IN THE SUPREME COURT

STATE OF ARIZONA

JULIA V. VASQUEZ, Plaintiff, v. SAXON MORTGAGE, INC.; SAXON MORTAGE SERVICES, INC.; DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR SAXON ASSET SECURITIES TRUST 2005-3, Defendants.	Case No. CV 11-0091-CQ United States Bankruptcy Court for the District of Arizona Case No. 4:08-bk-15510-EWH

BRIEF OF *AMICUS CURIAE* UNITED TRUSTEES ASSOCIATION ADDRESSING QUESTIONS CERTIFIED BY THE UNITED STATES BANKRUPTCY COURT

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I. INTEREST OF *AMICUS CURIAE*

The United Trustees Association ("UTA") is a multi-state professional association comprised of trustees of deeds of trust, and other members working in industries that provide support services in the nonjudicial foreclosure process (e.g., trustees, substitute trustees, foreclosure agents, legal newspapers, title companies, posting companies, and attorneys). The UTA's trustee members provide reconveyances when secured loans are satisfied and nonjudicial foreclosure services upon borrowers' default for all lenders in the Arizona real estate market.

II. ARGUMENT

Question 1: Is the recording of an assignment of deed of trust required prior to the filing of a notice of trustee's sale under A.R.S. § 33-808 when the assignee holds a promissory note payable to bearer?

A. Arizona's Nonjudicial Foreclosure Statutes Do Not Require the Recording of Assignments.

The first question posed to the Court inquires whether an assignment must be recorded in the land records before a notice of trustee's sale can be issued and recorded. However, the more fundamental question is whether the recording of an assignment is required *at all*, regardless of the timing. Based on a review of the statutory language, the answer is a clear "no." There is simply no statutory requirement for an assignment of deed of trust to be recorded in order for a holder of the note to foreclose.

1. By their Plain Language, Arizona Statutes Permit – But Do Not Require -- the Recording of Assignments.

If the language of a statute is not ambiguous, the Court must interpret the statutory language as it is written, giving effect to the plain meaning of the text. *Paging Network, Inc. v. Ariz. Dep't of Revenue*, 193 Ariz. 96, 97, 970 P.2d 450 (Ct. App. 1998). Additionally, statutory language must be read in context and "in light of its place in the statutory scheme." *Grant v. Bd. of Regents*, 133 Ariz. 527, 529, 652 P.2d 1374 (1982). As this Court has recognized, the Deed of Trust statutes contained in A.R.S. §§ 33-801 et seq. specify the "the only procedure" required for a valid trustee's sale. *Patton v. First Fed. Sav. & Loan Ass'n*, 118 Ariz. 473, 476, 578 P.2d 152 (1978); *see also In re Krohn*, 203 Ariz. 205, 208, 52 P.3d 774 (2002), ("The deed of trust scheme is a creature of statutes . . . ."). These statutes outline each of the requirements that must be fulfilled to perform a valid nonjudicial foreclosure that will pass clear title to the purchaser at the trustee's sale.

The issues in this case revolve around the definition of the term "beneficiary" used A.R.S. §§ 33-807 and 33-808, which permit foreclosure to be conducted by a trustee at the direction of the beneficiary. *See* A.R.S. § 33-807(A). "Beneficiary" is defined as "the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the persons' successor

in interest." A.R.S. § 33-801(1). Plaintiff concludes, without citing to any authority, that the statute means to say "successor in interest as recorded in the land records." (*See* Plaintiff's Br. 5.) However, no such language appears in the statute. Had the legislature intended for the term "beneficiary" in include *only* those persons who were identified in a recorded assignment, it could have included that additional language in the statute. It did not. This Court is not free to read words into the statute which the legislature chose to omit. *Home Builders Ass'n v. City of Scottsdale*, 187 Ariz. 479, 483, 930 P.2d 993 (1997). No language appears anywhere in the statute that would require recordation of an assignment of the trust deed before a successor of the original beneficiary could foreclose.

