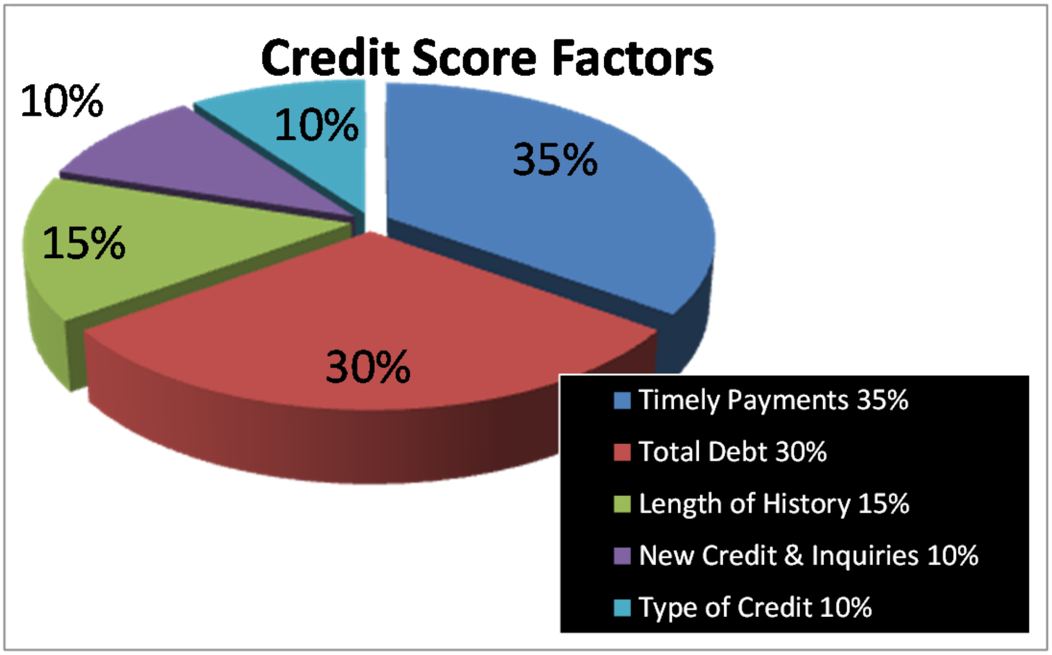


***Credit Ramifications in a Mortgage Crisis***

## I. Overview

**a.** If purchasing a home is the largest single purchase an individual will make, facing the prospect of losing a home is likely the most stressful and agonizing financial situation a person is likely to face. According to the Wall Street Journal 70% of Americans live from paycheck to paycheck. The stress of money and personal finance can be overwhelming, and it starts to impact the quality of life as a whole.

**b.** The stress can seem overwhelming and beyond cure at times. However, no matter what the circumstances may be it is important to realize that there is always a light at the end of the proverbial tunnel. Nothing in our financial lives is forever if we are educated on the protections and policies that exist for consumers.

**c.** In a mortgage crisis there are a lot of concerns and unanswered questions such as:

- **i.** Can I be sued?
- **ii.** How will this affect my credit?
- **iii.** When will this completely end?
- **iv.** Should I file for bankruptcy?
- **v.** Do those ads I hear on the radio really work?

**d.** The biggest variable for most people will be their credit. It has become the adult grade card, it opens and closes doors of opportunity and survival. The stress over credit is a burden, however, for someone in a mortgage crisis it is more important to focus on closure in order to move forward to curing the circumstances.



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**e.** The silver lining: nothing bad on the credit report will last forever. No matter what the advertisements on the radio and television may say, nothing is forever, although scenarios vary and some are more extreme than others. It may be necessary to look at bankruptcy as an option, although in some cases bankruptcy may not be necessary. The "B" word is not favorable, although the reality is that it is an efficient means to cleaning up the problems of financial disarray in a very specific and legal manner without leaving the door open to future liability from today's circumstances.

