

I. INTRODUCTION

SEE: OCC Advisory Letter 2003-2 (2-21-03), available at www.occ.treas.gov/advlst03.htm

SEE: AARP *Subprime Mortgage Lending and Older Americans* (2001)

NOTE: A Subprime Mortgage is a type of mortgage given to a borrower with a less-than-perfect credit report. Lenders charge a higher interest rate on subprime mortgages and argue that they do so to compensate for potential losses from customers.

NOTE: As of 2004, Freddie Mac and Fannie Mae will not invest in subprime mortgages that contain arbitration clauses. See, www.blankrome.com/publications/fsconslend/updatesummer2004-3.asp

A. WHAT IS PREDATORY MORTGAGE LENDING?

1. Mortgage lending becomes predatory when vulnerable consumers are subjected to practices such as:
 - a. Extending loans with terms that borrowers clearly lack the ability to repay
 - b. "Flipping" loans - Frequent refinancings that generate additional loan fees, prepayment penalties, and fees from credit-related products
 - c. Targeting excessively expensive credit products to older borrowers
 - d. "Packing" of excessive and/or hidden fees in the amount financed
 - d. Enticing borrowers to take on additional debt by using fraudulent or misleading sales tactics
 - e. Charging unnecessarily high interest rates and fees
 - f. Using balloon payments to conceal true burden of financing
 - g. Inadequate disclosure of true costs and risks
 - h. Use of mandatory arbitration clauses
2. While most predatory practices are found within subprime loans, not all subprime lenders are predatory
 - a. Subprime lending provides opportunities for those with less than perfect credit to have access to funds to purchase homes and pay for major purchases
 - b. Access to constructive credit should and can be promoted and advanced
 - c. The elimination of predatory practices does not equate to the reduction of availability of credit

B. WHAT REMEDIES ARE AVAILABLE?

1. Rescission that voids the lender's security interest, enabling clients to get back fees and interest paid

2. Statutory penalties designed to curtail predatory practices
3. Actual and/or punitive damages under Unfair and Deceptive Acts and Practices (UDAP) laws, common law, tort and contract theories
4. Cancellation of loan under door-to-door or warranty claims
5. Bankruptcy filing/foreclosure defense to assert borrower rights and protections
6. Renegotiation or refinancing at better rate and affordable terms after negotiation to reduce principal balance in predatory loan

15 U.S.C. §§ 1601 *et seq.*

C. PRIMARY TOOLS

15 U.S.C. §§ 1602(aa),
1639

1. Truth in Lending Act (TILA):
Requires accurate lender disclosures
2. Home Ownership and Equity Protection Act (HOEPA)
 - a. Requires additional disclosures
 - b. Violation of HOEPA = violation of TILA
 - c. Enhanced damages

Table of Contents

I. Introduction	1
A. What is Predatory Mortgage Lending?	1
B. What Remedies are Available?	1
C. Primary Tools	2
II. Who Are the Victims?	3
III. What are the Signs?	7
A. Assorted Lending Practices and Home Loan Products	7
B. Targeted to Vulnerable Populations	13
IV. How Predatory Practices Developed	17
A. Contributing Factors	17
B. Consequences	18
V. How to Prepare A Case	21
A. Client Intake	21
B. Essential Documentation	22
VI. Consumer Remedies	29
A. Introduction	29
B. Technical Defense to Foreclosure	29
C. Truth in Lending Act	29
D. Home Ownership and Equity Protection Act	35
E. Real Estate Settlement Procedures Act	39
F. Unfair and Deceptive Acts and Practices	42
G. Other Remedies	43
H. Reverse Mortgage	47
Bibliography	51
Appendices	
A. Early Warning Signs of Predatory Lending	59
B. Case Studies	61
C. Interview Guide	65
D. Players and Possible Defendants	71
E. Good Faith Estimate	73
F. Fixed Rate Loan Note	74
G. Prepayment Addendum to Note	76
H. Truth in Lending Disclosures	78
I. Sample HUD-1A Form	80
J. Reading Between the lines of HUD-1A	82
K. What Happened to the Mitchells?	83
L. Notice of Right to Cancel	85
M. Regulation Z Disclosures	87
N. Notice of Right of Rescission	89
O. Notice of Rescission	91
P. State Predatory Lending Laws and Regulations	93
Q. HECM Reverse Mortgages: Credit Available to Older Homeowners	95

Bruce Lambert, "New York Planning Crackdown on Excessive Home Loan Fees," *New York Times*, March 16, 2000.

1. Long Island couple missed one monthly payment on mortgage
2. Interest rate jumped from 14% to 24%

F. VICTIM 6

John Hechinger, "At a Price, Low-Income Borrowers Forfeit Cheaper Mortgages to Pay Off Their Debt," *Wall Street Journal*, Dec. 7, 2001.

1. Seasonal forklift driver and disabled former hotel maid
2. Traded 0% Habitat for Humanity loan (\$40,000 note, 15 yr. maturity, \$200 monthly payment) for 11% ARM (\$51,300 note, interest cap at 18%, \$500 monthly payment) from Countrywide Home Loan
3. Tapped into increased home value to consolidate credit card debt
4. Lender claimed that 11% mortgage was better interest rate than credit card interest because borrower would have lower monthly payments

G. VICTIM 7

Illinois Association of Mortgage Brokers v. Office of Banks & Real Estate, No. 01 C 5151 (D. Ill, Aug. 3, 2001) Brief Amici Curiae

1. 70-year-old widow who lived in Chicago home for 25 years
2. \$1250 income from pension and Social Security
3. 3 home repair loans between 1993 and 1998
4. By 1998 mortgage payments were \$780 on \$68,000 debt
5. Sought additional \$4,000 to repair steps of home
6. Lender said needed \$93,500 loan at 12.5% to "make loan worthwhile"
7. Loan included \$8,925 in broker fees and \$1500 in lender fees
8. Monthly payments increased to \$1035

H. VICTIM 8

ACORN v. Household International, Inc., et al., Plaintiff's Complaint (Feb. 2002)

1. California couple received in the mail and cashed a "live check" for \$5,000 from Household
2. Household recontacted to offer refinancing to consolidate \$129,185 first mortgage and to extend \$10,000

II. WHO ARE THE VICTIMS?

A. VICTIM 1

Diana Henriques & Lowell Bergman, "Profiting from Fine Print with Wall Street's Help" *New York Times*, March 15, 2000

1. California widow living on a small pension and Social Security
2. Sought 8.5% adjustable rate mortgage for \$51,493
3. Goals were to consolidate credit card bills and lower monthly payments
4. Final loan had 26 points for \$64,590 loan principal
5. Interest rate set to increase every 6 months

B. VICTIM 2

Shelly Schwartz, "Don't fall prey to lenders: Elderly, low-income consumers still targeted for high-cost home loans." *CNNfn*, March 15, 2000

1. 68-year-old Minnesota widow with \$850 monthly in Social Security
2. Exchanged 7.75% fixed rate loan of \$37,000 for 7% "introductory rate" mortgage
3. Had \$7,000 up-front processing costs, variable rate to 13.75%, final loan amount of \$59,000 with \$750 in monthly payments

C. VICTIM 3

William J. Brennan, Jr., Director, Home Defense Program of Atlanta Legal Aid Society in testimony before US Senate Special Committee on Aging, March 16, 1998

1. 70-year-old Georgian
2. Got 15-year mortgage for \$54,000 at 12.85% and \$596.49 monthly payments
3. In 2011 when 83 years old will owe balloon payment of nearly \$48,000

D. VICTIM 4

William J. Brennan, Jr., Director, Home Defense Program of Atlanta Legal Aid Society in testimony before US Senate Special Committee on Aging, March 16, 1998

1. 68-year-old African-American
2. Original loan in 1987 for \$20,000
3. Loan was flipped six times in six years with final loan amount of \$35,000
4. Paid credit life insurance premium of \$2,300 six times for a total of \$13,800

E. VICTIM 5

"revolving" loan

- 3. Household told couple new loans would save money, produce a lower effective interest rate**
- 4. Did not disclose actual APR, finance charges**
- 5. Did not tell that payments would not include escrow for taxes, as original mortgage did**
- 6. Revolving loan had interest rate of 23.9 % and did not completely amortize, resulting in balloon payment**
- 7. Sold credit life insurance at cost of \$5,265 that offered protection for first 5 years of 30-year mortgage**

III. WHAT ARE THE SIGNS?

A. ASSORTED LENDING PRACTICES AND HOME LOAN PRODUCTS

1. High interest rates

Reg. Z, 12 C.F.R. § 226.32(a)(i)

Rates also at
www.federalreserve.gov

SEE: Fannie Mae Press Release, March 2, 2000 at www.fanniemae.com/news/pressreleases

SEE: Economic Issues in Predatory Lending, U.S. Dept. of the Treasury, OCC Working Paper (7-30-03) at www.mortgagebankers.org/resources/predlend/index.html

12 C.F.R. § 226.32(a)(ii)

PRACTICE TIP: For fees that fall short of HOEPA or state law, consider unconscionability claim.

NOTE: January 2005 CPI data are scheduled to be released on February 23, 2005, at 8:30 am Eastern Time. See, www.bls.gov/cpi/

NOTE: Quicken Loans Inc., estimated that in 2003, fees to refinance a \$150,000 loan ranged from \$1,207 (NC) to \$3,001 (FL).

PRACTICE TIP: All lenders market their services and products. Apply Unfair and

- a. Home Ownership Equity Protection Act (HOEPA) defines as "APR exceeds rate for Treasury securities with comparable maturity by more than 8 percentage points"
- b. Local newspapers publish current Treasury rates
- c. Prime loans are usually one to two percent over Treasury
- d. Almost 50% of subprime borrowers could qualify for lower-cost financing
- e. High interest rates are directly correlated with high mortgage foreclosure rates

2. Excessive fees and charges

- a. HOEPA defines as "points and fees that exceed the greater of 8% of loan amount or \$400"
 - 1) Dollar amount adjusted annually based on Consumer Price Index (CPI-U)
 - 2) Set at \$499 for 2004
- b. By comparison, prime loans usually have one to two points (1% - 2%)

3. Aggressive/deceptive marketing and practices

- a. Deliberately misleading solicitations by phone, door-

Deceptive Acts and Practices (UDAP) provisions for practices/ messages/promotions that "get out of bounds."

to-door, direct mail, TV, Internet, flyers to homeowner who may otherwise not be interested in refinancing

b. "Rescuing" homeowner from foreclosure

- 1) Once credit ruined by high interest loan, predatory lenders are the only lenders willing to make credit available, but at higher terms thus creating captive market
- 2) Homeowners who have received foreclosure notices report aggressive solicitations from lenders to refinance

c. Home improvement contractors

- 1) May get commission for arranging loans as quasi mortgage brokers
- 2) Arranging financing deals allows unscrupulous contractors to charge more
- 3) Lender may pay contractor directly before work completed, leaving homeowner with no leverage for unsatisfactory work

d. High referral fees to mortgage brokers

- 1) "Yield spread premium" (YSP) is commission paid to broker by a mortgage lender for arranging mortgage loan with an inflated interest rate to cover the cost of the commission
- 2) Broker represents to homeowner that has found best rate, when actually homeowner gets higher rate than he might otherwise qualify for, plus pays fee
- 3) Borrower may not be aware that dealing with broker rather than with lender, i.e., home improvement contractors or mobile home dealers

SEE: 24 C.F.R. pt. 3500 (Oct. 18, 2001)(describing the two-part test to determine legality of YSPs).

Culpepper v. Irwin Mortgage Corp., 253 F.3d 1324 (11th Cir. 2001)(granting class certification to challenge to yield spread premiums as illegal kickback. Borrower paid broker 1% and mortgage company paid additional \$1,500 fee from increased interest rate).

BUT SEE: *Costa v. SIB Mortgage Corp.*, 210 F.R.D. 84 (2002)(refusing to grant class certification to challenge YSPs as illegal based on HUDs 2001 policy statement);

***Glover v. Standard Federal Bank*, 289 F.3d 558 (8th Cir. 2002)(district court abused its discretion in certifying nationwide class because question of whether payment of YSP violates Real Estate Settlement Procedures Act (RESPA) requires loan-specific analysis to determine if is payment based upon services or illegal referral).**

ALSO SEE: Cantwell, T. *Yield Spread Premiums: Who is working for the borrower? HUDs Erroneous Regulation and its' Bar on Plaintiffs*, 21 Law & Ineq. J. 361 (2003).

SEE: 24 C.F.R. pt. 203 (2004)(new HUD rule on lender accountability makes lenders accountable for appraisals on properties securing FHA-insured mortgages and provides for sanctions if appraisals violate rule).

- e. Forgery of loan documents
 - 1) Loan terms left blank or changed after signature
 - 2) Dates changed or signatures forged on disclosure notices
- f. Borrower's income inflated
 - 1) Application makes it appear that borrower is qualified
 - 2) Enables quick sale in secondary market
 - 3) May involve falsified W-2 or 1040 forms
 - 4) Happens when lender prepares application as "service" to borrower
 - 5) Traps borrower in loan payment that is too high
- g. Inflated assessed value of home
 - 1) Assessors "told" the expected value
 - 2) Traps borrower in loan based on inflated equity
- h. Bait and switch
 - 1) Advertised terms not available at settlement time

PRACTICE TIP: If borrower applies for loan

with certain terms and lender offers a more expensive loan, the lender must deliver to borrower a notice of counter offer that changes terms under the Equal Credit Opportunity Act (ECOA). Absence of this document and other preclosing notices required by federal and state law is evidence of bait and switch in violation of ECOA and possibly other state and federal laws.

