

Electronically  
Filed 9-4-2009

1 JAMES R. FELTON, ESQ. (CA State Bar No. 138767)  
jfelton@greenbass.com  
2 GREENBERG & BASS LLP  
16000 Ventura Boulevard, Suite 1000  
3 Encino, California 91436  
Tel: (818) 382-6200 • Fax: (818) 986-6534  
4

5 Attorneys for Receiver  
Dennis Murphy  
6  
7

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
11 **UNITED STATES SECURITIES AND**  
12 **EXCHANGE COMMISSION,**

13 Plaintiff,

14 v.

15 **EMVEST MORTGAGE FUND, LLC;**  
16 **EMVEST, INC.; and MILON LYLE**  
17 **BROCK,**

18 Defendants.  
19

**CASE NO.: 04CV2295-DMS (RBB)**

**JUDGE:** Hon. Dana M. Sabraw

**RECEIVER'S SEVENTEENTH**  
**VERIFIED REPORT AND**  
**PETITION FOR INSTRUCTIONS**

**CTRM:** 10  
**DATE:** September 25, 2009  
**TIME:** 1:30 p.m. (No Oral Argument)

**Disc. Cut-off:** November 10, 2005  
**Motion Cut-off:** November 10, 2005  
**Trial Date:** January 3, 2006

20 **Emvest Mortgage Fund, LLC**

21 **Receiver's Seventeenth Verified Report and Petition for Instructions;**

22 **Prepared by Dennis Murphy, Permanent Receiver,**

23 **For the Period from 5/7/09 to 9/1/09**

24 This "Receiver's Seventeenth Verified Report and Petition for Instructions" is  
25 filed on behalf of Emvest Mortgage Fund, LLC ("the Fund") in compliance with  
26 reporting requirements for Receivers under Civil Rule 66.1 (Receivers). This  
27 seventeenth report covers the period from 5/7/09 to 9/1/09.  
28



1           **1. Summary of Operations of Receiver:**

2           It is now common knowledge that there is a major worldwide slump. Real  
3           estate markets have been hit especially hard, prices continue to soften, foreclosure  
4           rates continue upward, mortgages are difficult to obtain, liquidity has not reentered the  
5           financial markets, and the survival of many financial institutions remains problematic.  
6           Within those challenging constraints, the Receiver continues to focus on making  
7           prudent business decisions while liquidating the Fund's portfolio.

8           Despite the difficult circumstances in the marketplace, the Fund's operations  
9           continue in a stable manner, accurate and timely financial reports are routinely  
10          prepared, solid financial controls are in place, information is posted on the Fund's  
11          website for all to see, and the Receiver continues to run the business on a daily basis.  
12          Just as in the past, the Receiver continues to focus on running the Fund in a  
13          transparent and prudent manner. The goal has always been to liquidate the Fund's  
14          assets by the 12/31/08 target date, but that did not happen. The entire portfolio is still  
15          for sale, and updated details of each loan are regularly posted on the Fund's web site  
16          for all to see and evaluate. Since there is still so much uncertainty in the marketplace,  
17          it is not clear how long it shall actually take to liquidate the Fund. The Receiver now  
18          believes that a realistic planning target for liquidating the Fund is by the end of the  
19          first quarter of 2010.

20          Here is a summary of operations related matters:

21          1.1   Continued Monthly Distributions to Members: The Court Order filed on  
22          3/2/05 allowing the Receiver, at his discretion, to "resume making monthly  
23          distributions to the Members of up to 6% annually, as long as justified by the Fund's  
24          revenue." The Receiver resumed making regular monthly distributions in March 2005  
25          at an annual rate of 6%, and this policy still continues.

26          As the loan portfolio has decreased in size, the Fund's income has also  
27          decreased accordingly. The Fund has reached the point where the regular 6% monthly  
28          cash payments to Members are being made partially from portfolio income and

1 partially from a return of Member equity. Since Members have come to rely on the  
2 regular monthly payments, since the Fund has an adequate cash reserve, and since the  
3 Fund is in the process of being liquidated, the Receiver continues to believe that  
4 making the regular 6% monthly cash payments is prudent under these circumstances.

