and bounds description that only described parcel B, and referenced the deed conveyance of parcel B. Id.

The court, in declining to avoid the mortgagee’s lien under Section 544(a), found that the partial description of the encumbered property (i.e. the metes and bounds description of parcel B and deed reference) was “not inserted in the form of a restriction that would limit the mortgage to Parcel B.” Id., at 499. As the mortgaged property was completely described by the Map 62, Lot 58 reference, the subsequent mistaken description was to be rejected and deemed “inconsequential to the validity of the mortgage.” Id., at 499-500.⁴

⁴ It is unclear how persuasive this fact was, but the court did refer the fact that the broader description (i.e. the map reference) was also in the body of the mortgage document on the first page. Id., at 500 (“The first page of the

In Option One Mortg. Corp. v. Aurora Loan Serv., LLC, 78 A.3d 781, 786 (R.I. 2013), which is instructive though not a bankruptcy case, Kenneth Stebenne was the owner of two, adjacent parcels, which he mortgaged to Option One: one was referred to as the house lot and the other as the vacant lot. Option One Mortg. Corp., 78 A.3d at 783. The property description attached to the mortgage only described the metes and bounds of the vacant lot. Id. However, the property description also referenced the deed conveyance by which Stebenne acquired both the house and vacant lots. Id. The Rhode Island Supreme Court ruled that “the prior deed reference in the Option One Mortgage description was sufficient to put a subsequent purchaser or mortgagee on notice that the Option One Mortgage was intended to encumber both the house lot and the vacant lot.” Id., at 786. Thus, a trustee challenging Option One’s mortgage under Section 544(a) would not have prevailed.

The Option One court noted that Rhode Island law gives the “broadest possible effect to constructive notice.” Id. (citation omitted). This is exemplified by the case of In re Barnacle, 623 A.2d 445 (R.I. 1993), in which the court charged a hypothetical bona fide purchaser with constructive knowledge of information contained within a document in the chain of title other than the mortgage at issue. The court was responding to two questions of law certified to the court by the Rhode Island Bankruptcy Court. In re Barnacle, 623 A.2d at 446. The second of the two questions related to a property description in a mortgage that failed to reference the specific condominium unit it intended to encumber, but instead described the entire condominium project. Id. The borrower filed a petition in bankruptcy under Chapter 11 and sought to avoid the mortgage under Section 544(a)(3). Id. The Bankruptcy Court certified the following question to the Rhode Island Supreme Court:

mortgage lists the property mortgaged as ‘MAP 62 LOT 58,’ and a reference to the recorded plan is provided. The property encumbered can reasonably be determined from this description.”).

Whether the legal description contained in a mortgage deed, which does not describe the particular condominium unit intended to be conveyed but instead describes the entire condominium building, gives constructive notice to a bona fide purchaser of the single condominium unit?

Id. A Collateral Assignment of Leases and Rents was contemporaneously recorded with the mortgage, referenced the specific condominium unit in the body of the document, and referred to an attached Exhibit A, which set forth the same general metes and bounds description as the mortgage. Id., at 450.

The court found that the general metes and bounds description of the condominium project was constructive notice of the creditor's interest in the specific condominium unit. Id., at 451. The court noted that a purchaser of real property is obligated "to make a reasonable and diligent search of the records." Id. It found that "[o]ne searching the records would literally have the key to the specific identity of the condominium unit at his or her fingertips and could unlock the resulting information simply by turning one page in the land evidence records" because the Collateral Assignment of Leases and Rents, which identified the specific condominium unit, was recorded immediately after the mortgage. Id., at 451-52. Therefore, the court answered the Rhode Island Bankruptcy Court's second question in the affirmative thereby preventing the Chapter 11 debtor from avoiding the mortgage pursuant to Section 544(a)(3).

2. Defective Execution

In the First Circuit, a mortgage that is defective because it has a faulty property description may still provide constructive notice to bona fide purchasers that the mortgage encumbers a certain parcel or parcels, but what about a deed or mortgage with a material defect in its execution? As a general rule, an improperly acknowledged instrument does not provide constructive notice. See In re Ryan, 851 F.2d 502, 510 (1st Cir. 1988) (citing authorities). Some defects, however, are not material and are, therefore, not fatal to the acknowledgment.

Notary acknowledgements are defective where the blank spaces in the notary block are left incomplete and fail to set forth the names of the persons appearing before the notary public to sign. The Massachusetts Bankruptcy Court in In re Giroux, Bankr. No. 08-14708-JNF, Adv. No. 08-1261, 2009 WL 1458173 (Bankr. D. Mass. May 21, 2009), found that such a patent defect was a material one that rendered the mortgage subject to avoidance by the trustee because, under Massachusetts law, the materially-defective mortgage should not have been accepted for recording and, therefore, did not operate as constructive notice to third parties. In re Giroux, 2009 WL 1458173, at *10-11. The New Hampshire Bankruptcy Court was faced with the same issue in In re Grenier, Bankr. No. 12-11228-JMD, Adv. No. 12-01061-LHK, 2013 WL 310244 (Bankr. D.N.H. Jan. 24, 2013), and certified the question to the New Hampshire Supreme Court whether such a defect was a material, fatal defect rendering the mortgage subject to avoidance under Section 544(a). In re Grenier, 2013 WL 310244, at *5.

Relying in part on In re Giroux, the court in In re Nistad, Bankr. No. 10-17453-WCH, Adv. No. 11-1179, 2012 WL 272750 (Bankr. D. Mass. Jan. 30, 2012), found the notary acknowledgment materially defective where it set forth the names of two persons in the acknowledgment who were not the borrowers and signers. In re Nistad, 2012 WL 272750, at *3-4. Due to the defective acknowledgment, the mortgage should have not been recorded and it did not provide constructive notice to third parties, including the trustee. Id., at *4.

The notary acknowledgment in In re Kelley, 498 B.R. 392 (1st Cir. B.A.P. 2013), did not state how the notary public verified the identities of the signers (e.g. personal knowledge, driver's license), but this was not a fatal flaw. In re Kelley, 498 B.R. at 394, 400. However, the court did find it fatal that the language in the acknowledgment failed to "unequivocally express that the execution of the Mortgage was the free act and deed of the principals, i.e., the Debtors"

as opposed to the voluntary act of the attorney-in-fact signing on the Debtors' behalves. Id. The court explained that “[a]lthough the acknowledgment contains a recitation that the Mortgage was signed ‘voluntarily for its stated purpose,’ we are left to speculate whether the voluntariness relates to the principals (the Debtors) or to the attorney-in-fact (Obringer).” Id., at 401. As the patent defect was a material one, the court ruled the mortgage should not have been accepted for recording and was incapable of providing constructive notice to third parties. Id. The trustee was permitted to avoid the mortgage pursuant to Section 544(a)(3). Id.

Rhode Island applies the minority rule of defectively-executed instruments. In Duffy v. Dwyer, 847 A.2d 266 (R.I. 2004), also instructive although not a Section 544(a) case, the notary failed to state that the parties' execution of a deed was “their free act and deed.” Duffy, 847 A.2d at 270. The court noted that Rhode Island will not “exalt form over substance” and found that the deed was not materially defective and was sufficient to place third parties on constructive notice of its contents. Id., at 270-71. Compare McOuatt v. McOuatt, 69 N.E.2d 806, 810 (Mass. 1946) (requiring an admission that the grantor “voluntarily and freely executed the instrument” for it to be duly-acknowledged). The court also cited to In re Barnacle, 623 A.2d 445 (R.I. 1993), and the first question in that case certified by the Rhode Island Bankruptcy Court to the Rhode Island Supreme Court, namely:

Whether the failure of one of two joint mortgagors to execute a mortgage document, which instrument is thereafter duly recorded in the appropriate land evidence records, gives constructive notice to a bona fide purchaser five years later?

In re Barnacle, 623 A.2d at 446. The Barnacle court found that the complete failure of a mortgagor to sign the mortgage was not a material defect that rendered the mortgage ineffective for purposes of providing constructive notice to third parties, again rejecting form over substance. Id., at 449.

The deed in Duffy also suffered from a second defect: the notary acknowledgment stated that “Brian + Kathleen Dwyer” appeared before the notary to execute the deed. Duffy, 847 A.2d at 270. Brian’s last name (i.e. Evans) was omitted. Id. The court, again applying the minority rule, found that such a defect was not material as:

Evans’s first and last names were plainly stated in the first sentence of the quitclaim deed, just inches above the acknowledgment. Anyone performing a title search would locate Evans’s name in the grantor’s index and would be led to the properly recorded original quitclaim deed. If the searcher questioned the validity of the acknowledgement on the recorded deed, he or she could then inquire further.

Id. (citing In re Barnacle, 623 A.2d at 449).