12 U.S.C. § 1639(h); Reg. Z § 226.32(e)(1)

- 2) Lender "lowers" monthly payment by switching from conventional loan to balloon loan
- 3) Lender "lowers" monthly payment by not collecting taxes for escrow, leaving borrower with unexpected high tax bill

4. Equity stripping

- a. Charging excessive points, fees and settlement charges that are added to loan principal
 - 1) increases borrower's debt
 - 2) reduces equity
- b. Maximizing the up-front fees in a loan to convert as much equity as possible into cash for the original lender or broker
- c. Lending is based on equity in the home, not on borrower's ability to repay
 - 1) Monthly payments at unaffordable rate
 - 2) When loan cannot be repaid, lender recovers investment via foreclosure
- d. HOEPA prohibits a pattern or practice of "extending credit to a consumer based on consumer's collateral if, considering the consumer's current and expected income, the consumer will be unable to make the scheduled payments to repay the obligation."
- e. Points, fees and charges financed into loan's principal and depletes equity
- f. Early default remedied with offer to refinance and pack in more settlement charges
- g. When equity used up, foreclosure inevitable

5. Loan flipping

- a. Homeowner induced to refinance mortgage multiple times
- b. Homeowner charged new points and fees with each refinancing to increase amount borrowed
- c. Previous lender often charges pre-payment penalties

SEE: *Hoffman v. Stamper*, 155 Md. App. 247, 843 A.2d 153 (2004)(the Maryland Court of Appeals affirmed a \$1.3 million compensatory damages verdict against a lender for turning a willful 'blind eye' to a conspiracy among the seller, the lender's loan officer and the appraiser to 'flip' nine properties at inflated prices).

***U.S. v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Nov. 12, 2003)**(alleging that defendants, *inter alia*, failed to post mortgage payments on time, and charged illegal late fees and other unauthorized fees, resulted in a \$40 million settlement for consumer refunds). Online at www.ftc.gov/opa/2003/11/fairbanks.htm

NOTE: On or after October 1, 2002, Freddie Mac does not invest in subprime mortgages with prepayment penalty terms greater than 3 years. www.freddiemac.com/news/archives2002/subprime_030102.htm

SEE: *Buyers in Higher Minority Areas More Likely to Receive Prepayment Penalties on Subprime Loans* (2005), Center for Responsible Lending. Online at www.responsiblelending.org/reports/ppp2005.cfm

SEE: *F.T.C. v. Stewart Finance Co.*, No. 103CV-

- d. Increases principal, reduces equity
- 6. Property Flipping
 - a. Buying distressed property at bargain price, making cosmetic repairs and selling at an inflated price
 - b. Appraiser inflates value, buyer pays more than he/she should
 - c. Lender may be aware of actual property value
- 7. Late posting of payments
 - a. Generates late charges that are added to principal total to be repaid
 - b. Another demerit to credit report
 - c. May trigger increase in interest rate
- 8. Prepayment penalties
 - a. Eighty percent of subprime loans have prepayment penalties versus two percent of prime loans
 - b. Penalty charged in first 1 to 5 years if loan paid off before end of term
 - c. Cannot be a requirement of loan
 - d. Similar to points charged to back end of loan, supposedly to compensate lender for lost profit
 - e. Difficult and expensive for homeowner to get out of bad loan
 - f. If loan is refinanced, prepayment penalties added on to new principal amount
 - g. As principal amount due increases, equity declines, making market-rate refinancing more difficult
- 9. Loan packing

2648 (N. Dist. GA 2003).

PRACTICE TIP: Loan packing is revealed by examining Settlement Statement/HUD-1A and copies of checks disbursed

SEE: *F.T.C. v. Associates First Capital Corp.*, 239 F. Supp.2d 1302 (2001)(alleging that defendants engaged in deceptive practices to induce consumers to, *inter alia*, buy high-cost credit insurance. Resulted in \$215 million settlement).

- a. Adding on unnecessary fees by "selling the monthly payment" and glossing over costs as being included in the payment
- b. Loan originator has financial incentive to make principal of loan as large as possible
- c. Exorbitant or fraudulent costs
 - 1) Charging \$50 for credit report that costs \$15 and pocketing the difference
 - 2) Financing "optional" insurance as mandatory component of loan
 - 3) Padding recording fees
- d. Inflated appraisal
- e. Duplicative "services"
- f. Credit life insurance
 - 1) Lender sells credit life, accident, unemployment, health insurance
 - 2) Primarily protects lender in event of borrower's death
 - 3) Inflated premiums compared to insurance policy purchased outside of settlement
 - 4) Described as mandatory
 - 5) Premiums financed as lump sum at settlement
 - 6) Sold even when borrower not qualified, e.g. too old, or has active work requirement
 - 7) Term of insurance much less than term of loan

HOW PREDATORY LENDER PROFITS		
Original Loan Amount	\$30,000	
10 Points	\$3,000	\$3,000 lender profit
"Enhanced " Closing Costs	\$2,000	\$1,000 lender profit
Credit Insurance Premium	\$2,200	\$1,000 lender commission
Total amount borrowed	\$37,200	
Lender's immediate profit		\$5,000 (or 16% of the loan amount, not including interest to be earned over the life of the loan if these costs are financed)

10. Negative amortization

- a. Monthly payments are too low to cover accruing interest or to reduce principal
- b. Unpaid interest is added to principal and compounded
- c. Principal amount due is higher at end of loan period than at outset of loan
- d. Creates balloon payment due at end of term

HOW NEGATIVE AMORTIZATION WORKS	
Original loan amount	\$30,000
Interest rate	15%
Monthly interest	\$375
Monthly payment	\$350
Term	180 months (15 yr.)
Total monthly payments	\$63,000
Balloon payment	\$46,481.65

B. TARGETED TO VULNERABLE POPULATIONS

**SEE: Predatory Lending:
Are Federal Agencies
Protecting Older Americans
from Financial Heartbreak?
Statement Before the
Special Committee on
Aging of the U.S Senate,**

1. Elderly
 - a. Over 80% of persons 65+ are homeowners
 - b. 80% of these homeowners own homes "free and clear"

February 24, 2004.
Available at [www.aarp.org/
research/press/testimony/
Articles/a2004-02-26-
testimony.html](http://www.aarp.org/research/press/testimony/Articles/a2004-02-26-testimony.html)

Calhoun *et al.* *Home Loan
Protection Act: A Model
State Statute* (2001).
Available at [http://research.
aarp.org/consumer/
d17346_loan.html](http://research.aarp.org/consumer/d17346_loan.html)

Manti, M., Raca P., & Zorn,
P. *Subprime Lending: An
Investigation of Economic
Inefficiency* (Feb. 25,
2000).

HUD and Treasury,
*Curbing Predatory Home
Mortgage Lending: A Joint
Report* (June 2000)
(unpublished).

Walters & Hermanson,
*Subprime Mortgage
Lending and Older
Borrowers* (2001) AARP
Public Policy Institute.
Available at
[http://research.aarp.org/co
nsumer/dd57_lending.html](http://research.aarp.org/consumer/dd57_lending.html)

- c. Est. 700,000 older homeowners, have lived in home for 20+ years, have no mortgage, have incomes of less than \$30,000, have equity of more than \$100,000
- d. Disproportionately at risk to predatory practices
 - 1) Borrowers 65+ are 3 times more likely to hold subprime mortgage than borrowers younger than 35 years of age.
 - 2) 11% of older borrowers with subprime mortgage have credit backgrounds that would likely qualify for prime loans at lower costs
- e. Low-Income/Financial Crisis
 - 1) Illness or medical expenses
 - 2) Reduced income through retirement or loss of spouse
 - 3) Major home repairs
 - 4) Family members exploiting borrower
- f. Older deteriorating homes needing repair
 - 1) Fall prey to unscrupulous home improvement contractors
 - 2) Given loans with inflated interest rates, outrageous fees, unaffordable repayment terms
- g. Financially unsophisticated
 - 1) Unsure of credit history and loan eligibility
 - 2) Often have limited education
 - 3) Unaware of mortgage details

- 4) Older subprime borrowers are less likely than prime borrowers to report having searched for best available mortgage rates
- 5) Older subprime borrowers say they are less likely than prime borrowers to say they feel well prepared to take out a note

U.S. Dept. of HUD,
*Unequal Burden in
Chicago: Income and
Racial Disparities in
Subprime Lending in
America* (May 2000).
Available at
[www.hud.gov/library/
bookshelf18/pressrel/
subprime.html](http://www.hud.gov/library/bookshelf18/pressrel/subprime.html)

*Separate and Unequal:
Predatory Lending in
America* (2002). Available
at [www.acorn.org/
index.php?id=8071](http://www.acorn.org/index.php?id=8071)

U.S. Dept. of HUD & U.S.
Dept. of Treasury, *Curbing
Predatory Home Mortgage
Lending: A Joint Report*
(June 2000).

[www.responsiblelending.or
g/reports/ppp2005.cfm](http://www.responsiblelending.org/reports/ppp2005.cfm)

2. Minority

- a. Minority neighborhoods are under served by prime lenders and reliant on subprime lenders
- b. In neighborhoods at least 30% minority, subprime share of refinancing market increased from 3% to 23% between 1993 and 1998
- c. Regardless of income, minorities are significantly more likely to receive subprime mortgage. In 2000, African-Americans had 41% of subprime loans, Latinos had 26% and non-minorities had 17%
- d. Predatory lending targeted at minorities/protected classes is violation of Fair Housing Act, Equal Credit Opportunity Act, and other civil rights statutes
- e. Homeowners who live in predominantly minority neighborhoods are 35% more likely to be charged prepayment penalties on mortgage loans than those living in largely non-minority areas.

IV. HOW PREDATORY MORTGAGE PRACTICES DEVELOPED

National Consumer Law Center, *Stop Predatory Lending: A Guide for Legal Advocates* (2002). Available at www.consumerlaw.org

A. CONTRIBUTING FACTORS

1. Tax code changes on deductibility of home-secured debt
2. Dramatic increase in home values
3. Rise in equity-rich, cash-poor older homeowners
 - a. Estimates based on American Housing Survey suggest that elderly, female, single-person households hold approximately \$570 billion in home equity
 - b. Elderly female homeowners likely to have incomes of less than \$30,000 and home equity of \$100,000 or more
4. Federal deregulation: eliminated all usury controls on first lien mortgages by permitting lenders to charge higher interest rates to borrowers with weak or uncertain credit (securitization)
5. Deregulation of consumer credit industry
6. Increasing home ownership in lower income and minority families: sixty-seven percent of persons 65 years old and over, at or below the federal poverty level, own homes
7. Expansion of mortgage broker industry
 - a. Role in financing process generally not understood by consumers
 - b. Can be highly lucrative with low overhead
 - c. Not regulated by the traditional banking industry
8. Secondary Market
 - a. Bundling of loans for resale to secondary investors
 - b. Creates potential for immediate profit for loan originator
 - c. "Hit and run": Loan originator has financial incentive to make loan, get immediate profit from up-front costs, and pass on risk of default to investor
9. Rise in subprime lending

SEE: Remarks of Federal Reserve Governor, May 21, 2004 at www.federalreserve.gov/boarddocs/speeches/2004/20040521/default.htm

1980 Depository Institutions Deregulatory and Monetary Control Act. 12 USCS § 1735f-7a.

SEE: Economic Issues in

Predatory Lending, U.S.
Dept. of Treas., OCC
Working Paper (7/30/03).

*House Hearing on
Subprime Lending Draws
Fire From both Sides,
Consumer Financial
Services Law Report,
4/23/04, Vol.7, No. 20.*

Walters & Hermanson,
*Subprime Mortgage
Lending and Older
Borrowers* (2001) AARP
Public Policy Institute.
Available at
http://research.aarp.org/consume/dd57_lending.html

Weicher, John. *The Home
Equity Lending Industry:
Refinancing Mortgages for
Borrowers with Impaired
Credit* (1998).

SEE: Letter to the
Honorable Michael Oxley,
Re: The Skyrocketing
Foreclosure Rate Caused
by Subprime Mortgages
(2003). Available at
www.consumerlaw.org

- a. HUD: Subprime loans increased from 5% in 1994 to 8.6% in 2002
- b. Subprime lending industry has expanded from \$34 billion in 1994 to \$213 billion in 2002 and by 50% from 2002 to 2003
- c. Subprime mortgages represent 8.8% of total mortgage originations in 2003
- d. Subprime loans are intended for borrowers with less than prime credit rating, but also made to borrowers with prime credit
- e. 10% to 35% of A - loans are granted to borrowers who would qualify for A loans
- f. Subprime lending does make loans available to those with credit problems
- g. Subprime lenders defend risk-based financing, saying:
 - 1) Because of past credit problems, subprime borrowers are more likely to default
 - 2) Thus, higher risk
 - 3) Therefore, lenders need to charge higher interest rates and higher fees
- h. However, loans are secured by real estate decreasing lender's risk
- i. Loan-to-Value ratios on subprime loans are higher than on prime loans, showing the difficulty that subprime borrowers have in making down-payments

B. CONSEQUENCES

1. Loss of major/only asset and financial security through foreclosure
2. Foreclosure growth

**SEE: Economic Issues in
Predatory Lending, U.S.
Dept. of Treas., OCC
Working Paper (7/30/03).
Available at
[www.mortgagebankers.org/
resources/predlend/main.ht
ml](http://www.mortgagebankers.org/resources/predlend/main.html)**

- a. Over 250% increase between 1980 and 2001
 - b. Subprime loans in foreclosure in 2nd quarter of 2003 were 6.8% compared to .53% of prime loans (1/12 of subprime foreclosure rate)
 - c. Delinquency rate for subprime mortgages was at 10.44% in late 2002, compared to .55% for all conventional (prime) loans
-
- 3. Destruction/destabilization of neighborhoods when long-term homeowners move out and absentee speculators move in
 - 4. Loss of tax base for cities

V. HOW TO PREPARE A CASE

SEE: Appendix C:
Interview Guide

A. CLIENT INTAKE

1. Major Issues

- a. Imperative to get as many details as possible of financial transaction history
- b. Highly document intensive
- c. Client may have had numerous loans in short period
- d. Loan companies change names
- e. Loans routinely sold to mortgage servicers or other financial companies
- f. Client may not have, or may not have received, all essential documentation
- g. Client may have memory problems, and/or be thoroughly confused by transactions

PRACTICE TIP: Keep closing papers in original order and condition. Do not separate, unstaple, unbind. Have assistant witness preservation of papers. Client needs to be able to testify as to which papers given at closing and that they were received in that same order and condition.

PRACTICE TIP: Get copies of closing documents from title company, lawyer who closed the loan, or original lender.

PRACTICE TIP: Title search may disclose transactions/loans that client doesn't know about.