In further attempt to support her argument that recorded assignments should be required, Plaintiff cites to A.R.S. § 33-411.01, which provides that a document evidencing the sale of an interest in real property must be recorded within sixty days of the transfer. Notably, the second sentence of § 33-411.01 explicitly states that "in lieu" of recording evidence of the transfer, the transferor must provide indemnity to the transferee if the transferee's interest in the property is challenged. Thus, the legislature recognized there would be situations where no evidence of the transfer would be recorded. The legislature *did not* state that such transfers would be invalid, but instead merely provided a remedy to a transferee who is harmed by the lack of a recorded document. Here, the transferee of the beneficial interest in

the Deed of Trust is Deutsche Bank. Under A.R.S. § 33-411.01, Deutsche Bank would have a remedy against the original beneficiary, *at its option*, but nothing in the statute would otherwise render the unrecorded transfer to be void. As the Court of Appeals recognized in analyzing a similar provision under A.R.S. § 33-404, which requires disclosure of the beneficial interests in property held in trust:

> The short answer is that the legislature determines how deep its remedy is to cut. The remedy the legislature fashioned to correct what it perceived to be an evil was to allow the nonoffending party to withdraw from the transaction. Nothing less, but nothing more, was provided.

Blalak v. Mid Valley Transp., 175 Ariz. 538, 542, 858 P.2d 683 (Ct. App. 1993).

No Arizona statute contains any express provision that would require an assignment of a deed of trust to be recorded in order to be valid. The general provision governing perfection of an interest in real property is found at A.R.S. § 33-411(A), which provides: "No instrument affecting real property gives notice of its contents to subsequent purchasers or encumbrance holders for valuable consideration without notice, unless recorded as provided by law in the office of the county recorder of the county in which the property is located." Nothing in this statute would render an unrecorded instrument void. Rather, the statute simply *permits* instruments affecting title to real property to be recorded. *See Watson Constr. Co. v. Amfac Mortg. Corp.*, 124 Ariz. 570, 576, 606 P.2d 421 (Ct. App.

1979), (stating that A.R.S. § 33-411 identifies the types of documents that are "entitled to be recorded").

Further, A.R.S. § 33-412 explicitly recognizes that an unrecorded instrument "shall be valid and binding" between the parties and their heirs, as well as any third parties with notice of the instrument. A.R.S. § 33-412(B); *see also 3502 Lending, LLC v. CTC Real Estate Serv.*, 224 Ariz. 274, 277, 229 P.3d 1016 (Ct. App. 2010). While an assignee beneficiary may be acting at its own peril if it chooses not to record an assignment of the deed of trust -- as there would be no ability to impose constructive notice on third parties that may also assert an interest in the property -- the unrecorded transfer is nonetheless binding between the parties.

The only statutory mention of an assignment of a deed of trust is contained in A.R.S. § 33-818. That statute states that certain instruments, including a trust deed or assignment of beneficial interest under a trust deed, "shall from the time of being recorded impart notice of the content to all persons, including subsequent purchasers and encumbrancers for value[,]" except that recording alone without further notice to the trustor will not invalidate any payments made by the trustor to the prior beneficiary. A.R.S. § 33-818. This statute does nothing more than reaffirm the more generally-applicable rule contained in A.R.S. § 33-411(A), that recording a document provides constructive notice of its contents to the world. Again, the statute does not say that an assignment of deed of trust must be recorded

to be valid, instead stating only that *if* recorded, the document gives constructive notice of its contents.

2. *Other Courts Have Concluded that No Recorded Assignment Is Required.*

Plaintiff's Brief fails to cite a single court opinion that has found Arizona's statutory framework requires the recording of assignments. Her only attempt to do so is a reference to *Newman v. Fidelity Savings & Loan*, 14 Ariz. 354, 357-58, 128 P. 53 (1912), in which the court stated that, "If the law requires or provides for the recording of certain instruments, and they are not recorded, a party searching the records is justified in concluding that no such instrument exists . . . ." (*See* Plaintiff's Br. 6-7.) However, the *Newman* court did not conclude that the law requires the recording of an assignment of a deed of trust. Rather, it merely stated that *if* a document is required to be recorded, then a party is entitled to rely on its absence from the records as evidence that it does not exist. *Newman* provides no support for Plaintiff's position in the present case.

To the contrary, courts considering this question have consistently found that assignments are not required. As one such court recently found, "Arizona law does not require recordation of an assignment of foreclosure rights to become effective. Recordation serves to put parties on notice." *Nichols v. Bosco*, 2011 U.S. Dist. LEXIS 22564, at *13 (D. Ariz. Mar. 4, 2011); *see also Ciardi v. The Lending Co.*,

2010 U.S. Dist. LEXIS 50878, at *9-10 (D. Ariz. May 24, 2010); *Warren v. Sierra Pacific Mortg. Servs. Inc.*, 2010 U.S. Dist. LEXIS 121742, at *10 (D. Ariz. Nov. 15, 2010).

