

# FED MY CAPA CITY

**QUESTION FOR TEXANS :** [This scenario may similarly apply in other states, depending upon the laws of that state]

Home Equity loans in Texas are protected by the Texas Constitution. Texas Rules of Civil Procedure, Rule 735, and Rule 736 govern the actions related to home equity loan foreclosures. A requirement for filing an application seeking a court order allowing the foreclosure of a lien under Tex. Const. art. XVI, § 50(a)(6)(D), for a home equity loan, requires "filing a verified application in the district court in any county where all or any part of the real property encumbered by the lien sought to be foreclosed (the "property") is located.". If an agent is acting for a non-resident claimant, how can a verified application be initiated?

Would the agent acting for a non-resident filing a false verified application under Rule 736, Texas Rules of Civil Procedure, be committing perjury?

Is this not a violation of Constitutionally guaranteed rights?

Do you realize reverse mortgages are treated in the same fashion?

## **Scenario:**

To help you better understand this explanation, a little thought work usually helps to warm some slow minds to wake up. So, imagine that you are a citizen, a resident, of Texas [insert your state's name if you live elsewhere]. You choose to contract with an agent to accomplish certain legal tasks for you. Should you ever be faced with a breach of contract, or other such tort, you could choose whether you, the principal, wanted to pursue a suit against the defendant with another agent for you, the principal, or you could opt for your 1<sup>st</sup> agent to pursue the litigation for you, the principal. It would only matter if your agent lived in another state, so long as they are a registered BAR buddy in your state, since you are suing another resident, a citizen in Texas, because you are the principal, and you reside in Texas.

But, what if you live in Oklahoma and your defendant lives in Texas? If you cannot establish capacity and standing, the court has no jurisdiction to opine in your favor even if you are right.

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## STANDING VERSES CAPACITY

In Texas one must prove both *standing* and *capacity* to bring a lawsuit.<sup>1</sup> In *Austin Nursing Center, Inc. v. Lovato*, the Texas Supreme Court stated; “The issue of standing focuses on whether a party has a sufficient relationship with the lawsuit so as to have a "justiciable interest" in its outcome, whereas the issue of capacity "is conceived of as a procedural issue dealing with the personal qualifications of a party to litigate."

## COMMON FACTORS

What does Fannie Mae, Freddie Mac, Ginnie Mae, and Pass-through Certificates (Trusts) all have in common? They are all entities.

Fannie Mae, and Freddie Mac are Government Sponsored Entities, Ginnie Mae is a Government entity, and a Pass-Through Certificate is a Trust entity. Why should this be important to recognize? Capacity?

According to [12 USC 1717](#), Fannie Mae maintains its principal office in the District of Columbia. And proclaims “for purposes of venue in civil actions, to be a resident”.

According to [12 USC 1452](#), Freddie Mac maintains its “principal office in the District of Columbia or at any other place determined by the corporation”. According to [28 USC 1332\(c\)\(1\)](#), Freddie Mac is a citizen of District of Columbia by which it has been incorporated and District of Columbia is where the principal place of business is located.

You ask, “What about the Pass-Through Certificate?”. It is an Estate Trust. An Estate Trust is not a corporation. An Estate Trust is not a national bank. It is a Trust. A Trust is governed according to Trust law of the State in which the Trust was created or formed. In support, look at the “Preliminary Statement” section of the Pooling and Servicing Agreement of [NCMT 2008-1](#). It evidences; “*In exchange*

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<sup>1</sup> [Austin Nursing Center, Inc. v. Lovato](#), 171 SW 3d 845 - Tex: Supreme Court 2005

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*for the Certificates, the Depositor hereby conveys the Trust Estate to the Trustee to create the Trust. The Trust Estate for federal income tax purposes will be treated as three separate real estate mortgage investment conduits (the "Upper-Tier REMIC," the "1-A Lower-Tier REMIC" and the "2-A Lower-Tier REMIC," respectively, and each, a "REMIC")*". [*emphasis* added] What is the trust estate? The Trust, NCMT 2008-1<sup>2</sup>.

If a reader wants to understand a bit more, [Mario Kenny](#) wrote an electronic thingy back in 2012 for an interesting read about the trusts. The missing piece to his standing assertion removed focus as to whether capacity was also a determining factor as to whether the defendant trust lacked standing?

## ENTITIES

Each "entity" was created in some form or fashion, somewhere, in the United States. Fannie, Freddie and Ginnie were all created by some act of Congress.

Pass-Through Certificates are created or formed by other entities to produce certain intangible tasks in the secondary market. Entities like Fannie, Freddie or Ginnie Mae purchase interest in those intangible assets, allegedly to provide additional liquidity to further home ownership in America. Nevertheless, none of these entities are National Banks, according to the National Banking Act. Why would that be important to know? How could these non-resident entities obtain jurisdiction of a Texas court when they are non-residents of Texas, and not a recognized national bank according to the National Banking Act?