**f.** The other silver lining: a foreclosed homeowner today can be a homebuyer again, not tomorrow, but generally at the 3 year point. In 3 years (FHA 4155 Guidelines as of 4.21.2010) no matter what my circumstances are right now I can buy again, that is 1,095 days, or only 26,280 hours (1/3 or more of which I will sleep through), once again, nothing is forever. Of course at the 3 year mark I have to qualify and there cannot be any derogatory credit issues after the original foreclosure.

**g. Best practices for recovery:**

**i. Save your credit reports forever so that you have a record of dates as to when negative accounts should be coming off of the credit report. Do not assume you should save financial documents for only 7 years;** we have that drilled into our heads because of IRS audit timeframes. You never know when past debt issues will be resurrected and you will need to defend yourself with documentation. Preferably a consumer will have copies of their credit report before, during, and after the housing crisis.

**ii. Review the credit report to see how it is reporting, is everything correct? There are numerous websites offering free credit reports, but they come with a catch. There is only one government mandated website available to U.S. consumers for a free "no strings attached" credit report (www.annualcreditreport.com).** This site does not include a credit score with the credit report, long story short, that is how the legislation went through in 2005 when the Fair Credit Reporting Act was changed to allow the free report. It is worth noting that the three major credit bureaus (Experian, Equifax, and TransUnion) will sell you a credit score, however, if it is called VantageScore do not waste your money. The only score that matters in the mortgage lending industry is the FICO score created by Fair Isaac. In 1995 Fannie Mae approved the FICO score to be used in approving mortgages; no other score has been approved for the mortgage industry. Paying for the VantageScore, which is a product of the credit bureaus, is not only a waste of money, but it can give you an incorrect assessment of your credit score. The VantageScore can be 100+ points higher than the FICO score, so you may think you have a 700 score,



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but the lender may pull a 600 score when they pull the FICO score. You can purchase your FICO score through the credit bureaus or on www.myfico.com. Your best method to getting a FICO score is to have your lender pull it, then there is no question it is the right one.

iii. **Get a copy of the Trustee's Deed Upon Sale off the County Recorder's website to have documentation of foreclosure sale date.**

iv. **Paying expenses with a personal check creates the purest form of documentation because the cancelled check is always available if needed to prove payment was made on-time (date of check and deposit date by endorsement).** Some people choose to pay by money order, this is not the best means of documentation simply because it may be impossible to prove payment was actually received unlike the ease of getting a cancelled check. Paying with cash and money orders is generally a bad idea simply for the fact that in absence of a receipt, it is more difficult to document should the need arise.

v. **The goal for credit should be:**

1. 3 forms of credit (on-time) for 12 – 24 month
    - **a.** Start reestablishing your own credit ASAP, secured credit cards may be necessary, store cards and other lower tier credit accounts may not be available immediately.
    - **b.** If possible be added as an authorized user on the credit card of a relative or close friend:
        - i. Preferably the card would be opened for over 7 years, be paid on-time, and have a low balance.
        - ii. This is also useful for the times when a credit card is necessary such as renting a car, flying, hotel, ordering something online, etc.
2. Proof of on-time rent for 12 months (this is not on report, but important for future lending)
3. Nothing negative since the original financial crisis

vi. **Be meticulous about everything:**

1. Medical collections account for almost half of all consumer collections, pay careful attention to any medical event to be sure that deductibles and/or any amount not paid by insurance is covered. DO NOT LET THESE GO TO COLLECTION. While medical collections can happen to anyone, when someone is trying to overcome past issues, a medical collection carries the potential to crush the chances of getting a mortgage because an underwriter is likely going to look at it as evidence the borrower did not learn their lesson and the likelihood of default is too high.



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2. Watch your utility bills, make sure the last bill is paid when moving, call and double check.
3. Watch cable bills when moving, equipment such as a digital cable box, DVR, and modem can cause a collection to be reported to the credit bureaus if the equipment is not turned back in and properly inventoried. SAVE RECEIPTS, PHYSICALLY TAKE IT BACK YOURSELF.
4. Even the library can be a hazard, some city libraries will turn an account over to collection if a book is not returned.

vii. **Keep your focus on the fact that more time passing reduces the impact from a foreclosure:** The good news – the more time that passes, the less impact past credit issues will have. In 12 month increments everything that was negative will have less and less impact until it no longer exists on the credit report.

