



Representations & Warranties

Posted 4/27/12

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NOTES

3 Representations & Warranties

Overview

Description	This chapter outlines the representations, warranties and covenants (reps/warranties) made by each Seller upon the “sale” (defined as the funding of the mortgage loan by MSI) of a mortgage loan to Mortgage Services III, LLC. (MSI), its successors and assigns, unless expressly waived in writing. The Seller makes such representations, warranties and covenants in order to induce MSI to fund/purchase the related mortgage loan.
Reliance of MSI	The Seller acknowledges that, with respect to each mortgage loan funded/purchased by MSI, the mortgage loan was funded/purchased in good faith and in reliance on the Seller’s compliance with each of the representations, warranties and covenants made by the Seller pursuant to the MSI Seller Guide.
Survival of the Reps & Warranties	All representations, warranties and covenants on the part of the Seller contained in this Agreement or given pursuant hereto shall survive any termination of this Agreement and the closing of the loan purchase transactions herein contemplated and shall remain in full force and effect, regardless of such termination or the closing dates of said transactions.
Seller Guide	By sale of the mortgage loan to MSI, the Seller represents and warrants that each loan meets all requirements as outlined in the MSI Wholesale Seller Guide (Seller Guide), which is a Contract Document added to the Mortgage Broker Agreement by Bulletin (hereafter known as “Announcement”).
Defined Terms	In this section, the following terms are used as noted: <ul style="list-style-type: none">✓ Broker – interchangeable with Seller and/or Mortgage Broker✓ Buyer – interchangeable with Mortgage Services III, LLC. (MSI)

Seller's General Representations and Warranties

Description The Broker (aka in this document as Seller) in connection with the sale of a loan to MSI represents and warrants the following:

-
- Qualifications** The Broker:
- ✓ Meets all of the eligibility requirements set forth in the Eligibility chapter of this Guide.
 - ✓ Is approved by MSI to sell loans to MSI
 - ✓ Is in Good Standing with MSI
 - ✓ Be duly licensed as a mortgage broker or equivalent where required by law, to engage in business of brokering residential mortgage loans in the States accepted by MSI for the Broker.

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- Organization and Good Standing** In accordance with the laws of the jurisdiction under which it was organized, the Broker:
- ✓ Is in the business of being retained by and representing prospective borrowers as the agent of such prospective borrowers.
 - ✓ Is Duly organized
 - ✓ Is Validly existing
 - ✓ Is In Good Standing with all applicable investors and supervising entities and under the laws of the jurisdiction of its organization
 - ✓ Is qualified to do business, and has the corporate power and authority to perform its obligations under this Agreement.
 - ✓ Holds all applicable state or other licenses, authorizations or approvals required to do business as a Mortgage Broker (or equivalent) in the States accepted by MSI.

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Seller's General Representations and Warranties, Continued

Authority The execution, delivery and performance of this Agreement (including all instruments of transfer to be delivered pursuant to this Agreement) have been duly and validly authorized by all requisite action on the part of the Seller.

Binding Obligation This Agreement is the legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable liquidation, conservatorship, bankruptcy, insolvency, rearrangement, moratorium, reorganization or similar debtor relief laws affecting the rights of creditors generally.

Adverse Action There is no proceeding, action, investigation, or litigation pending or, to the best of the Seller's knowledge, threatened against the Seller which, individually or in the aggregate, may have a material adverse effect on this Agreement or on any action taken or to be taken in connection with the Seller's obligations contemplated herein, or which would be likely to impair materially its ability to perform under the terms of this Agreement.

No Consent Required No consent, approval, authorization or order or, registration or filing with, or notice to, any governmental authority or court is required (except with respect to the recordation of the assignment of the mortgages or deeds of trust) under federal laws, or the laws of any jurisdiction, for the execution, delivery and performance of, or compliance by the Seller with, this Agreement or the consummation of any other transaction contemplated hereby.

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Seller's General Representations and Warranties, Continued

True and Correct Information

- ✓ None of the statements or information contained in any document submitted with or included as part of the application package, or in any document reviewed in connection with MSI's underwriting decision, contains or will contain any misleading, false or erroneous statements, or omit facts necessary to make such statements or information accurate and understandable in every respect.
- ✓ All documents are genuine and each mortgage and mortgage note is the legal, valid and binding obligation of the maker thereof and is enforceable in accordance with its terms, except only as such enforcement may be limited by bankruptcy, insolvency, reorganization, and all parties to each loan had full legal capacity to execute all loan documents and convey the estate therein purported to be conveyed and each loan document has been duly and properly executed by all parties thereto and acknowledged, where required:
 - all certified copies of original documents are true copies of the originals;
 - the documents, instruments and agreements submitted for loan underwriting were not falsified and contain no untrue statement or material fact or omit to state a material fact required to be stated therein or necessary to make the information and statements therein not misleading;
 - no fraud was committed in connection with the origination of the loan.
- ✓ All other representations as to each such loan are true and correct and meet the requirements and specifications of all parts of this Agreement.