Additionally, the general consensus among courts in other jurisdictions applying nonjudicial foreclosure statutes similar to Arizona is that no assignment of a deed of trust is required. For example, the relevant portion of the Revised Code of Washington provides, "a conveyance of real property . . . may be recorded in the office of the recording officer of the county where the property is situated. Every conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for valuable consideration . . . whose conveyance is first duly recorded." R.C.W. § 65.08.070. This statute is similar to the provisions of A.R.S. § 33-411(A), providing that an unrecorded document is not valid against subsequent bona fide purchasers of the property without notice. In interpreting the Washington statute, courts have found that although the statute allows an assignment to be recorded, it does not impose any mandate that would require an assignment to be recorded before an assignee of the original lender could foreclose. *See Salmon v. Bank of Am. Corp.*, 2011 U.S. Dist. LEXIS 55706, at *21-22 (E.D. Wash. May 25, 2011), (rejecting borrowers' argument that an assignment of deed of trust must be recorded before foreclosure is initiated).

Courts applying California's foreclosure statutes have reached the same conclusion. California Civil Code § 2934 provides that an assignment of a deed of trust "may" be recorded, and from the time it is recorded, it imparts constructive notice to all persons of the contents of the assignment. In construing the meaning of this statute, and finding no express statutory provision that would mandate the recording of an assignment, courts have concluded that no recorded assignment of a deed of trust is required. *See, e.g., Adler v. Sargent*, 109 Cal. 42, 49, 41 P. 799 (1895); *Santens v. Los Angeles Finance Co.*, 91 Cal. App. 2d 197, 202, 204 P.2d 619 (Ct. App. 1949); *Quintero Family Trust v. OneWest Bank, FSB*, 2010 U.S. Dist. LEXIS 6618, at *23 n.6 (S.D. Cal. Jan. 27, 2010).

These cases, both within Arizona and from similarly-situated jurisdictions, confirm that while it is permissible to record an assignment of a deed of trust to impart constructive notice on other potential claimants to the property, an assignment is not statutorily-required. The relevant Arizona statutes make no mention of a recording requirement, but instead merely explain the effects of failing to record an assignment if a challenge arises from a bona fide purchaser or encumbrancer. This Court should interpret the statutes' clear language in the same way.

B. An Entity With Authority to Enforce the Note May Foreclose Without a Recorded Assignment of the Deed of Trust.

It is well established that a transfer of the note carries with it an equitable interest in the security. As the United States Supreme Court explained in 1872, the "transfer of a note carries with it the security, without any formal assignment or delivery, or even mention of the latter." *Carpenter v. Longan*, 83 U.S. 271, 275-76 (1872). This principle has remained unchanged since that time. When the note is transferred, the deed of trust automatically follows the note without the need for a formal assignment of the security instrument. *Hill v. Favour*, 52 Ariz. 561, 568-69, 84 P.2d 575 (1938); *Stock Growers' Fin. Corp. v. Hildreth*, 30 Ariz. 505, 514-15, 249 P. 71 (1926). In the present case, the facts are undisputed that the note was transferred from Saxon to Deutsche Bank. When that transfer was made, an equitable interest in the Deed of Trust transferred along with it, as the security is "a mere incident to the debt which it secures, and follows the transfer of the note with the full effect of a regular assignment." *Ord v. McKee*, 5 Cal. 515, 515 (1855).

Plaintiff's Brief recognizes this principle, but nevertheless argues that a formal assignment of the deed of trust is required. Plaintiff's argument must be rejected, as the law is clear that a transfer of the note results in the automatic transfer of the security "without any formal assignment" of the security instrument. *Carpenter*, 83 U.S. at 275-76. Indeed, "no principle is better settled[.]" *Batesville*

Institute v. Kauffman, 85 U.S. (18 Wall.) 151, 153 (1873). This rule has been repeatedly reaffirmed in Arizona. *See, e.g.*, *Rodney v. Arizona Bank*, 172 Ariz. 221, 223, 836 P.2d 434 (Ct. App. 1992), (finding assignment of a portion of note proceeds automatically transferred an interest in the deed of trust); *Campbell v. Warren*, 151 Ariz. 207, 208-09, 726 P.2d 623 (Ct. App. 1986). Plaintiff has not identified any statutory provision that would alter this well-established rule.

