

**IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA**

CASE NO.:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
NOT IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS TRUSTEE FOR MFRA TRUST 2014-2,

Plaintiff,

v.

DON A. FESTGE; UNKNOWN SPOUSE OF DON A.
FESTGE; MINDY E. GRIMES FESTGE A/K/A
MINDY E. GRIMES FESTGE; UNKNOWN
SPOUSE OF MINDY E. GRIMES FESTGE A/K/A
MINDY E. GRIMES FESTGE; ANY AND ALL
UNKNOWN PARTIES CLAIMING BY, THROUGH,
UNDER, AND AGAINST THE HEREIN NAMED
INDIVIDUAL DEFENDANT(S) WHO ARE NOT
KNOWN TO BE DEAD OR ALIVE, WHETHER
SAID UNKNOWN PARTIES MAY CLAIM AN
INTEREST AS SPOUSES, HEIRS, DEVISEES,
GRANTEES OR OTHER CLAIMANTS; UNKNOWN
TENANT NO. 1 and UNKNOWN TENANT NO. 2,

Defendant(s).

VERIFIED COMPLAINT FOR FORECLOSURE

Plaintiff, WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS
INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR MFRA TRUST 2014-2,
(hereafter, "Plaintiff"), sues the Defendant(s), DON A. FESTGE; UNKNOWN SPOUSE OF
DON A. FESTGE; MINDY E. GRIMES FESTGE A/K/A MINDY E. GRIMES FESTGE
(hereinafter "MINDY E. GRIMES FESTGE"); UNKNOWN SPOUSE OF MINDY E. GRIMES
FESTGE A/K/A MINDY E. GRIMES FESTGE; ANY AND ALL UNKNOWN PARTIES
CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED

INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEEES OR OTHER CLAIMANTS; UNKNOWN TENANT NO. 1 and UNKNOWN TENANT NO. 2, and alleges:

1. This is an action for monies due under a promissory note and for equitable relief under a Mortgage, and is within the subject matter jurisdiction of this Court.
2. The Plaintiff has complied with the notice requirements of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq., as amended. The Notice, an acceleration/default letter, previously mailed to the Defendant Borrower(s), DON A. FESTGE and MINDY E. GRIMES FESTGE, is attached hereto and incorporated as *Exhibit "A"*.
3. Venue of this action is in Miami-Dade County, Florida because the real property which is the subject matter of this foreclosure action is located in Miami-Dade County, Florida, and because the causes of action that are the subject of this Complaint accrued in Miami-Dade County, Florida.

STATEMENT OF FACTS

4. This is an action to enforce the terms of a mortgage secured by real property located in the State of Florida and as such, Plaintiff has the capacity to initiate a lawsuit in the State of Florida.
5. Plaintiff is the present owner and holder in due course of the Note and the Mortgage, and is entitled to enforce same.
6. Defendant DON A. FESTGE is responsible for the payment of the Note under the terms of the subject Note and Mortgage and upon information and belief, resides in Miami-Dade County, Florida.

7. Defendant MINDY E. GRIMES FESTGE is responsible for the payment of the Note under the terms of the subject Note and Mortgage and upon information and belief, resides in Miami-Dade County, Florida.
8. Defendant UNKNOWN SPOUSE OF DON A. FESTGE is in possession of the subject Property, and upon information and belief, resides in Miami-Dade County, Florida.
9. Defendant UNKNOWN SPOUSE OF MINDY E. GRIMES FESTGE A/K/A MINDY E. GRIMES FESTGE is in possession of the subject Property, and upon information and belief, resides in Miami-Dade County, Florida.
10. Defendants UNKNOWN TENANT NO. 1 and UNKNOWN TENANT NO. 2, upon information and belief, reside in the subject property which is located in Miami-Dade County, Florida.
11. On October 22, 2007, DON A. FESTGE and MINDY E. GRIMES FESTGE executed and delivered a Note to Assurity Financial Services, LLC, a Colorado Limited Liability Company to further evidence a loan from Assurity Financial Services, LLC, a Colorado Limited Liability Company to DON A. FESTGE and MINDY E. GRIMES FESTGE, in the principal amount of \$393,300.00 (the "Note"). Pursuant to Fla. Stat. 702.015(4), a copy of the Note and any endorsements or allonge(s) is/are attached to the Certification of Possession of the Original Promissory Note, all attached hereto as *Composite Exhibit "B"*.
12. On October 22, 2007, DON A. FESTGE and MINDY E. GRIMES FESTGE, as Mortgagor(s), executed and delivered the Mortgage to Mortgage Electronic Registration Systems, Inc. solely as nominee for Assurity Financial Services, LLC, a Colorado Limited Liability Company (the "Mortgagee" or "Lender") securing payment of the Note to the Lender. The Mortgage was recorded on November 5, 2007 at Official Records Book 26031 Page 3770

of the Public Records of Miami-Dade County, Florida. A copy of the recorded Mortgage is attached hereto as *Exhibit "C"*.

