

Bryan J. Case
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Skagit County Auditor

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Document title(s): **Order Appointing Custodial Receiver**

Reference number(s) of document(s) assigned or released (if applicable): **N/A**

Plaintiff: **Opus Bank, successor-in-interest to Cascade Bank**

Defendant: **Gerald D. Fischer and Karane Fischer**

Receiver: **D. Keith Kaiser, CPM, Kidder Matthews & Segner**

Legal description: **P124190**

LOT 14 "PLAT OF HARVEST EDGE" AS RECORDED MARCH 17, 2006, UNDER AUDITOR'S FILE NO. 200603170131, RECORDS OF SKAGIT COUNTY, WASHINGTON.

LOT 4, "PLAT OF HARVEST EDGE," AS RECORDED MARCH 17, 2006, UNDER AUDITOR'S FILE NO. 200603170131, RECORDS OF SKAGIT COUNTY, WASHINGTON.

LOT 3, "PLAT OF HARVEST EDGE," AS RECORDED MARCH 17, 2006, UNDER AUDITOR'S FILE NO. 200603170131, RECORDS OF SKAGIT COUNTY, WASHINGTON.

LOT 13, "PLAT OF HARVEST EDGE," AS RECORDED MARCH 17, 2006, UNDER AUDITOR'S FILE NO. 200603170131, RECORDS OF SKAGIT COUNTY, WASHINGTON.

LOT 2, "PLAT OF HARVEST EDGE," AS RECORDED MARCH 17, 2006, UNDER AUDITOR'S FILE NO. 200603170131, RECORDS OF SKAGIT COUNTY, WASHINGTON.

LOT 1, "PLAT OF HARVEST EDGE," AS RECORDED MARCH 17, 2006, UNDER
AUDITOR'S FILE NO. 200603170131, RECORDS OF SKAGIT COUNTY,
WASHINGTON.

SITUATE IN THE CITY OF BURLINGTON, COUNTY OF SKAGIT, STATE OF
WASHINGTON.

Assessor's Tax Parcel Number(s): **P124190, P124191, P124192, P124193,
P124202, P124203**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

OPUS BANK,

Plaintiff,

v.

GERALD D. FISCHER; KARANE
FISCHER, and the marital community
comprised thereof,

Defendants.

No. 12-2-01502-6

**ORDER APPOINTING
CUSTODIAL RECEIVER**

THIS MATTER having come before the Court upon the petition of Opus Bank ("Plaintiff"); the Court having duly considered Plaintiff's Petition for Appointment of Custodial Receiver, the declarations in support thereof, and the other records and files herein; and it appearing to the Court that good cause for the entry of this order has been shown;

NOW THEREFORE, it is ordered, adjudged and decreed as follows:

**ORDER APPOINTING
CUSTODIAL RECEIVER - I**

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I. FINDINGS OF FACT

1.1 Plaintiff is the successor-in-interest via merger to Cascade Bank with regard to the loans described herein.

1.2 Plaintiff is the current holder of six promissory notes executed by the Gerald D. Fischer and Karane Fischer ("Defendants") in favor of Cascade Bank evidencing loans, each having an original principal amount of \$169,875.00. The six promissory notes executed by Defendants are referred to as the "Notes."

1.3 Defendants' obligations under the Notes are secured by the Deeds of Trust described below.

1.4 Plaintiff is the current beneficiary of six deeds of trust recorded in Skagit County on March 5, 2007 (collectively, the "Deeds of Trust"), that encumber certain real property and secure Defendants' obligations under the Notes. The Deeds of Trust are recorded under no. 200703050163, 200703050174, 200703050172, 200703050166, 200703050170, 200703050168, records of Skagit County, Washington. Collectively, the Notes and the Deeds of Trust are referred to as the "Loan Documents."