5 1.2 Emergency Hardship Refunds to Members: The Receiver initially  
6 received permission under the Court Order filed on 3/2/05 to “make distributions to  
7 Members based on a showing of extreme hardship or emergency, not to exceed 20%  
8 of those Members’ original capital.” The Court subsequently gave permission to the  
9 Receiver in extreme cases to refund up to 75% of a Member’s original capital. Most  
10 recently, in its Order filed on 8/8/06, the Court granted the Receiver’s request to be  
11 able “to disburse up to the book value of a Member’s equity for Members of not more  
12 than \$15,000 who face extreme hardship, in order to provide additional help.” As  
13 appropriate, the Receiver still continues to make hardship disbursements to Members,  
14 and the process continues to work as intended.

15 1.3 Continuation of Voluntary Reduction of Receiver’s Fees: With Court  
16 approval, to conserve Fund assets, the Receiver voluntarily reduced his fixed Fund  
17 management fee from \$12,500 per month down to \$9,000 per month starting in  
18 January, 2008. This reduced fixed-fee arrangement has yielded significant savings to  
19 the Fund. Non-operations fees continue to be excluded from this fixed fee. This fee  
20 payment process continues.

21 1.4 Loan Portfolio Status: The Fund’s loan portfolio has been negatively  
22 affected by the same weak market conditions that continue to be widely reported, and  
23 fund management continues to require substantial close attention. Slow but steady  
24 progress continues to be made toward liquidation of the portfolio, as shown on the  
25 attached financial statements. The portfolio principal balance was \$14,968,831 as of  
26 12/31/06; it has been reduced to \$2,478,314 as of 7/31/09, plus Real Estate Owned  
27 (“REO”) of \$1,207,214. The Receiver continues to market the foreclosed properties  
28 aggressively. The continued uncertainty and the lack of liquidity in the market (which

1 means that new mortgages are more difficult to obtain) means that finding qualified  
2 buyers for REO has been very difficult.

3 1.5 “Member’s Equity to Buy REO” Plan: In the “Order Re: Receiver’s  
4 Thirteenth Report,” the Receiver obtained Court approval for a new plan by which  
5 Members could use their current equity toward the purchase of any of the Fund’s Real  
6 Estate Owned (“REO”). The Receiver’s Fifteenth Report describes the details of this  
7 plan. One property was successfully sold to a Member under this plan, and this offer  
8 remains in effect.

9 1.6 “Discounted Cash-Out” Plan: In the “Order Re: Receiver’s Fourteenth  
10 Report,” the Receiver obtained Court approval for a new plan by which Members can  
11 cash-out their equity at a discount. How this discounted cash-out plan works is as  
12 follows:

13 a. An amount of not to exceed \$500,000 has been allocated for  
14 discounted cash-outs for a limited period after Members were notified of the program.  
15 The original plan was to run the program from 11/1/08 to 12/31/08, but the program  
16 has been extended indefinitely.

17 b. Members can now cash-out at 30% of the value of their current  
18 equity, as shown in the most recent Financial Statements at the time of the cash-out.  
19 (As of 7/31/09, Members’ equity was at 55.29% of their original investment. Hence,  
20 for example, a Member who had initially invested \$10,000 would currently cash-out at  
21 30% of 55.29% of \$10,000, which would result in a cash-out amount of  
22 approximately \$1,650 as of 7/31/09.)

23 c. Withdrawals are done on a first come first served basis, up to the  
24 total \$500,000 cap.

25 d. No partial withdrawals are permitted. Each Member is required to  
26 cash out completely and to sign a release.

27 The program has been extended indefinitely since it appears to provide an  
28 immediate cash exit for certain investors while it does not hurt (and may possibly

1 help) those investors who remain as Members in the Fund.

2 **2. Financial Statements:**

3 Monthly financial statements which conform to Generally Accepted  
4 Accounting Principles ("GAAP") continue to be prepared on a timely basis, and  
5 continue to be posted regularly on the Fund's website (<http://emvest.info>). In  
6 addition, these financial statements are included with the Receiver's periodic reports  
7 sent to Members. Attached are Financial Statements as of 7/31/09 for the Fund,  
8 including a Balance Sheet, Income Statement, Recap of Members' Equity, and a  
9 Schedule of Accrued Interest.

10 Since the size of the Fund's loan portfolio has been reduced from about \$15  
11 million on 12/31/06 to about \$2.4 million on 7/31/09 (plus about \$1.2 million of real  
12 estate owned), and since about \$7.7 million has been paid to withdrawing Members  
13 since the start of 2007, simply comparing current net income to historical net income  
14 is no longer a meaningful approach to assessing the Fund's performance. A more  
15 appropriate approach now being used is now to track the Book Value of a \$10,000  
16 investment, as discussed below.