The recording of an assignment of a deed of trust is not necessary to confer standing to foreclose because the security follows the note, rather than the other way around. Consequently, assignments have no particular bearing on who is entitled to foreclose, and this Court should not upset these well-established principles by requiring formal assignment to accompany a transfer of the debt.

C. The Purposes Behind the Recording Statutes Would Not Be Served by Requiring a Recorded Assignment of the Deed of Trust.

The argument being advanced by Plaintiff in this case, and which is frequently advanced by borrowers seeking to avoid foreclosure, appears to be based on the erroneous belief that the recording statutes are aimed at protecting borrowers and ensuring that the borrowers know the identity of the deed of trust beneficiaries at all times. Simply put, that is not the purpose of Arizona's recording statutes. Recording statutes are enacted to protect the persons claiming

rights under the recorded instruments against competing claims. *Bailey v. Kuida*, 69 Ariz. 357, 362, 213 P.2d 895 (1950).

> For instance, if a man has an unrecorded deed to a piece of property he is the owner of the property, and the recording does not in any manner add to his actual title. The only effect of his failure to record is that he is estopped from asserting such rights as against others which may have arisen in favor of other *bona fide* purchasers or encumbrancers who did not have notice of this right.

Sunrise Gold Mining Co. v. Brayton Commercial Co., 51 Ariz. 301, 305-06, 76 P.2d 749 (1938). Assignments are recorded in order to protect the assignee from any potential claims by other parties claiming to hold the beneficial interest in the instrument, not to give borrowers notice of a transfer of the deed of trust or the note. *Federoff v. Pioneer Title & Trust Co.*, 166 Ariz. 383, 388, 803 P.2d 104 (1990); *Price v. N. Bond & Mortg. Co.*, 161 Wash. 690, 698, 297 P. 786 (1931); *Domarad v. Fisher & Burke, Inc.*, 270 Cal. App. 2d 543, 554 (Ct. App. 1969). In this case, the party claiming an interest under the assignment is Deutsche Bank, not Plaintiff, and it is only Deutsche Bank's interest that would be protected by recording the instrument.

This is not to say that borrowers such as Plaintiff are, or should be, left in the dark as to the identity of the bank that owns their debt. Specific consumer protection measures have been enacted to ensure borrowers receive that information. For example, the Truth in Lending Act was amended in 2009 to

include a requirement that each time a loan is sold or otherwise transferred, notice of the transfer must be provided to the borrower within thirty days. 15 U.S.C. § 1641(g). Similarly, the Real Estate Settlement Procedures Act requires that the borrower be notified in writing each time servicing of the loan is transferred. 12 U.S.C. § 2605(b)(1). These provisions ensure that a borrower is informed of who owns the debt, who their monthly payments should be made to, and who they can contact if they want assistance in avoiding foreclosure. Because these interests are adequately protected by other statutes, there is no need to interject a notification requirement into Arizona's recording statutes, which were not enacted as consumer protection measures.

Question 2: Must the beneficiary of a deed of trust being foreclosed pursuant to A.R.S. § 33-807 have the right to enforce the secured obligation? [1]

For the past several years, borrowers seeking to avoid foreclosure have sought relief by contending that the foreclosing beneficiary has not proven it had the power to enforce the promissory note, often seeking to require the beneficiary

[1] As an initial matter, the language of Question 2 certified to this Court is ambiguous and open to several interpretations. For instance, the question could be aimed at addressing whether a beneficiary must prove compliance with the provisions of the Uniform Commercial Code for enforcement of a promissory note prior to pursuing foreclosure; or it could be aimed at addressing whether it is permissible for a beneficiary to be the agent for the note-holder rather than the note-holder itself. These are distinct inquiries, and it is difficult to determine which (if either of these) was contemplated by the Bankruptcy Court. Nevertheless, the UTA will attempt to address both of these distinct questions.

to produce the original note to prove it was qualified to enforce the note under the provisions of the Uniform Commercial Code ("UCC"). Arizona District Courts have repeatedly and consistently rejected this argument, finding that nonjudicial foreclosure under the Deed of Trust Act is not enforcement of the note; hence, production of the note or proof of one's ability to enforce the note is not required. As one District Court recently explained:

> It is unnecessary to decide whether Defendants satisfy the qualifications of a "person entitled to enforce" an instrument under [the UCC] because conducting a trustee's sale under power granted by the Deed of Trust is not the same as enforcing an instrument under the Uniform Commercial Code. In the Deed of Trust Plaintiff not only conveyed the power of sale to the trustee, but also agreed to empower MERS, as the lender's nominee, to exercise the lender's rights, including the right to foreclose. To date, Arizona law does not require the trustee or beneficiary to possess the Note in order to exercise the power of sale granted by the Deed of Trust.