1.5 The Deeds of Trust encumber certain real properties located at 436 Harvest Edge Place, 447 Harvest Edge Place, 435 Harvest Edge Place, 448 Harvest Edge Place, 423 Harvest Edge Place, and 401 Harvest Edge Place, Burlington, WA (collectively, the "Properties"), as well as all rents, issues, and profits of such real property. The Properties are rental properties and are not occupied by Defendants.

1.6 Each of the Deeds of Trust includes an Assignment of Rents pursuant to which Defendants assigned to the Deed of Trust beneficiary "all the rents and revenues

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1 ('Rents') of the Propert[ies], regardless of whom the Rents of the Propert[ies] are
2 payable."

3 1.7 Pursuant to the Deeds of Trust, Plaintiff has a valid and perfected security
4 interest in each of the Properties and the Rents.

5 1.8 Defendants have failed to make payments under the Notes when due and
6 have not remitted Rents to Plaintiff since at least December, 2011.

7 1.9 Defendants are in default under the terms of the Notes and Deeds of Trust.

8 1.10 Plaintiff has commenced non-judicial foreclosure proceedings under the
9 Deeds of Trust and RCW Ch. 61.24, and has given the statutory Notices of Default
10 required thereunder.

11 1.11 Under the terms of Deeds of Trust, Defendants agreed that upon notice of
12 default, Plaintiff shall be entitled to have a receiver appointed, irrespective of the
13 adequacy of the Plaintiff's security.

14 1.12 Appointment of a receiver is necessary to give effect to the Assignments of
15 Rents contained in the Deeds of Trust.

16 1.13 The proposed receiver is Kidder, Mathews & Segner, Inc. ("Kidder
17 Mathews"), a Washington corporation. Kidder Mathews is not interested in this action,
18 and is eligible and qualified to act as a receiver of the Properties under RCW 7.60.035.
19

20 II. CONCLUSIONS OF LAW

21 2.1 This Court has jurisdiction over Defendants pursuant to RCW
22 4.28.185(1)(a) and (c). Venue is proper in this Court because the Properties are located in
23 Skagit County, Washington.
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25 ORDER APPOINTING
CUSTODIAL RECEIVER - 3

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1 2.2 The terms of the Assignments of Rents contained in the Deeds of Trust
2 entitle Plaintiff to the appointment of a receiver for the Properties upon Defendants'
3 defaults under the Notes.

4 2.3 Pursuant to RCW 7.60.025(1)(b)(i) and (ii), Plaintiff is entitled to the
5 appointment of a custodial receiver for the Properties because (i) the Properties' revenue
6 producing potential is in danger of being lost or impaired, (ii) a receivership is provided
7 for by agreement pursuant to the Assignments of Rents and (iii) a receivership is
8 reasonably necessary to effectuate and enforce the Assignments of Rents.

9 **III. ORDER APPOINTING RECEIVER**

10 3.1 Receiver. Kidder Mathews, acting through David Keith Kaiser (the
11 "Receiver"), is hereby appointed as the Custodial Receiver of the Properties and shall take
12 charge of the Properties, maintain, secure and manage the Properties, review the books
13 and records with respect to the Properties, and collect the rents, deposits and profits
14 thereof for the benefit of Plaintiff. The Properties and Rents shall comprise the
15 Receivership Estate. The Receiver shall not be required to post a bond.

16 3.2 Authority of Receiver. Receiver shall be a "custodial receiver" as defined
17 in RCW 7.60.015. The Receiver shall have the authority, without further order of this
18 Court, to do all things permitted pursuant to RCW 7.60.060, including, but not limited to,
19 the power to do all things which the owner of the Properties might do in the ordinary
20 course of the operation of the business as a going concern or use of the Properties
21 including, but not limited to, the execution , enforcement, cancellation, renewal and
22 modification of leases; the collection of any rents, profits, revenues, income, deposits or
23 other charges payable by any person or entity, including any occupant of any part of the
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25 ORDER APPOINTING
 CUSTODIAL RECEIVER - 4

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1 Properties; the purchase and sale of goods or services in the ordinary course of such
2 business; the incurring and payment of expenses from Receivership funds of the business
3 or property in the ordinary course; the payment of all utilities and other ordinary operating
4 expenses of the Properties; the entering into, modifying or terminating employment or
5 service contracts for the Properties, including without limitation janitorial, security,
6 landscaping, equipment maintenance, roof repair, paving repair, and general maintenance
7 contract; and the enforcement of leases, rental agreements and other agreements relating
8 to the Properties, including the commencement of legal actions against any person for
9 unlawful detainer or the collection of rent.