The Chapter 13 debtor’s signature on the mortgage in In re Chase, 388 B.R. 462 (Bankr. D.N.H. 2008), was forged by the debtor’s ex-husband. In re Chase, 388 B.R. at 464. As a result of pre-petition litigation, the New Hampshire Supreme Court had ruled that the mortgage was not “a charge against the Debtor’s interest in her residence, or her homestead, because as a matter of law it had not been executed in accordance with the statutory formalities.” Id., at 466 (citation omitted). The Supreme Court also ruled that the mortgagee was equitably subrogated to the rights of the prior mortgagee, thereby giving it a lien in the same priority as the prior, discharged mortgage. Id. The mortgagee did not record a copy of the Supreme Court’s or lower court’s decisions. Id., at 465, 468-69.

The court found that the improperly-executed mortgage did provide constructive notice to bona fide purchasers of a possible claim of the mortgagee because under New Hampshire law, “a BFP acquires knowledge of a possible interest in real estate even when an improper document is recorded in the registry of deeds.” Id., at 467 (citation omitted). Therefore, the mortgagee’s interest could not be avoided under Section 544(a)(3). However, the court found that the improperly-executed mortgage did not provide constructive notice to lien creditors. The court

explained that “New Hampshire law places a different burden on attaching creditors. An attaching creditor may simply rely on the record in the registry of deeds.” Id. (citation omitted). Because the mortgage was improperly executed, it should not have been accepted for recording and did not provide constructive notice to lien creditors. Id., at 467-68. Although the mortgagee was equitably subrogated to the rights of the prior mortgagee, nothing of record indicated this and the mortgagee’s interest was avoided under Section 544(a)(1). Id., at 468-69.

B. Potential Solutions

Obviously, the key is to spot these issues prior to the bankruptcy filing. If possible, the prospective debtor-in-bankruptcy should work with the transferee or mortgagee to execute a confirmatory deed or mortgage that remedies the deficiencies in the deed or mortgage of record. If the transferee or mortgagee is not responsive, the debtor could initiate an action to reform the deed or mortgage, which should get the attention of the transferee or mortgagee (who should be quite appreciative). Any court order resulting from the reformation action should be recorded so as to provide constructive notice to any bona fide purchaser or lien creditor (and subsequent bankruptcy trustee).

Remember that altering the mortgage could give rise to a preference attack so consideration must be given to the timing of the bankruptcy filing so that the change will be insulated from avoidance as a preferential transfer. Query whether a borrower could execute a confirmatory mortgage without the mortgagee’s involvement and simply record the new mortgage with the Registry of Deeds? See In re Borges, Bankr. No. 10-12800, Adv. Nos. 10-01170, 11-01012, 11-01105, 2014 WL 1364937 (10th Cir. B.A.P. 2014) (avoiding a confirmatory mortgage unilaterally prepared and recorded by the mortgagee in an effort to correct a defect in

the property description without the signature of the debtors). This might work, but could be problematic if there are intervening lienholders of record.

II. Challenging Trust Instruments

A. The Trust *Res* as Property of the Estate under Section 541(a)

A debtor's control over the *res* of a trust, including a spendthrift trust, may be so pervasive that the *res* must be considered property of the bankruptcy estate under Section 541(a). A spendthrift trust may be independently invalidated because it is self-settled. In analyzing the terms of the controlling trust document and the powers afforded the debtor thereunder, courts rely on state law. Following are overviews of some cases illustrating relevant factors.

In In re Tougas, 338 B.R. 164 (Bankr. D. Mass. 2006), the court found that the debtor retained the right to treat the trust *res* as her own property, to alter or amend the trust as trustee, and to terminate the trust as settlor. The court found that:

These powers, taken together, permit the Debtor to amend the Trust document to revise the termination article to eliminate any need for both settlors to be living and to sign an instrument, and they permit her to change the beneficiaries. Because she retained the power ... to change or eliminate beneficiaries ... and to revise [the Trust document] to permit termination of the Trust and a conveyance of the Trust property to herself, the Debtor's control over the Trust *res* both through the Trust document and in practice is manifest.

In re Tougas, 338 B.R. at 175. The court ruled that “[t]he Debtor’s treatment of the Trust property as her own, coupled with the provisions of the Trust, compel the conclusion that the Trust *res* is property of the Debtor’s bankruptcy estate.” Id., at 177.

In In re Beatrice, 277 B.R. 439 (Bankr. D. Mass. 2002), the debtor established the trust for the benefit of his children and retained the rights to terminate the trust (with the property reverting to the debtor) and add or eliminate beneficiaries. In re Beatrice, 277 B.R. at 440. The court found the debtor retained broad powers to control the trust and that the rights of the

beneficiaries were severely limited, resulting in the debtor having the power to treat the trust *res* as his own. Id., at 448. Therefore, the court ruled the trust *res* was property of the debtor's bankruptcy estate. Id., at 449.

The court in In re Peirce, 483 B.R. 368 (Bankr. D. Mass. 2012) ruled that the power to amend the trust was an asset of the bankruptcy estate and, therefore, could be exercised by the trustee. In re Peirce, 483 B.R. at 379-81. The trustee amended the trust to appoint himself special trustee and sought to sell the real property held in trust. Id., at 374.

In contrast to Tougas, Beatrice, and Peirce, see the case of In re Felice, 494 B.R. 160 (Bankr. D. Mass. 2013) in which the court ruled that although the debtor possessed extensive powers over the trust, he was not the sole trustee of the trust and, therefore, “lack[ed] the pervasive control over the trusts that would be necessary for me to conclude that [the trust *res*] is property of his bankruptcy estate.” In re Felice, 494 B.R. at 177.

The spendthrift provision of a trust was invalidated in In re McCullough, 259 B.R. 509 (Bankr. D.R.I. 2001) because the debtor exerted “sufficient dominion and control over the trust property.” In re McCullough, 259 B.R. at 518. The debtor was the sole beneficiary and was given “unrestricted power to make disbursements in his sole discretion.” Id. The evidence showed that the trustee would execute any checks drawn on the trust's account that the debtor placed before him without question and, at a later point, the trustee left blank, signed checks in the debtor's possession for his use. Id., at 518-19. The debtor also exerted dominion and control over an E*Trade stock trading account, which he opened without the trustee's knowledge or consent using the trustee's signature stamp, of which he named himself co-trustee, and in which he traded stock. Id., at 519.

Massachusetts courts have invalidated spendthrift provisions where the trusts were self-settled or where the trust language bestowed such broad powers upon the grantor or trustee that the grantor or trustee effectively controlled the trust corpus. See In re Tosi, 383 B.R. 1, 11 (Bankr. D. Mass. 2008); In re Tougas, 338 B.R. 164, 174-75 (Bankr. D. Mass. 2006).

The court in In re Spenlinhauer, 182 B.R. 361 (Bankr. D. Me. 1995) invalidated a self-settled spendthrift trust under Maine law. It ruled that debtor-settlor's beneficial interest in the spendthrift trust was property of the bankruptcy estate and rejected the argument that because the debtor was only one of several settlors and one of several beneficiaries, his interest could not be included in the estate. In re Spenlinhauer, 182 B.R. at 364-65.

B. Using Section 544(a)(1) to Reach the Trust Res

Under Massachusetts law, the power to revoke a trust is not a property interest, so it does not come into the debtor-settlor's bankruptcy estate under Section 541(a) and cannot be exercised by the trustee. In re Cowles, 143 B.R. 5, 7 (Bankr. D. Mass. 1992). However, Massachusetts law has permitted creditors to reach the assets of a trust to satisfy the creditors' claims against the debtor-settlor who retains the power to revoke. Id., at 8 (citation omitted). Therefore, a trustee in Massachusetts (or in any state where the power to revoke is not "property") can use Section 544(a)(1) to accomplish what the debtor's creditors could, i.e. reach the assets of the trust for the benefit of creditors.

It is unnecessary for the trustee to assert his strong-arm powers under Section 544(a)(1) when dealing with a trust instrument applying Maine law (or the law of similarly-situated states), because Maine courts have held that the power to revoke a trust is a property interest. In In re Marrama, 316 B.R. 418 (1st Cir. B.A.P. 2004), the court found that the debtor's power to revoke the trust, where he was the trust's sole beneficiary and revocation resulted in conveyance of the

trust's assets to the debtor, was an asset of the bankruptcy estate that could be exercised by the trustee. In re Marrama, 316 B.R. at 422-23. The trustee could, therefore, revoke the trust causing the assets of the trust to revert to the debtor and benefit the bankruptcy estate.

C. Potential Solutions

Clearly the key is to limit the debtor's control over the trust *res*. The case of Markham v. Fay, 74 F.3d 1347 (1st Cir. 1996) provides a good comparison between two trusts where the court ruled that the trusts' assets were property of the debtor and a third trust where the court found the opposite. Based on that case, the debtor may wish to forego the power to revoke, alter or amend. Alternatively, if the debtor desires to retain the power to revoke, alter or amend, it could be shared among multiple beneficiaries (including the debtor) such that the majority of beneficial interest holders would have to agree on a course of action. A debtor who is trustee and a beneficiary could limit his discretion as trustee to distribute trust income, provide for multiple beneficiaries, and limit the right to receive income as a beneficiary to an amount in proportion to the beneficial shares owned. Additionally, as demonstrated by the case of In re Felice, 494 B.R. 160 (Bankr. D. Mass. 2013), the debtor may wish to provide for a co-trustee with unanimous consent of the trustees required for action.