Maxa v. Countrywide Loans, Inc., 2010 U.S. Dist. LEXIS 72521, at *13-14 (D. Ariz. July 19, 2010); *see also Mansour v. Cal-Western Reconveyance Corp.*, 618 F. Supp. 2d 1178, 1181 (D. Ariz. 2009); *Diessner v. Mortg. Elec. Registration Sys.*, 618 F. Supp. 2d 1184, 1187 (D. Ariz. 2009).

Recently, the Arizona Court of Appeals expressed agreement with these federal authorities. *Hogan v. Wash. Mut. Bank, N.A.*, 2011 Ariz. App. LEXIS 133,

at * 8-9 (Ct. App. July 26, 2011).[2] In *Hogan*, the appellate court rejected the borrower's attempt to interject the requirements of the UCC into the nonjudicial foreclosure process:

> Even assuming that the note is an instrument governed by the UCC, [the bank] has not brought an action on the note, but seeks to conduct a sale pursuant to the deed of trust. Hogan's complaint was directing at preventing the trustee sale and he offers no authority that a non-judicial foreclosure of a deed of trust must comply with the UCC.

Id. at *10. In the present case, Plaintiff has likewise failed to demonstrate that the UCC applies to nonjudicial foreclosure. Accordingly, this Court should reach the same conclusion as the District Courts and Court of Appeals and find that a foreclosing party need not prove it is the "person entitled to enforce" the note under the UCC.

A. Nonjudicial Foreclosure is Not an Action to Enforce the Note.

Upon default of an obligation secured by a deed of trust, the creditor must elect one of three alternative remedies: (1) a judicial action to foreclose the security, (2) a nonjudicial trustee's sale of the property, or (3) an action to enforce the promissory note against the borrower personally. *Binder v. Fruth*, 150 Ariz. 21, 22, 721 P.2d 679 (Ct. App. 1986). Enforcement of the note is governed by the

[2] Although the official citation for *Hogan v. Washington Mutual Bank* is not yet available as of the time this Brief is submitted, the *Hogan* opinion was designated for publication, and therefore it may be cited and considered by this Court. *See Hogan v. Wash. Mut. Bank, N.A.*, 2011 Ariz. App. LEXIS 133, at *1 n.1 (Ct. App. July 26, 2011).

requirements of the UCC; nonjudicial foreclosure by way of a trustee's sale is not. Thus, the provisions of the UCC requiring that actions may only be taken by the "person entitled to enforce" the note do not apply to trustee's sales. *See* A.R.S. § 47-3301; *Mansour*, 618 F. Supp. 2d at 1181.

Notably, in *Hogan v. Washington Mutual Bank*, the Court of Appeals explicitly rejected the argument that a beneficiary foreclosing under a deed of trust by way of a trustee's sale had to comply with the UCC by proving it was the "person entitled to enforce" the note. *Hogan*, 2011 Ariz. App. LEXIS 133, at *10-11. The court noted that the plaintiff's "focus on the note is misplaced" because the bank did not bring an action to enforce the note, but instead it opted to foreclose nonjudicially pursuant to the deed of trust. *Id.* at *10. Because nonjudicial foreclosure is not governed by the UCC, the UCC's provisions concerning enforcement of the note were entirely inapplicable.

B. Nothing in Arizona Law Would Prohibit the Entity With Power to Enforce the Note From Designating a Separate Entity to Act as Beneficiary.

As discussed above, the term "beneficiary" is defined as "the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the persons' successor in interest." A.R.S. § 33-801(1). No mention is made of the entity entitled to enforce the note. Instead, the statutory language indicates that the contracting parties (i.e. borrower and lender) may designate a

separate party to act as beneficiary by including language to that effect in the deed of trust. The designated beneficiary may then exercise the rights of the lender, as the lender's agent or nominee. "Absent ascertainable public policy to the contrary, parties are free to contract as they wish." *Smith v. Saxon*, 186 Ariz. 70, 73, 918 P.2d 1088 (Ct. App. 1996).

