By February 2012, 49 state attorneys general and the federal government announced an historic, joint state-federal settlement with the country's five largest mortgage servicers, including Bank of America Corporation, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup, Inc., and Ally Financial, Inc. (formerly GMAC).

The settlement provides as much as $25 billion in relief to distressed borrowers, and direct payments to states and the federal government. This agreement settles state and federal investigations. Interestingly, data observed shows that the country's five largest mortgage servicers routinely signed foreclosure-related documents outside the presence of a notary public and without really knowing whether the facts they contained were correct. Both of these practices violate the law. The settlement provides benefits to borrowers whose loans are owned by the settling banks as well as to many of the borrowers whose loans they service.

Some of the terms of the agreement required that the government and borrowers preserved the following claims:

1. The release does not grant any immunity from criminal offenses or affect criminal prosecutions.
2. The release does not include claims relating to securitizations of mortgage loans.
3. The release does not include the Mortgage Electronic Registration Systems (MERSCORP, Inc.), a privately held company that operates an electronic registry designed to track ownership of mortgage loans and servicing rights.
4. State attorneys general and the federal agencies signing onto this agreement agree to release the servicers only from servicing, foreclosure and origination liability claims (note that many origination claims are now time barred by statutes of limitation).
5. This agreement does not prevent homeowners or investors from pursuing individual, institutional, or class action civil cases against the servicers.

Because of these preserved claims, settlements have continued in the following years, including the following:

1. JPMorgan Chase agreed to a $13 billion settlement that included paying $6 billion to compensate investors, $4 billion to help struggling homeowners, and the remainder as a fine in early November 2013.
2. A $1.9 billion settlement between the FHFA and Deutsche Bank Structured products announced in December 2013. The agreement resolved ongoing securities fraud-related litigation as well as certain repurchase claims.
3. Ocwen Financial Corporation and its subsidiary, Ocwen Loan Servicing, have agreed to a $2.1 billion dollar joint state-federal settlement on December 20, 2013.
4. Bank of America reached a comprehensive settlement with the U.S. Department of Justice, certain federal agencies, and six states. The settlement includes releases on the securitization, origination, sale, and other specified conduct relating to residential mortgage-backed securities for $9 billion in August 2014.

During the same period, the CFPB has fined over 30 large firms over half a billion dollars, and ongoing investigations will continue until all the statutes of limitation expire. There were government penalties, criminal charges, and civil suits that lasted for 10 years after the savings and loan crisis and the formation of the Resolution Trust Corporation back in the late 1980s.

MORTGAGE PROCEDURES

Several important procedures associated with mortgage instruments merit further discussion. While legal practices do differ between the states, the purpose or reason for certain procedures is generally the same, as we will see in the next section.

Recording

Modern society protects land ownership with the help of its public records, which are open to anyone with an acceptable instrument to file. **Recording** is the act of entering into the public record a written instrument that affects title to property. Other sets of public records, separate from that

for real estate, have a bearing on the quality of title to real estate. These include records regarding taxes, probate, marriage, and judgments.

State laws define what is necessary for an instrument to be recorded; generally, it must be in writing and properly acknowledged. The instrument must be recorded in the county in which the land is located. Recording a document gives constructive notice to the world of the existence of the document and its contents. Failure to record a document does not invalidate the agreement between the parties thereto. Nor does a failure to record invalidate the agreement for any other parties who have notice of its existence. But recording laws specify that if a document is not recorded, it generally is void as against any subsequent purchaser, lessee, or mortgagee acting in good faith who does not have knowledge of the unrecorded document. This means, for example, that if a deed transferring property ownership is not recorded, the record title remains with the seller insofar as innocent third parties are concerned. A subsequent judgment against the seller could result in a valid claim against a property that has already been sold. The purchaser who did not bother to record the deed would most likely be left with a difficult lawsuit and possible loss of the property to the judgment claimant.

One more point should be noted on the nature of recording. If a recorded document is, for some reason, void, recording it does not make it valid.