Seller Warranty Clarification:

Mortgage Broker understands that by making the warranty (above) it is warranting the accuracy of all information contained in any loan package submitted to MSI, whether or not submitted by Mortgage Broker and whether or not Mortgage Broker has knowledge of, or reason to suspect, any inaccuracy.

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Seller's General Representations and Warranties, Continued

Compliance with Laws

Mortgage Broker represents and warrants that it has and will continue to comply with all State and Federal laws and regulations applicable to the conduct of its business, including but not limited to, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, Home Ownership Equity Protection Act, the Privacy Act, and the Federal Truth In Lending Act.

- ✓ The Mortgage Broker further warrants that it had the benefit of legal counsel in reviewing the Agreement, and is fully aware of its responsibilities as a Mortgage Broker and has executed this Agreement only after it had adequate opportunity to confer with its attorney.

Ethical Standards and Responsible Lending

(8/04/10)

Mortgage Services III, LLC (MSI) adheres to the highest level of ethical standards to ensure that as a financial services organization we maintain the trust of our customers, employees and stockholders. MSI is committed to fair, responsible and ethical lending. By sale of loans to MSI our Sellers warrant that they manage their firms with the same commitment and focus.

By sale of a loan to MSI, the Seller warrants and represents that their company does:

- ✓ Comply with all regulatory or legal obligations.
- ✓ Adhere to MSI's Fair Lending Policy and does not discriminate against any loan applicant. See [MSI Fair Lending Policy](#).
- ✓ Fully understand the applicant's lending needs and financial circumstances and that the product and loan obligations are fully explained to all applicants.
- ✓ Deliver appropriate levels of service and product quality to customers.
- ✓ Protect the privacy of all applicants and ensure that any applicant information is appropriately protected.
- ✓ Perform in a manner that respects the lending industry, their relationship with MSI and preserves their own reputation as well as that of MSI.

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Seller's General Representations and Warranties, Continued

MSI Fair Lending Policy (8/04/10)

Background

Fair Lending Laws are designed to ensure that credit is made available with fairness and impartiality. Federal Regulators charge lenders to ensure fair lending and to prohibit discrimination in lending. Lending policies and procedures must not discriminate on the basis of race, color, religion, sex, marital status, age, national origin, familial status, handicap or receipt of income through public assistance.

Fair lending covers four separate regulations:

- ✓ The Equal Credit Opportunity Act (ECOA) – Regulation B
- ✓ The Fair Housing Act (FHA)
- ✓ The Home Mortgage Disclosure Act (HMDA)
- ✓ The Community Reinvestment Act (CRA)

The major areas covered by the fair lending laws are:

- ✓ Non discrimination in lending policies, procedures, practices and products
- ✓ Non discrimination in real estate activities
- ✓ Collection of specific information for government monitoring purposes
- ✓ Fair Lending is the law and moral obligation of every individual providing service in our industry. Mortgage Services III has adopted the accompanying Fair Lending Statement, which reflects our commitment to the equal treatment of all credit applications.

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Seller's General Representations and Warranties, Continued

MSI Fair Lending Policy, Continued

MSI Policy

Mortgage Services III, LLC (MSI) policy is to promote the availability of credit on a safe and sound basis to all credit-worthy applicants. We evaluate each credit application on its merits without regard to the applicant's race, color, ethnicity, national origin, religion, gender, marital or familial status, sexual orientation, disability, and age, the fact that the applicant receives public assistance, or may have exercised rights under the Federal Consumer Credit Protection Act.

MSI policy of fair treatment and equal opportunity extends to every aspect of the credit transaction. This includes, but is not limited to:

- ✓ Advertising
- ✓ Inquiries - pre-qualifications and discussions
- ✓ Application Taking
- ✓ Pricing
- ✓ Processing
- ✓ Third party activities such as appraising properties
- ✓ Underwriting
- ✓ Purchasing
- ✓ Servicing
- ✓ Collecting on delinquent loans

Sole Source or Agent

Mortgage Broker represents to MSI that MSI is not Mortgage Broker's only lender source and acknowledges that MSI does not require that a borrower use the Mortgage Broker in order to obtain a loan from MSI. Mortgage Broker further warrants

- (a) that it will not represent to any party that it is an agent, servant or employee of MSI or
- (b) advise any prospective borrower that MSI is the lender unless such borrower's application is submitted to MSI by Mortgage Broker and is approved by MSI.