10 The Receiver shall pay accounts payable on a going-forward basis only, unless the
11 payment of a payable is necessary for the ongoing operations of the Properties. Receiver
12 shall have no obligation to advance its own funds to pay any costs and expenses of acting
13 as Receiver.

14 The personal liability of Receiver shall be governed by RCW 7.60.170. No
15 obligation incurred by Receiver in the performance of its duties and responsibilities,
16 whether pursuant to any contract, by reason of any tort, or otherwise, shall be Receiver's
17 obligation or the personal obligation of its principals or agents. Rather, the recourse of
18 any person or entity to whom Receiver becomes obligated in connection with the
19 performance of its duties and responsibilities shall be solely against the assets of the
20 receivership estate, and the receivership estate shall hold harmless and indemnify
21 Receiver from any and all such obligations except to the extent they arise from Receiver's
22 gross negligence, willful misconduct or fraud.

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25 ORDER APPOINTING
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1 If the Receiver is at any time uncertain as to the scope of the Receiver's authority
2 or as to any matter affecting or relating to the performance of the Receiver's duties, the
3 Receiver shall be free to seek and obtain instructions from this Court with respect to such
4 matters upon motion and notice to the parties. The Receiver at any time may apply for a
5 modification of this Order or for further powers, if such modification or further powers are
6 considered by the Receiver to be necessary for the performance of the Receiver's duties or
7 for the preservation or protection of the Properties.

8 3.3 Management of Properties. The Receiver and his agents shall manage the
9 Properties out of funds generated by the Properties and the proceeds therefrom
10 (collectively, the "Rents"), unless otherwise expressly provided by order of the Court.
11 The Receiver shall take possession of, and may assume and complete, any contract or
12 other transaction in connection with the Properties that the Receiver deems prudent in its
13 business judgment to complete or undertake and may contract for the labor, materials,
14 equipment, and service necessary to perform such contracts. The Receiver may apply to
15 this Court to reject and terminate any incomplete or unexpired contract as Receiver deems
16 prudent in its reasonable business judgment.

17 The Receiver shall have no obligation to complete or file tax returns on behalf of
18 the Properties or Defendants. While acting as Receiver, Receiver shall comply with all
19 applicable laws and regulations relating to tax reporting requirements. On reasonable
20 request, the Receiver shall furnish Defendants with access to books and records within
21 Receiver's custody or control as reasonably may be necessary in order for Defendants to
22 complete and file tax returns on their own behalf.

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25 ORDER APPOINTING
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1 The Receiver is authorized to make such repairs, replacements, alterations, or
2 improvements to the Properties as the Receiver determines to be prudent or necessary.
3 Unless otherwise ordered by the Court, the Receiver is not obligated to undertake, and
4 will have no liability for any remediation or cleanup with respect to hazardous materials
5 presently existing under, on or about any real property used, occupied or operated by
6 Defendants.

7 The Receiver is authorized to review all existing insurance coverage with respect
8 to the Properties and to procure and/or maintain such insurance as the Receiver deems to
9 be necessary to preserve and protect the Properties.

10 3.4 Records. Defendants shall turn over, and the Receiver shall take
11 possession of, all books and records related to the Properties, including, but not limited to
12 all licenses and insurance policies. In addition, Defendants shall be required to leave the
13 current insurance policies in place and the Receiver may be added as an additional
14 insured.