Priority

From a practical point of view, recording gives priority to documents based on the time they are recorded; for example, a mortgage filed on October 15, 2015, has priority over a mortgage filed on October 16, 2015. However, there is a separate class of liens whose priority is not based on time of filing. This class includes tax liens, mechanic's liens, and special-assessment liens that are a matter of public record. Property taxes become liens when assessed. This is not true of federal income and payroll taxes, which must have claims of record filed to take a priority position as liens. One other way to alter the priority of a claim is a subordination agreement, which we will discuss in a later section.

Releases

Recording is so often thought of in terms of conveying property, or asserting a claim, that the reverse procedure is sometimes overlooked. It is also important to record a release when a claim has been satisfied. If a claim is based on a written document, so should the release be a written document.

Recording a release is most important when dealing with a mortgage. While it is true that payoff of a mortgage note voids the mortgage pledge, the document remains a matter of record and a cloud on the title unless released. Depending on state law, two releases may be needed: If there is a vendor's lien (a claim that derives from a purchase-money debt), a release is needed when it is paid off. And if there is another mortgage claim against the property, it too requires a release.

Releases must be in a recordable form. Sometimes return of original lien instruments to the grantor, or the note marked "paid in full," are thought to satisfy release requirements. That kind of release is valid between the parties involved, but it takes recorded documents to actually clear title to property.

Subordination

Subordination is a method of altering the priority of claims to property by a written agreement. It is a method commonly used in development projects when the land is seller-financed, or even when the land is leased. In a typical transaction, the land seller would hold a purchase-money mortgage on the land sold. Then, to facilitate development, the land seller would agree to subordinate that mortgage in favor of a construction lender. This allows the developer/purchaser to obtain a first mortgage loan to build the intended improvement. Thus, the subordination agreement alters the normal rule of giving priority to the mortgage that is recorded first.

If land is leased to a developer for a development project rather than sold, the landowner could subordinate the fee in favor of a construction loan (or other mortgage claim). Technically, the fee cannot be subordinated to a leasehold mortgage; the procedure is more properly called *encumbering* the fee. But the end result is the same. The construction lender holds a prior claim on the property for repayment of the loan.

A subordination clause can be included in a mortgage instrument permitting a subsequent mortgage to take a higher priority. This is a fairly standard type of clause found in a junior mortgage when an existing prior mortgage is recognized in the junior instrument.

STANDARDIZING LOAN DOCUMENTATION

Documentation for residential loans has become more uniform throughout the country. Both regulators and the industry have worked to promote

standard procedures. Uniform methods make it easier for consumers to better understand the process and enable more accurate comparisons between lenders. Standardization has become a necessity for loan pools in which individual loans are assigned as col- lateral for securities and the cash flow from each must be accounted for. However, commercial loans are still mostly one-of-a-kind types of transactions and are not subject to the regulations imposed on residential loans.

Three standardized instruments are now required for residential loan transactions. All three are mentioned here and will be examined in later chapters. The relevant forms are reproduced in the Appendix of this text.

Uniform Residential Loan Application

The Equal Credit Opportunity Act imposed certain nondiscriminatory requirements that must be incorporated in all residential loan applications. The form used to implement the requirements is a modified version of Fannie Mae's Form 1003 and Freddie Mac's Form 65. It has undergone several revisions, with the most recent one made mandatory for use as of July 2010. An example of this form appears in the Appendix.

Uniform Residential Appraisal Report (URAR)

FIRREA established standards for appraisals that apply to federally regulated lenders. The requirements resulted in a revision of the URAR form made mandatory for use with certain loans after March 1, 2005, for basis URAR (Form 1004) and Market Conditions Addendum (Form 1004MC). Effective April 1, 2009, this form replaced the old Statement of Limiting Conditions and Appraiser's Certification (Form 1004B). The new form is required for all loans involving Fannie Mae, Freddie Mac, VA, HUD/FHA, and RHS. An example appears in the Appendix. While all residential loans are not included in this mandate, it is a document used in more than 90% of all residential mortgage loans and represents another step toward standardization.