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Seller's General Representations and Warranties, Continued

- Indemnification** Mortgage Broker shall indemnify and hold MSI and its affiliates, shareholders, directors, officers, agents, employees, successors, and assigns harmless from and against, and shall reimburse the same with respect to, any and all losses, damages, demands, claims, liabilities, costs and expenses, including reasonable attorney's fees, (collectively "losses") from any cause whatsoever, incurred by reason of or arising out of or in connection with,
- (a) any breach of any agreement, covenant, representation or warranty contained in the Agreement;
 - (b) Mortgage Broker's failure to perform any obligation hereunder,
 - (c) any claim by a Borrower resulting from MSI's failure or refusal to fund a loan; or
 - (d) any claim by any third party that Mortgage Broker is a joint venturer, partner, representative, employee or agent of, or otherwise associated or affiliated with, MSI.

Mortgage Broker's obligation to indemnify MSI under this Agreement shall arise upon MSI's incurring a Loss.

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Seller's General Representations and Warranties, Continued

- Valid First Lien** The Seller Represents, Warrants and Covenants the following to MSI as to each loan offered for sale or funding:
- ✓ The mortgage is a valid, existing, and enforceable first lien on the Mortgaged Property; on all buildings on the mortgaged property; on all installations and mechanical, electrical, plumbing, heating, and air conditioning systems located in or affixed to such buildings; and on all additions, alterations, and replacements made at any time with respect to the foregoing. Any mortgaged property that has any existing or simultaneous lien that takes priority over the first mortgage is not eligible for purchase. This includes but is not limited to liens that utilize the municipal tax assessment process or a utility company to ensure payment.
 - ✓ The Mortgage lien is subject only to:
 - current real property taxes and assessment liens not yet due and payable;
 - covenants, conditions, restrictions, rights of way, easements, and other matters of public record which as of the date of the lien's recording are or were acceptable to mortgage lending institutions generally, are specifically referred to in the Title Policy or, as permitted by Wells Fargo and applicable state law, an attorney's opinion of title, delivered to the Loan originator, and: (a) were referred to or otherwise considered in the appraisal made for the Loan originator or (b) do not adversely affect the Mortgage Property's appraised value set forth in such appraisal; or
 - other matters to which like properties are commonly subject, which other matters do not materially interfere with the benefits of the security intended to be provided by the Mortgage, or the use, enjoyment, value, or marketability of the related Mortgaged Property.

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Seller's General Representations and Warranties, Continued

Valid Title

Each mortgage or deed of trust is a valid first lien on the property securing the Loan and is insured by

- (i) an American Land Title Association ("ALTA") lenders' loan title insurance policy issued by an underwriter acceptable to the Buyer or
- (ii) the type of policy uniformly acceptable where ALTA policies are not available, which policy is subject only to the lien of current real estate taxes and assessments, and covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of such mortgage or deed of trust, such exceptions appearing of record and being acceptable to mortgage lending institutions generally or specifically reflected in the survey of the property securing the Loan.

The title insurance policy relating to the Loan is in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement.

- ✓ No claims have been made under such title insurance policy.

Compensation Arrangements REV (4/01/11)

- ✓ Seller's payments to its loan originators comply with all applicable laws, including, but not limited to, 12 C.F.R. §2226.36 as amended from time to time.
- ✓ Seller has not requested compensation from MSI that is based on the terms or conditions of any loan delivered or expected to be delivered by the Seller, and the reasons stated by the Seller for any requested change in compensation are true and correct.
- ✓ In any transaction in which Seller has received compensation from the consumer, neither Seller nor any of its loan originators has received, nor are any of them expected to receive, compensation from any other source.
- ✓ Seller has not delivered any loan to MSI based on the fact that Seller expects to receive greater compensation from MSI than in other transactions that Seller offered or could have offered to the consumer; and has subjected any loan delivered to MSI to any test that provides a legal "safe harbor" or similar protections against such a claim.
- ✓ Upon request of MSI, Seller will provide to MSI within five (5) business days documentation evidencing Seller's compliance with 12 C.F.R. §2226.36, as amended from time to time.

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Seller's General Representations and Warranties, Continued

Confidentiality of Borrower Information
CLAR (1/12/12)

Confidentiality and Security of Borrower Information

All Sellers are required to insure that the borrower's personal (social security number, etc.) and loan information is confidential and secure. Borrower information must be delivered and received in a secure manner acceptable to MSI.

- ✓ MSI provides a Secure Email System to ensure the confidentiality of the borrower's information.
- ✓ Please see the Web Site Tutorial entitled, "Secure Mail Tutorial" for full details on using MSI's Secure Email System.