15 3.5 Cooperation. Defendants shall fully and timely cooperate with the
16 Receiver in connection with the Receiver's assumption of performance of the Receiver's
17 duties. Defendants shall grant the Receiver full and unfettered access to the records
18 related to the Properties, including but not limited to computer records, ledgers, contracts,
19 leases, bank statements, deposit slips and checks, and allow the Receiver to examine the
20 same. Defendants shall also provide the Receiver promptly, upon request, with all
21 documents and records necessary to the operation and maintenance of the Properties.
22 Defendants shall also sign all documents (i.e. bank account signature authorizations)
23 reasonably requested by the Receiver to permit the Receiver to perform its duties.

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25 ORDER APPOINTING
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1 3.6 Effect of Receivership on Certain Parties. Immediately upon entry of this
2 Order, Defendants and every other person or entity in a position to exercise control over
3 the Properties are hereby enjoined from obstructing, delaying, or interfering with the
4 Receiver in the performance of its duties or from withdrawing, transferring, or disposing
5 of any records related to the Properties, whether held in the names of Defendants or any
6 other name.

7 3.7 Application of Net Proceeds. Plaintiff shall apply all net rents, incomes,
8 and profits received from the Receiver pursuant to this Order toward a reduction of the
9 loans secured by the Deeds of Trust and evidenced by the Notes (the "Loans"). Plaintiff's
10 acceptance and application of said net rents, income, and profits, however, unless
11 sufficient to fully cure the defaults describe herein, shall not constitute a waiver or cure of
12 the defaults under the Deeds of Trust nor a defense to Plaintiff's foreclosure of the Deeds
13 of Trust encumbering the Properties, nor shall Plaintiff's acceptance of any payments
14 totaling less than the amount required to reinstate the Loans constitute a waiver or cure of
15 the defaults under the Deeds of Trust nor a defense to Plaintiff's foreclosure of the Deeds
16 of Trust.

17 3.8 Rents and Advances by Plaintiff. The Receiver may use the Rents to pay
18 the fees, costs and expenses of the Receiver in the performance of its duties under this
19 Order. Plaintiff, in its sole discretion, may choose to advance funds to the Receiver to the
20 extent that the Rents are insufficient to fund the fees, costs, and expenses of the Receiver.
21 Any and all such funds advanced by Plaintiff to the Receiver shall be added to the
22 indebtedness subject to foreclosure and paid out of the foreclosure proceeds, or, at
23 Plaintiff's election, charged against and paid out of the Receivership and shall be entitled
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25 ORDER APPOINTING
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1 to a first and paramount lien against the Properties. Plaintiff, in its sole discretion, may
2 choose not to make such advances, provided that Plaintiff immediately so advises
3 Receiver in writing, in which case Receiver shall be permitted to resign as Receiver.

4 3.9 Compensation of the Receiver. The Receiver and Kidder Mathews shall be
5 compensated as follows:

6 a. The Receiver shall be paid based upon the following hourly rates:

| Person/Position | Amount |
|---------------------------------|----------|
| Keith Kaiser | \$175.00 |
| Senior Manager/Property Manager | \$150.00 |
| Administrative/Accounting | \$75.00 |

10 b. The Receiver shall be reimbursed for all reasonable fees and costs
11 incurred by its employees and/or agents, including travel expenses (transportation, meals,
12 and lodging) and fees and costs of professionals (including attorneys and accountants).

13 c. Per RCW 7.60.180(4), the Receiver may pay itself from the Rents,
14 without further leave of the Court.

15 d. Notwithstanding the foregoing, hourly fees by the Receiver for
16 work outside the ordinary course shall only be paid upon either: a) notice of the charges to
17 Plaintiff and Defendants, combined with the written consent of Plaintiff and the absence
18 of a written objection from Defendants ten (10) days after notice; or b) a further Order of
19 the Court.
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22 3.10. Counsel for Receiver. The Receiver is authorized to employ as its
23 attorneys the law firm of Riddell Williams P.S. (the "Law Firm"). The Receiver may pay
24 the reasonable fees and costs of the Law Firm from the Rents; provided that fees in excess

25 ORDER APPOINTING
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1 of \$2,500.00 shall not be paid with first obtaining a subsequent Order of the Court after
2 notice to all parties of record.

