

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

DEKALB COUNTY, and JOHN ACARDO,)
in his capacity as DeKalb Clerk & Recorder,)
on behalf of themselves and all others)
similarly situated,)

Plaintiffs,)

vs.)

FEDERAL HOUSING FINANCE)
AGENCY, AS CONSERVATOR FOR)
FEDERAL NATIONAL MORTGAGE)
ASSOCIATION AND FEDERAL HOME)
LOAN MORTGAGE CORPORATION;)
FEDERAL NATIONAL MORTGAGE)
ASSOCIATION, a federally chartered)
corporation; and FEDERAL HOME LOAN)
MORTGAGE CORPORATION, a federally)
chartered corporation,)

Defendants.)

) Case No.

) Honorable Judge:

) **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

NOW COME the Plaintiffs and complain of Defendants as follows:

1. Plaintiff DeKalb County is duly organized body politic. Plaintiff John Acardo is the County Clerk & Recorder of DeKalb County.
2. Defendant Federal National Mortgage Association (“Fannie Mae”) is a federally-chartered private corporation with its principal place of business in Washington, D.C.
3. Defendant Federal Home Loan Mortgage Corporation (“Freddie Mac”) is a federally-chartered private corporation with its principal place of business in McLean, Virginia.
4. Defendant Federal Housing Finance Agency (“FHFA”) is an agency of the United States with its principal place of business in Washington, D.C.

5. The parties are citizens of different states and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00). As a result, this Court has jurisdiction pursuant to 28 USC §1332.

6. In addition, this case requires the interpretation of federal law in order to adjudicate Plaintiffs' state law claims. As a result, this Court has jurisdiction pursuant to 28 USC §1331.

7. Plaintiffs are located in this judicial district, Defendants do business in this judicial district, and Plaintiffs' claim arises out of Defendants' activities in this district. As a result, venue is proper in this district.

CLASS ACTION ALLEGATIONS

8. Plaintiffs bring this action on their own behalf and, pursuant to Fed. R. Civ. P. 23, on behalf of a class of persons defined as any Illinois county, and the Recorder or Registrar of Titles of said counties, which have recorded a deed or other conveyance from Defendants Fannie Mae or Freddie Mac where those Defendants have claimed they are exempt from the Illinois Transfer Tax as set forth in 35 ILCS 200/31-1, *et seq.*

9. The members of the class are so numerous that joinder of all members is impracticable. The total number of class members is believed to include all Illinois counties. There are 102 counties in Illinois.

10. The questions of law and fact common to the class concern whether Defendants Fannie Mae and Freddie Mac qualify for the exemptions they claim from the Illinois Transfer Tax. These common questions will predominate over any individual questions throughout the litigation.

11. The claim of Plaintiffs and the absent class members have a common origin and share a common basis. Their claim originates from the same practice by Defendants Fannie Mae and Freddie Mac and Defendants act in the same way toward Plaintiffs and the members of the class. Consequently, the named Plaintiffs and each class member has been the victim of Defendants' actions. Plaintiffs' claim is typical of the claim of absent class members. If brought individually, the claim of each class member would necessarily require proof of the same material and substantive facts, and seek the same remedies.

12. The Plaintiffs are willing and prepared to serve the Court and the proposed class in a representative capacity. The Plaintiffs will fairly and adequately protect the interest of the class and have no interest adverse to, or which directly and irrevocably conflicts with, the interests of other members of the class. Plaintiffs have retained counsel experienced in prosecuting complex class action litigation.

13. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual claims by the class members are impractical as the costs of prosecution may exceed what any class member has at stake.

PLAINTIFFS' CLAIM

14. Pursuant to Illinois statute, 35 ILCS 200/31-1, *et seq.*, the grantor in a real estate transaction is to pay the recorder or registrar of titles of the county in which the property is situated a real estate transfer tax for the privilege of recording various documents with the County (the "Transfer Tax").

15. Defendants Fannie Mae and Freddie Mac have been the grantors in many real estate transactions in Illinois which they have recorded with the Recorder or Register of Deeds and have not paid the Transfer Tax.

16. Defendants Fannie Mae and Freddie Mac have not paid the Transfer Tax because they have claimed on the face of the documents they have recorded that the transaction is exempt from the Transfer Tax. They sometimes claim the transaction is exempt because they are government entities and, under Illinois statute, government entities are exempt. Other times they claim they are exempt pursuant to federal statute. An example of a deed and Transfer Declaration in which Defendant Fannie Mae claims it is exempt is attached as Exhibit A. An example of a deed and Transfer Declaration in which Defendant Freddie Mac claims it is exempt is attached as Exhibit B. Other times they claim they are exempt pursuant to federal statute. *See* 12 U.S.C. § 1723a(c)(2) and 12 U.S.C. § 4617(j)(2).

17. None of the claimed exemptions described above apply. Defendants Fannie Mae and Freddie Mac are federally chartered private corporations and not government entities. Defendants' federal law exemption from certain taxes does not include the Transfer Tax.

18. On some occasions Defendants have paid the Transfer Tax and not asserted an exemption, implicitly recognizing the inapplicability of the claimed exemptions. *See* Exhibit C.

19. Defendants Fannie Mae and Freddie Max have failed to pay the Transfer Tax as required by law. As a proximate result, Plaintiffs have been damaged. Among other things, Plaintiffs are entitled to the Transfer Tax that should have been paid and statutory interest for failure to pay the Transfer Tax pursuant to Illinois statute and law.

20. The claim by Defendants Fannie Mae and Freddie Mac that they are exempt from the Transfer Tax was either negligent, intentional or intended to defraud and Plaintiffs are entitled to the penalties prescribed by Illinois statute and law.

21. Defendant FHFA is the Conservator of Defendants Fannie Mae and Freddie Mac. To the extent that Defendant FHFA is responsible for the acts of Defendants Fannie Mae and Freddie Mac, Plaintiffs seek judgment against Defendant FHFA.

WHEREFORE, Plaintiffs pray that this Honorable Court do the following:

- A. Certify the matter as a class action pursuant to the provisions of subsection (b)(2) and (b)(3) of Fed. R. Civ. P. 23 and order that notice be provided to all class members.
- B. Declare that Defendants are subject to the Transfer Tax;
- C. Award Plaintiffs damages in an amount to be determined by the trier of fact;
- D. Award Plaintiffs statutory interest and penalties;
- E. Award Plaintiffs their costs, prejudgment interest and attorney fees; and
- F. Grant such other relief as is just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury for all issues so triable.

Dated: June 21, 2012

Respectfully submitted,

/s/Robert M. Foote
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