2. Documentation

- a. Success often depends on what disclosures client did/did not receive and when
- b. Failure to disclose material terms is key statutory claim for fraud or unconscionability
- c. Need to be able to compare what papers client actually received to what lender claims were given

B. ESSENTIAL DOCUMENTATION

1. Preclosing papers

SEE: Appendix E: Good Faith Estimate

SEE: Appendix M: Regulation Z Disclosures

- a. Good Faith Estimates
- b. HOEPA disclosures and advance warning notice
- c. State mandated disclosures
- d. Brochures, flyers
 - 1) May contain admissions about broker posing as lender
 - 2) May contain admissions about lender posing as government agency
 - 3) May contain fraudulent advertising claims
- e. Business cards may reveal who contacted client
- f. Home improvement contract
- g. Mobile home sales agreement
- h. Broker contract

2. Note

SEE: Appendix F: Fixed Rate Loan Note

- a. Contract between borrower and lender
- b. Amount of money borrowed
- c. Interest rate charged
- d. Term of loan
- e. Schedule for repayment
- f. Type of loan
 - 1) Fixed rate
 - 2) Adjustable Interest Rate
- g. Special features such as balloon
- h. Other obligations

3. Deed of Trust or Mortgage

- a. Creates the security interest in borrower's home
- b. Gives lender (or lender's agent, the trustee) right to foreclose
- c. Defines default
 - 1) Nonpayment of principal and interest
 - 2) Nonpayment of real estate taxes
 - 3) Failure to maintain the property ("waste")
 - 4) Failure to maintain property insurance

SEE: Appendix G:
Prepayment Addendum to
Note

4. Riders to Note or Trust

- a. Attachment that amends Note or Trust
- b. Becoming prevalent with subprime loans
- c. Typical riders
 - 1) Prepayment penalty when Note says no prepayment penalty
 - 2) Arbitration agreement
 - 3) Balloon payment
 - 4) Change of interest rate in event of default

Reg. Z, 12 C.F.R. §
226.22; 15 U.S.C. § 1638

**SEE: Appendix H: Truth in
Lending Disclosures**

NOTE: Reg. Z available at
[www.federalreserve.gov/
boarddocs/press/
boardacts/2001/20011214
2/attachment.pdf](http://www.federalreserve.gov/boarddocs/press/boardacts/2001/200112142/attachment.pdf)

5. Truth in Lending (TILA) Disclosure ("Federal Box")

- a. Required to be given to borrower before note and mortgage signed
- b. Typically given at loan closing
- c. Supposed to "translate" legalese of Note and Trust
 - 1) Aid in comparison shopping
 - 2) Aid in understanding loan costs
 - 3) Aid in understanding loan provisions

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of my credit as a yearly rate	The dollar amount the credit will cost me	The amount of credit provided to me or on my behalf	The amount I will pay after I have made all scheduled payments
15%	\$225,000	\$90,000	\$315,000

Reg. Z, 12 C.F.R. §
226.18(g)

d. Schedule of Payments

- 1) Must include the number of payments, the amount of the payment, and the date payment is due
- 2) The single final payment is the balloon payment due at the end of the loan's term

Number of Payments	Amount	Date
1	\$1,334	March 1, 2000
178	\$1,397	Monthly beginning April 1, 2000
1	\$65,000	February 1, 2015

NOTE: The APR is considered accurate if it is not more than 1/8 of 1 percentage point above or below the true APR for regular transactions. 12 C.F.R. § 226.22(2).

e. Annual Percentage Rate (APR)

- 1) Combines interest rate and other costs as yearly rate
- 2) Other costs now include financed credit insurance for HOEPA loans
- 3) The APR will be higher than the interest rate

PRACTICE TIP: Compare interest rate on note and APR on disclosure for significant discrepancy. Loan with interest rate of 11% on the Note could have APR of 15% indicating high up-front fees.

Reg. Z, 12 C.F.R. § 226.4

f. Finance Charge

- 1) Cost of credit or total amount of interest payments and certain fees
 - a. "Any charge payable directly or indirectly by consumer imposed directly or indirectly as

Reg. Z, 12 C.F.R. §
226.4(b)(1-10)

SEE: Reg. Z, 12 C.F.R. §
226.4(c) for list of
exclusions.

Reg. Z, 12 C.F.R. §
226.18(b)

PRACTICE TIP: Take principal amount on Note and subtract "finance charge" financed as part of principal of loan, or add up all disbursements on HUD-1 that benefit borrower, such as pay off of earlier mortgage, legitimate settlement costs, tax lien, credit card debt, cash to borrower.

SEE: Official Staff
Commentary, 12 C.F.R. §
226.18(h)

SEE: TILA Chart on page
22 of this module.

incident to extension of credit"

b. Generally includes:

interest

service charges

points

Insurance or guarantee premiums

loan origination fee

underwriting fees

discount points

broker fee

c. Generally excludes:

application fees

seller's points

anticipated late payment charge

2) What is a finance charge may depend on type of transaction or facts

g. Amount Financed

- 1) Amount borrowed without credit costs OR
- 2) Amount borrowed that benefits the borrower

h. Total of Payments

- 1) Amount Financed plus Finance Charge
(225,000 + 90,000 = 315,000)

PRACTICE TIP: Should equal total monthly payments reflected in Schedule of Payments.

Reg. Z, 12 C.F.R. § 226.23(b)(1)

SEE: Appendix L: Notice of Right to Cancel

Reg. Z, 12 C.F.R. § 226.23(a)(3)

PRACTICE TIP: If closing is on Friday, notice must accurately state the end date of the cancellation period, i.e., midnight on next Tuesday.

SEE: Appendix I: HUD - 1A Form

HUD has consumer-friendly explanation of the HUD-1A form at www.hud.gov/offices/hsg/sfh/res/sc3secta.cfm

The HUD consumer guide for home buyers is at www.pueblo.gsa.gov/cic_text/housing/settlement/sfh_restrc.html

- 2) Total amount to be paid, if paid on time and to full term
($178 \times 1,397 + 65,000 + 1334 = \$315,000$)

6. TILA notice of right to cancel

- a. Must provide 2 copies to EACH homeowner at settlement
- b. Must provide homeowner with notice that s/he has until midnight of the 3rd business day to rescind or cancel
 - 1) Third business day starts from the latest of:
 - a) Consumation of loan transaction,
 - b) Delivery of proper notice of right to rescind, or
 - c) Delivery of all material disclosures (correctly made)
- c. Three-day period includes Saturday

7. HUD -1A Form

- a. On sample HUD-1A form in Appendix I, note the following lines with potential problems:
 - 1) High, unbundled attorney's fees of \$600 (lines 1101, 1103, 1105)
 - 2) Mortgage broker commission as yield spread premium (YSP) (line 808)
 - 3) Pay off of prior mortgage (line 1503)
 - 4) Pay off of unsecured car loan (line 1505)
 - 5) Pay off unsecured credit card debt (line 1504)
 - 6) High total settlement charges (line 1602)

PRACTICE TIP: Refer to state laws regarding broker agreements.

Reg. Z, 12 C.F.R. § 226.23(c)

Reg. Z, 12 C.F.R. § 226.23(e)

PRACTICE TIP: Current holder of loan must be included as defendant even if not involved in initial fraud.

PRACTICE TIP: Notify lender immediately to stop contacting client and only contact you.

8. Broker agreements

- a. Should reveal amount of commission borrower agreed to pay
- b. May address agency relationship with borrower

9. Loan applications

- a. Should be consistent with information provided by client
- b. May identify if fraudulent income entry

10. Post-closing documents

- a. Disbursement check to borrower: If borrower received before three days after closing, may indicate violation of TILA right to rescind
- b. Rescission Waiver: Borrower may have been instructed to sign at settlement, in violation of TILA right to rescind
- c. Amended TILA and/or HUD -1: May be indicated if lender made any post-closing changes

11. Collection and foreclosure documents

- a. Unlikely that loan is still in hands of original lender
- b. Collection letters may indicate violation of Fair Debt Collection laws
- c. Default, acceleration, foreclosure notices should be examined to determine if comply with laws re: timing, form, amounts

12. Other loans

- a. If client promised lower monthly payments through refinancing, prior loan papers will indicate if it actually happened
- b. Lower monthly payments could occur if new lender does not escrow for taxes and insurance

- c. Prior loan could have had prepayment penalty
- d. Prior loan could have been subsidized by government or nonprofit organization (i.e., Habitat for Humanity)

13. Loan Payment history

- a. Will reveal lenders' calculation of arrearage
- b. May reveal late charges when payment was actually timely paid
- c. May reveal delayed posting when timely received
- d. May reveal too much/too little escrow
- e. May reveal duplicate tax payments by lender and borrower
- f. May reveal duplicative hazard insurance premiums
- g. May reveal loss of older homeowner reduction in property taxes

14. Client Financial Records

- a. Client bank statements may reveal timing of or absence of payments made to borrower
- b. Client bank statements may reveal unauthorized automatic withdrawals

VI. CONSUMER REMEDIES

A. INTRODUCTION

1. Mosaic of possible claims to challenge a mortgage loan
2. No simple solution
3. Advantages of multiple claims and alternative pleading

B. TECHNICAL DEFENSE TO FORECLOSURE

1. Availability depends on state foreclosure law
2. Check for any violations in procedure, such as notice
3. Lender may correct error and reissue, only delaying process
4. Wrongful disclosure is a technical defect post-foreclosure that may void sale
5. Tort of wrongful disclosure may be available in some states

C. TRUTH IN LENDING ACT (TILA)

1. History

15 U.S.C. §§ 1601 *et seq.*

15 U.S.C. §§ 1601 *et seq.*;
Reg. Z, 12 C.F.R. § 226.31-32

12 C.F.R. § 226; Official Staff
Commentary to Reg. Z, 12
C.F.R. § 226 ("O.S.C.")

66 Fed. Reg. 65,604-65,622
(Dec. 20, 2001)(codified at 12
C.F.R. § 226). Available at
www.federalreserve.gov/boarddocs/press/boardacts/2001/200112142/default.htm

- a. Originally enacted in 1968; simplified in 1980
- b. Further amended by Home Ownership and Equity Protection Act of 1994 (HOEPA)
- c. Implemented by Federal Reserve Board's Regulation Z
- d. Reg. Z amended December 14, 2001. The amendments
 - 1) extended the scope of mortgage loans subject to HOEPA's protections
 - 2) restricted certain acts and practices
 - 3) strengthened HOEPA's prohibition on loans based on homeowners' equity without regard to repayment ability, and

69 Fed. Reg. 16769 (Mar.31, 2004)(codified at 12 C.F.R. § 226). See, www.federalreserve.gov/boarddocs/press/bcreg/2004/20040326/default.htm

- 4) enhanced HOEPA disclosures received by consumers before closing
- e. Reg. Z. revised in 2004
 - 1) Added an interpretative rule of construction to clarify that the word "amount" used in the regulation to describe disclosure requirements, refers to a numerical amount
 - 2) Revised staff commentary to provide guidance on consumers' exercise of rescission rights for certain home-secured loans

2. Purpose

- a. Primarily disclosure of loan terms
- b. Provide consumer with accurate information concerning cost of credit
- c. Facilitate loan comparisons
- d. Uniform manner of defining, calculating and presenting loan terms
- e. Key: failure of material disclosure = rescission + damages

Reg. Z, 12 C.F.R. § 226.23(a), (f)

3. Necessary definitions for rescission

- a. "Loan"
 - 1) Non-purchase money consumer loan
 - 2) Secured by borrower's principal residence
 - 3) Funded by "creditor"
- b. "Creditor" for mortgage loan purposes
 - 1) Person or entity that regularly extends consumer credit
 - 2) Made 6 mortgage-secured loans in previous calendar year, or
 - 3) Made 2 high cost mortgage loans during any 12 month period, or
 - 4) Made 1 high cost mortgage through a

Reg. Z, 12 C.F.R. § 226.2(a)(17)

NOTE: These definitions can change depending on type of loan

mortgage broker during any 12 month period

Note No. 48 to Reg. Z, 12
C.F.R. § 226.23; 12 C.F.R. §
226.32(c),(d)

15 U.S.C. § 1635(f); *See also*
Stanley v. Household finance
Corp. III (In re James B.
Stanley), 315 B.R. 602
(Bankr. D. Kan.
2004)(plaintiff/borrower
entitled to, *inter alia*, void his
mortgage and costs when
lender failed to provide two
right to rescind notices and
failed to provide clear and
conspicuous disclosures).

15 U.S.C. § 1639(c); Reg. Z,
12 C.F.R. § 226.31

15 U.S.C. § 1641(c)

15 U.S.C. § 1640(a)(2)(A)(iii),
(e)

15 U.S.C. § 1640(h)

15 U.S.C. § 1640(a)(3)

c. Material Disclosure

- 1) Failure to properly disclose any of the following on TILA Disclosure extends the 3 day right to rescind to 3 years
 - a) Finance charge
 - b) Annual Percentage Rate
 - c) Amount Financed
 - d) Schedule of Payments
 - e) Total of Payments
- 2) Failure to provide 2 copies of Notice of Right to Rescind (per borrower) extends to 3 years the right of rescission
- 3) Failure to provide 2 copies of HOEPA notice (per borrower) also extends right to 3 years
- 4) Assignees always liable for rescission
- 5) Statutory damages between \$200 and \$2000
 - a) Defensively, via set-off
 - b) Offensively, if homeowner files within 1 year of transaction, or
 - c) 1 year after lender fails to honor valid rescission and
 - d) Assignees liable for damages if violation apparent on the face of the loan documents
- 6) Attorneys fees and costs are available

15 U.S.C. § 1640(e)

15 U.S.C. § 1640(c)

15 U.S.C. § 1635; Reg. Z, 12
C.F.R. § 226.23

PRACTICE TIP: Technically
should be no problem
because no proceeds have
been disbursed and no home
improvement work performed.