HUD-1 Settlement Statement

RESPA sets standards for closing all residential loans, and one of its requirements is the use of a HUD-1 Settlement Statement. The purpose is proper disclosure of information to a consumer/borrower. It is an itemized listing of the consideration tendered in closing a transaction and how the money is distributed to the various parties to the transaction. Chapter 16 covers the details of HUD-1.

GSE-Conforming Loans as a Catalyst for Uniform Loan Documentation

While neither Fannie Mae nor Freddie Mac are limited to purchasing only conforming loans, use of the procedures allows loan originators to avoid the time-consuming examinations necessary for nonconforming or nonuniform documented loans. Conforming loans require more than simply submitting uniform documentation. To be acceptable, a loan must also meet the not-to-exceed loan limits set annually, plus property standards and borrower qualification guidelines. In addition to use of the three standardized documents listed in the preceding section, Fannie Mae and Freddie Mac require the use of their own forms for conforming loans not previously outlined, as follows:

- Verification of Employment (Fannie Mae Form 1005 and Freddie Mac Form 90)
- Verification of Deposit (Fannie Mae Form 1006)
- A uniform state-specific mortgage instrument
- A uniform promissory note that complies with state requirements

Examples of all the forms listed above appear in the Appendix.

It is not uncommon to find conforming loan standards explained to a borrower as "government limits." And in a general sense they are, as both Fannie Mae and Freddie Mac are quasi-government agencies. But the limitations are not in the same class as a government regulation. The standards apply only if the loan originator sells the loan to either Fannie Mae or Freddie Mac. Many investors will buy loans that are sold under the title of conforming except for some provision. The current maximum conforming limits were applied to all conventional mortgages delivered to Fannie Mae in 2015. In prior years, the conforming limit changed every year in response to gradual increases in home values. However, the 2015 general conforming loan limits are identical to those of the previous eight years, reflective of the steep decline of home prices nationwide during the Great Recession and slow recovery in home prices since 2008. The high-cost areas are established by the Federal Housing Finance Agency and may vary depending on geographic location and loan origination date. The Housing and Economic Recovery Act of 2008 changed Fannie Mae's charter to expand the definition of a "conforming" loan, creating two sets of limits for first mortgages: general conforming loan limits and high-cost area conforming loan limits. See Table 6-1 for a breakdown of these new limits.

Table 6-1 Maximum Original Principal Balance for Loans Closed in 2015*

	Contiguous States, District of Columbia, and Puerto Rico		Alaska, Guam, Hawaii, and Virgin Islands	
Units	**General**	**High-Cost***	**General**	**High-Cost***
1	$417,000	$625,500	$625,500	$938,250
2	$533,850	$800,775	$800,775	$1,201,150
3	$645,300	$967,950	$967,950	$1,451,925
4	$801,950	$1,202,925	$1,202,925	$1,804,375

* The limit may be lower for a specific high-cost area; use the Loan Limit Look-Up, Figure 6-1 above, to see limits by location. These limits apply to all loans originated on or before January 1st, 2015. 2015 high-cost area loan limits have increased for 46 counties due to a high-cost area adjustment or the county being newly assigned to a high-cost area. Amounts shown listed above are maximum limits allowed by the provisions of the Housing and Economic Recovery Act of 2008. The specific high-cost area loan limits are established for each county (or equivalent) by FHFA. Lenders are responsible for ensuring that the original loan amount of each mortgage loan does not exceed the applicable maximum loan limit for the specific area in which the property is located. Some counties and states have been removed from High Cost status such as Puerto Rico is no longer a listed as High Cost.

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Loan Document Mandate

In practice, loan originators retain considerable freedom in loan documentation because there are many secondary-market purchasers who do not require conforming loan standards. Basically, residential loans need only two mandated forms: (1) Uniform Residential Loan Application, and (2) the TRID forms. Standardized documents become important when a loan originator wants to sell a loan; at that point, it becomes necessary to meet the requirements of whoever purchases the loan.