17 As a reminder, since this is an accrual (rather than cash based) Income  
18 Statement, the net income also includes expenses for 100% of the fees billed by the  
19 Receiver and his attorney although they were not actually paid. The accrued unpaid  
20 fees are shown as Current Liabilities on the Balance Sheet.

21 **2.1. Income Statement:** For the first seven months of 2009, the Fund  
22 recorded negative net income of \$444,279 which includes Bad Debt expenses of  
23 \$375,000. These Bad Debt expenses were taken as an adjustment to try more  
24 accurately to reflect the Trustee's best estimate of the current market value of the  
25 Fund's assets.

26 **2.2. Balance Sheet:** For the period ending 7/31/09, the loan portfolio is  
27 valued at \$2,478,314 and the amount of "Real Estate Owned" ("REO") of \$1,207,214  
28 reflects real estate which has been taken back by the Fund through foreclosures.

1 Additional foreclosures are expected, so the amount of REO is expected to grow.

2       2.3. Recap of Members' Equity: As of 7/31/09, the book value of a \$10,000  
3 original investment is \$5,529 (i.e., about 55% of Members' original investment).  
4 After sustained growth in the value of their investment during the Receivership  
5 through 2006, the drop in Members' equity in 2007, 2008 and 2009 is a continued  
6 reflection of the bad debt write-offs taken and of the extreme weakening of the  
7 market. When put into the context of the overall continued turbulence in the real  
8 estate and subprime mortgage markets, the Emvest Mortgage Fund continues to be in  
9 stronger financial condition than many others.

10       **3. Proposed Strategy and Timeline for Fund Liquidation:**

11       In his Sixteenth Report, the Receiver requested guidance from the Court  
12 regarding the liquidation of the Fund. In its "Order Re; Receiver's Sixteenth Report,"  
13 the Court instructed the Receiver to identify a plan for liquidating the Fund, a timeline  
14 in which the plan could be accomplished, and an estimate of the amounts to be  
15 received by Members. Here is the plan:

16       3.1. Liquidation of Current Loan Portfolio: The Fund currently owns seven  
17 Notes secured by Deeds of Trust, and here is the outlook for these:

18       - Five of these properties (3 commercial and 2 residential) are in foreclosure.  
19 As soon as these properties are taken back, they shall be marketed very aggressively.  
20 If necessary they shall be sold at auction so that they may be liquidated by the end of  
21 the first quarter of 2010.

22       - One of the borrowers is paying timely, and one of the Notes is in the process  
23 of being refinanced. Two parallel tracks shall be followed for the liquidation of these  
24 Notes, with the Receiver selecting the approach that yields the greater benefit. These  
25 Notes shall be offered for sale at a discount to outside investors, and the current  
26 borrowers shall be offered a discount to refinance these Notes. The target for  
27 liquidation of these two Notes is by the end of 2009.

28 ///

1           3.2. Liquidation of Real Estate Owned ("REO"): Here is a brief summary:  
 2           - One house is currently in a sale escrow, and it is expected to close in October.  
 3           - Twelve parcels of land have been listed for more than six months, with very  
 4 little buyer interest. The Receiver shall employ an auction house to sell all of these  
 5 lots in an expeditious manner, and a sale may be expected by the end of 2009 or  
 6 during the first quarter of 2010.

7           - Construction on one house is to be completed by December, and a sale is  
 8 targeted for the first quarter of 2010.

9           3.3 Timeline and Valuation of Liquidation:

10          - A realistic target for completion of the liquidation of the portfolio is by the  
 11 end of the first quarter of 2010.

12          - Liquidation of the assets described above should yield a return to current  
 13 Members of about 48% of their original investment. Since Members have already  
 14 received 42.1% of their original investment back in payments (including both interest  
 15 and return of equity), members would have received back a total of about 90% of their  
 16 original investment.

17          4. Voluntary Reduction of Receiver's Monthly Fees in January 2010:

18          With Court approval, and to further conserve Fund assets, the Receiver  
 19 proposes that his monthly fixed Fund management fee should be reduced from \$9,000  
 20 per month to \$5,000 per month starting in January 2010. Non-operations fees would  
 21 continue to be excluded from this fixed fee.