3 3.11 Payment of Receiver's Professional Fees and Costs. The Receiver shall
4 cause to be filed with the Court a notice of compensation of professionals and serve such
5 notice, together with a reasonably detailed description of the time periods, services, source
6 of payment and amount requested on: (i) counsel for the Plaintiff, K&L Gates; (ii) those
7 parties who have requested notice; and (iii) any party(s) who has recorded a notice of lien
8 against the Properties. If no party in interest objects to such payments or portions of such
9 payments and files such objection with the Court with a copy to the Receiver within ten
10 (10) calendar days following the date of notice, the fees and costs shall be deemed
11 approved as being fully and finally earned without further order or leave of the Court. In
12 the event of such objection, the Receiver shall schedule a hearing on the matter with the
13 Court on appropriate notice. If the Rents are insufficient to pay the approved fees and
14 costs, then Plaintiff shall advance funds to the Receiver sufficient to pay such approved
15 fees and costs. Any such advances will be considered advances pursuant to section 3.8
16 above.

17 3.12 Discharge of Receiver. Upon seven days written notice to respective
18 counsel for Plaintiff and Defendants, the Receiver may request discharge by means of ex
19 parte motion to this Court. Upon Plaintiff's giving of such notice, and in accordance with
20 the procedures of RCW 7.60.180(4), Receiver may and is authorized to use the Rents to
21 compensate Receiver and its professionals and reimburse their respective expenses;
22 provided, however, that if the Rents are insufficient to cover all such compensation and
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25 ORDER APPOINTING
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1 expense reimbursement, then Plaintiff shall make advances sufficient funds to cover any
2 shortfall.

3 3.13 Automatic Stay. Pursuant to RCW 7.60.110, upon entry of this Order,
4 commencement or continuation of any proceeding against Borrower is stayed; as well as
5 enforcement of any judgment, any act to assess or recover any pre-receivership claim, any
6 act to obtain possession of or exercise control over the Properties, or to create, perfect, or
7 enforce any lien against the Properties; except that neither this Order nor RCW 7.60.110
8 shall operate as an automatic stay as to Plaintiff or Receiver, or to the continuation of any
9 judicial action or non-judicial proceeding by Plaintiff to foreclose on its lien on the
10 Properties.

11 DONE IN OPEN COURT this 24 day of August, 2012.

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13 
14 JUDGE/COURT COMMISSIONER

15 Presented by:

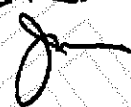
16 K&L GATES, LLP

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18 By 

19 Michael J. Gearin, WSBA # 20982

20 Brian T. Peterson, WSBA # 42088

21 Attorneys for Plaintiff

22 * This order supersedes the order entered
23 herein on 8/21/12, which is hereby vacated.
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25 ORDER APPOINTING
CUSTODIAL RECEIVER - 11

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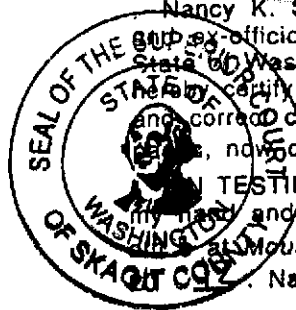
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State of Washington, } ss.
County of Skagit

Nancy K. Scott, County Clerk of Skagit County
sup ex-officio Clerk of the Superior Court of the
State of Washington, for the County of Skagit, do
hereby certify that the foregoing instrument is a true
and correct copy of the original, consisting of 11
pages, now on file in my office.



IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the Seal of said Court at my
office at Mount Vernon this 27 day of Aug,
Nancy K. Scott, County Clerk.

By [Signature]
Deputy Clerk



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