Reg. Z, 12 C.F.R. §
226.23(a)(3)

15 U.S.C. § 1635; Reg Z., 12
C.F.R. § 226.23

15 U.S.C. § 1635(e)(2); Reg
Z., 12 C.F.R. § 226.23(f)(2);
see also Official staff
Commentary § 226.23(f)-4

15 U.S.C. § 1635(b); Reg Z.,
12 C.F.R. § 226.15(d)(1)

Official Staff Commentary §§
226.15(d)(1)-1, 226.23(d)(1)-1

7) Statute of Limitations (SOL)

- a) One year from date of the occurrence of violation
- b) With right of rescission, SOL runs from date rescission procedure violated (up to three years)
- c) Over one year if raised defensively, via set-off or recoupment to creditor claim
- d) SOL can be tolled if fraudulent concealment

4. Rescission

a. Introduction

- 1) Absolute right to cancel loan and void mortgage
 - a) If within three business days after signature
 - b) No reason, any reason
- 2) If lender failed to make correct material disclosures or failed to afford the three-day cancellation period, right to rescind extended to three years
- 3) Must be non-purchase money security interest in consumer's primary residence
- 4) Limited right to rescind current loan if it refinanced a prior loan from the same lender; may be able to rescind the prior loan

b. Effect

- 1) Security interest is void, thus creditor cannot foreclose
- 2) Creditor's interest in property is automatically negated
- 3) Creditor cannot collect any finance or other

fees on loan

- 4) Creditor must return or credit against principal all interest paid, and/or property which reduces amount owed
- 5) Homeowner responsible only for net amount owed after all interest and fees have been returned or credited

How Amount Due on Loan is Reduced	
Amount Borrowed	\$100,000
Amount Paid in Settlement costs	\$11,000
Balance due on Loan	\$89,000
Amount Paid in Interest and Principal	\$14,000
Balance due on Loan	\$75,000
Statutory damages if lender refuses to honor valid rescission (max)	\$2,000
Balance due on Loan	\$73,000
Statutory damages if suit brought within 1 year (or if brought defensively)	\$2,000
Balance due on Loan	\$71,000

c. Three Step Rescission Process

NOTE: Wise to also send copy to current owner of note

Reg. Z, 12 C.F.R. § 226.23(d)(1)

Reg. Z, 12 C.F.R. § 226.23(d)(2)

NOTE: Courts have allowed refund to be an off-set of what consumer owes. See, e.g., *Williams v. Bank One (In re Williams)*, 291 B.R. 636 (Bankr. E.D. Pa. 2003).

NOTE: Some of the steps are subject to the court's equitable modification authority. See, e.g., Reg. Z, 12 C.F.R. §§ 226.15(d)(4),

- 1) Starts when borrower sends valid cancellation notice to creditor.
 - a) Security interest automatically voided and borrower's obligation to pay finance charge and other charges automatically eliminated
 - b) Lender has 20 days to refund or credit money or property given/paid (including to third party) and take steps to void security interest
 - c) When lender has performed, borrower must tender back remaining balance
- 2) Payments already made should be credited to loan proceeds

226.23(d)(4).

SEE: *Inge v. Rock Fin. Corp.*,
281 F.3d 613 (6th Cir.
2002)(construing 15 U.S.C. §
1605(f)).

15 U.S.C. § 1605(f); *Truth in
Lending*, 5th ed. & 2004 Supp.,
§ 4.6.3. NCLC at
www.consumerlaw.org

SEE: 15 U.S.C. § 16059(f);
Reg. Z, 12 C.F.R. § 226.23(g)

PRACTICE TIP: Must
carefully examine documents
for TILA violations, but must
also check behind charges to
determine if meet statutory
requirements for
inclusion/exclusion from
finance charge.

15 U.S.C. § 1640(a)(3)

NOTE: Closed-end loans

5. Tolerance for Error in Disclosures

- a. Law allows some leeway for error in the required financial disclosures
- b. Tolerance for Error is an affirmative defense raised by creditor, not an element of borrower's claim
- c. Prior to 1995, borrower could rescind if
 - 1) Calculation of finance charge off by \$10 or less
 - 2) Calculation for amount financed had any error
 - 3) Calculation error = failure to disclose = extended right to rescind
- d. *Rodash v. AIB Mortgage*, 16 F.3d 1142 (11th Cir. 1994)
 - 1) Creditor's failure to include \$22 courier fee was a basis to uphold borrower's right to rescind
- e. Rodash Relief (TILA Amendments of 1995)
 - 1) Expanded/defined tolerances for error for loans consummated after 9/30/95
 - 2) Complicated set of rules to determine if error is within limits
 - 3) Depends on type of transaction, i.e., open-end or closed-end, and type of error, whether affirmative or defensive, and amount financed
 - 4) Somewhat different rule for loans consummated before 9/30/95

6. TILA Damages (closed-end transactions)

- a. Statutory damages of twice the finance charge

have fixed terms.

with \$200 minimum, \$2000 maximum for failure to disclose:

- 1) Total finance charges
- 2) Amount financed
- 3) Annual Percentage Rate (APR)
- 4) Payment schedule
- 5) Total of payments
- 6) Security interests

BUT SEE: *Smith v. Gold Country Lenders*, 289 F.3d 1155 (9th Cir. 2002)(borrower must show detrimental reliance on inaccurate disclosure to obtain actual damages).

b. Actual damages for failure to properly disclose:

- 1) Itemization of amount financed
- 2) Prepayment penalties
- 3) Late payment fees
- 4) Security interest charges
- 5) Insurance charges
- 6) Assumption policy
- 7) Demand features

c. Costs of litigation

d. Attorney fees

15 U.S.C. §§ 1602(aa), 1639; Reg. Z, 12 C.F.R. §§ 226.31, 32 (as amended Dec. 20, 2001) (amendments mandatory October 1, 2002)

D. HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994 (HOEPA)

1. Amends TILA
2. Applies to closed-end mortgage loans with high interest rates, and/or points and fees
3. Does not cover home purchase, reverse mortgages, open-end credit
4. Expands assignee liability
5. HOEPA applies if EITHER of two triggers is met:
 - a. "High interest" trigger for first-lien mortgage is: APR more than 10 points above yield on Treasury

Reg. Z, 12 C.F.R. § 226.32(a)(1)(i)

NOTE: For Treasury bond

rates see
www.federalreserve.gov/releases/h15/current/

15 U.S.C. § 1602(aa)(1)(B)

Reg. Z, 12 C.F.R. §
226.32(b)(1); Official Staff
Commentary §
226.32(a)(1)(ii)-1

NOTE: Correct amount
financed as defined by Reg.
Z, 12 C.F.R. § 226.4(c)(7) is
not necessarily the disclosed
amount financed.

12 C.F.R. § 226.2(b)(1)(iii)-(iv)

SEE: *Johnson v. Know
Financial Group, LLC*, 2004
WL 1179335 (E.D. Pa. May
24, 2004)(a \$627.40 title
insurance premium, paid by
the borrower at closing, was
unreasonable and therefore
was not entitled to exclusion
from the TILA finance charge
or from the HOEPA points and
fees calculation); *Marquez v.
New Century Mortgage Corp.*,
2004 WL 742205 (N.D. Ill.
Apr. 5, 2004)(only the
difference between the \$665
for title insurance actually
charged and the "reasonable"
rate of \$349.95 should be
included in the finance
charge, and since the
difference of \$315.05 was
within the permissible
tolerance for error of one-half
percent of the total loan
amount, plaintiff had failed to
state a claim to rescind the
loan).

securities with comparable maturity. Reduced to 8
points for loan consummated after 10/1/02. Junior
liens remain at 10 points

- b. "High fee" trigger is: If total of certain points and
fees exceeds greater of 8% of "total loan amount"
or \$499 (2004), loan is covered by HOEPA

- 1) Dollar amount adjusted annually based on
consumer price index (CPI-U)

6. Total loan amount = **correct** amount financed minus
certain points and fees that are financed plus prepaid
interest

- a. Points and fees that must be subtracted from
amount financed to calculate "total loan amount"

- 1) Commissions paid to mortgage brokers

- 2) Settlement charges that are normally
excluded under Reg. Z, 12 C.F.R. §
226.4(c)(7)

- a. Unless charge is reasonable, and
b. Creditor gets no direct or indirect
compensation, and
c. Charge is not paid to an affiliate of
creditor
d. Premiums for credit, life, accident,
health, loss of income insurance,
and debt cancellation coverage

Reg. Z, 12 C.F.R. §
226.23(b)(1)

15 U.S.C. § 1639(b)(1)

15 U.S.C. § 1639(a)(1)

15 U.S.C. § 1639(a);
Reg. Z, 12 C.F.R. § 226.32(c)

15 U.S.C. § 1641(d)

Reg. Z, 12 C.F.R. §
226.32(d)(1-8)

6. Additional "material" disclosures

a. Creditor must provide:

- 1) Two copies per borrower
- 2) Must be provided 3 business days before loan consummated, and
- 3) Must give borrower disclosure in conspicuous type size containing statutorily mandated language

b. Required HOEPA disclosure

- "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application."
- "If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."
- "You are borrowing \$_____, optional credit insurance or debt cancellation coverage is/is not included in this amount."
- APR, amount of regular payment, and amount of balloon payment, if any
- If ARM, must state that interest rate and monthly payment may increase and provide the maximum possible monthly payment

7. Assignee liability

- a. For HOEPA loan can assert all claims against all assignees that could have asserted against original creditor
- b. Enhanced damages available under HOEPA are 2 times rescission amount
- c. Claim for statutory damages for TILA violations, if apparent on the face of the loan documents (\$200 - \$2000)

8. Prohibited contract terms that are bases for rescinding HOEPA loan

- a. Balloon payment if the loan term is less than 5 years
- b. Negative amortization, which occurs where borrower's payments are less than the interest accruing on the loan, causing the principal to grow over the course of the loan rather than decreasing as would happen in an amortizing loan
- c. Advance payments defined as a payment schedule which consolidates more than two periodic payments and pays them in advance from loan proceeds.
- d. Interest rate that increases after default
- e. Rebates which are calculated by a method unfavorable to the consumer, i.e., more than simple interest
- f. Prepayment penalties with certain important exceptions:
 - 1) Penalty can be exercised only for the first five years following consummation,
 - 2) Source of the prepayment funds is not a refinancing by the creditor/affiliate of the creditor, and
 - 3) At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the his/her monthly gross income
- g. Due-on-demand clauses that permits the creditor to terminate the loan in advance of the original maturity date and to accelerate the entire loan balance (10/1/02)

Reg. Z, 12 C.F.R. §
226.34(a)(1-4)

9. Prohibited practices

- a. Extending credit to consumers where income insufficient to repay loan:

Presumption of violation if creditor does not verify and document borrower's ability to repay (for loans after 10/1/02)

- b. Paying home improvement contractor directly from loan proceeds

PRACTICE TIP: Check to see if disbursement check was payable jointly to contractor

and borrower or to borrower
or to 3rd party escrow.

- c. Not providing buyer/assignee of loan with notice that "This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."
- d. Refinancing by same lender, affiliate, or loan servicer within a year (for loans after 10/1/02)
- e. Wrongfully documenting loans as open-ended credit

E. REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)

12 U.S.C. § 2601 *et seq.*;
Regulation X, 24 C.F.R. §
3500.1 *et seq.*

24 C.F.R. § 3500.2(b)(7)

24 C.F.R. § 3500.7

SEE: Appendix E: Good Faith
Estimate

PRACTICE TIP: RESPA
provides no remedy for failure
of GFE and HUD-1 disclosure
requirements. Can be basis
for UDAP claim. See section
F.

- 1. Purpose is to protect consumers from unnecessarily high settlement costs and abusive mortgage practices
- 2. Applies to almost all home secured loans, including purchase and refinance
 - a. Does not apply to a bona fide transfer of a loan in the secondary market
 - b. Limited to federally related mortgage loans
- 3. Disclosure requirements
 - a. Good Faith Estimate (GFE) of settlement costs
 - 1) To borrower no later than 3 days after loan application
 - 2) Itemization of costs including
 - a) Mortgage broker fee
 - b) Real estate agent fee
 - c) Tax and recordation
 - d) Appraisal
 - e) Closing attorney fee
 - f) Points, loan origination fees, etc.
 - g) Any other fee
 - b. HUD -1A settlement sheet

SEE: Appendix I: HUD - 1A

- 1) To borrower at closing
- 2) Final itemization of where and to whom loan proceeds are paid
- 3) Should accurately reflect all items of the transaction
- 4) Used to calculate TILA finance charge and amount financed

4. Servicer obligations

12 U.S.C. § 2605

- a. Servicer = any person/entity that makes a federally-related mortgage loan
- b. Servicer must notify borrower, at time of loan application, that loan may be sold, assigned or transferred
- c. Servicer must give notice of sale, assignment or transfer not less than 15 days prior

15 U.S.C. § 2605(b)(3)(A-G)

- d. Statutory requirements for contents of notice
- e. Servicer must pay escrowed taxes, insurance to proper recipients
- f. Servicer must investigate and respond to customer inquiries not later than 60 days after request

12 U.S.C. § 2605(f)

5. Damages

- a. Failure to comply = liable to individuals and class action
- b. Actual and additional damages

12 U.S.C. § 2607

6. Kickbacks and referral fees

SEE: *Boulware v. Crossland Mortg. Corp.*, 291 F.3d 261 (4th Cir. 2002)(no cause of action under section 8(b) where mortgage company overcharges consumer for credit report and kept the difference. Section 8(b) only applies to fees that are "kicked back" to a third party).

- a. Illegal to give, receive, or split fees or kickbacks for referral of settlement service if fee is not paid for goods or services actually rendered
- b. "Settlement service" broadly defined to include everything paid for in transaction
 - 1) Appraisal
 - 2) Title insurance

- 3) Mortgage broker
- 4) Survey
- 5) Attorney fees
- 6) Real estate broker fees
- 7) Funding of the loan itself

c. Penalties for Violations

- 1) \$10,000 cap or 1 year confinement, or both
- 2) Joint and several liability
- 3) Court costs, attorney's fees

d. Yield Spread Premium (YSP)

- 1) Fee to broker from lender when broker is able to get borrower to take loan at higher rate than would otherwise be eligible for
- 2) Lender recoups amount paid to broker through higher interest rate to borrower
- 3) Rewards brokers who steer borrowers to more expensive loans
- 4) Borrower may be led to believe "best loan you can get"
- 5) May be in addition to fee borrower knowingly pays to broker
- 6) Mortgage industry justifies as "payment for services actually performed"

SEE, e.g., *Hirsch v. Bankamerica Corp.*, 328 F.3d 1306 (11th Cir. 2003)(lenders payment of YSP to mortgage broker was proper where broker performed actual services and total compensation was reasonable).

