

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT MILLER; AND BERYL
MILLER,
Appellants,
vs.
CITIMORTGAGE, INC.; AND FEDERAL
HOME LOAN MORTGAGE
CORPORATION,
Respondents.

No. 61360

FILED

DEC 17 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY K. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a Foreclosure Mediation Program (FMP) matter. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

In an appeal from a district court order granting or denying judicial review in an FMP matter, this court defers to the district court's factual determinations and reviews de novo the district court's legal determinations. *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. ___, ___, 286 P.3d 249, 260 (2012). To obtain an FMP certificate, a deed of trust beneficiary must: (1) attend the mediation; (2) participate in good faith; (3) bring the required documents; and (4) if attending through a representative, have a person present with authority to modify the loan or access to such person. NRS 107.086(4) and (5) (2011); *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. ___, ___, 255 P.3d 1275, 1278-79 (2011).

Appellants first contend that a deed of trust assignment produced by respondent Citimortgage was "void" because it did not recite the amount of consideration that Citimortgage paid for the assignment. According to appellants, this failure to recite the consideration paid violates NRS 111.210. We disagree. NRS 111.210, part of Nevada's

statute of frauds, applies to “contract[s] . . . for the sale of . . . an[] interest in lands.” NRS 111.210(1). A written assignment of a deed of trust, however, is not a contract, but is an instrument that sets forth the chain of title. A written assignment is therefore akin to a receipt, providing a written record of who is entitled to foreclose on secured property as a means of satisfying a borrower’s obligation under a promissory note. *Cf. Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. ___, ___, 290 P.3d 249, 254 (2012) (indicating that an assignment’s purpose is to complete the chain of title of the person seeking to enforce the note and to proceed with foreclosure). Thus, while a signed writing is required to transfer the beneficial interest in a deed of trust, *see* NRS 111.205, this writing does not need to recite consideration to accomplish its purpose. *See Leyva*, 127 Nev. at ___, 255 P.3d at 1279 (discussing the applicability of NRS 111.205 without reference to NRS 111.210). Accordingly, the district court properly determined that the deed of trust assignment produced by Citimortgage was not “void” for failure to comply with NRS 111.210(1). *Edelstein*, 128 Nev. at ___, 286 P.3d at 260.

Appellants next contend that Citimortgage did not own their loan because a printout from the Mortgage Electronic Registration System, Inc.’s (MERS) website indicated that Citimortgage was merely the servicer and that a different entity, respondent Freddie Mac, was the “investor.” While this printout may suggest as much, Citimortgage appeared at the mediation with the documents needed to establish that it was entitled to enforce appellants’ note and to proceed with foreclosure.¹

¹In contrast, it does not appear that appellants produced the September 2011 MERS printout at the October 2011 mediation, making it
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See *Edelstein*, 128 Nev. at ___, 286 P.3d at 255 (“[T]o have standing to foreclose, the current beneficiary of the deed of trust and the current holder of the promissory note must be the same.”). As this is what the FMP requires, *id.*, the district court did not abuse its discretion in denying appellants’ petition and ordering the issuance of an FMP certificate, and we therefore

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Ninth Judicial District Court Dept. 1
Mark L. Mausert
Pite Duncan, LLP
Douglas County Clerk

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impossible for the mediator to document appellants’ concerns in the mediator’s statement.