## II. Credit System and Credit Scoring

**a.** The credit system in place today is fast, a credit report and score can be obtained by a creditor within seconds of requesting a credit report. Generally used for lending it is the basis for approving or denying loans. The credit score came along in the early 1990's when Fannie Mae approved the FICO score to be used in mortgage approvals. The advent of the credit score saved hours per loan application in terms of approving or denying a loan request.

**b.** The three big credit bureaus (Experian, Equifax, and TransUnion) provide credit reports to creditors. The credit reports contain information on current and past accounts a consumer has had, including details such as amounts owed, payment history, length of time the account has been open, etc.

**c.** The credit bureaus receive information from creditors, this information is placed into the credit report of each individual. The credit score is derived from the information contained in the credit report, the calculation is immediate when a credit report is requested.

**d.** The Five Factors of the FICO Scoring Model:

**i. Payment history accounts for 35% of the score.** Paying accounts on-time is the largest factor for credit scores. An account is considered on-time for reporting purposes as long as the payment is received within 30 days of the due date. If you sent out your payment one day past the due date it may be late in the eyes of the lender. You could be subject to a late charge, but if it is received before it is 30 days past due it will not affect your credit scores. I have had several clients who were nervous about late



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payments only to find out their credit reports do not reflect any late payments. Could a lender report an account that was one day past due as being late to the credit bureaus? Absolutely. Will they? Not likely. It is an accepted practice by lenders to report only payments that are 30 days late. I have yet to encounter a lender that reports prior to 30 days past due. However, we still want to be accountable by sending our payments in before they are due.

ii. **Balances owed accounts for 30% of the score.** The balances we carry have an impact on the credit scores. This comes into play mostly with revolving accounts such as credit cards. The rule of thumb is that you should try to keep your balances on credit cards less than 50% of the available credit limit. Some people suggest to never go above 44%. Some industry spokespeople have even advised keeping credit card balances under 30% of the available limit. The closer you get to the limit on an account the more likely you are to see a decline in credit scores. Try to keep your credit card balances as low as possible.

iii. **Length of credit history accounts for 15% of the score.** The longer positive credit history the better. We can control this to a certain extent. An installment loan has a set lifespan and will be closed when the last payment has been made. Conversely, credit cards (revolving accounts) can have an infinite lifespan. There is one thing I hear people advised to do that makes my skin crawl, "Pay off your credit cards and close them." Contrary to popular belief, closing accounts is not a good thing when it comes to credit scores. If you cannot withstand the temptation to accumulate more debt on open credit cards, then perhaps closing the accounts is your best bet. But I would still recommend putting them out of immediate reach (safe deposit box) to avoid spontaneous purchases and keeping them open if at all possible. You know your habits so do what is right for you. Just know that by wiping out valuable history your credit scores may not be as high as they could be. Reestablishing credit history is like doing the same task twice, so try to avoid closing out history you have already earned. If you were working toward a degree and decided to stop you wouldn't just say "destroy all records of the classes I have already attended, if I change my mind I will start from scratch." There would be no sense in doing that. So don't put yourself in a situation of having to do things twice.

iv. **New credit accounts for 10% of the score.** Inquiries and new accounts fall into this category. Every time a lender gets your credit report or credit score it shows up as an inquiry on your credit report. An inquiry can have a small impact on your credit score, maybe a decline of a point. Gaining a



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new credit account can have a larger impact on your credit score in the short term. The main thing is to not apply for unneeded credit.

v. **Mix of credit accounts for 10% of the score.** A good mix of credit would be credit cards, car loans, mortgages, student loans, etc. Having a mix of credit is ideal. However, it is not imperative. Over time the credit picture will naturally develop a mix on its own as our needs change. Someone with only credit card accounts and nothing else may be at the most risk. However this is not always the case, and keep in mind the "mix" is only 10% of the overall formula.

**e.** Besides borrowing money why do we need credit?

**i.** Employment – 60% of employers surveyed in 2009 by the Society of Human Resource Management said they conduct credit checks of potential employees. This is an increase from 2006 in which only 42% of employers were doing credit checks.