12 U.S.C. § 2607(c)(2)

PRACTICE TIP: Examine HUD -1 for cryptic disclosure, e.g., "1000 YSP P.O.C." (\$1000 paid out of closing as yield spread premium). Also examine broker agreement and Good Faith Estimate.

Culpepper v. Irwin Mortgage Corp. 253 F.3d 1324 (11th Cir. 2001) (authorized class to challenge yield spread premiums).

7) Issues:

- a) Did borrower agree to pay the yield spread premium?
- b) If so, what services did borrower get for

this agreement to pay?

c) Is the amount reasonable for services provided?

Department of House and Urban Development, 24 C.F.R. § 3500 [Docket No. FR-4714-N-01] Statement of Policy 2001-1.

8) HUD policy statement issued October 15, 2001, indicated approval of YSP as serving "important purpose" by letting low-income borrowers "pay less at the time of settlement and pay a higher interest rate and monthly payment over the life of a mortgage."

7. Remedies

- a. No private right of action under RESPA for violation of disclosure requirements.
- b. Treble damages and attorneys' fees for violations of RESPA anti-kickback rule with 1-year statute of limitations
- c. Actual damages plus statutory damages, if a pattern or practice, plus attorney fees for violation of servicing requirement with 3-year statute of limitations
- d. Failure to comply may lead to claim under state consumer law (UDAP)
 - 1) Misstatement of payment to broker may indicate unfair and deceptive act or fraud
 - 2) Misstatement that lender paid off of prior debt that was not paid may indicate fraud based on deception

F. UNFAIR AND DECEPTIVE ACTS AND PRACTICES (UDAP)

Unfair and Deceptive Acts and Practices. National Consumer Law Center (6th ed. 2004).
www.nclc.org/publications/manuals/

1. State specific

- a. All 50 states, D.C., and Puerto Rico have UDAP laws
- b. UDAP violations include issues of:
 - 1) Equity stripping
 - 2) Loan terms
 - 3) YSPs

- 4) Closing practices
- c. Provide state and private enforcement and remedies
- d. Many provide for attorney fees and punitive damages
- e. Almost any abusive consumer practice is (arguably) a UDAP violation
 - 1) Not UDAP violation if practice specifically falls outside state law
- 1. General provisions
 - a. Unfair or misleading business practices
 - 1) May not need to prove lender's intent to mislead or borrower's reliance on misrepresentation
 - 2) Example: Lender misrepresents APR at 10% when actually charging 16%
 - 3) Example: Upcharging, or charging fees for services that are grossly in excess of marketplace charges
 - 4) Example: Taking advantage of person who is unable to protect own interest due to age, physical or mental infirmity
 - b. May provide for treble and punitive damages and attorneys' fees

G. OTHER REMEDIES

1. Home Solicitation Sales Rule

16 C.F.R. § 429

- a. Federal Trade Commission
 - 1) Right to cancel home solicitation transaction
 - 2) Seller must provide buyer with two notices of right to cancel
 - 3) 3 business days from date contract was signed
 - 4) Every state has enacted an analogous 3 day 'cooling off' law

SEE: *Hager v. American General Finance*, 37 F.Supp.2d 778 (S.D. W.Va. 1999); *Family Financial Services v. Spencer*, 41 Conn. App. 754 (1996)(mortgage loan unconscionable when borrower had limited English ability, was uneducated, was not represented at closing, and did not have the income to pay debt).

ALSO SEE: *Besta v. Beneficial Loan Co.*, 855 F.2d 532 (8th Cir. 1988)(contract procedurally unconscionable when lender failed to tell borrower that she could have repaid the same loan with lower monthly payments in one-half the time. Granted rescissory relief and attorney's fees).

Restatement (Second) of Contracts §§ 162, 164, 167 (1981).

NOTE: Usually limited to actions where there was intent to deceive or that the misrepresentation substantially contributed to borrower signing contract. See, D. Dobbs, *The Law of Torts* §§ 470, 472 (2000).

2. Private Remedies

a. Common law unconscionability

1) Two types: Procedural and Substantive

- a) Procedural = refers to the relative bargaining positions of the parties, including their age, education, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, whether alterations in the printed terms were possible, and whether there were alternative sources of supply for the goods in question.
- b) Substantive = refers to the contract terms themselves and their commercial reasonableness

b. Uniform Commercial Code, Uniform Commercial Credit Code §§ 2 - 302, 2A - 108:

- 1) Courts can refuse to enforce:
 - a) unconscionable contracts or contract terms
 - b) contracts where borrower lacked meaningful choices

3. Common Law Torts: Fraud, Deceit and Misrepresentation

a. Misrepresentation:

- 1) failure to state a fact or false representation of a fact
- 2) fact must be fraudulent or material
- 3) Borrower relied on misrepresentation
- 4) Damage resulted to borrower based on misrepresentation

b. Non-disclosure can be basis for fraud claim

- 1) Common basis for canceling contract

SEE e.g., *Scott v. Mayflower Home Improvement Corp.*, 363 N.J. Super. 145 (Law Div. 2001).

- 2) Contract entered into based on fraudulent statements = rescission and restoring borrower to pre-contract position
 - c. Can file simultaneously with a UDAP claim
 - d. Common Law torts = punitive damages
4. State or local licensing laws
 - a. Lender, mortgage broker, real estate broker, or home improvement contractor may have to be properly licensed under state law to do business
 - b. Check if any parties are bonded, if required
 - c. May be prohibitions against signing documents in blank, settlement in borrower's home, exclusive dealing clauses, loans made with intent to foreclose
 - d. May be record keeping requirements
 - e. May be additional disclosure requirements
5. Breach of fiduciary duty
6. Duress, Coercion and Undue influence
 - a. Basis for rescinding contract
 - b. Physically or psychologically overpowering borrower, or
 - c. One party uses dominant position to influence weaker party
7. Incapacity to Contract
 - a. Defense to contract if it is established that borrower lacked capacity to contract, i.e.,
 - 1) under guardianship;
 - 2) an infant;
 - 3) mentally ill; or
 - 4) intoxicated.
 - b. Requires expert testimony on capacity

**SEE: 17A Am. Jur. 2d
Contracts § 28 (2004).**

SEE: *Union Nat'l Life Ins. Co. v. Crosby*, 2004 WL 253557 (Miss. 2004)(recites elements of an unjust enrichment claim).

PRACTICE TIP: If lender argues that a legal remedy exists, argue that it is not "adequate." See, i.e., *Sherrer v. Hale*, 285 S.E. 2d 714, 718 (Ga. 1982).

SEE: *Lewis v. Delta Funding Corp.*, (In re Lewis), 290 B.R. 541 566 (E.D. Pa. 2003)(loan broker meets definition of credit services organization).

15 U.S.C. § 1691et seq.

42 U.S.C. § 3605 et seq.; *U.S. v. Old Kent Financial Corp.*, 2004 U.S. Dist. LEXIS 9235 (E.D. Mi. 2004).

73 Am. Jur. 2d *Statute of Frauds* § 468 (2004).; *Vigneaux v. Carriere*, 2003 R.I. Super. LEXIS 79 (document contained the necessary elements to satisfy the state statute of frauds: It named the parties, described the premises to be sold, set

c. If shown, contract can be voided = both sides return what they gave

8. Racketeer Influenced and Corrupt Organization Act (RICO)

a. May challenge collection of unlawful debt if:

- 1) Hidden interest, i.e., fictitious fees, points, commissions are treated as interest
- 2) Unlawful debt = usurious and unenforceable that bears an interest rate of least two times the enforceable rate.
- 3) Must show creditor collected debt that was at least 2x the enforceable rate

9. Civil conspiracy

10. Forgery

11. Unjust enrichment

- a. Equitable doctrine: Must show that no adequate legal remedy exists
- b. Lender/creditor receives benefit that is unjust to keep
- c. Remedy is restitution = return what borrower gave

12. Warranty claims

13. Credit repair statutes: many of these state laws cover loan brokers

14. Duty of good faith and fair dealing

15. Equal Credit Opportunity Act: Prohibits discrimination in any aspect of credit on the basis of age, race, ethnicity, nationality and more

16. Fair Housing Act

- a. Prohibits discrimination in lending based upon

the purchase price and method of payment, and it was signed by the seller, the party to be charged).

SEE: *Vaughn v. Consumer Home Mortgage, Inc.*, 293 F. Supp. 2d 206 (E.D.N.Y. 2003).

race, ethnicity, nationality etc.

17. Statute of Frauds (SOF)

- a. Purpose is to prevent fraud
- b. Certain contracts must be written and signed
 - a. Transfers of property must be in writing
 - b. Each state has a version of the SOF

18. Legal Malpractice

SEE:
www.mortgagebankers.org/re_sources/predlend/index.html

- 19. Specific anti-predatory lending state statutes: Most states have some type of predatory lending law.

H. REVERSE MORTGAGE

PRACTICE TIP: Explore a reverse mortgage, as way to refinance predatory loan, only after have negotiated reduction (cram down) of principal; otherwise, refinancing pays off predatory lender in full

Senior Income Reverse Mortgage Corp. v. Olsen, 1999 U.S. Dist. LEXIS 8193 (N.D. Ill. 1999)(home improvement company arranged for reverse mortgage for \$24,000 to pay for \$14,000 project).

- 1. Loan that allows homeowner to convert portion of home equity into cash
- 2. Possible alternative to generate cash for older homeowner
- 3. Can be means to refinance predatory loan to more favorable terms
- 4. No repayment required until borrower/homeowner no longer uses home as principal residence
- 5. Some reverse mortgages can be predatory
- 6. Description
 - a. Loan against home that can provide cash to pay off less favorable loan
 - b. Amount owed increases during life of the loan in contrast to regular mortgage balance that declines over time
 - c. Requires no repayment until the last surviving borrower moves, sells, or dies

7. Amount available determined by:
 - a. Age of youngest borrower or joint life expectancy of all borrowers
 - b. Interest rates plus loan costs and fee
 - c. Property value or program equity limits (as applicable, whichever is lower)
8. Consumer protections
 - a. Counseling required
 - 1) Provided by independent non-profit or public agencies
 - 2) No vested or financial interest in the transaction
 - b. Non-recourse limit: Borrower can never owe more than house is worth
 - c. TILA Disclosure Rules: Total Annual Loan Cost (TALC) rate including all fees
9. Consumer risks
 - a. Very expensive way to borrow for short term
 - b. Complicated to explain/understand
 - c. Reduces or eliminates family inheritance of home
 - d. Potential for abuse by lenders, families
 - e. No effect on means-tested public benefit programs except when proceeds are used to purchase an annuity
10. HUD Home Equity Conversion Mortgage (HECM)
 - a. Most regulated product
 - b. Eligibility
 - 1) All borrowers must be age 62 or older
 - 2) Borrowers must own and occupy property
 - a) Includes 1-4 units

SEE:
www.hud.gov/offices/hsg/sfh/hecm/rmtopten/cfm

- b) Includes some condos/PUDs
- c) Excludes co-ops
- 3) Do not repay loan until borrower stops living in house as primary residence
- 4) Property must be in good condition or repaired with proceeds from the reverse mortgage
- 5) Borrower receives independent counseling by public/nonprofit entity before application
- 6) Maximum lending limit varies from 160,200 - 290,300
 - a) Maximum limit adjusts annually

SEE: Appendix Q: HECM Reverse Mortgages: Example of Credit Available to Older Homeowners

c. HECM Payment options

- 1) "Term": monthly advances for fixed number of months/years
- 2) "Tenure": monthly advances as long as borrower remains in home (primary residence)
- 3) "Line of Credit" (LOC): withdraws on demand until funds depleted; remaining unused credit line balance grows at same rate charged on the loan (not available in Texas)
- 4) "Modified Term": term plus LOC
- 5) "Modified Tenure": tenure plus LOC

SEE: B. Belling & K. Scholen. *Home Equity Conversion Mortgage Counseling* at www.hecmresources.org/resources/study-manual.pdf

d. Costs and fees

- 1) Interest rates: "Initial" and "Expected" which are used in payment calculation software to determine loan amount
- 2) Closing costs average \$2000
- 3) Maximum Claim Amount (MCA) is lesser of home value or area equity limit set by HUD
- 4) Origination fee is greater of \$2,000 or 2% of the MCA
- 5) Mortgage Insurance Premium of 2% of MCA

+ 1/2% annual premium

6) Monthly servicing fee capped at \$30-\$35

www.fanniemae.com/homebuyers/findamortgage/reverse/

11. Fannie Mae Home Keeper Mortgage

- a. Age 62 or over
- b. Considers joint life expectancy of all borrowers so it results in smaller advances for couples
- c. Must own home free and clear or have low mortgage balance
- d. Includes single family homes or condos only
- e. Higher equity limit of \$333,700 for 2004 with no floor (adjusts annually)
- f. Does not have term or modified term payment options
- g. Creditline does not grow like HECM's LOC

www.financialfreedom.com

12. Financial Freedom Cash Account ("jumbo" reverse mortgages)

- a. Covers homes at 500k + but virtually no max home value or limit
- b. Age 62 or over
- c. Lifetime interest rate capacity of 6% over initial APR

13. Other equity conversion options

- a. State/local property tax postponement
- b. State/local deferred payment loans for home improvement
- c. Sale with leaseback transaction
- d. Life Estate/Remainder plans

BIBLIOGRAPHY

BIBLIOGRAPHY

AARP MATERIALS

Borrower's Guide To Home Loans (D17381, English) (D17447, Spanish).

C. Herbert et al., Abt Associates, *Subprime Originations and Foreclosures in New York State: A Case Study of Nassau, Suffolk and Westchester Counties*. AARP Public Policy Institute (2002).

Mike Calhoun, Margot Saunders, Elizabeth Renuart, & Mark Benson, *Home Loan Protection Act: A Model State Statute*, AARP Public Policy Institute (D17346).

Elizabeth Renuart and Rich DuBois, *Home Improvement Contractors (Model Law)*, AARP Public Policy Institute (D16911).

Elizabeth Renuart & Margot Saunders, *Home Improvement Financing Model Law*, AARP Public Policy Institute.