22 DATED: September 4, 2009

GREENBERG & BASS LLP

24 By: /s/ James R. Felton  
 25 JAMES R. FELTON  
 26 Attorneys for Receiver  
 27 Dennis Murphy



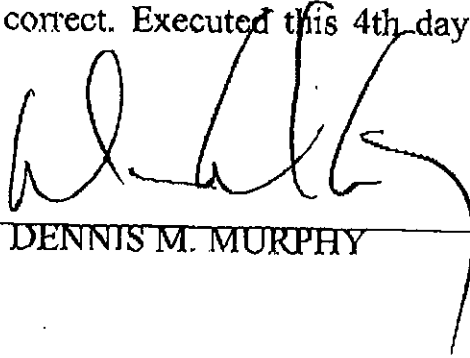
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION OF DENNIS M. MURPHY**

I, Dennis M. Murphy, declare as follows:

I am the Court appointed Permanent Receiver in this matter. I have read the Seventeenth Report of Receiver to be filed concurrently with this Verification and know the contents thereof. The information contained therein is true and correct of my own personal knowledge.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed this 4th day of September, 2009 at Pasadena, California.



\_\_\_\_\_  
DENNIS M. MURPHY

**G&B**  
GREENBERG & BASS LLP

**EMVEST MORTGAGE FUND LLC  
(A LIMITED LIABILITY COMPANY)  
BALANCE SHEET  
July 31, 2009**

**ASSETS**

<b>Current Assets</b>		
Cash in Bank	\$ 898,030	
Accrued Interest Receivable	113,833	
<b>Total Current Assets</b>		<b>\$1,011,863</b>
<b>Loan Portfolio</b>		
Mortgage Loans held	\$ 2,525,683	
Loans in Process & Advanced Costs	368,139	
Allowance for Foreclosed Assets	(415,508)	
		<b>\$2,478,314</b>
<b>Other Assets</b>		
Real Estate Owned	\$ 1,207,214	
Bond - Certificate of Deposit	10,000	
		<b>\$1,217,214</b>
<b>Total Other Assets</b>		<b>\$1,217,214</b>
<b>Total Assets</b>		<b>\$4,707,391</b>

**LIABILITIES AND EQUITY**

<b>Current Liabilities</b>		
Accrued Expenses - Attorney for Receiver	\$ 36,052	
Accrued Expenses - Receiver	139,740	
		<b>\$ 175,792</b>
<b>Total Current Liabilities</b>		<b>\$ 175,792</b>
<b>Total Members' Equity</b>		<b>4,531,599</b>
<b>Total Liabilities and Members' Equity</b>		<b>\$ 4,707,391</b>

*OK*  
*W*  
*8/31/09*

**EMVEST MORTGAGE FUND LLC  
(A LIMITED LIABILITY COMPANY)  
INCOME STATEMENT  
FOR THE SEVEN MONTHS ENDED JULY 31, 2009**

<b>Revenue</b>		
<b>Interest Income</b>	<b>\$</b>	<b>9,618</b>
		<u>          </u>
<b>Total Revenue</b>	<b>\$</b>	<b>9,618</b>
<b>Operating Expenses</b>		
<b>Accounting/Bus Operations - Receiver</b>		<b>59,595</b>
<b>Advance Insurance</b>		<b>5,864</b>
<b>Attorney Expenses - Receiver</b>		<b>25,419</b>
<b>Bad Debt</b>		<b>375,000</b>
<b>Bank Service Charges</b>		<b>3,189</b>
<b>Licenses, Fees &amp; Permits</b>		<b>250</b>
<b>Litigation Response - Receiver</b>		<b>-</b>
<b>Loan Documentation</b>		<b>-</b>
<b>Loan Servicing - FCI</b>		<b>180</b>
<b>Miscellaneous</b>		<b>-</b>
<b>Office Expense</b>		<b>9,465</b>
<b>REO Costs</b>		<b>53,788</b>
<b>Taxes</b>		<b>2,600</b>
<b>Tax Issues - Receiver</b>		<b>-</b>
		<u>          </u>
<b>Total Operating Expenses</b>	<b>\$</b>	<b>535,350</b>
<b>Net Ordinary Income</b>		<u><b>(525,732)</b></u>
<b>Other Income/(Expense)</b>		
<b>Other Income</b>		<b>81,453</b>
<b>Interest Other</b>		<b>-</b>
<b>Other Expense</b>		<b>-</b>
		<u>          </u>
<b>Net Other Income/(Expense)</b>		<u><b>81,453</b></u>
<b>Net Income</b>	<b>\$</b>	<u><u><b>(444,279)</b></u></u>