1. Employers may be considering many things, such as the likelihood to be more tempted to steal based on delinquent accounts or high debt-to-income ratio based on the debt present on the credit report. Other considerations:
   - **a.** On the job errors
   - **b.** Longer lunch breaks to take care of personal problems
   - **c.** Requesting paycheck advances
   - **d.** Attempting to borrow money from co-workers
   - **e.** Frequent personal phone calls or incoming collection calls
   - **f.** Absenteeism, attitude, enthusiasm, etc.

2. How employers gauge the credit issues in terms of a hiring decision:

| | | |
|---|---|---|
| **a.** | Outstanding judgments | 64% |
| **b.** | Collection accounts | 49% |
| **c.** | High debt-to-income | 18% |
| **d.** | Foreclosure | 11% |
| **e.** | Medical debt | 1% |

3. High level security positions will almost always require a credit check. If an applicant knows they have credit issues it is wise to prepare a statement of explanation (or place a statement in the credit report for each derogatory account up to 100 words, contact each of three credit bureaus via the websites to do this). An explanation should cover:
   - **a.** Why the circumstance was out of your control



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b. Why the circumstance is unlikely to repeat itself
c. Why the circumstance is unique and out of character for you

ii. Landlords – renting a property will generally require a credit check. The requirements of landlords vary, large apartment complexes may have a credit score requirement, individual property owners may only care about judgment and collections from previous landlords as long as income to afford the rent can be documented.

iii. Cell phone / utilities / cable and internet – setting up new service will sometimes require a credit check if there is no history of previous payments to the provider. In the case of utilities the cutoff may be a score below 700, whereas for a cell phone carrier it may be 620, it varies by provider. A utility will only require a deposit, a cell phone carrier may deny service or require a co-signer (warning to anyone being asked to co-sign, know what you are getting yourself into, it could hurt your credit if the account becomes delinquent)

iv. Insurance – car and homeowners insurance policies can be higher based on a low credit score. Not all insurance companies do this, ask before applying if it might be an issue. The premium difference could be a couple hundred dollars, so it is worth shopping around.

v. Car rental – not a problem when paying with a credit card, however, if paying with a debit card, some car rental agencies require a credit report to be pulled at the time of the rental and may be looking for a 680 credit score or higher. This is not just a problem for someone if they are traveling, this is an issue if they are involved in a car accident and need to rent a car even though their insurance company may be reimbursing them.

## III. How does a mortgage crisis impact the credit?

a. The impact on the credit score will vary, the main issue is the number of months of delinquency. Since 35% of the credit score is based on payment (a late payment is reported if the payment is 30 days past the due date) a delinquency or multiple delinquencies will have the most adverse impact.

b. The main variable to a credit score is the number of accounts, the age of the accounts, and the performance of the accounts, so this can vary dramatically from person to person. Hence, there is no blanket answer to what damage a person might expect when going through a foreclosure or short sale, it hinges on how many months late they become.



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c. What about this common statement heard in the real estate industry: “a foreclosure will drop a credit score 250 points, while a short sale will drop the score only 100 points or less”. This cannot truly be gauged because it does not refer to number of months of delinquency. Someone who is having difficulty making their mortgage payment most likely has derogatory credit of some sort already. The reality is there is gross misconception of how a foreclosure and short sale (settled for less than the amount due) look on the credit report, they are both classifications, but the overall picture for any mortgage that is not “paid as agreed” is that there was a failure to meet the obligation of the note.

   Here is an explanation I received from Craig Watts at Fair Isaac for an article I wrote on this subject:

   i. “Based on the information that lenders report and the way it shows up on consumer credit reports, the FICO scoring model assesses a foreclosure, short sale, or deed in lieu as a serious derogatory tradeline. They all represent a major failure on the part of the consumer to meet his mortgage obligation.