Neal Walters & Sharon Hermanson, *Subprime Mortgage Lending and Older Borrowers*, AARP Public Policy Institute Digest (March 2001) (DD #57).

Neal Walters & Sharon Hermanson, *Credit Scores and Mortgage Lending*, AARP Public Policy Institute Issue Brief (August 2001) (IB #52).

Sharon Hermanson & Kristin Moag, *Home Improvement Contractors*, AARP Public Policy Institute (PPI Fact Sheet FS # 75).

Sharon Hermanson & George Gaberlavage, *The Alternative Financial Service Industry* AARP Public Policy Institute (PPI Issue Brief IS #51).

Tips on Home Improvement (D17556)

Home-Made Money (D12784)

For single orders call (800) 424-3410
www.aarp.org/revmort

Understanding Reverse Mortgages (D17329 English) (D17330 Spanish)
2-page fact sheet

Reverse Mortgage Choices (video)

Two 15-minute videotapes

Part I A New Source of Retirement Income

Part II A Closer Look

Send check for \$5.00 shipping and handling to AARP Foundation, P.O. Box 51040 GASD,
Washington, DC 20091

To order AARP materials with D number, write to AARP Fulfillment, 601E Street, NW,
Washington, DC 20049 or send fax to AARP Fulfillment (202) 434 6987.

To order PPI materials, call (202) 434-3846.

OTHER RESOURCES

Association of Community Organizations for Reform Now (ACORN), *Drained Wealth, Withered Dreams* (June 2004); *Separate and Unequal: Predatory Lending in America* (Nov. 2001).

Bradford, C., *Risk or Race? Racial Disparities and the Subprime Refinance Market* (May 2002)

Immergluck & Wiles, *Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development*, Woodstock Institute (Nov. 1999).
www.woodstockinst.org/

National Consumer Law Center, www.consumerlaw.org.

Publications: (617) 542-9595 or 77 Summer Street, 10th Floor, Boston, MA 02110,

Stop Predatory Lending: A Guide for Legal Advocates (2002)

Cost of Credit (2d ed. & 2004 Supp.)

Truth in Lending (4th ed. & 2004 Supp.)

Unfair and Deceptive Acts and Practices (6th ed. & 2004 Supp.)

Consumer Law Pleadings (2004 on CD ROM)

NCLC is available to consult with advocates on predatory lending and other consumer cases. NCLC has limited resource to provide free consultations to attorneys representing elders and others in certain circumstances. In other cases, NCLC offers consultations at affordable rates. For more information, please contact NCLC at (617) 542-8010.

National Association of Consumer Advocates, (202) 332-2500

Patricia Sturdevant & William J. Brennan, Jr., *The Double Dirty Dozen Predatory Mortgage Lending Practices*, adapted from *Consumer Mortgage Litigation: A Survey of Recent Cases and Trends* (LRP Publications) (800) 341-7874, ext. 310.

FEDERAL CONTACT NUMBERS

U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410
Web site: www.hud.gov

For information about FHA-insured home mortgage loans on one-to-four family dwellings call:
1-800 CALL FHA (800) 225-5342.

For information about buying a HUD home call: 1-800-767-4483.

For consumer counseling referrals call: 1-888-HOME4US (888) 466-3487.

2010 Statewide
Foreclosure

Practice Tips / Thoughts on Foreclosure or How I Stopped Worrying and Learned to Love the HAMP Program (with regards to Stanley Kubrick / Dr Stangelove)

A. Complaint allegations - Factual allegations - in my opinion, alleging specific calls, on specific dates, and short description of getting the run around each time is more persuasive than alleging "called many times and got run around" in general.

- Good clients will be keeping a record of each call
- Some will record them

B. If possible, figure out how/where you are going to serve before filing. Most of the Defendants are covered by CT Corporation, 1111 W Jefferson Street, Suite 530, Boise. The vertical privity of the Defendants can be confusing. I don't think you have long arm jurisdiction problems. Once court issues the TRO, not much time to get them served before the hearing. So you end up having to ask the judge to continue the TRO.

C. TRO Hearing - see memo re elements. Check record title, see what's in chain of title. Check whether other requirements of non judicial foreclosure were followed.

- don't fear the bond - see case law in memo - they're not entitled to anything more than the house anyway, so depriving it from them for a little while longer doesn't harm them .

D. Assume you will get a motion to dismiss for each cause of action. So be careful with certain causes of action, such as Fraud (must plead with particularity), UDAP (Idaho consumer protection act), etc. Remember statutes of limitations especially on federal causes of action (TILA, RESPA).

E. Consider law of assignments, whether you can hold this Defendant liable for prior assignors' actions. See *Murr v Selag Corp*, 113 Idaho 773, 780, 747 P. 2d 1302 (Idaho App. 1987) "... a transferee of property or contract rights is not personally liable for third party claims affecting the property or acts of the transferor in the absence of proof that the transferee assumed and agreed to pay such obligations.... an assignees assumption of an assignor's liabilities is never presumed ..." Did Bank of America assume liability for all of Countrywide's misdeeds ?

F. Motion for Mediation

Probably a good move generally

STATEWIDE SEPTEMBER 15, 2010, HOUSING SPECIALTY GROUP:

FORECLOSURE RESOURCES

Helpful Foreclosure Resources:

1. National Consumer Law Center: Alys Cohen at acohen@nclcdc.org.

The NCLC "What to Do" sheets and index to include references to the Handbook are posted the NCLC webpage and made the HAMP web page somewhat more helpful.

http://www.nclc.org/index.php?option=com_content&view=article&id=211&Itemid=139

2. National Association of Consumer Law Attorneys: (www.naca.org) Ira Reingold ira@naca.net
3. Idaho Attorney General's Office Consumer Protection Division: Attorneys Brett DeLange and Stephanie Guyon; Housing Mediator Kathy Ream: Stephanie.guyon@ag.idaho.gov , brett.delange@ag.idaho.gov, kathy.ream@ag.idaho.gov.
4. Department of Treasury: Anita Hunt at anita.hunt@do.treas.gov.
5. Department of Finance: Anthony Polidori at apolidori@finance.idaho.gov.

Identifying Participating Servicers

1) Check to see if the loan is owned by either Fannie Mae or Freddie Mac.

- All loans owned by Freddie or Fannie are governed by their loss mitigation requirements, which include specific versions of HAMP
- www.fanniemae.com/loanlookup
- www.freddie.mac.com/mymortgage

2) Check to see if the Loan is a VA or FHA loan.

- VA and FHA loans have their own versions of HAMP.
- Usually, VA or FHA loans will be identified as such on the settlement statement (the HUD-1 or HUD-1A)

3) Check the Making Home Affordable website.

- http://makinghomeaffordable.gov/contact_servicer.html

4) Google the servicer.

- Does their website say they are participating in HAMP?
- Are they a subsidiary of another entity?
- Is the servicer's name a "dba" for another entity?

5) Check the actual contracts at financialstability.gov.

- HAMP FAQ 1301 provides that a parent company may sign on behalf of its subsidiaries.
- Some of those contracts spell out who is covered.
- Some of the contracts are signed by one or more entities, or require notice to be provided to multiple entities. Any entity named in the contract is at least arguably covered.

6) Check the FFIEC's website.

- <http://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx>
- Listing of all lending institutions and their affiliate/ subsidiary structure

7) If you believe the servicer is covered, but the servicer denies, escalate!

- E-mail escalations@hmpadmin.com.
- Ask for Ken Hannold if escalation isn't satisfactory.

What to Do When the Servicer Says “No”

1) Get and review the denial notice

- SD 09-08 requires a denial notice with a reason.
- The notice must have a toll-free number to reach a servicer representative who can provide more information.
- NPV values need not be provided in the denial notice, but must be provided if requested within 10 calendar days if the borrower requests them within 30 calendar days of the denial notice. Sup. Dir. 09-08, p.3.
- Dodd-Frank, P.L. 111-203, Section 1482 requires more NPV values to be provided to borrowers.

2) If the servicer got any of the NPV inputs wrong, provide information as to the correct inputs.

- The servicer must re-run the NPV if the correction “is material and likely to change the NPV outcome.” Sup. Dir. 09-08, p. 3.
- Dodd-Frank, P.L. 111-203, Section 1482 requires a portal for use by borrowers to check the accuracy of the servicer’s NPV calculation.
- The foreclosure sale must be suspended while the NPV is re-run. Sup. Dir. 09-08, p. 3.

3) If the borrower was denied for any financial reason, including the NPV test or excessive forbearance, and the borrower has additional income to report, including additional income from a non-borrower, request reconsideration.

- A borrower remains eligible for HAMP if the denial is for any financial reason or because of basic eligibility considerations, and the borrower’s circumstances change. Sup. Dir. 10-01, p. 4.
- The borrower has until midnight of the seventh business day (typically 10 days) proceeding a scheduled foreclosure sale to request reconsideration. Sup. Dir. 10-02, p. 9.

5) If the servicer won’t review, escalate!

- Ask for the servicer’s in-house escalation team.
- E-mail escalations@hmpadmin.com.
- Ask for Ken Hannold if escalation isn’t satisfactory.

LOAN MODIFICATIONS AND MORTGAGE SERVICING

[Loan Modifications and Mortgage Servicing](#)

[Foreclosure Mediation Programs](#)

[State Foreclosure Laws](#)

[Predatory Mortgage Lending](#)

[Lender Bankruptcies and Failed Banks](#)

[Foreclosure Prevention Counseling Resources](#)

[Foreclosure Relief Scams](#)

[Back to Issues Homepage](#)

HAMP and Other Loan Modification Programs

Administrative Guidance

- [Handbook](#)
- [Supplemental Directives](#)
- [Common FAQs](#)
- [HAMP General Administration](#)

Progress Reports from Treasury

- [2010 Servicer Performance Reports and Press Releases](#)

Reports

- [COP Reports](#)
- [SIGTARP](#)
- [GAO Reports](#)

HAMP Policy Analysis

[Testimony, Reports, Recommendations, and Press Releases](#)

Decisions

- [Recent Trial Court Decisions on HAMP Enforceability as Foreclosure Defense](#)

Practice Aids

- [Identifying Participating Servicers](#)
- [What to Do When the Servicer Says the Investor Is Not Participating?](#)
- [What to Do When the Servicer Says No?](#)
- [What to Do When the Servicer Denies Because They Re-ran the NPV Test?](#)
- [What to Do When the Servicer Refuses to Accept or Process a HAMP Application Because Client is in an Active Bankruptcy Case?](#)
- [What to Do When the Servicer Denies a HAMP Modification Because the Client Received a Discharge in a Chapter 7 Case and Did Not Reaffirm the Mortgage Debt?](#)
- [HAMP Program Documentation Index](#)

Participating Servicers

- [List of Participating Servicers](#)
- [Servicer Participation Agreements](#)

Related Programs: HAFA, UP, Second Lien, and HARP

- [Home Affordable Foreclosure Alternatives \(HAFA\)](#)
- [Unemployment Program \(UP\)](#)
- [Second Lien](#)
- [Home Affordable Refinance Program \(HARP\)](#)

Related Programs: Fannie Mae, Freddie Mac, VA, FHA, and USDA

- [Fannie Mae](#)
- [Freddie Mac](#)

- [VA](#)

- [FHA HAMP and Refinancing](#)

- [USDA](#)

Other Loan Modification Programs

- [FDIC](#)

- [HOPE Now Program](#)

- [Private Loan Modification Programs](#)

Other Resources:

- [The Institute for Foreclosure Legal Assistance](#)

- [HOPE for Homeowners](#)



The Institute for Foreclosure Legal Assistance

NCLC gratefully acknowledges the support of IFLA in the creation and maintenance of this page.

[Employment](#) [Contact Us](#) [Directions](#)

WHAT IS FORECLOSURE?

Foreclosure is the most common way that mortgage lenders, like banks, are able to repossess homes and land (called "real property" or "realty"). When the foreclosure process is complete, the home buyers who loaned money from the lender are not allowed to pay back the loan to keep the home. Instead, the home is sold at an auction where the lender often buys it.

In Idaho, most lenders set up home loans through "trust deeds." A home loan set up through a trust deed is technically not a "mortgage," but it's okay to call it a mortgage; even lawyers do. Under a trust deed, the home buyer deeds her home to a "trustee," which is usually a specialized business or another bank. The trustee holds the deed to the home for the lender while the home buyer is paying off the home loan.

Under Idaho law, a trust deed gives the trustee a "power of sale." The power of sale allows the trustee to sell the home at a "trustee's sale" if the home buyer "defaults" on the home loan. Default on a home loan usually means that the home buyer missed one or more of his/her loan payments. If the buyer defaults, the lender will notify the trustee and the foreclosure process begins. A foreclosure when a trust deed is involved is governed by statutes in the Idaho Code; you can find them beginning at Idaho Code §45-1502 through 45-1515.

The trust deed "foreclosure" process requires the following steps:

1. Either the trustee or the lender must give a "Notice of Default" by filing it with the county recorder and mailing it to everybody who owns an interest in the property. You can also request, in writing, that the trustee or lender mail you a copy of the Notice of Default, by filing your request with the county recorder.
2. Next, the trustee or lender must give a "Notice of Trustee's Sale" where the home will be sold at auction. They have to mail the sale notice to the home buyer and others who have an interest in the property, including tenants in some cases.
3. After mailing the sale notice, the trustee or lender has to try to deliver it to an adult who is living at the

home. If you're an adult tenant, that's you. They have to try to deliver the notice to you at least three times over a week or longer period. If they don't find anyone home all three times, they have to make sure the sale notice is posted in an obvious place (like the front door) on the property. The trustee or lender also has to publish the sale notice in a major local newspaper four times over four weeks.

4. Next, the trustee holds the "trustee's sale" where the home is sold to the highest bidder. The sale might happen at a title company office, a lawyer's office, or on the courthouse steps. The sale must happen at least 120 days after the sale notice was mailed out and at least 30 days after the notice was delivered or posted on the property and published in the newspaper.

5. The highest bidder gets a "trustee's deed" from the trustee and becomes the owner of the property. The new owner typically tries to get everybody out of the house, starting ten days after the sale. New owners, even banks, may tell you that you have no choice but to move out, even though many tenants have a right to remain in the house for three months or longer after a trustee's sale.