DOES THIS LOOK DEFECTIVE?
CRITICAL UPDATE: THE IMPACT OF *IN RE TRAVERSE*

Donald R. Lassman
Law Office of Donald R. Lassman
Needham, Massachusetts
Don@LassmanLaw.com

On May 23, 2014, the First Circuit Court of Appeals overturned Bankruptcy Court and Bankruptcy Appellate Panel decisions permitting a Chapter 7 Trustee to a Debtor's principal residence in the context of a lien avoidance proceeding.

FACTS: Traverse granted a first priority mortgage to Washington Mutual Bank in the original principal amount of \$200,000.00 and the mortgage was never recorded. The Debtor then granted a second mortgage to Citibank in the original principal amount of \$31,000, which was duly recorded. JP Morgan Chase acquired the Washington Mutual mortgage but also never recorded the mortgage. The Debtor recorded a homestead declaration after the second mortgage was recorded. The Trustee filed a Complaint to avoid the first mortgage and preserve its first priority position senior in rank to Citi and the Debtor's Homestead. The Debtor filed a counterclaim seeking a ruling that, even if the Trustee prevailed, the Trustee could not sell the real estate but only the avoided mortgage.

HOLDING: The Trustee, having avoided the first priority lien on the Debtor's residence because it was recorded in the wrong Registry of Deeds and preserved the mortgage for the benefit of the bankruptcy estate, sought to sell the residence pursuant to 11 U.S.C. Section 363¹ and apply the proceeds of the sale to pay the avoided mortgage and, in

¹ The Debtor was current on the payments on the first mortgage so the Trustee did not have the ability to foreclose the avoided mortgage.

turn, satisfy creditor claims. The First Circuit ruled that Section 363 does not empower a trustee with the power to sell exempt property. The Debtor claimed a homestead exemption in the residence and the Court found that there was no equity beyond the value of the secured claims (which included the mortgage now held by the Trustee) on the Property and the debtor's homestead exemption. The Trustee succeeded only to that which he avoided, a mortgage on the Debtor's principal residence. The avoided mortgage became property of the estate which the Trustee could sell but avoidance did not "give the estate any current ownership interest in the underlying asset".²

The decision seemingly forces a Trustee to await a default under the terms of the mortgage, at which point the Trustee could commence a foreclosure action on the avoided mortgage. However, the decision may indeed be much more problematic for Trustees in as much as it would appear to separate the mortgage from the mortgage note. Indeed, the First Circuit cryptically notes in the final footnote of the opinion that, absent an agreement with the debtor, the Trustee is not entitled to payment on the underlying debt, presumably because the underlying debt remains with the original mortgage holder. However, there would seem to be no apparent reason for the debtor to pay the original mortgage holder either, whose debt will be subject to discharge together with the balance of the debtor's unsecured creditors. On June 6, 2014, the Trustee filed a Petition for Rehearing En Banc. The request was recently denied and the Trustee is planning to request review by the U.S. Supreme Court.

WHAT NOW? Lien avoidance issues are rapidly multiplying in Massachusetts. Counsel for Debtors must be very vigilant before filing a bankruptcy case, reviewing and analyzing all secured claims to determine if the claims may be subject to avoidance. Relying on a debtor to accurately portray lien claims is insufficient due diligence.

² The First Circuit seemingly overlooks the effect of Section 541, which plainly makes the residence "property of the estate" without need to resort to Section 544 or 551.

Moreover, counsel must be mindful of the potential impact of a voidable lien on the Debtor. *Traverse* dramatically alters the landscape in terms of the advice that Debtor's counsel can and should provide to Debtors on lien avoidance issues. Predicting a result in this area is all but impossible and the law is rapidly. Following is a suggested course of due diligence and questions that Debtor's counsel should consider when analyzing a case for potential lien avoidance problems –

1. **Review Documents Carefully.** Review all recorded documents for potential errors or omissions in conformity with case law in your jurisdiction identifying the grounds for seeking lien avoidance.
2. **Can an error be corrected pre-petition?** Should an error or omission be identified, consider and discuss with the debtor the potential impact of the problem and possible pre-bankruptcy solutions. For instance, is there sufficient time to correct a notary glitch, or record a previously unrecorded mortgage? Could a pre-bankruptcy correction curing a perfection error be considered a preferential transfer or fraudulent conveyance? Could the debtor simply sign a new mortgage and record it with the Registry of Deeds if the mortgage holder is unresponsive to the Debtor's efforts to address the problem?
3. **Should an error be corrected pre-petition?** Should the error be corrected at all or could the error be in the best interest of the debtor? What is the risk of loss of the Debtor's home as a result of the lien avoidance process? *Traverse* suggests that a debtor may be able to retain possession of real property without payment to the Trustee? Might the debtor expect to be able to negotiate more favorable mortgage terms (e.g. a lower principal amount, for instance) as part of the lien avoidance process and, if so, when might this occur? Should counsel for the debtor be pro-active as soon as a case is filed

- and seek a resolution that all parties are amenable to as opposed to awaiting the results of the lien avoidance action?
4. **Effect on Reaffirmation.** If a lien may be subject to avoidance, there would seem to be no reason to reaffirm. However, the Debtor's choice on the Statement of Intention must be performed within 30 days after the date first set for the meeting of creditors, while lien avoidance through an Adversary Proceeding may take years to resolve.
 5. **Effect on junior lien holders.** How might lien avoidance and negotiations to resolve lien avoidance be complicated by holders of junior liens who may be fully, partially, or wholly unsecured? What stake might they assert during the lien avoidance process?

Ex. 1

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



2014 00002108

Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) **“Borrower”** is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

(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. §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 and Lender’s successors and assigns, with power of sale, the

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:

Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

- Borrower

_____**[Space Below This Line for Acknowledgment]**_____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being _____, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Nora Notary
Notary Public
My Commission Expires: 4/11/2017

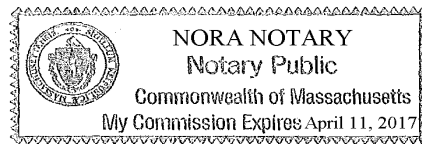


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPSHIRE, *Ramona Register*, REGISTER
Ramona Register

Ex. 2

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

12 Highland Avenue, Longmeadow, MA 01106

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) **“Borrower”** is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

(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. §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 and Lender’s successors and assigns, with power of sale, the

following described property located in the County of
[Type of Recording Jurisdiction]
Hampden:
[Name of Recording Jurisdiction]

Legal description attached hereto and made a part hereof

which currently has the address of 12 Highland Avenue
[Street]
Longmeadow, Massachusetts 01106 (“Property Address”):
[City] [Zip Code]

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 seised 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.

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:

Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

_____ (Seal)
- Borrower

_____ [Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being _____, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Nora Notary
Notary Public
My Commission Expires: 4/11/2017

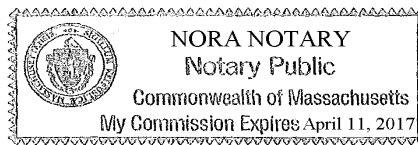


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, *Richard Register*, REGISTER
Richard Register



2010 00001015

Bk: 613 Pg: 8 Page: 1 of 1

Recorded: 05/15/2010 1:37 PM

Once recorded return to:

Ellen Example
12 Highland Avenue
Longmeadow, MA 01106

QUITCLAIM DEED

I, Peter Predecessor, of Longmeadow, Massachusetts, for consideration paid of \$250,000.00 (Two Hundred Fifty Thousand and 00/100 Dollars) grant to


Ellen Example, of Springfield, Massachusetts

with Quitclaim Covenants, that certain parcel of Land together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts 01106, bounded and described as follows:

One (1) parcel comprised of Lots One (1) and Two (2) as shown on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For grantor's title see deed from Lynn Landowner and Louis Landowner, recorded on February 1, 2000 with the Hampden County Registry of Deeds in Book 602, Page 16.

Executed as a sealed instrument this 15th day of May, 2010.

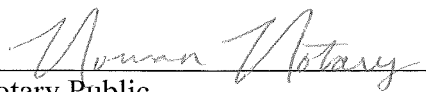


Peter Predecessor

Massachusetts State Excise Tax
Hampden County Registry of Deeds
Date: 05-15-2010 @ 1:37 pm
Ctl: 506 Doc: 1015
Fee: \$1,140.00 Cons: \$250,000

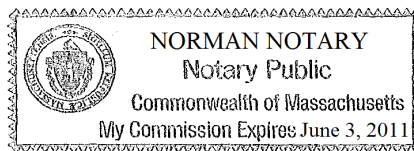
Commonwealth of Massachusetts)
Hampden County, ss.)

