

TO: Securitization Market Participants

FROM: ASF Staff

DATE: November 16, 2010

**RE: ASF Releases Detailed Legal Study re Principles of Valid Mortgage Loan Transfers in Securitization**

**ASF White Paper: “Transfer and Assignment of Residential Mortgage Loans in the Secondary Mortgage Market”**

Recently, a few commentators have raised a number of legal theories questioning whether securitization trusts, either those created by private financial institutions or those created by government sponsored enterprises, such as Ginnie Mae, Fannie Mae or Freddie Mac, have valid legal title to the seven trillion dollars of mortgage notes in those trusts. In an effort to contribute thorough and well-researched legal analysis to the discussion of these theories, the ASF is issuing the White Paper entitled “Transfer and Assignment of Residential Mortgage Loans in the Secondary Mortgage Market” (the “White Paper”). The White Paper provides a detailed overview of the legal principles and processes by which mortgage loans are typically held, assigned, transferred and enforced in the secondary mortgage market and in the creation of mortgage-backed securities (“MBS”). These principles and processes have centuries-old origins, and they have continued to be sound and validated since the advent of MBS over forty years ago.

The White Paper finds that traditional legal principles and processes, including the common law rule that “the mortgage follows the note,” are fully consistent with today’s complex holding, assignment and transfer methods for mortgage loans and those methods are legally effective for participants in the secondary mortgage market to transfer mortgage loans. Thirteen major U.S. law firms noted in White Paper Exhibit A have reviewed the White Paper and believe that the Executive Summary contained therein represents a fair summary of the legal principles presented.

Please click [here](#) for the ASF White Paper and [here](#) for the press release that will be issued this morning. We would like to thank Larry Platt and Phoebe Winder of K&L Gates LLP for their outstanding work serving as ASF’s outside counsel in preparing the White Paper. Last month, ASF released a press statement, which can be found [here](#), noting that MBS legal structures and loan transfers are sound and indicating the organization was working on the White Paper released today.

ASF’s White Paper is discussed in an exclusive story that is appearing in the print edition of this morning’s *Wall Street Journal*. The electronic version of the story can be accessed [here](#) (subscription required).

Additionally, ASF Executive Director Tom Deutsch will appear on CNBC's Squawk on the Street at 10:45 a.m. (ET) today, Tuesday, to discuss mortgage documentation. CNBC will host an online replay following the show at [www.cnbc.com](http://www.cnbc.com).

ASF wishes to thank each of the aforementioned major U.S. law firms as well as the dozens of preeminent MBS attorneys who have contributed to the development of this White Paper.

### **COP Report on Mortgage Documentation**

Early this morning, the Congressional Oversight Panel released a report entitled, "Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation." The report discusses concerns over mortgage documentation and the ability to foreclose.

Please click [here](#) for the full report.

### **Senate Hearing**

Later today at 2:30 PM ET, the Senate Banking Committee will be holding a hearing on a number of these related issues. A live feed and more details for that hearing may be found [here](#).

### **House Hearing**

On Thursday at 10:00 AM ET, the House Financial Services Housing and Community Opportunity Subcommittee will also be holding a hearing on similar issues. A live feed and more details for that hearing may be found [here](#).

Please contact Tom Deutsch at [tdeutsch@americansecuritization.com](mailto:tdeutsch@americansecuritization.com) or at 212.412.7107 with any questions, comments or concerns.

Thank you.