During the foreclosure process, the bank may not be fully aware that you are a tenant and that the home buyer is not living at the property. The home buyer might have even told the bank that she was living there and not renting the place to you. You may get mail addressed to "occupant" or "current resident" or even to the home buyer, whose name you might not have known. Although it is important that you read all the mail you get during this period, be very careful because scam artists and others may try to take advantage of you or the home buyer during a foreclosure.

PROTECTING YOUR RIGHTS AS A TENANT BEFORE A FORECLOSURE SALE

Especially during a time when many home buyers are at risk of foreclosure, it is important that tenants do the extra work needed to protect themselves. These steps may sometimes be a hassle, but they could save you from a much bigger headache: packing up and moving on short notice and under threat of eviction.

1. Do your research before signing a lease.

If you are moving and looking for a rental home, make sure you ask the owner or property manager whether the home is paid off or still under a mortgage. If there is a loan on the property, ask if it is current. Write down whatever you are told, noting the name of the person who told you, the date and time they told you, and where you spoke with them (if over the phone, write down the phone number you dialed or from which the person called you). Some property managers and landlords will tell new tenants that the loan is in good shape when it is not; that could be fraud.

You can also visit your county recorder (find him/her on the web or under the name of your county in the phone book) and look to see whether a Notice of Default or other foreclosure documents have been filed. If you are polite and patient, workers at the county recorder's office will often help you understand how to search for these documents.

2. Have your lease notarized and file it with the county recorder.

Just like smart home buyers always file their deed with the county recorder, smart tenants should file their lease or rental agreement too. To "record" a document in Idaho, it must be "acknowledged" by a notary. Most residential leases are not set up to be notarized, so you will have to attach a special Notary Acknowledgment* and ask your landlord or property manager to cooperate. Some landlords and property managers will refuse to cooperate. If they do, ask them why and write down what they tell you, noting the time, date, and location of the conversation. If you do get your lease notarized, you will have to take it to the county recorder and pay the recording fee. By recording your lease, you put potential buyers, banks, and everyone else on notice that you are a tenant at the property.

3. File a request for foreclosure notices.

Idaho law allows anyone to request copies of any Notice of Default or Notice of Trustee's Sale given on a particular property. The request must include:

- (a) Your name and address.
- (b) The instrument number, location, and recording date of the Deed of Trust on the property (the county

recorder's office can help you find this information).
(c) Your signature with a notary's acknowledgment. You have to also find out the name and address of the trustee (the county recorder's office can also help you find this information) and mail a copy of your request to the trustee. You can use the Foreclosure Notice Request Form* to make sure you include everything that's required. Once complete, you must take the request to the county recorder and pay the recording fee.

4. If you suspect foreclosure or other sale, make sure everybody knows you are a tenant.

If your landlord is at risk of foreclosure, she might try to sell the home you are renting. This sale might either be a traditional sale or a "short sale," where the landlord gets permission from the lender to sell the home for less than the landlord owes the lender. If potential buyers, real estate agents, or others start visiting your home, you must make it clear that you are a tenant. Get the names of anyone who visits your home. Make sure your landlord is respecting your rights to peace and quiet and following the rules in your lease for coming on the property. You should also give anyone who visits a written Notice of Tenancy* and attach your lease to it. If you find out that someone is serious about buying the home, you should mail them a copy of the Notice by certified mail, return receipt requested. Write down the names of everyone who was notified that you were a tenant and when they got the notice.

5. Keep paying your rent.

Even if your landlord's property is in foreclosure, you must continue to pay your rent on time. However, if your lease term extends past the date of the scheduled trustee's sale, your landlord may realize that she is not going to be able to honor her rental contract with you. Once you find out that a trustee's sale is scheduled, you should contact your landlord or property manager and ask for a rent reduction or waiver for the months leading up to the sale. If you agree on a reduction or waiver, make sure the agreement is written down and signed by you and your landlord or property manager. If you don't pay your rent in full and on time, your landlord will be able to have you rapidly evicted for not

paying.

6. Find out whether you could buy the home you are renting.

Sometimes, especially through a short sale, you can get a good deal when buying a home that is in foreclosure. If you have a reliable income and find out the home you are renting is in foreclosure, it is worth looking into the possibility of buying the home from your landlord. Call the Idaho Housing and Finance Association at 1-800-432-4066 or talk to your credit union, bank, or city or county home buyer program office to determine what loans and programs for which you might be eligible.

WHAT HAPPENS AFTER A FORECLOSURE SALE?

Unless your landlord buys her own house back at the foreclosure sale, the highest bidder becomes the new owner, and in most cases, your new landlord, at the trustee's sale. Even if you could not afford to buy at the foreclosure sale, you can still attend. The date, time, and location will be listed on the Notice of Trustee's Sale. Sometimes, the trustee will postpone the sale only by announcing it at the time originally scheduled for sale. And sometimes the trustee will not actually hold the sale at the time or place they said they would.

1. Your rights as a tenant after foreclosure under federal law.

If the home you are renting was sold at foreclosure after May 19, 2009, then you are probably protected by the federal Protecting Tenants at Foreclosure Act until the end of 2012 (if you are renting a home sold at foreclosure before then, you should contact Idaho Legal Aid Services or a trusted attorney if possible). That law divides tenants into different categories with different rights:

>If your lease is already expired: The new owner must let you stay in the home until at least 90 days after giving you a notice to vacate.

>If your lease will expire within 90 days of the foreclosure sale: The new owner becomes your new landlord and must let you stay in the home until at least 90 days after giving you a notice to vacate. Plus, if the new owner wants you to move after that, it has to also terminate your lease in a way permitted by the lease and Idaho law.

>If your lease will expire more than 90 days after the foreclosure sale:

The new owner becomes your new landlord. If the new owner is going to move in, then she must let you stay in the home until at least 90 days after giving you a notice to vacate. If the new owner, like a bank, is not going to move in, then it must honor your lease term. If it wants to move in at the end of that term, it also has to terminate your lease in a way permitted by the lease and Idaho law.

>If you are in the Section 8 Housing Choice Voucher program, the new owner also has to let you keep your rental assistance through the program. If you are in that program, the new owner also cannot terminate your lease just because of the foreclosure.

Now that you know your rights, make sure the new owner does too. As soon as you know who the new owner is (after the trustee's sale, the county recorder's office can help you find this information), you should send a letter to the new owner informing them that you know your rights. You can use the Notice of Tenancy* form.

Keep in mind there are some exceptions to this federal law, and some foreclosures and sales are not covered by it. If possible you should consult with an Idaho Legal Aid Services or other trusted lawyer if you are a tenant affected by a foreclosure.

2. Keep paying your rent.

After the trustee's sale, you must pay your rent on time to the new owner, your new landlord. If you do not pay your rent in full and on time, the new owner will be able to have you rapidly evicted for not paying. If you need repairs, you must notify the new owner (see Idaho Legal Aid Services' brochure on landlord-tenant repairs).

3. "Cash for keys."

Right before or anytime after the trustee's sale, a bank, lender, real estate agent, or other person might contact you and try really hard to get you to move out. These people might call you, send you letters or demands, or visit you at home. They might tell you that you have no choice but to move out right away. They might tell you things that are different from what this brochure says or that an Idaho Legal Aid Services attorney told you.

If the agent realizes that you aren't going to give up

easily, they may offer you a "cash for keys" deal. Under these deals, the lender who's the new owner will pay you money if you move out by a certain date and leave the property in good, clean condition. Cash for keys deals typically allow you 15 to 45 days to move in exchange for \$500 to \$5000 or more, depending on the type of home you are in. Up to a point, agents are almost always authorized to offer you more time and money than they will tell you at first.

If you think you might want to accept a cash for keys offer, do your homework first and figure out how much time and money you will need to move. Make sure the cash for keys will provide enough of both. If you cannot move out on time, you will probably not get all the cash. Before signing a cash for keys agreement, make sure you have read and understand every word. Ask the agent if you will be required to sign anything else: agents will typically "demand" that you sign other documents at the last minute. Be especially sure you understand when and under what circumstances you will get the money. You usually do not get paid under these deals until after you have moved.

4. Eviction.

Whether or not the new owner has offered you a cash for keys deal or given you proper notice under federal law, at some point the new owner may sue you to have you evicted. In Idaho, the owner has to go to court to have you evicted legally. Defending against an eviction, especially when a foreclosure has happened, can be complicated. You will probably want an experienced tenant's lawyer to help you. If you receive an eviction notice after a foreclosure sale, or receive court papers, such as a "Summons" or "Complaint" or other documents from a process server or attorney's office, contact your local Idaho Legal Aid Services office or a trusted attorney right away. If you put it off and call a lawyer too late, s/he will not be able to help on short notice.

*** To access these documents go to our website and enter the document name in the library search:**

www.idaholegalaid.org

TENANTS, LANDLORDS AND FORECLOSURE

Prepared by:

Idaho Legal Aid Services, Inc.

www.idaholegalaid.org

Idaho Legal Aid Services Area Offices

310 N. 5 th Street, Boise	345-0106
1104 Blaine Street, Caldwell	454-2591
410 Sherman Ave., Coeur d'Alene	667-9559
482 Constitution Way, Idaho Falls	524-3660
633 Main Street, Lewiston	743-1556
150 S. Arthur, Pocatello	233-0079
475 Polk, Twin Falls	734-7024
Idaho Senior Legal Hotline	1-866-345-0106
Idaho Senior Legal Hotline	
(Spanish-speaking)	1-866-954-2591
Domestic Violence Advice Line	1-877-500-2980
TTY (Deaf & Hard of Hearing)	1-800-245-7573
Fair Housing Legal Advice Line	1-866-345-0106

To find Idaho rental assistance and properties, call 1-877-428-8844 or visit www.housingidaho.com

This pamphlet will help you understand what foreclosure is, how it can affect you as a tenant, and how to protect yourself if the place you're renting is in foreclosure.

Sometimes landlords stop paying their home loans. When this happens, banks and other lenders may foreclose on the property you are renting from your landlord. In many cases, the banks become the new property owners. These new owners might try to convince you, as a tenant, that you do not have the same rights as other tenants and that they do not have the same obligations as other landlords. In many cases, though, your rights remain the same as in any landlord-tenant relationship. You must do extra work during this period to protect your rights.

Q: WHAT HAPPENS WHEN I MISS MY MORTGAGE PAYMENTS?

Foreclosure may occur. This is the legal means that your lender can use to repossess (take over) your home. When this happens, you must move out of your house. If your property is worth less than the total amount you owe on your mortgage loan, a deficiency judgment could be pursued. If that happens, you not only lose your home, you also would owe HUD an additional amount.

Both foreclosures and deficiency judgments could seriously affect your ability to qualify for credit in the future. So you should avoid foreclosure if possible!

Q: WHAT SHOULD I DO?

1. **DO NOT IGNORE THE LETTERS FROM YOUR LENDER.** If you are having problems making your payments, call or write to your lender's Loss Mitigation Department without delay. Explain your situation. Be prepared to provide them with financial information, such as your monthly income and expenses. Without this information, they may not be able to help.
2. Stay in your home for now. You may not qualify for assistance if you abandon your property.
3. Contact a HUD-approved housing counseling agency. Call **1-800-569-4287** or **TDD 1-800-877-8339** for the housing counseling agency nearest you. These agencies are valuable resources. They frequently have information on services and programs offered by Government agencies as well as private and community organizations that could help you. The housing counseling agency may also offer credit counseling. These services are usually free of charge.

Q: WHAT ARE MY ALTERNATIVES?

You may be considered for the following:

Special Forbearance. Your lender may be able to arrange a repayment plan based on your financial situation and may even provide for a temporary reduction or suspension of your payments. You may qualify for this if you have recently experienced a reduction in income or an increase in living expenses. You must furnish information to your lender to show that you would be able to meet the requirements of the new payment plan.

Mortgage Modification. You may be able to refinance the debt and/or extend the term of your mortgage loan. This may help you catch up by reducing the monthly payments to a more affordable level. You may qualify if you have recovered from a financial problem and can afford the new payment amount.

Partial Claim. Your lender may be able to work with you to obtain a one-time payment from the FHA-Insurance fund to bring your mortgage current.

You may qualify if:

1. your loan is at least 4 months delinquent but no more than 12 months delinquent;
2. you are able to begin making full mortgage payments.

When your lender files a Partial Claim, the U.S. Department of Housing and Urban Development will pay your lender the amount necessary to bring your mortgage current. You must execute a Promissory Note, and a Lien will be placed on your property until the Promissory Note is paid in full.

The Promissory Note is interest-free and is due when you pay off the first mortgage or when you sell the property.

Pre-foreclosure sale. This will allow you to avoid foreclosure by selling your property for an amount less than the amount necessary to pay off your mortgage loan.

You may qualify if:

1. the loan is at least 2 months delinquent;
2. you are able to sell your house within 3 to 5 months; and
3. a new appraisal (that your lender will obtain) shows that the as is value of your home meets HUD program guidelines.

Deed-in-lieu of foreclosure. As a last resort, you may be able to voluntarily "give back" your property to the lender. This won't save your house, but it is not as damaging to your credit rating as a foreclosure.

You can qualify if:

1. you are in default and don't qualify for any of the other options;
2. your attempts at selling the house before foreclosure were unsuccessful; and
3. you don't have another FHA mortgage in default.

Q: HOW DO I KNOW IF I QUALIFY FOR ANY OF THESE ALTERNATIVES?

Your lender will determine if you qualify for any of the alternatives. A housing counseling agency can also help you determine which, if any, of these options may meet your needs and also assist you in interacting with your lender. Call **1-800-569-4287** or **TDD 1-800-877-8339**.

Q: SHOULD I BE AWARE OF ANYTHING ELSE?

Yes. Beware of scams! Solutions that sound too simple or too good to be true usually are. If you're selling your home without professional guidance, beware of buyers who try to rush you through the process. Unfortunately, there are people who may try to take advantage of your financial difficulty. Be especially alert to the following:

Equity skimming. In this type of scam, a "buyer" approaches you, offering to get you out of financial trouble by promising to pay off your

mortgage or give you a sum of money when the property is sold. The "buyer" may suggest that you move out quickly and deed the property to him or her. The "buyer" then collects rent for a time, does not make any mortgage payments, and allows the lender to foreclose. Remember, signing over your deed to someone else does not necessarily relieve you of your obligation on your loan.