On this 15th day of May, 2010, before me, the undersigned Notary Public, personally appeared Peter Predecessor, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily for its stated purpose.



Notary Public
My Commission Expires: 6/3/2011

ATTEST: HAMPDEN, Richard Register, REGISTER
Richard Register



12 Highland Avenue, Longmeadow, MA 01106

Ex. 3

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



2014 00002108

Bk: 750 Pg: 123 Page: 1 of 17

Recorded: 07/07/2014 11:04 AM

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) **“Borrower”** is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

12 Highland Avenue, Longmeadow, MA 01106

(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. §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 and Lender’s successors and assigns, with power of sale, the

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:

Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

(Seal)
- Borrower

[Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared _____, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Nora Notary

Notary Public
My Commission Expires: 4/11/2017

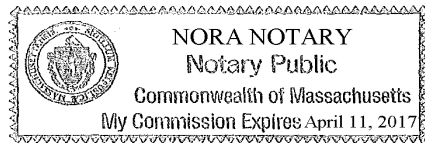


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, *Richard Register*, REGISTER
Richard Register

Ex. 4

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



2014 00002108

Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

_____[Space Above This Line For Recording Data]_____

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) **“Borrower”** is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

12 Highland Avenue, Longmeadow, MA 01106

(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. §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 and Lender's successors and assigns, with power of sale, the

following described property located in the County of
[Type of Recording Jurisdiction]
Hampden:
[Name of Recording Jurisdiction]

Legal description attached hereto and made a part hereof

which currently has the address of 12 Highland Avenue
[Street]
Longmeadow, Massachusetts 01106 (“Property Address”):
[City] [Zip Code]

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 seised 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.

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:

_____ Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

_____ (Seal)
- Borrower

_____ [Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared William Wrong, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily for its stated purpose.

Nora Notary
Notary Public
My Commission Expires: 4/11/2017

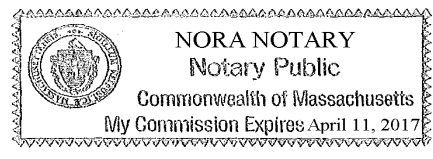


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, *Richard Register*, REGISTER
Richard Register

Ex. 5

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



2014 00002108

Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

12 Highland Avenue, Longmeadow, MA 01106

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) **“Borrower”** is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

(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. §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 and Lender's successors and assigns, with power of sale, the

following described property located in the County of
[Type of Recording Jurisdiction]
Hampden:
[Name of Recording Jurisdiction]

Legal description attached hereto and made a part hereof

which currently has the address of 12 Highland Avenue
[Street]
Longmeadow, Massachusetts 01106 (“Property Address”):
[City] [Zip Code]

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 seised 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.

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:

Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

- Borrower

[Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being _____, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Nora Notary

Notary Public
My Commission Expires: 4/11/2017

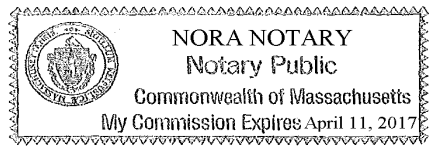


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 14 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Three (3) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on November 5, 2008 in Book 601, Page 145.

ATTEST: HAMPDEN, Richard Register, REGISTER
Richard Register

Ex. 6

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) **“Borrower”** is Ellen Example and Earl Example. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

12 Highland Avenue, Longmeadow, MA 01106

(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. §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 and Lender’s successors and assigns, with power of sale, the

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:

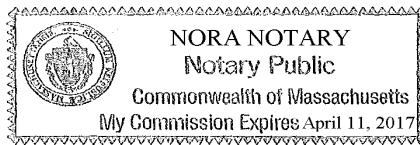
Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

Earl Example (Seal)
EARL EXAMPLE - Borrower

[Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

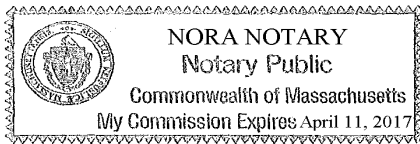
On this 18th day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.



Nora Notary
Notary Public
My Commission Expires: 4/11/2017

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 18th day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily for its stated purpose.



Nora Notary
Notary Public
My Commission Expires: 4/11/2017

EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, *Richard Register*, REGISTER
Richard Register

Ex. 7

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) **“Borrower”** is Ellen Example and Earl Example. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

(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. §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 and Lender’s successors and assigns, with power of sale, the

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:

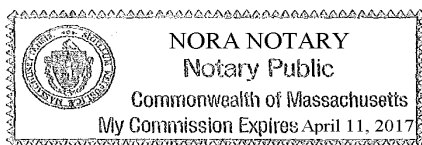
Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

Earl Example (Seal)
EARL EXAMPLE - Borrower

_____ [Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

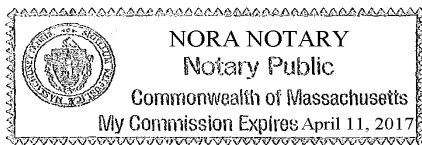
On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.



Nora Notary
Notary Public
My Commission Expires: 4/11/2017

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Earl Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily for its stated purpose.



Nora Notary
Notary Public
My Commission Expires: 4/11/2017

EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

Ex. 8

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



2014 00002108

Bk: 750 Pg: 123 Page: 1 of 17

Recorded: 07/07/2014 11:04 AM

12 Highland Avenue, Longmeadow, MA 01106

[Space Above This Line For Recording Data]

MORTGAGE

DEFINITIONS

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

(A) **“Security Instrument”** means this document, which is dated January 6, 2012, together with all Riders to this document.

(B) **“Borrower”** is Ellen Example and Earl Example. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 6, 2042.

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

(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. §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 and Lender’s successors and assigns, with power of sale, the

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:

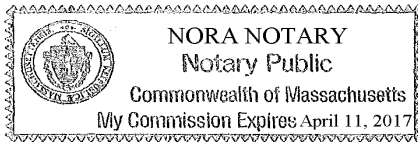
Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

Earl Example (Seal)
EARL EXAMPLE - Borrower

[Space Below This Line for Acknowledgment]

Commonwealth of Massachusetts)
Hampden County, ss.)

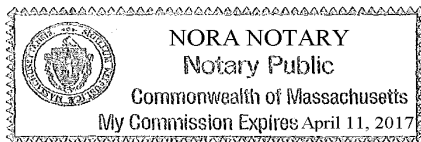
On this 6th day of January, 2012, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document.



Nora Notary
Notary Public
My Commission Expires: 4/11/2017

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 6th day of January, 2012, before me, the undersigned Notary Public, personally appeared Earl Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document.



Nora Notary
Notary Public
My Commission Expires: 4/11/2017

EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, *Richard Register*, REGISTER
Richard Register

Ex. 9

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

12 Highland Avenue, Longmeadow, MA 01106

[Space Above This Line For Recording Data]

MORTGAGE

DEFINITIONS

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

- (A) **“Security Instrument”** means this document, which is dated January 6, 2012, together with all Riders to this document.
- (B) **“Borrower”** is Ellen Example and Earl Example. Borrower is the mortgagor under this Security Instrument.
- (C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.
- (D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 6, 2042.
- (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"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |

(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. §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 and Lender’s successors and assigns, with power of sale, the

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:

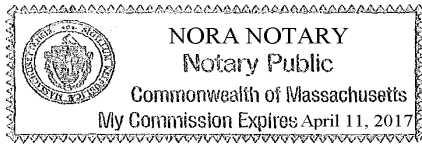
Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

Earl Example (Seal)
EARL EXAMPLE - Borrower

[Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

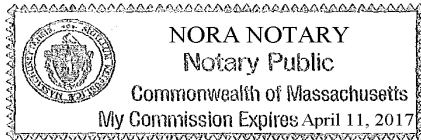
On this 7th day of July, 2012, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document.



Nora Notary
Notary Public
My Commission Expires: 4/11/2017

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 7th day of July, 2012, before me, the undersigned Notary Public, personally appeared Earl Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document.