Confidential Business Information
CLAR (4/26/12)

Definition:

Each party (as "Recipient") may have access to and each party (as "Owner") may provide to the other party, information that the Owner regards as confidential or proprietary. Confidential Information includes information of a commercial, proprietary or technical nature and includes (but is not limited to) the following, whether now in existence or hereafter created:

- ✓ Any information about customers of any nature whatsoever, and specifically including the fact that someone is a current or prospective customer of the Owner. All lists of customers, applicants, prospective customers and all personal or financial information relating to and identified with such persons.
- ✓ All information marked "confidential" or similarly marked, or information that the Recipient should, in the exercise of reasonable business judgment, recognize as confidential.
- ✓ All notes, memoranda, analyses, compilations, studies, techniques, processes, approaches and other documents or information in various forms whether prepared by the Owner, the Recipient or others which contain or otherwise reflect Confidential Information used to conduct business.

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Seller's General Representations and Warranties, Continued

Confidential Business Information, Continued

Essential Obligation of the Parties:

- ✓ Confidential Information must be held in confidence and disclosed only to those employees or agents whose duties reasonably require access to such information.
 - ✓ Recipient must protect the Owner's Confidential Information using at least the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure or duplication (except as required for backup systems) of such Confidential Information as Recipient uses to protect its own confidential information of a similar nature.
 - ✓ Recipient shall establish and maintain data safeguards against the destruction, loss, alteration of or unauthorized access to Owner's Confidential Information in the possession of Recipient.
-

Miscellaneous Covenants

Overview	MSI and the Seller shall comply with the following Miscellaneous Covenants.
Notices	All demands, notices and communications to the Seller shall be in writing and be deemed to have been given if electronically mailed (Emailed), posted on the MSI Web site (www.msiloans.biz), or mailed or delivered to the applicable party at the address shown in the Agreement, or such other address as may hereafter be furnished to the other parties by like notice.
Agreement to Supersede	This Agreement shall supersede and replace any prior written or oral agreement between the parties concerning the purchase of Loans by the Buyer, although any such Loans purchased by the buyer from the Seller prior to the date of this Agreement shall continue to be governed by the terms of any prior agreement pertaining thereto. No term or provision of this Agreement may be waived or modified unless in writing and agreed to by all parties hereto.
Assignment of Interest	The Seller shall not assign its interest in this Agreement without the prior written Consent of the Buyer.
Governing Law	The Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois. In the event of a dispute hereunder or any action to enforce or interpret the Agreement, the parties hereby consent to the exclusive jurisdiction of, and any action or proceeding shall be filed and maintained in, the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

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Representations & Warranties



Miscellaneous Covenants, Continued

Limitations Nothing herein contained shall be deemed or construed to create a partnership or joint venture between the parties hereto, and the Seller shall not represent that it is the Seller's agent for any purpose.

Rights of MSI In reliance upon the representations and warranties made by Mortgage Broker in the Agreement based upon MSI's own credit, collateral and other lending criteria, MSI may, in its sole and unilateral discretion, from time to time accept and review applications from borrowers referred to MSI by Mortgage Broker. Mortgage Broker acknowledges that MSI has not, by its execution of this Agreement, agreed to make loans to borrowers referred to MSI by Mortgage Broker.

- ✓ Loan approvals will be determined solely in the discretion of MSI and MSI shall have no liability to Mortgage Broker or Mortgage Broker's client, based on MSI declining to approve any loan application or to make any loan.

Current License Annexed as a part of the Agreement the Broker provided copies of all mortgage broker or equivalent licenses held by Mortgage Broker, which authorize Mortgage Broker to engage in business of brokering residential mortgage loans. Mortgage Broker warrants that it will continue to maintain all such licenses in good standing at all times.

- ✓ MSI retains the right to annually request copies of current license to document Broker's authorization to continue doing business in the applicable State. Failure to provide evidence is cause for termination of the business relationship between the Broker and MSI.

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Representations & Warranties

Miscellaneous Covenants, Continued

Early Pay-Off In the event that any loan purchased by MSI hereunder is paid in full within 150 days of the date such loan was purchased or funded by MSI or current policy, the Mortgage Broker hereby agrees to repay to MSI the Gross Premium portion of the purchase price paid to the Mortgage Broker.

MSI-Right to Offset In the event Broker fails to pay MSI any sums, which are due, MSI shall be permitted to offset such sums from any amounts, which are due or become due to the Broker.

Appraisals
(5/01/09) The appraisal used in connection with the origination of the Loan was ordered, performed and rendered in accordance with the requirements of all laws and regulations relating to the origination of the Loan and the purchase/funding of the Loan by the Buyer, including, but not limited to, the provisions of the Financial Institution Reform, Recovery and Enforcement Act and the Home Valuation Code of Conduct (HVCC).

HVCC: Conventional appraisals must be ordered, prepared and obtained in full compliance with all aspects of the HVCC as established by Fannie Mae and Freddie Mac and MSI in their respective Guides.

Representations & Warranties



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