Furthermore, even without the borrower's consent to designate a third party to act as beneficiary, the lender's contractual rights are freely assignable. *See Sogeti USA LLC v. Scariano*, 606 F. Supp. 2d 1080, 1082 (D. Ariz. 2009); *Highland Vill. Partners, LLC v. Bradbury & Stamm Constr. Co.*, 219 Ariz. 147, 150, 195 P.3d 184 (Ct. App. 2008). As a matter of policy, "the law looks with favor on the free assignability of rights and frowns on restrictions that would limit or preclude assignability." *Easton Bus. Opp. v. Town Exec. Suites*, 230 P.3d 827, 830 (Nev. 2010). Hence, the party holding the power to enforce the note is free to assign its rights to exercise the power of sale to a separate entity acting as beneficiary. *See, e.g., Fontenot v. Wells Fargo Bank, N.A.*, __ Cal. App. __, 2011 Cal. App. LEXIS 1059, at *32-33 (Aug. 11, 2011), (rejecting argument that only the owner of the promissory note could be designated as beneficiary of a deed of trust); *Ciardi v. The Lending Co.*, 2010 U.S. Dist. LEXIS 50878, at *8-9, ("To the extent Plaintiffs rely on a theory that the beneficiary must have an interest in the actual note, Plaintiffs have failed to cite any law so requiring."); *Ogden State Bank*

v. Barker, 40 P. 769, 769 (Utah 1895), ("The mere fact that the mortgagee was not the real owner of the notes, but was simply a trustee or agent for the owner, does not affect the validity of the mortgage."); *Adams v. Niemann*, 8 N.W. 719, 720 (Mich. 1881), ("A mortgage to a third person would be as valid as a mortgage to a creditor. The choice of a mortgagee is a matter of convenience.").

III. CONCLUSION

For the foregoing reasons, as well as the additional reasons and authorities cited in the Brief of Defendants Saxon Mortgage, Inc., Saxon Mortgage Services, Inc., and Deutsche Bank National Trust Company, this Court should find: (1) there is no requirement under Arizona law for an assignment of a deed of trust to be recorded; and (2) the beneficiary of a deed of trust being foreclosed pursuant to A.R.S. § 33-807 is not required to have a right to enforce the secured obligation.

In addition to the above, the Court must also consider the implications of a contrary ruling. A finding that recorded assignments are required would wreak havoc on the multitudes of nonjudicial foreclosures that have already been completed without a recorded assignment of the deed of trust. If this Court were to now find that recorded assignments are required, the finality of those sales could be placed in jeopardy, potentially disrupting the established rights of the current title-holders. A better practice would be to leave the decision up to the Arizona Legislature to determine whether the foreclosure statutes should be amended to

include an express requirement for recording of assignments. Such rule-making is properly the province of the Legislature, and not this Court. Therefore, the UTA respectfully asks this Court to interpret the requirements of Arizona's statutes as they currently stand, not as borrowers such as Ms. Vasquez would prefer them to be, and find that no recorded assignment of a deed of trust is required prior to a trustee's sale.

Dated: August 18, 2011

Respectfully Submitted,
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CERTIFICATE OF WORD COUNT

(Ariz. R. Civ. App. P. 16(a))

The undersigned hereby certifies that this Brief was prepared using proportionately-spaced size 14 Times New Roman font, and contains 4,631 words (excluding the tables of contents and authorities) as counted by the Microsoft Word 2007 computer software used to create it.

Dated: August 18, 2011

By: _____

Paul M. Levine, Esq.
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CERTIFICATE OF SERVICE

I, Josie Streitz, certify that on August 18, 2011, I caused the original and seven (7) copies of the foregoing documents, titled:

- **MOTION OF UNITED TRUSTEES ASSOCIATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF ADDRESSING QUESTIONS CERTIFIED BY THE UNITED STATES BANKRUPTCY COURT**

- **BRIEF OF *AMICUS CURIAE* UNITED TRUSTEES ASSOCIATION ADDRESSING QUESTIONS CERTIFIED BY THE UNITED STATES BANKRUPTCY COURT**

to be delivered to the Clerk of the Arizona Supreme Court, and I further caused two copies of the foregoing to be delivered via U.S. Mail to:

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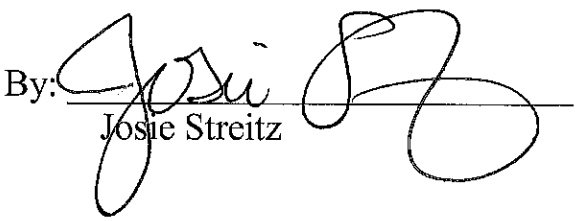
By: 
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