Finding Investor Restrictions on Loan Modifications

CT FAIR HOUSING CENTER
Pooling and Servicing Agreements (PSAs)

- Agreement formed at creation of mortgage pool
  - Details the servicer's duties to the pool's investor
- Most are public documents
  - Filed with the SEC along with other documents intended for investor restrictions
- Not proprietary or confidential
- Contain any and/or all investor restrictions
PSAs and HAMP

- HAMP is a servicer-based program. Servicers must modify eligible loans.
- But... non-GSE investors may have a contractual right to object to a HAMP modification
  - "There’s an investor restriction"
  - "Investor isn’t participating"
- Evaluate the claim by reviewing the PSA
  - There might be no restriction (e.g., permits servicer to modify loans in default), or
  - The restriction isn’t as broad as claimed.
Investor Names

- Trustees for mortgage pools or the pools themselves are often named as plaintiffs in foreclosure actions. Check the summons or the affidavit of debt.
  - US Bank N.A. as Trustee for [Investor name]
- If not in foreclosure or you haven’t received the affidavit of debt, you can send a “QWR” to the servicer
  - Response time = 60 business days.
Sincerely,

Thank you for taking the time to acknowledge and answer this request.

Please provide the following information:

[Signature]

[Address]

[City, State, Zip]

[Phone]

[Email]

[Attorney]

[Company]

[Date]

[Return Receipt Requested]
Finding a PSA via SEC.gov

(a/k/a EDGAR)

Sample Plaintiff (includes Investor Name): "HSBC Bank USA, National Association, as Trustee for WFASC Home Equity Asset-Backed Certificates, Series 2007-1"

Servicer = Wells Fargo
1. Go to www.sec.gov and click on "Search for Company Filings" under "Filings & Forms"
2. Click on the top listed link – the one that begins with “Company or fund name”
3. Under “Company Name,” enter part of what follows the “Trustee for” and click on “Contains”

HSBC Bank USA, National Association, as Trustee for WASC Home Equity Asset-Backed Certificates, Series 2007-1
4. Find the particular trust you are looking for and click on the “CIK” link.

HSBC Bank USA, National Association, as Trustee for WFASC Home Equity Asset-Backed Certificates, Series 2007-1
5. Under “Filings,” click on each **8-K** until you find the Pooling and Servicing Agreement.
...you find one that has "Pooling and Servicing Agreement" listed as an exhibit (usually Form 4.1).
6. Clicking on the .txt link will bring you to the PSA. The first page should list the servicer.

HSBC Bank USA, National Association, as Trustee for WFASC Home Equity Asset-Backed Certificates, Series 2007-1

<DOCUMENT>
<TYPE>EX-4.1
<SEQUENCE>1
<FILENAME>we8220839-ex4_1.txt
<DESCRIPTION>POOLING AND SERVICING AGREEMENT
<TEXT>

EXHIBIT 4.1

WEILS FARGO ASSET SECURITIES CORPORATION,
Depositor

WEILS FARGO BANK, N.A.,
Servicer

WEILS FARGO BANK, N.A.,
Securities Administrator

and

HSBC Bank USA, National Association,
Trustee

POOLING AND SERVICING AGREEMENT

Dated as of March 30, 2007

Home Equity Asset-Backed Certificates, Series 2007-1

<PAGE>
If EDGAR doesn’t work…

- Google the Loan Number along with “Pooling and Servicing Agreement”
  - This might also help you find the name of the Trust
- Google the name of the Trust
- File a discovery request (if you’re in litigation)
Once You’ve Found The PSA

- It’s long. Use Search/Find – Ctrl+F on PCs
  - Terms like “modify,” “waive,” and “forgive” should help you find the relevant section – it’s usually Section 3.01
  - Alleged restriction:
    “...the Servicer may waive, modify or vary any term of any Mortgage Loan [which is in default or for which default is reasonably foreseeable] or consent to the postponement of strict compliance with any such term or in any manner grant indulgence to any Mortgagor if in the Servicer's reasonable determination such waiver, modification, postponement or indulgence is not materially adverse to the Certificateholders...”
Other Helpful Documents Besides PSAs

- Prospectus Supplement (424B5) from the Filings on Slide 10
  - Not itself a contract with the servicer
  - But it may describe restrictions on loan modifications in easier-to-read language

- Investor guidelines are arguably not contractual restrictions on loan modifications
  - They could be restrictions if the PSA provides for binding investor guidelines (uncommon)
Final Note: Reasonable Efforts

- Even if there are contractual restrictions preventing a HAMP-participating servicer from modifying a loan, the servicer must:
  - "make reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties in order to carry out any modification under HAMP"

- Eff. June 1- has a letter been sent?