**EMVEST MORTGAGE FUND LLC**  
**(A LIMITED LIABILITY COMPANY)**  
**RECAP OF MEMBERS EQUITY**  
**FOR THE TIME PERIOD 01/01/02 THROUGH 7/31/09**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Y-T-D</u> <u>2009</u>	<u>Totals</u>
Members' Equity at Beginning of Year	-0-	\$ 3,774,359	\$ 10,646,176	\$ 15,269,624	\$ 15,003,527	\$ 15,840,643	\$ 9,105,176	\$ 5,421,079	
Capital Contributions	\$ 4,215,807	8,080,495	8,014,408	0	0	0	0	0	20,310,710
Net Income	97,702	520,460	721,953	1,147,862	2,790,958	70,881	(1,842,715)	(444,279)	3,062,822
Distributions to Members	(124,574)	(908,462)	(1,570,242)	(857,856)	(992,290)	(687,881)	(532,188)	(290,998)	(6,008,751)
Withdrawals to Members	(182,734)	(426,570)	(2,140,175)	(556,103)	(973,373)	(6,214,386)	(1,309,194)	(154,204)	(12,115,150)
Rounding						1	0	1	2
Syndication Costs	<u>(231,842)</u>	<u>(394,106)</u>	<u>(402,496)</u>	-	11,821	95,918	0	0	<u>(920,705)</u>
Members' Equity at End of Year	<u>\$ 3,774,359</u>	<u>\$ 10,646,176</u>	<u>\$ 15,269,624</u>	<u>\$ 15,003,527</u>	<u>\$ 15,840,643</u>	<u>\$ 9,105,176</u>	<u>\$ 5,421,079</u>	<u>\$ 4,531,599</u>	<u>\$ 4,328,928</u>
Book Value of \$10,000 Investment	\$ 9,359	\$ 9,109	\$ 8,695	\$ 8,817	\$ 9,811	\$ 9,275	\$ 6,491	\$ 5,529	

11

Emvest Mortgage Fund							
Schedule of Accrued Interest							
07/31/09							
FCI Loan #	Name	Balance at 07/31/09	Rate	Last Payment	End of Month	# of Days	Interest Due
FCI/1	Thomas	540,000.00	14.500%	02/08/09	07/31/09	173 F	24,026.30
ALG/122	Sellers	288,917.31	12.000%	10/13/08	07/31/09	291 F	26,121.29
FCI/8	Praise	160,000.00	12.950%	11/11/07	07/31/09	628 BK	9,707.18
ALG/123	Zohn	223,181.72	12.000%	11/09/08	07/31/09	264 F	17,169.71
FCI/20	Mendoza	348,500.00	12.500%	04/27/08	07/31/09	460 BK	18,618.49
FCI/25	Tashchyan	368,048.76	12.000%	12/21/07	07/31/09	588 F	15,851.31
FCI/27	Nelson	310,500.00	12.500%	07/09/09	07/31/09	22	2,339.38
Grand Totals		<u>2,239,147.79</u>					<u>113,833.66</u>

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **16000 Ventura Boulevard, Suite 1000, Encino, California 91436.**

On September 4, 2009, I served the foregoing document described as **RECEIVER'S SEVENTEENTH VERIFIED REPORT AND PETITION FOR INSTRUCTIONS** on the interested parties in this action.

- by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

**SEE ATTACHED SERVICE LIST**

- BY REGULAR MAIL:** I deposited such envelope in the mail at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

- BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
- BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal Express Drop Box located at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was deposited with delivery fees thereon fully prepaid.
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 4, 2009, at Encino, California.

  
Margaret Tyndall

**SERVICE LIST**

United States Securities and Exchange Commission  
v. Emvest Mortgage Fund, et al.  
Case No. 04CV2295-DMS(POR)

Molly M. White, Esq.  
Securities and Exchange Commission  
5670 Wilshire Blvd., 11th Floor  
Los Angeles, CA 90036  
(323) 965-3908 (FAX)

Magnolia Marcelo, Esq.  
Securities and Exchange Commission  
5670 Wilshire Blvd., 11th Floor  
Los Angeles, CA 90036  
(323) 965-3908 (FAX)

David R. Clark, Esq.  
Higgs, Fletcher & Mack LLP  
401 West A Street, Suite 2600  
San Diego, CA 92101-7913  
(619) 696-1410 (FAX)

Dennis M. Murphy, CPA, CIRA  
630 N. Rosemead Blvd., Suite 100  
Pasadena, CA 91107  
(626) 794-7298 (FAX)