      Keep in mind that the FICO score's goal is only to rank-order consumers based on their future repayment risk. Failure to repay a creditor has consistently proven to be highly predictive of future repayment risk. Down the road a ways, Fair Isaac hopes to see significantly more examples of short sales and deed-in-lieu settlements on the credit report samples that the big credit bureaus provide us to analyze, preparatory to our updating the FICO scoring model. Only then can Fair Isaac statistically determine if there are useful distinctions that the scoring model could make between the predictive value of those settlement types in order to produce a more predictive score”.

d. It is safe to assume that the credit scores will decline, but by how much will depend not only on the mortgage payment history (number of months delinquent) but other factors such as credit card balances, collection accounts, late payments on other accounts such as auto, credit card, and student loans. The credit score is dependent on several things, not just a single item, although if someone reaches 90 days of delinquency on a mortgage they are most likely going to be in the 500 range for their credit score. It is better to avoid saying specific point amounts and refer to a credit score range

   By keeping any conversation about credit scores in a score range rather than specific point drops (i.e. a foreclosure might knock the score down XX points) it becomes a more blanket way to explain the ramifications. For example if someone with an 800 credit score asks me how a foreclosure would impact their credit, while there is no specific answer without actually looking at the credit report after the fact, it would be safe to assume that in a foreclosure they have likely reached 90 days of delinquency or more, that could very well bring them down into the 500 range depending on other accounts being reported that may be positive (i.e. a credit card with a low balance and always paid on-time). However, if someone posed the same question but inserted short sale instead of foreclosure, I would have to guess at how many months delinquent they might become, if the assumption is 90 days then they are likely going to be in the 500 range. Same scenario but a loan modification, the 90 day trial period is reported as a delinquency while it is in the trial period, so the same likely applies, the scores will likely get down in to the 500 range.

IV. **What protections does a homeowner have?** The Federal Trade Commission enforces consumer protections, if a consumer feels they are being taken advantage of they should file a complaint with the FTC at www.ftc.gov.

a. **Fair Credit Reporting Act**: The Fair Credit Reporting Act (FCRA) was designed to allow every consumer the rights to accuracy, fairness and privacy in their credit reports. The FCRA is the cornerstone of the laws and procedures consumer reporting agencies (credit bureaus) and creditors (lenders) must follow. The credit reports provided by the credit bureaus are supposed to contain correct and complete information. Considering the primary purpose of a credit report is to allow businesses (typically lenders or service providers) to make a decision, it is vital that the information be factual.

The truth about credit reports is that a large amount of inaccurate information exists. A study performed by the U.S. Public Interest Research Group showed up to 70% of consumers have mistakes on their credit report. Congress passed the FCRA for the simple reason that consumers need a way to protect themselves. The existence of the Act gives consumers the ability to correct, update, amend and take action regarding the content of a credit report.

The Act only works if a consumer takes action. Unfortunately, many consumers are not aware of their rights. Furthermore, many consumers do not review their credit reports to discover incorrect information. While the credit bureaus are aware of the law, they are providing information given by creditors. Since the credit bureaus only report the information they receive, the burden of verification rests on the shoulders of consumers and creditors.

**There are over 1 billion entries per month by the credit bureaus.** The likelihood of error is great. Entry mistakes, computer malfunctions and other slip-ups create potential for any number of mistakes in credit reporting. Common ways mistakes occur:

- Applying under different names such as James Smith or James Smith-Oliver can lead to problems.
- Clerical errors occur in-putting a loan application.
- Inaccurate social security numbers may be provided, or are input incorrectly by a lender.
- Information may be inadvertently applied to the wrong account.

**Rights under FCRA:** http://www.ftc.gov/os/statutes/031224fcra.pdf (for full text)



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1. You must be told if information in your file has been used against you
2. You can find out what is in your file – www.annualcreditreport.com
3. You can dispute inaccurate information with the credit bureaus
4. Inaccurate information must be corrected or deleted
5. You can dispute inaccurate items with the source of the information
6. Outdated information may not be reported – 7 years for most things, 10 years for a Chapter 7 bankruptcy
7. Access to your file is limited
8. Your consent is required for reports that are provided to employers, or reports that contain medical information
9. You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers – offers could target people with lower credit to take advantage of them
10. You may seek damages from violators

**b. Fair Debt Collection Practices Act:** applies to personal, family, and household debts. This includes money owed for the purchase of a car, for medical care, or for charge accounts. The FDCPA prohibits third-party debt collectors from engaging in unfair, deceptive, or abusive practices while collecting these debts.