Nora Notary
Notary Public
My Commission Expires: 4/11/2017

EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, *Richard Register*, REGISTER
Richard Register

Ex. 10

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

12 Highland Avenue, Longmeadow, MA 01106

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) **“Borrower”** is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender’s address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

(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]:

- Adjustable Rate Rider
- Balloon Rider
- 1-4 Family Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 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. §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 and Lender’s successors and assigns, with power of sale, the

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:

Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

_____ (Seal)
- Borrower

_____ [Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this ___ day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Nora Notary
Notary Public
My Commission Expires: 4/11/2017

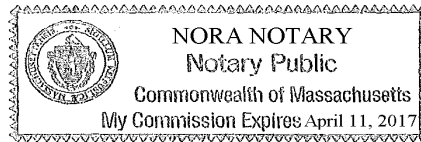


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, Richard Register, REGISTER
Richard Register

Ex. 11

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

12 Highland Avenue, Longmeadow, MA 01106

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) "Borrower" is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender's address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

(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. §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 and Lender's successors and assigns, with power of sale, the

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:

Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

_____ (Seal)
- Borrower

_____ [Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Nora Notary
Notary Public
My Commission Expires: 4/11/2014

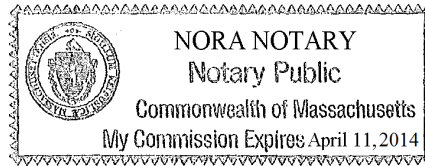


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, Richard Register, REGISTER
Richard Register

Ex. 12

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



2014 00002108

Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

12 Highland Avenue, Longmeadow, MA 01106

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) "Borrower" is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender's address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

(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. §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 and Lender’s successors and assigns, with power of sale, the

following described property located in the County of
[Type of Recording Jurisdiction]
Hampden:
[Name of Recording Jurisdiction]

Legal description attached hereto and made a part hereof

which currently has the address of 12 Highland Avenue
[Street]
Longmeadow, Massachusetts 01106 (“Property Address”):
[City] [Zip Code]

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 seised 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.

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:

Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

- Borrower

_____ [Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA Driver's License, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

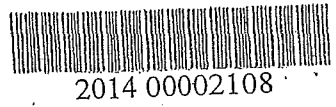
Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, *Richard Register*, REGISTER
Richard Register

Ex. 13

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.
- (B) "Borrower" is Ellen Example. Borrower is the mortgagor under this Security Instrument.
- (C) "Lender" is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender's address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.
- (D) "Note" means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.
- (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"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] _____ |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |

12 Highland Avenue, Longmeadow, MA 01106

(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. §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 and Lender’s successors and assigns, with power of sale, the

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:

Ellen Example (Seal)

ELLEN EXAMPLE - Borrower

By Sally Substitute as Attorney-in-Fact. See Power of Attorney recorded herewith.

(Seal)

- Borrower

[Space Below This Line for Acknowledgment]

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example by Sally Substitute, as Attorney-in-Fact, who proved to me by satisfactory evidence of identification, being MA Driver's License, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Nora Notary

Notary Public

My Commission Expires: 4/11/2017

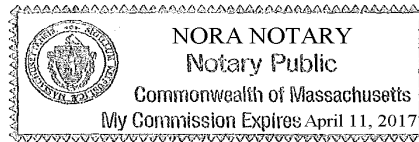


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, *Richard Register*, REGISTER
Richard Register

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:

_____ (Seal)
ELLEN EXAMPLE - Borrower

_____ (Seal)
- Borrower

_____ [Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Sally Substitute, who proved to me by satisfactory evidence of identification, being MA Driver's License, to be the person who executed the preceding document in behalf of Ellen Example, and acknowledged to me that she signed it voluntarily as the free act and deed of said Ellen Example for its stated purpose.

Notary Public
My Commission Expires:

Ex. 14

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



2014 00002108
Bk: 750 Pg: 123 Page: 1 of 17
Recorded: 07/07/2014 11:04 AM

12 Highland Avenue, Longmeadow, MA 01106

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) "Borrower" is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender's address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

(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]:

- Adjustable Rate Rider
- Balloon Rider
- 1-4 Family Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 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. §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 and Lender’s successors and assigns, with power of sale, the

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:

ELLEN EXAMPLE - Borrower (Seal)

- Borrower (Seal)

[Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Nora Notary

Notary Public
My Commission Expires: 4/11/2017

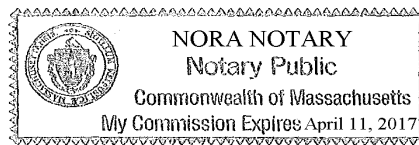


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA" and recorded in the Hampden County Registry of Deeds in Plan Book 178, Page 89.

For title reference, see the Deed recorded on May 15, 2010 in Book 613, Page 8.

ATTEST: HAMPDEN, *Richard Register*, REGISTER
Richard Register

Ex. 15

After Recording Return To:
National Bank, F.S.B.
1649 Mortgagee Way
12th Floor
Los Angeles, CA 90071



2014 00002108

Bk: 750 Pg: 123 Page: 1 of 17

Recorded: 07/07/2014 11:04 AM

[Space Above This Line For Recording Data]

MORTGAGE

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 July 1, 2014, together with all Riders to this document.

(B) "Borrower" is Ellen Example. Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is National Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of the United States of America. Lender's address is 1649 Mortgagee Way, 12th Floor, Los Angeles, CA 90071. Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated July 1, 2014. The Note states that Borrower owes Lender Two Hundred Fifty Thousand Dollars (U.S. \$250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2044.

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

12 Highland Avenue, Longmeadow, MA 01106

(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. §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 and Lender's successors and assigns, with power of sale, the

following described property located in the County of
[Type of Recording Jurisdiction]
Hampden:
[Name of Recording Jurisdiction]

Legal description attached hereto and made a part hereof

which currently has the address of 12 Highland Avenue
[Street]
Longmeadow, Massachusetts 01106 ("Property Address"):
[City] [Zip Code]

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.

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:

Ellen Example (Seal)
ELLEN EXAMPLE - Borrower

_____ (Seal)
- Borrower

_____ [Space Below This Line for Acknowledgment] _____

Commonwealth of Massachusetts)
Hampden County, ss.)

On this 1st day of July, 2014, before me, the undersigned Notary Public, personally appeared Ellen Example, who proved to me by satisfactory evidence of identification, being MA DL, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose.

Nora Notary
Notary Public
My Commission Expires: 4/11/2017

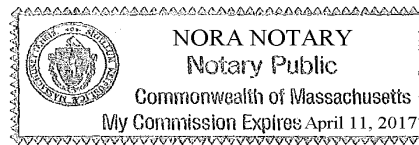


EXHIBIT "A"

That certain parcel of land, together with all buildings and improvements thereon, known as 12 Highland Avenue, Longmeadow, Massachusetts, bounded and described as follows:

Said parcel is shown as Lot Two (2) on a subdivision plan drawn by Sal Surveyor, dated August, 28, 1953, entitled "Plan of Land in Longmeadow, MA," as approved by the Court, filed in the Land Registration Office as Plan No. 23307-B, a copy of a portion of which is filed with Certificate of Title No. 57128.

So much of the above-described land as is included within the limits of said Highland Avenue is subject to the rights of all persons lawfully entitled thereto in and over the same.

For title reference, see the Deed as set forth in Document # 81015, Certificate of Title No. 129351.

ATTEST: HAMPDEN, Richard Register, REGISTER
Richard Register

United States Court of Appeals For the First Circuit

No. 13-9002

IN RE: VIRGINIA A. TRAVERSE,
Debtor.

MARK G. DEGIACOMO, Chapter 7 Trustee for the
Estate of Virginia A. Traverse,
Appellee,

v.

VIRGINIA A. TRAVERSE,
Appellant.

APPEAL FROM THE BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT

Before
Torruella, Howard, and Kayatta,
Circuit Judges.

David G. Baker for appellant.
Tara Twomey, National Consumer Bankruptcy Rights Center, and
Ray DiGiuseppe on brief for the National Association of Consumer
Bankruptcy Attorneys, Amicus Curiae.

Mark G. DeGiacomo, with whom Keri L. Wintle and Murtha Cullina
LLP were on brief, for appellee.

May 23, 2014

HOWARD, Circuit Judge. This case requires us to explore the contours of a bankruptcy trustee's lien avoidance and preservation powers under 11 U.S.C. §§ 544 and 551 when a debtor's state-law homestead exemption has been invoked.

In 2005, six years before filing a petition for Chapter 7 bankruptcy, Virginia Traverse secured a loan with a mortgage on her home. In the years before her bankruptcy and continuing since filing her petition, Traverse has remained current on all mortgage payments on the property. Because Traverse's home is subject to a homestead exemption under Massachusetts law, in these circumstances the Bankruptcy Code would ordinarily allow Traverse to pass through bankruptcy in possession of her home. Yet because Traverse's bank failed to record the mortgage with the appropriate registry, the bankruptcy trustee contends that his power to avoid and preserve the mortgage justifies him in selling Traverse's home as property of the bankruptcy estate. The bankruptcy judge and Bankruptcy Appellate Panel accepted the trustee's view. We reverse.

I. Facts and Background

Virginia A. Traverse resides in a home in Lynn, Massachusetts. She has been the title owner of the property since April 30, 1999, when she recorded her ownership with the Essex County South District Registry of Deeds. On July 11, 2005, Traverse executed a mortgage on the home in favor of Washington Mutual Bank to secure a loan of \$200,000. On September 25, 2008,

JP Morgan Chase acquired this mortgage as part of its blanket acquisition of Washington Mutual's assets. At no point did either mortgagee record the mortgage on Traverse's home with the Registry of Deeds. Meanwhile, in March of 2007, Traverse executed a second mortgage in favor of Citibank to secure a loan of \$31,000, which Citibank recorded in due course. Traverse has kept current on her mortgage payments to both JP Morgan and Citibank.