13. Copies of the assignment(s) of mortgage evidencing the chain of title into the Plaintiff are attached as *Composite Exhibit "D"*.

14. DON A. FESTGE and MINDY E. GRIMES FESTGE failed to pay in full the required monthly payment of principal and interest that was due on July 1, 2011, and all monthly payments that became due thereafter and accordingly, DON A. FESTGE AND MINDY E. GRIMES FESTGE, are in default of the Note.

15. The Property is currently owned by DON A. FESTGE and MINDY E. GRIMES FESTGE, who hold possession of the property. The Warranty Deed from the previous owners to DON A. FESTGE AND MINDY E. GRIMES FESTGE is attached hereto as *Exhibit "E"*.

16. All conditions precedents to the filing of this action have occurred, have been satisfied, or have been waived.

COUNT I
ACTION ON A PROMISSORY NOTE

17. Plaintiff repeats and re-alleges paragraphs 1 through 16 above as if fully stated herein.

18. This is an action for monies due under the Note in excess of \$15,000.00, exclusive of interest, reasonable attorney's fees and costs, and for other relief, and is within the jurisdiction of this Court.

19. The Note provides for monthly payments of principal and interest. See *Composite Exhibit "B"*.

20. Pursuant to the terms of the Note, it is an event of default if DON A. FESTGE and MINDY E. GRIMES FESTGE fail to make a payment in full when due.

21. As a result of DON A. FESTGE and MINDY E. GRIMES FESTGE's payment default, the entire amount due under the Note became, and Plaintiff declares same, due and payable.
22. As of the filing of this Verified Complaint, and pursuant to the terms of the Note, DON A. FESTGE and MINDY E. GRIMES FESTGE owe the Plaintiff, the principal amount of \$402,896.70, along with accrued Note rate interest, accrued default rate interest, late fees, title search expenses, filing fees, other taxable court costs, and reasonable attorney fees and costs if the Plaintiff is retains an attorney to enforce the terms of the Note..
23. The Plaintiff has retained the firm of AIRAN LAW, P.A., and is obligated to pay this firm a reasonable fee for their services.

WHEREFORE, the Plaintiff, WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR MFRA TRUST 2014-2, demands that a judgment be entered against DON A. FESTGE and MINDY E. GRIMES FESTGE for the principal amount of \$402,896.70, along with accrued Note rate and default rate interest, late fees, title search expenses, filing fees, attorney fees and costs, other taxable court costs, and prays for any and all other relief this Court deems just and proper under the circumstances.

COUNT II
MORTGAGE FORECLOSURE

24. Plaintiff repeats and re-alleges paragraphs 1 through 16 above as if fully stated herein.
25. This is an action to foreclose a Mortgage on real property in Miami-Dade County, Florida with address 14027 North Miami Avenue, Miami, FL 33168 (the "Property"), and legally described as follows:

**LOT 104, OF BISCAYNE GARDENS SEC. H PART 1,
ACCORDING TO THE PLAT THEREOF, AS RECORDED IN
PLAT BOOK 44, AT PAGE 5, OF THE PUBLIC RECORDS OF**

MIAMI-DADE COUNTY.

26. The Mortgage was recorded on November 5, 2007 at Official Records Book 26031 Page 3770 of the Public Records of Miami-Dade County, Florida, and mortgaged the Property, then owned by and in possession of Defendants DON A. FESTGE and MINDY E. GRIMES FESTGE. See *Exhibit "C"*.
27. Copies of the assignment(s) of mortgage evidencing the chain of title into the Plaintiff are attached as *Composite Exhibit "D"*.
28. DON A. FESTGE and MINDY E. GRIMES FESTGE have defaulted under the Mortgage and under the Note as a result of failing to pay in full the monthly payment due July 1, 2011, and all subsequent monthly payments.
29. Both DON A. FESTGE and MINDY E. GRIMES FESTGE have failed to cure the payment default and, accordingly, the full amount payable under the Note and Mortgage is now due to the Plaintiff.
30. Defendant UNKNOWN SPOUSE OF DON A. FESTGE may claim an interest in the Property by virtue of homestead rights, possession, or any right of redemption. However, UNKNOWN SPOUSE OF DON A. FESTGE's interest is subject to, subordinate and/or inferior to Plaintiff's interest in the Property.
31. Defendant UNKNOWN SPOUSE OF MINDY E. GRIMES FESTGE A/K/A MINDY E. GRIIMES FESTGE may claim an interest in the Property by virtue of homestead rights, possession, or any right of redemption. However, UNKNOWN SPOUSE OF MINDY E. GRIMES FESTGE A/K/A MINDY E. GRIIMES FESTGE's interest is subject to, subordinate and/or inferior to Plaintiff's interest in the Property.