Recently, Wells Fargo Bank, N.A. acting as Trustee for an Estate Trust, a trust created according to trust laws of another state could not prove their capacity to invoke a Texas courts jurisdiction in the State of Texas, yet the court failed to recognize such imposter from the caption on the docket.<sup>3</sup> Interestingly enough is the 2013 cause that was dismissed which was captioned [Shaver v. Wells Fargo](#)

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<sup>2</sup> A.k.a. [National City Mortgage Trust 2008-1](#)

<sup>3</sup> [SHAVER V. WELLS FARGO BANK, NA AS TRUSTEE FOR NCMT 2008-1](#)

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[\*Bank, N.A. as Trustee for NCBT 2008-1\*](#) Imagine that, Wells Fargo Bank, N.A. as Trustee for two separate trusts claiming the same property?

Just because a national bank such as Wells Fargo Bank, N.A. may act as an agent, for a Pass-Through Certificate, known as a “Trust”, it does not mean Wells Fargo Bank, N.A. as Trustee is a national bank conducting business as national bank with the capacity to invoke a court’s jurisdiction.

When you are finished reading this article, and you’ve peered into the securities act, or other securities related laws, to verify for yourself, you may wonder how the “signers” of the reports, opinions, or certificates could possibly prove the reports were truthfully signed under the penalty of perjury to meet the requirements of [15 USC 77nnn](#), Reports by Obligors, statement of compliance with indenture provisions, (e)Recitals to certificates or opinions,

## **PRINCIPAL OR AGENT**

There are many demonstrations of these “non-resident” acts as evidenced in most Texas court dockets which are conducted in the names of non-residents like Fannie Mae, Freddie Mac. For Fannie or Freddie acting as principals for their own benefit they could be considered a resident of the state, but Fannie or Freddie acting as an agent for a non-resident like an NCMC 2008-1 Trust, or similar, created in a state other than Texas does not constitute legal capacity which is one of the jurisdictional requirements to access Texas courts.

The National Banking Act, provided the determination of how the national banks could sue or be sued. A National Bank, or its “branches” could possibly be a resident, a citizen of a state, so would it be wise to prove your argument about the banks jurisdictional ability?

The National Banking Act does not extend to cover Trusts, a non-national bank protected by the Act. The National Banking Act does not extend to cover to a non- national bank , such as a Government Sponsored either.

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Hence, Texas courts are somewhat filled with alleged agents for non-residents filing forcible-detainer-and-entry actions using Trusts created to meet the requirements of Trust laws of another state.

How does an agent of a non-resident supply sufficient evidence of ownership to demonstrate superior rights to possession they do not have?

Don't confuse the national banks identification as a national bank lawfully carrying out its duties as a national bank, when the national bank is acting as a agent for a Trust which is not a national bank or a citizen.

You can probably guess that Mortgage Electronic Registration Systems, Inc., A.k.a. MERS, a corporation, with a principal office somewhere other than Texas, is a non-resident also. MERS works as an agent for the intangible members of its corporate fiction. Is MERS a Principle? MERS is an electronic agent, and governed by E-SIGN and UETA, and not the law of agency used for centuries in this country.

### ONE COURT, OF MANY

Plaintiff is a Texas resident. Defendant is a Delaware corporation with a principal place of business in Georgia. Orig. Pet. at ¶ 2-3. It is thus a resident of those states for jurisdictional purposes. 28 U.S.C. § 1332(c)(1) (Corporations "shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business").

[POLJANEC v. HOME DEPOT USA INC.](#), Dist. Court, WD Texas 2014

So, when the bank as a principle in its own rights acts as an agent for a non-resident of Texas, is the principle bank, acting as an agent, lawfully capable of commencing a litigation action in Texas courts for a non-resident of Texas

### IF THAT'S NOT WORRISOME ENOUGH

Do the courts turn a blind eye? Are the AG's ignorant ? Is it the Lawmakers are ignorant?

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Was it Lawmakers or the state AG's who violated 15 USC 15c<sup>4</sup>, when they placed the mortgage settlement monies into state coffers, instead of allocating the monies to the natural persons, a.k.a injured victims rights guaranteed by law?

Can criminally involved government officials or agents be protected by the cover of "immunity" when they violate federal law?

[Woe unto you lawyers!](#)

And he said, Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers.

**Intrinsic Fraud? Extrinsic Fraud? Securities Fraud? Tax Fraud? Treason?**

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<sup>4</sup> [Actions by attorneys general](#)