On August 14, 2011, Traverse filed a voluntary bankruptcy petition under Chapter 7 of the Bankruptcy Code. On her bankruptcy schedules, Traverse valued her home at \$223,500.¹ She listed the remaining claim secured by JP Morgan's mortgage as \$185,777.30 and the claim secured by Citibank's mortgage as \$29,431.04. Finally, pursuant to the Massachusetts Homestead Act, Traverse claimed a homestead exemption in the property in the amount of \$500,000. Traverse's homestead exemption, which Traverse had formally recorded in a Declaration of Homestead in January 2009, went unchallenged by any interested party.

On December 15, 2011, Mark D. DeGiacomo, acting as the Chapter 7 trustee of Traverse's bankruptcy estate, filed a complaint to avoid JP Morgan's unrecorded mortgage and to preserve it for the benefit of the estate. In response, Traverse filed a

¹ As of March 2012, the City of Lynn assessed Traverse's home as having a fair market value of \$236,200. Because the approximate \$13,000 dollar difference between these estimates does not change the legal analysis, the remainder of this opinion relies on Traverse's schedules.

counterclaim seeking a declaratory judgment that, even if he preserved the mortgage, DeGiacomo could sell only the mortgage itself and not her underlying property. Traverse argued that because the trustee's preservation of JP Morgan's mortgage gave the estate only the rights of the original mortgagee, it created no right to sell her home until she defaulted on her payments and triggered the right of foreclosure. After DeGiacomo moved for summary judgment, the bankruptcy court granted summary judgment in his favor on all counts and the Bankruptcy Appellate Panel (BAP) affirmed. Both tribunals concluded that, having preserved JP Morgan's interest in Traverse's home for the bankruptcy estate, the trustee was entitled to sell the home in order to liquidate that interest. While not disputing that Traverse's current mortgage payments prevented DeGiacomo from foreclosing on her home in his capacity as mortgagee, the bankruptcy court and the BAP concluded that DeGiacomo could nevertheless sell the home pursuant to his core powers as a trustee administering a debtor's property under the Bankruptcy Code.

Traverse now challenges that conclusion as a matter of law.

II. Standard of Review

On appeal from the BAP, we train our analysis on the underlying bankruptcy court decision, reviewing factual findings for clear error and conclusions of law de novo. In re Canning, 706

F.3d 64, 68-69 (1st Cir. 2013). Under the de novo standard, we do not defer to the bankruptcy court's ruling, but consider the matter anew as though no decision were rendered below. Id. at 69. Neither do we cede any deference to the conclusions of the BAP. In re Hill, 562 F.3d 29, 32 (1st Cir. 2009).

III. Discussion

Under § 541 of the Bankruptcy Code, all of the debtor's legal and equitable interests in property at the time of her bankruptcy petition automatically become the property of the bankruptcy estate. 11 U.S.C. § 541(a)(1); In re Barroso-Herrans, 524 F.3d 341, 344 (1st Cir. 2008) ("When an individual files for bankruptcy, all of his property . . . becomes property of the estate."). Nevertheless, § 522 of the Code allows a debtor to exempt certain property, based either on an enumerated list of federal exemptions or on any alternate exemptions provided by her state. See 11 U.S.C. § 522(b); In re Cunningham, 513 F.3d 318, 323 (1st Cir. 2008); In re Hildebrandt, 320 B.R. 40, 43 (B.A.P. 1st Cir. 2005). Among the state exemptions incorporated by § 522 is the Massachusetts Homestead Act, which allows a debtor to claim an interest of up to \$500,000 in a home being used by the debtor as her principal residence. In re Peirce, 483 B.R. 368, 376 (Bankr. D. Mass. 2012); see also Mass. Gen. Laws ch. 188, § 1. The debtor's declared homestead exemption is insulated from conveyance, sale, or levy to help satisfy the debtor's debts in bankruptcy,

with the exception of (as relevant here) a debt secured by a lien on the property, such as a mortgage. Mass. Gen. Laws ch. 188, § 3(b); In re Swift, 458 B.R. 8, 15 (Bankr. D. Mass. 2011) ("[A] debtor's homestead exemption is not effective against a mortgagee where the mortgage in question was executed before the debtor recorded a declaration of homestead."). The final working of the scheme is that, when a debtor declares a property as her homestead, proceeds realized from the sale of that property must be used first to pay off any secured claims and subsequently to satisfy the debtor's claimed exemption before, at last, being turned over to her bankruptcy estate.

A core power of a bankruptcy trustee under § 363(b) of the Code is the right to sell "property of the estate" for the benefit of a debtor's creditors. 11 U.S.C. § 363(b)(1) ("The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate"). Because a debtor's exempted property interests are effectively removed from the estate, however, see Owen v. Owen, 500 U.S. 305, 308 (1991), § 363 does not empower the trustee to sell exempted interests. In re Carmichael, 439 B.R. 884, 890 (Bankr. D. Kan. 2010) ("[W]here the debtor's interest is exempted, the estate no longer has an interest that it may sell." (quoting Collier on Bankruptcy ¶ 363.08[3] (16th ed. 2012))); see also In re Parker, 142 B.R. 327, 330 (Bankr. W.D. Ark. 1992) ("The trustee

abandons property of the estate in a chapter 7 case usually because there is no equity in the property or the property is exempt."). Nor does a bankruptcy trustee ordinarily sell property solely for the benefit of secured creditors. See In re Scimeca Found., Inc., 497 B.R. 753, 781 (Bankr. E.D. Pa. 2013) ("[A] bankruptcy trustee should not liquidate fully encumbered assets, for such action yields no benefit to unsecured creditors."); Collier on Bankruptcy ¶ 725.01 ("It is not the proper function of the trustee to liquidate property solely for the benefit of secured creditors.").² Consequently, where a debtor claims a homestead exemption in her home, a trustee will typically sell the home only where its value exceeds both the mortgage liens on the property and the debtor's homestead exemption. In re Ellerstein, 105 B.R. 214, 216 (Bankr. W.D.N.Y. 1989) ("[Where] [t]he debtors' interest is subject to a mortgage . . . and the debtors' equity is significantly more than the amount of the homestead exemption . . . the trustee would sell the property"); In re Early, Bankr. No. 05-01354, 2008 WL 2569408, at *3 (Bankr. D.D.C. June 23, 2008) ("[I]f the amount of the debtor's exemption was less than the value of the property, . . . a trustee is free to sell the property," so long as

² The U.S. Department of Justice instructs that, "[g]enerally, a trustee should not sell property subject to a security interest unless the sale generates funds for the benefit of unsecured creditors." U.S. Department of Justice, Executive Office for United States Trustees, Handbook for Chapter 7 Trustees at 8-20 (2002).

she "distribute[s] the proceeds first to the debtor in payment of the debtor's claimed exemption"). This excess benefit for the unsecured creditors, calculated as the value of the estate minus any secured claims and exemptions, represents the bankruptcy estate's remaining "equity" in the property. In re Hyman, 123 B.R. 342, 344 (B.A.P. 9th Cir. 1991), aff'd, 967 F.2d 1316 (9th Cir. 1992) ("[T]he equity available for the estate would be any amount exceeding . . . encumbrances . . . plus the homestead exemption"); In re McKeever, 132 B.R. 996, 999 (Bankr. N.D. Ill. 1991) (defining the estate's "equity" as that "which would be left for unsecured creditors after payment of secured claims and the debtors' homestead exemption").

Where, on the other hand, a property fails to yield any remaining equity for the estate beyond the value of its secured encumbrances and the debtor's homestead exemption, a trustee generally should not sell the home, but should leave the secured creditors to their own legal means of recovering their claims. See Scimeca Found., 497 B.R. at 781 ("[I]t is appropriate for a chapter 7 bankruptcy trustee to . . . allow the secured creditors to exercise their right to recover possession of their collateral."). This is because, by definition, "[a] secured creditor can protect its own interests in the collateral subject to the security interest." U.S. Department of Justice, Executive Office for United States Trustees, Handbook for Chapter 7 Trustees at 8-20 (2002).

If a debtor defaults on her mortgage payments, the secured creditor's options include its contractual right to foreclose on the debtor's home. If, however, a debtor continues to satisfy her contractual obligations to the benefit of the creditor, the mortgagee has no grounds to foreclose and the debtor may retain her home through the bankruptcy proceedings. See Ellerstein, 105 B.R. at 216 ("[If] [t]he debtors' home is subject to a mortgage which is not in default and the debtors' equity is less than the properly claimed homestead exemption . . . the trustee would abandon the interest and the debtors would retain the home.").