32. Defendants UNKNOWN TENANT NO.1 and UNKNOWN TENANT NO. 2 may claim an interest in the Property as tenant(s) pursuant to a lease agreement, either written or oral. However, UNKNOWN TENANT NO.1 and UNKNOWN TENANT NO. 2's interest is subject, subordinate and/or inferior to Plaintiff's interest in the Property.

33. Defendants UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNWON PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES OR ORTHER CLAIMANTS may claim an interest in the Property. However, their interest, if any, is subject to, subordinate, and/or inferior to the Plaintiff's interest in the Property.

34. DON A. FESTGE and MINDY E. GRIMES FESTGE owe \$402,896.70 that is due as principal on the Note and Mortgage, along with accrued Note rate and default rate interest, late fees, title search expenses, filing fees, attorney fees and costs, and other taxable court costs.

35. The Plaintiff has retained the law firm of AIRAN LAW, P.A., and is obligated to pay its attorneys a reasonable fee for their services and is entitled to recover those attorney's fees and costs pursuant to the terms of the Note and Mortgage.

WHEREFORE, the Plaintiff, WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR MFRA TRUST 2014-2, requests this Court grant the following relief:

- a. that the Court take jurisdiction of this cause, of the subject matter, and the parties;
- b. that this Court determine the amount due and payable to the Plaintiff under the Note and Mortgage, plus late charges, abstracting, taxes, expenses and costs, including attorney fees and costs;

- c. that the amount be decreed to be a lien on the Property described in the Mortgage;
- d. that the lien be foreclosed and if the amount determined by the Court to be owed to the Plaintiff is not paid within the time set by the Court, the Court foreclose the Mortgage and the Clerk of the Court sell the Property securing the indebtedness to satisfy Plaintiff's mortgage lien in accordance with the provisions of Florida Law;
- e. that any right, title, interest or claim of any Defendant(s), or any party claiming by, through, under or against any Defendant(s) named herein, or hereafter made a Defendant(s), be forever barred and foreclosed;
- f. that upon the issuance and delivery of the Certificate of Title to the successful bidder at the foreclosure sale, any and all Defendants, and/or any and all persons in possession of the Property by, through, under or against any Defendant(s) named herein, or hereafter made a Defendant(s), be required to vacate the Property forthwith;
- g. that the Court retain jurisdiction of this action to make any and all further orders and judgments as may be necessary and proper including, but not limited to, the issuance of a Writ of Possession; and
- h. that the Court order such other and further relief as this Court may deem just and proper under the circumstances including, but not limited to, a deficiency judgment against Defendants DON A. FESTGE and MINDY E. GRIMES FESTGE (*unless said debt has been discharged in bankruptcy proceedings*), if the proceeds of the sale are insufficient to pay the Plaintiff's claim.


Dated this 4th day of August, 2015.

NOTICE OF DESIGNATION OF EMAIL ADDRESS

Pursuant to Florida Rule of Judicial Procedure 2.516, Airan Law, P.A, hereby designates its Primary E-Mail address of **reception@airanlawpa.com** in this matter. Please direct the email to the appropriate attorney and send to the designated email address.

Respectfully submitted,

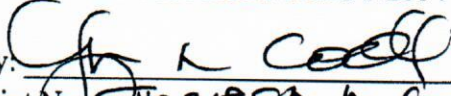
AIRAN LAW, P.A.
Plaza San Remo, Suite 310
6705 SW 57 Avenue (Red Road)
Coral Gables, Florida 33143
Telephone: 305-666-9311

By: 
D.S. "DAR" AIRAN, ESQ.
Fla. Bar No.: 405825
MEGHA M. MAHAJAN, ESQ.
Fla. Bar No.: 91831

VERIFICATION OF COMPLAINT

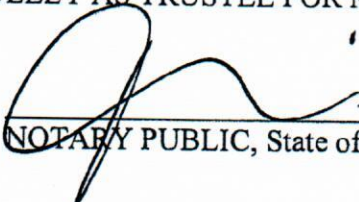
Under penalty of perjury, I declare that I have read the foregoing Verified Complaint for Foreclosure, and the facts alleged therein are true and correct to the best of my knowledge and belief.

FAY SERVICING, LLC AS SERVICER AND ATTORNEY-IN-FACT FOR WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR MFRA TRSUT 2014-2

By: 
Print Name: Theresa M. Cook
For: Fay Servicing, LLC
Its: Foreclosure Specialist

STATE OF IL
COUNTY OF Cook

This instrument was acknowledged before me on 7-26-15 by Theresa Cook as Foreclosure Specialist of FAY SERVICING, LLC AS SERVICER AND ATTORNEY-IN-FACT FOR WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR MFRA TRSUT 2014-2.


NOTARY PUBLIC, State of IL

(Personalized Seal)