- **i.** Debt collectors may contact you only between 8 a.m. and 9 p.m.
- **ii.** Debt collectors may not contact you at work if they know your employer disapproves.
- **iii.** Debt collectors may not harass, oppress, or abuse you.
- **iv.** Debt collectors may not lie when collecting debts, such as falsely implying that you have committed a crime.
- **v.** Debt collectors must identify themselves to you on the phone.
- **vi.** Debt collectors must stop contacting you if you ask them in writing.

The Fair Debt Collection Practices Act applies to third-party collectors, in most cases a mortgage servicer is not classified as a debt collector. However, if the debt is sold on the bad debt market to a collector a consumer needs to know their rights.

## Appendix 1. Dispute Letter to Credit Bureau

Name of Credit Bureau (*Equifax, TransUnion or Experian*):

Date:

To Whom It May Concern:

Please be advised that I have found information on the credit report you are providing to be inaccurate.

The following item(s) are incorrect:
(*Provide the name of the creditor(s), type of account, account number and line number from credit report if possible; describe what it is you are disputing about the account*)



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I am requesting that the item be removed (*or request another specific change*) to correct the information.

Sincerely,

Your Name
Your DOB
Your Address
Your SSN

OFFICIAL RECORDS OF

Unofficial
Document

When Recorded Mail To:
**FIRST AMERICAN TITLE INSURANCE COMPANY**
**1 First American Way,**
**Building 5, Floor 5**
**Westlake, TX 76262**

MAIL TAX STATEMENTS TO:
**AMERICA'S SERVICING COMPANY**
**3476 STATEVIEW BLVD., FORECLOSURE MAC # 7801-013**
**FT. MILL, SC 29715**

EXEMPT TRANSACTION - NO AFFIDAVIT ARS 11-1134-[redacted] B-1

Space above this line for Recorder's use only

APN NO.: [redacted]
TITLE ORDER NO.: [redacted]

TS NO.: [redacted]
LOAN TYPE: **Conventional**

## TRUSTEE'S DEED UPON SALE

**FIRST AMERICAN TITLE INSURANCE COMPANY** as the duly appointed Substitute Trustee under a Deed of Trust referred to below, and herein called "Trustee", does hereby grant and convey without covenant or warranty, expressed or implied to

**The Bank of New York Mellon, fka The Bank of New York as Successor in interest to JP Morgan Chase Bank NA as Trustee for Structured Asset Mortgage Investments II Inc. Bear Stearns ALT-A Trust 2005-8, Mortgage Pass-Through Certificates, Series 2005-8**

herein called Grantee, all right, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the real property situated in the County of **MARICOPA**, State of **ARIZONA**, described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES.**

This conveyance is made pursuant to the powers including the power of sale conferred upon Trustee by that certain Deed of Trust dated **07/13/2005** executed by

[redacted]

as Trustor, **FIRST AMERICAN TITLE INSURANCE COMPANY.**, as TRUSTEE, in which, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR SPECTRUM FINANCIAL GROUP, INC., A ARIZONA CORPORATION**, is named as BENEFICIARY, and recorded on **7/25/2005**, as Instrument [redacted] in book _________, page _________ of Official Records of **MARICOPA**, ARIZONA, and after fulfillment by the SUCCESSOR TRUSTEE of the conditions specified in said Deed of Trust including posting, publishing, recordation of all necessary documents in compliance with Arizona Civil Code 33-809.

Said property was sold by Successor Trustee at public auction on **3/9/2009** in the County of **MARICOPA** in which said property is situated. "Grantee", being the highest bidder at such sale, became the purchaser of said property and made payment therefore to said trustee the amount bid, namely, **$127,500.00**.

IN WITNESS WHEREOF, **FIRST AMERICAN TITLE INSURANCE COMPANY**, as Trustee, has this day caused his name to be hereunto affixed

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY
LT



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