Traverse's homestead exemption leaves no residual equity for her unsecured creditors, and her lack of default on her monthly payments precludes both Citibank and JP Morgan from foreclosing on her property. There is consequently no dispute that, if Traverse's mortgages remained with their respective banks, the foregoing analysis would dispose of the case: the bankruptcy trustee would have no claim to sell Traverse's property and Traverse would retain possession of her home. Indeed, this appears to be the trustee's precise position with regard to Citibank's second mortgage. In the case of JP Morgan, however, the trustee notes a further wrinkle: neither Washington Mutual nor JP Morgan perfected the first mortgage on Traverse's home by recording the lien with the Registry of Deeds.

Where a creditor has an unperfected lien on a debtor's property, the Bankruptcy Code empowers a trustee to avoid and preserve the lien for the benefit of the estate. The trustee exercises this power through two strong-arm provisions. First, the trustee's right of avoidance under 11 U.S.C. § 544 "vests the trustee with the powers of a bona fide purchaser of real property for value, and allows the trustee to invalidate unperfected security interests." In re Sullivan, 387 B.R. 353, 357 (B.A.P. 1st Cir. 2008). Second, his right of preservation under 11 U.S.C. § 551 automatically preserves the benefit of the avoided interest for the estate by "put[ting] the estate in the shoes of the creditor whose lien is avoided." In re Carvell, 222 B.R. 178, 180 (B.A.P. 1st Cir. 1998). Together, these provisions benefit the unsecured creditors by allowing the trustee to eliminate unperfected liens on a debtor's property and subsequently to apply the value represented by those liens to the general estate, bypassing any junior lienholders. See In re French, 440 F.3d 145, 154 (4th Cir. 2006) ("[T]he Code's avoidance provisions protect creditors by preserving the bankruptcy estate against illegitimate depletions."); In re Nistad, Bankr. No. 10-17453-WCH, 2012 WL 272750, at *5 (Bankr. D. Mass. Jan. 30, 2012) ("The purpose of 11 U.S.C. § 551 is to allow a trustee to preserve the avoided interest for the estate so that junior interest holders do not benefit from the avoidance to the detriment of the estate and its creditors.").

In this case, the trustee exercised his strong-arm powers to avoid and preserve JP Morgan's mortgage on Traverse's home.³ He now argues that, by preserving the mortgage lien, he may sell the property that is subject to the lien in order to realize the value of the mortgage for the bankruptcy estate.

Before addressing the trustee's argument, it is important to clarify what the trustee does not argue. First, he does not suggest that his preservation of JP Morgan's mortgage empowers him to sell Traverse's home in his position as mortgagee. Nor could he, since Traverse correctly notes that her current payments on her mortgage insulate her property from foreclosure.⁴ Rather, the

³ In addition to objecting to the sale, Traverse also challenges the bankruptcy court's jurisdiction to enter a final order approving the trustee's avoidance and preservation in light of the Supreme Court's decision in Stern v. Marshall, 131 S. Ct. 2594 (2011). Traverse suggests that Stern strips the bankruptcy court of jurisdiction because the trustee's complaint seeks to augment the bankruptcy estate and depends on Massachusetts state law.

Under Stern, a bankruptcy court's jurisdiction to enter final judgments is limited by Article III to issues in bankruptcy that "stem[] from the bankruptcy itself or would necessarily be resolved in the claims allowance process." Id. at 2618. Both the trustee's complaint in this case, arising out of his § 554 and § 551 powers, and Traverse's counterclaim, disputing the bankruptcy estate's rights to her real property, stem directly from Traverse's bankruptcy filing. The bankruptcy court correctly exercised jurisdiction in entering a final order on all claims.

⁴ Under 11 U.S.C. § 524(c), a debtor who remains current on her loan payments must also enter into a valid reaffirmation agreement in order to prevent a mortgagee from foreclosing on its security interest after she has filed for bankruptcy. Id.; see also In re Golladay, 391 B.R. 417, 421 (Bankr. C.D. Ill. 2008). Although the record does not reveal whether Traverse properly reaffirmed her mortgage, because the trustee makes no claims to

trustee suggests that, even in the absence of default, his preservation of the mortgage has given the bankruptcy estate an equity interest in the home that triggers his core power of sale as bankruptcy trustee.

Second, the trustee does not argue that the preserved mortgage freed up equity in Traverse's home for the bankruptcy estate by eliminating a secured debt to be satisfied before the home's value can begin accruing to unsecured creditors. Nor, again, could he do so, because Traverse's unchallenged exemption of \$500,000 swallows the full \$223,500 value of her home regardless of whether the sale's proceeds are first used to satisfy the \$185,777.30 mortgage claim. Rather, the trustee insists that the preserved mortgage itself, as a senior lien on the home, has created equity in the home for the estate. He suggests, in short, that the preserved mortgage has turned some corresponding share of the home's value into the "property of the estate" to be liquidated through sale.

The trouble with the trustee's argument is that his preservation of an undefaulted mortgage on Traverse's home for the benefit of the bankruptcy estate is not co-extensive with an ownership right over the underlying property. Under § 551, the trustee preserves any liens or transfers avoided under § 544 by

Traverse's property based on his position as mortgagee we find no reason to challenge her reaffirmation in this case.

claiming those liens for the benefit of the estate, but he preserves the benefit of only that which has been avoided--in this case, the mortgage. "When the Trustee avoided the lien granted by Debtor . . . , the avoided lien and only the avoided lien became property of the estate under § 541(a)(4)." Carmichael, 439 B.R. at 890; cf. In re Haberman, 516 F.3d 1207, 1208 (2008) ("[A] bankruptcy trustee who successfully avoids a lien pursuant to 11 U.S.C. §§ 544 and 551 preserves for the bankruptcy estate the value of the avoided lien"). Preservation gives the bankruptcy estate an exclusive interest in the avoided lien, but it does not give the estate any current ownership interest in the underlying asset. See Early, 2008 WL 2569408, at *3 ("[T]he only interest recovered via avoidance is the avoided lien, not an ownership interest in the property."). As far as the trustee's § 363 powers are concerned, avoidance and preservation thus empower the trustee to sell the newly avoided mortgage as property of the estate. But if the underlying property has been exempted and withdrawn from the "property of the estate" for the purposes of § 363, the preservation of a mortgage does not resurrect the trustee's § 363 powers over that property itself. See Carmichael, 439 B.R. at 890 ("The only property interest which the Trustee may sell under § 363(b) is the estate's one-half interest in the unperfected lien"); In re Early, Bankr. No. 05-01354, 2008 WL 2073917, at *4 (Bankr. D.D.C. May 12, 2008), order amended and supplemented,

2008 WL 2569408, at *4 ("[T]he avoided lien here does not give the trustee a right to sell the debtor's interest in the Property itself.").⁵

The trustee makes much of the Supreme Court's holding in Schwab v. Reilly, in which the Court held that exemptions claimed under the Code remove only a monetary "interest" in a debtor's asset, rather than the asset itself, from the property of the bankruptcy estate. 560 U.S. 770, 782 (2010). Various courts have applied this same principle to state-created homestead exemptions, including that in Massachusetts. See Peirce, 483 B.R. at 376 (Mass. Gen. Laws ch. 188 only protects the owner's interest in the home to the extent of the monetary exemption."); In re Gebhart, 621 F.3d 1206, 1210 (9th Cir. 2010) ("The homestead exemptions available to the debtors . . . do not permit the exemption of entire properties, but rather specific dollar amounts."). The trustee reasons that, if Traverse's home remains part of the bankruptcy estate despite Traverse's homestead exemption, he may dispose of it like any other property so long as he repays Traverse the value of her exemption from the proceeds.

As a preliminary matter, we note that the rule articulated in Schwab does not apply directly to this case. In

⁵ Although the bankruptcy court in Early ultimately concluded that the issue of the trustee's power of sale was not ripe before it, withdrawing without repudiating its observations on the matter, see 2008 WL 2569408, at *3, we believe that the court's reasoning is precisely on point.

each of the cases above, the debtor's exemption could not prevent the trustee from selling the underlying asset because that asset's value surpassed the exemption amount, creating additional equity for the bankruptcy estate. Schwab, 560 U.S. at 776; Peirce, 483 B.R. at 376; Gebhart, 621 F.3d at 1210. By contrast, where a debtor's homestead exemption equals or surpasses the total value of her property, the bankruptcy court has construed the Massachusetts homestead exemption to protect the debtor's physical ownership of as well as her financial rights in her home. Peirce, 483 B.R. at 376 ("[S]o long as the available monetary exemption is greater than or equal to the value of that property, the owner's possessory and pecuniary interests are both fully protected."). This reading accords with the established policy behind the Massachusetts homestead exemption, which "favors preservation of the family home regardless of the householder's financial condition" and inclines courts to construe the exemption "liberally in favor of debtors." Shamban v. Masidlover, 705 N.E.2d 1136, 1138 (Mass. 1999); see also Hildebrandt, 320 B.R. at 44 ("Homestead laws are designed to benefit the homestead declarant and his or her family by protecting the family residence from the claims of creditors." (internal quotation marks omitted)). We decline to depart from that practice today.

More to the point, neither Schwab nor its progeny address the precise legal question before us. The issue raised by this

case is not whether Traverse's homestead exemption withdrew her home or merely the right to its proceeds from the property of the estate. The issue is whether a trustee's powers of sale under § 363 justify selling a debtor's asset where no equity remains for the estate beyond the senior claims of secured creditors and the debtor's own exempt interest. The distinction may best be illustrated by the fact that the issue facing us today could arise even if there were no homestead exemption involved. Imagine, for example, a case in which a debtor fails to claim any homestead exemption, but the full value of her home falls short of her defaulted mortgages on the property. In this scenario, even absent any debates about whether the debtor had withdrawn her home or merely an "interest" in her home from the bankruptcy estate, the trustee's § 363 powers would not justify selling the asset, because there would be no residual equity in the property for unsecured creditors. The trustee himself admits as much, as he acknowledges that he would not sell Traverse's home if both her mortgages remained with their banks--even though, under his own reading of Schwab, the home is technically "property" of the estate.

The trustee suggests that his preservation of Traverse's first mortgage for the bankruptcy estate makes this case different. He insists that the preserved mortgage empowers him to sell Traverse's home because, with the bankruptcy estate now standing in the shoes of the secured lienholder, the sale would directly

benefit the unsecured creditors. Just because the preserved mortgage entitles the estate to benefit from the sale of Traverse's property, however, does not mean that the trustee is by that fact empowered to sell the property so as to immediately realize that benefit. In itself, a mortgage carries neither a right of immediate ownership of Traverse's property, nor a right of immediate payment of the secured loan's outstanding value, but only a right to foreclose on Traverse's property in the event that she defaults on her loan or to receive payment in full when the home is sold through other means. And that is the extent of the rights gained by the estate by through the trustee's preservation. See Haberman, 516 F.3d at 1210 ("[T]he trustee, on behalf of the entire bankruptcy estate, in some sense steps into the shoes of the former lienholder, with the same rights in the collateralized property that the original lienholder enjoyed."); Carvell, 222 B.R. at 180 ("Preservation is just that. It simply puts the estate in the shoes of the creditor whose lien is avoided."). We make this observation not to revive the red herring argument that the trustee would need to exercise a mortgagee's power of foreclosure in order to sell Traverse's home; of course he could accomplish such a sale, when appropriate, simply in the exercise of his powers under § 363. We make the observation simply to clarify that, as far as the trustee's § 363 powers are concerned, the trustee may only sell "property of the estate," and the preserved mortgage in this case

carries no immediate ownership rights that might be seen to turn Traverse's home into the property of the estate.

To put it another way, contrary to the trustee's assertions, just because the preserved mortgage promises the bankruptcy estate a benefit from the sale of Traverse's home does not mean that the preserved mortgage creates "equity" for the estate. Bankruptcy courts have defined the equity that justifies a sale of property, consistently and explicitly, in one way: the value remaining for unsecured creditors above any secured claims and the debtor's exemption. See, e.g., Hyman, 123 B.R. at 344; In re White, 409 B.R. 491, 495 (2009); McKeever, 132 B.R. at 999. It is this equity for unsecured creditors that authorizes a trustee to liquidate the property in the first place, as the trustee should not exercise his § 363 powers for the benefit of secured creditors alone. See Scimeca Found., 497 B.R. at 781; U.S. Department of Justice, Executive Office for United States Trustees, Handbook for Chapter 7 Trustees at 8-20 (2002); Collier on Bankruptcy ¶ 725.01. Here, having avoided and preserved JP Morgan's mortgage for the benefit of the bankruptcy estate, the trustee has inherited the standing of the secured creditor. Haberman, 516 F.3d at 1210; In re Kors, Inc., 819 F.2d 19, 23 (2d Cir. 1987); Carvell, 222 B.R. at 180. But he has not changed the status of the lien as a secured lien, to be subtracted from the value of the asset before any remaining equity may be calculated. In this sense, for the very

reason that the preserved mortgage entitles the bankruptcy estate to any proceeds from Traverse's property, as a senior secured claim overriding Traverse's claimed homestead exemption, it cannot double as the unsecured equity triggering the trustee's sale powers under § 363.

The trustee, in essence, would have the preserved mortgage function as both the senior secured interest that entitles the bankruptcy estate to derive value from Traverse's property ahead of junior lienholders and the unsecured equity interest that excuses him from leaving the secured creditors to satisfy their claims contractually.⁶ Yet precisely because of their contractual means of protecting their interests, the bankruptcy scheme typically entrusts secured creditors such as mortgagees to vindicate their claims based on their privately negotiated terms. That in some cases a mortgagee will have no immediate means for claiming the value of its collateral--for example, when the mortgagor remains current on her mortgage payments pursuant to the contractual agreement--is not a flaw in the system, but rather reflects Congress's intent not to augment the mortgagee's rights over a compliant mortgagor simply because the mortgagor enters the world of bankruptcy. Cf. Dewsnup v. Timm, 502 U.S. 410, 418 (1992)

⁶ The secured creditors' contractual remedies would, of course, be subject to any lien enforcement procedures set by statute.

(noting the rule, valid since the Bankruptcy Act of 1898, that "a lien on real property passe[s] through bankruptcy unaffected").⁷

Our holding today comports not only with the most coherent reading we can make of the trustee's powers under the Bankruptcy Code, but also with any sense of fairness on these facts. As noted above, there is no dispute that if Traverse's first mortgage remained with JP Morgan she would retain her home in these exact same circumstances. We see no reason why the trustee's preservation of the mortgage under § 551 should alter that result. The objective behind the trustee's powers of avoidance and preservation is to change the priority of creditors' claims to property falling under a debtor's estate, boosting the standing of unsecured creditors against both illegitimate secured claims and junior secured creditors. See French, 440 F.3d at 154; Connelly v. Marine Midland Bank, N.A., 61 B.R. 748, 750 (W.D.N.Y. 1986). It remains a mystery to us why a provision clearly aimed at regulating the distribution of a debtor's estate among her creditors should exacerbate the debtor's substantive obligations and vulnerabilities in bankruptcy. That is especially the case here, where the

⁷ Our analysis here is limited to a trustee's attempts to benefit unsecured creditors by avoiding a security interest on fully exempt property, selling that property, and then capturing the proceeds of the sale for the estate up to the amount of the security interest. We do not decide whether a trustee may sell fully-secured property to benefit the estate in other scenarios, for example, when selling secured property as part of a package with unsecured property would increase the value of the unsecured property itself. See Handbook for Chapter 7 Trustees at 8-20.

trustee's ability to preserve JP Morgan's mortgage derives exclusively from the failure of two banking corporations to perform due diligence and record their mortgage on Traverse's home. To sanction the sale of the debtor's home in this case would be to punish an individual consumer for the administrative oversights of the banks.⁸

We affirm today the principle that the preservation of a lien entitles a bankruptcy estate to the full value of the preserved lien--no more and no less. Where this lien is an undefaulted mortgage on otherwise exempted property, the trustee may for the benefit of the estate enjoy the liquid market value of that mortgage, claim the first proceeds from a voluntary sale, or wait to exercise the rights of a mortgagee in the event of a

⁸ We note that, in general, our interpretation enhances predictability and lower transaction costs. Under the trustee's view, without first paying to confirm the perfection of the mortgage, no homeowner contemplating bankruptcy could predict whether the family will lose its residence merely because of a quirk in the bank's practices that no one could view as adverse to the debtor.

We also note that, to be sure, a bankruptcy trustee's avoidance powers extend to far less blameless and sympathetic scenarios, such as avoidance of fraudulent transfers under 11 U.S.C. § 548 or post-petition transfers under 11 U.S.C. § 549. None of these other circumstances is implicated by our opinion, however, in that none of them overrides a debtor's homestead exemption under § 522. Furthermore, to the extent that an avoided fraudulent or post-petition transfer of a debtor's home allows a trustee to sell the underlying property, it does so precisely by permitting the trustee to include in the estate the putatively transferred asset: the home.

default.⁹ But the trustee may not repurpose the mortgage to transform otherwise exempted assets, to which neither the estate nor the original mortgagee boasted any ownership rights, into the property of the bankruptcy estate.

IV. Conclusion

In the end, we see the matter differently than did the lower courts. Accordingly, we reverse the decision of the BAP and remand to that tribunal with directions to vacate the bankruptcy court's judgment and to remand the matter to the bankruptcy court for further proceedings consistent with this opinion.

⁹ The parties in this case have presented to us no issue regarding who is entitled to Traverse's post-petition payments. Absent a separate agreement to the contrary, avoidance and preservation of a security interest do not entitle the trustee to payments on the underlying debt. In re Rubia, 257 B.R. 324, 327 (B.A.P. 10th Cir. 2001), aff'd, 23 F. App'x 968 (10th Cir. 2001); In re Tribble, 290 B.R. 838, 845 (Bankr. D. Kan. 2003).