Phony counseling agencies. Some groups calling themselves "counseling agencies" may approach you and offer to perform certain services for a fee. These could well be services you could do for yourself for free, such as negotiating a new payment plan with your lender, or pursuing a pre-foreclosure sale. If you have any doubt about paying for such services, call a HUD-approved housing counseling agency at **1-800-569-4287** or **TDD 1-800-877-8339**. Do this before you pay anyone or sign anything.

Q: ARE THERE ANY PRECAUTIONS I CAN TAKE?

Here are several precautions that should help you avoid being "taken" by a scam artist:

1. Don't sign any papers you do not fully understand.
2. Make sure you get all "promises" in writing.
3. Beware of any contract of sale or loan assumption where you are not formally released from liability for your mortgage debt.
4. Check with a lawyer or your mortgage company before entering into any deal involving your home.
5. If you're selling the house yourself to avoid foreclosure, check to see if there are any complaints against the prospective buyer. You can contact your state's Attorney General, the State Real Estate Commission,

or the local District Attorney's Consumer Fraud Unit for this type of information.

Q: WHAT ARE THE MAIN POINTS I SHOULD REMEMBER?

1. Don't lose your home and damage your credit history.
2. Call or write your mortgage lender immediately and be honest about your financial situation.
3. Stay in your home to make sure you qualify for assistance.
4. Arrange an appointment with a HUD-approved housing counselor to explore your options at **1-800-569-4287** or **TDD 1-800-877-8339**.
5. Cooperate with the counselor or lender trying to help you.
6. Explore every alternative to keep your home.
7. Beware of scams.
8. Do not sign anything you don't understand. And remember that signing over the deed to someone else does not necessarily relieve you of your loan obligation.

Act now. Delaying can't help. If you do nothing.
YOU WILL LOSE YOUR HOME and your good credit rating

Visit our web site at www.hud.gov.

May 2001
HUD-PA-426-H



VMP -563 (0207)

VMP MORTGAGE FORMS • (800) 521-7291

U.S. Department of Housing and Urban Development

HOW TO AVOID FORECLOSURE



This booklet explains how property owners can avoid losing their homes because of delinquent payments.

Este folleto explica a los propietarios de casas como evitar perder su hogar debido al incumplimiento en los pagos. Para información en español llame a la entidad que le dió el préstamo.

www.hud.gov



Michael F. McCarthy
Attorney at Law
IDAHO LEGAL AID SERVICES, INC.
475 Polk Street, Ste. 4
Twin Falls, ID 83301
Telephone (208) 734-7024, ext. 1605
Facsimile (208) 734-7067
Idaho State Bar # 3448

Attorney for Plaintiff

FILED AS
CASE #

2010 MAR 26 AM 9:34

DUANE CLARK, CLERK
DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

VIRGIL RALPH,

Plaintiff,

vs.

MET LIFE HOME LOANS, a division
of MET LIFE BANK, NA, and
TRANSNATION TITLE AND ESCROW,

Defendants.

CASE NO. CV 2010-200

VERIFIED COMPLAINT

Fee Category: A.

Filing Fee: Exempt

Fee Waived Under Rule 10(a)(6)

The Plaintiff complains against Defendant and for a claim for relief alleges as follows:

A. PRELIMINARY STATEMENT

1. This action is brought by the Plaintiff, against the alleged beneficiary of a deed of trust, Met Life Home Loans, and Transnation Title and Escrow, Inc. the alleged trustee.

2. Defendant, Met Life Home Loans has lead the Plaintiff to believe he was being considered for a home loan modification pursuant to the Home Assistance Modification Program. An earlier trustee's sale set for July 16, 2009, was vacated while this request pending. Plaintiff was advised verbally on March 25, 2010, at 2:30 p.m. that his request for a modification was denied and the trustee's sale would occur the following day on March 26, 2010. It appears

VERIFIED COMPLAINT - 1

COPY

Defendant has failed to comply with Idaho Code 45-1502 et. Seq., the Home Affordability Modification Program ("HAMP") Act, and lacks the authority to maintain this action.

B. PARTIES

3. The Plaintiff resides at 908 A Street, in Rupert, Idaho. The Plaintiff is disabled and his sole source of income is his social security disability payment of \$1050 per month.

4. Defendant MET LIFE HOME LOANS purports to be the beneficiary of Plaintiff's deed of trust. Met Life Home Loans claims to be the successor in interest to First Horizon Home Loans.

5. Defendant, TRANSNATION TITLE and ESCROW is a Delaware corporation that purports to be the trustee for this deed of trust.

C. FACTUAL ALLEGATIONS

6. The Plaintiff purchased his home on October 1, 2007. He executed a deed of trust to Mortgage Electronic Registrations Systems Inc.(hereafter "MERS") as a "nominee" for the original Lender, First Horizon Home Loans. The Plaintiff has occupied the property at all times relevant to this action.

7. Before closing , the Plaintiff was advised that his initial loan payment would be \$355 per month. At closing, he found that his actual payments were actually going to be about \$478 per month.

8. In October of 2008, the Plaintiff was advised his monthly payment had been increased to about \$601 per month. The Plaintiff protested this change in several phone calls to First Horizon. Several of these phone calls were conference calls with the assistance of advocates from Life Incorporated, an agency which assists people with disabilities. In these calls, the Plaintiff would be transferred to various departments and be given conflicting information.

9. Defendant would promise to mail Plaintiff forms or documents to complete. Often these documents were mailed to an incorrect address.

10. In March, 2009, Plaintiff received a Notice of Default and a Notice of Trustees Sale by registered letter. That notice was also hand delivered to the Plaintiff by a sheriff. That Notice set the sale for July 16, 2009.

11. In May, 2009, Plaintiff submitted a loan modification work out plan. In letter dated May 26, 2009, Defendant Met Life acknowledge receipt of the packet and requested additional documents.

12. On June 4 2009, Mr Ralph's counsel sent Met Life a letter along with a release of information requesting a loan modification.

13. On July 8, 2009, Plaintiff's counsel confirmed with Met Life who confirms that the schedule foreclosure sale scheduled for July 16 2009 would be vacated .

14. On October 7 2009, the Loan Administration Loss Mitigation department faxed a cover memo and additional forms to the Plaintiff's counsel. Plaintiffs counsel then forwarded those forms to Plaintiff. Plaintiff completed the forms and returned them in a short amount of time.

15. Plaintiff also had help with his loan modification from an employee named "Raul" from the Idaho Housing Agency. As recently as January, 2010, Plaintiff had discussions with Raul in which he indicated that he was still having discussions with Met Life about the loan modification. Plaintiff was not advised that Met Life needed anything else and was told they would notify him later. They did not notify him that his request for a modification had been denied or that the sale had been rescheduled.

16. Between June 6, 2009 and February 25, 2010, Plaintiff's counsel sent letters to Met

VERIFIED COMPLAINT - 3

Life inquiring about the status of the request for a loan modification. Plaintiff and his counsel also spoke with Met Life on at least one occasion. Plaintiff's counsel was not notified that the modification had been denied and that the trustee's sale had been rescheduled

17. On March 25, 2010, at approximately 2:30 p.m. the Plaintiff received a phone call at his home from an unidentified person who indicated she was a Met Life Employee. She refused to identify herself further. She told him his property was going to be sold tomorrow, the 26th of March. She did not give him any additional information. She refused to discuss the matter with him further.

18. On March 26, 2010, counsel for the Plaintiff spoke with a Transnational employee. She indicated the sale was scheduled for Friday the 26th at 11:00 a.m.. She indicated she did not have the authority to stop the sale and provided a number to contact an individual at the "Default Resolutions" branch at Met Life.

19. On March 26, 2010, at 4:30 p.m., counsel for the Plaintiff and the Plaintiff had a conference call with a Met Life employee. She indicated the sale would be going forward and there was nothing that could be done to stop it.

20. To this date, the Plaintiff has not been provided with a written Notice of the March 26, 2010 Trustee's Sale, either personally or by registered or certified mail.

FIRST CAUSE OF ACTION - FAILURE TO
COMPLY WITH IDAHO CODE 45-1506

21. "If no bankruptcy is ever filed and no stay intervenes, postponement proceeds according to Idaho Code 45-1506(8)." *Federal Home Loan Mortgage Corporation v Appel*, 143 Idaho 42, 137 P. 3d 429, 433 (Idaho 2006).

22. Idaho Code 45-1506 (8) provides that the trustee may postpone the sale by

publicly announcing at the original sale a subsequent time and place. "No sale may be postponed to a date more than thirty (30) days subsequent to the date from which the sale is postponed."

23. The beneficiary canceled the original sale date of July 16, 2009, without publicly announcing a subsequent date within thirty days of the original sale.

24. The Trustee has failed to comply with the notice requirement in I.C. 45-1506, in that it has not given notice by registered or certified mail at least 120 days prior to the date fixed for sale, and has not made good faith attempts to serve a copy of the notice on the Plaintiff.

25. On information and belief, the Defendant has not complied with other relevant portions of Idaho Code 45-1501 et. Seq.

26. The failure to give proper notice violates the Plaintiff's constitutional right to notice and an opportunity to be heard as guaranteed by the state and federal constitutions.

27. Because of the Defendant's failure to comply with the foreclosure statutes, the sale should be enjoined and vacated until such time as the issues can be resolved or proper notice given.

**SECOND CAUSE OF ACTION – HOME
AFFORDABILITY MODIFICATION PROGRAM**

28. In 2009, the Congress enacted the Home Affordability Modification Program ("HAMP"). The purpose of the program is to assist homeowners at risk of losing their homes to foreclosure to keep their homes through the use of loan modifications. Participating servicers were provided with federal funds. In exchange for such funds, participating servicers agreed to consider homeowners for loan modifications before proceeding to foreclosures, and to make loan modifications in appropriate cases

29. On information and belief, Met Life Home Loans is a participant in the HAMP

program.

30. As a participating servicer, Met Life Home Loans is required to follow the program's guidelines and procedures. Supplemental Directive 09-01 states that mortgagors are required to suspend foreclosure proceedings until the borrower has been evaluated for the program and if eligible, offered an opportunity to participate in the HAMP Program.

31. The Defendant has not given the Plaintiff notice that he has been considered for a loan modification under the program. Until such time as he appropriately considered, the foreclosure sale should be enjoined and vacated.

32. Under the circumstances in this action, a modification that conforms to the HAMP program is appropriate.

THIRD CAUSE OF ACTION - THE DEFENDANTS
RIGHT TO PROCEED IS QUESTIONABLE

33. Plaintiff is the owner of the real property which is the subject of this action. Plaintiff seeks a determination as to the legal status of the parties as to the Note and the Deed of Trust.

34. On information and belief, the Plaintiff is not aware if the original beneficiary, Mortgage Electronic Registration Systems inc, the original Lender, First Horizon Home Loans, and the original Trustee, Land Title and Escrow, executed and recorded the necessary assignments and transfers to maintain a foreclosure action as required under the applicable statutes .

35. Only the note holder is authorized to collect payments and, in the event of a default, commence foreclosure proceedings, including authorizing the substitution of a Trustee. Defendants are required to prove their right to foreclose and strict compliance with the

foreclosure statutes. Until such time as Defendant's right to proceed is adequately established, they should be enjoined from proceeding further.

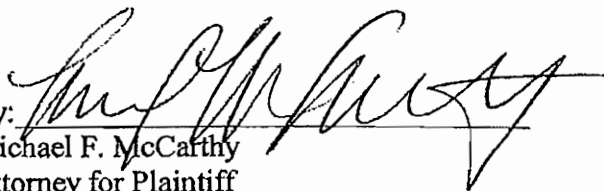
PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

1. Declare the Defendants' practices to be in violation of the Idaho Code 45-1502 et. seq.
2. Find that the Defendants failed to consider the Plaintiff for a loan modification, as required under federal statutes and the contractual obligations, and enjoin the Defendants from commencing or pursuing further foreclosure or other interference with Plaintiff's possession until such time as all rights to possession are properly determined.
3. Order the Defendants to prove their right to maintain a foreclosure proceeding and to prove strict compliance with the applicable statutes.
4. Award the Plaintiffs actual damages as proven at trial.
5. Award attorney's fees and costs as provided under the applicable statutes and regulations.
6. Grant such other further relief as the court deems just and equitable.

DATED this 25 day of March, 2010.

IDAHO LEGAL AID SERVICES, INC.

By: 
Michael F. McCarthy
Attorney for Plaintiff

VERIFICATION

STATE OF IDAHO)
COUNTY OF Middlebury :ss

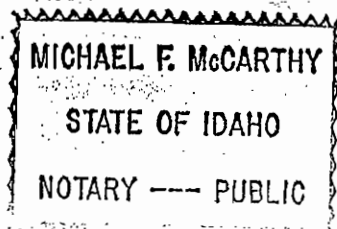
I, VIRGIL RALPH, do hereby depose and state that I have read the foregoing Complaint, know the contents thereof, and believe them to be true.

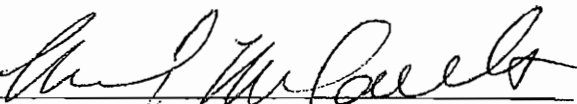
DATED this 26 day of March, 2010.


VIRGIL RALPH

SUBSCRIBED AND SWORN To before me this ____ day of March 2010.

(SEAL)




NOTARY PUBLIC FOR IDAHO
Residing at 9/17/13
Commission Expires June 2015

Michael F. McCarthy
Attorney at Law
IDAHO LEGAL AID SERVICES, INC.
475 Polk Street, Ste. 4
Twin Falls, ID 83301
Telephone (208) 734-7024, ext. 1601
Facsimile (208) 734-7067
Idaho State Bar # 3448

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

VIRGIL RALPH,)	
)	
Plaintiff,	)	CASE NO. <i>W 2010-203</i>
)	
vs.	)	TEMPORARY RESTRAINING ORDER
	)	AND ORDER TO SHOW CAUSE
)	
MET LIFE HOME LOANS, a division)	
of MET LIFE BANK, NA, and)	
TRANSNATION TITLE AND ESCROW,)	
)	
Defendants.)	
)	

UPON READING the Verified Complaint, Affidavit of Michael F. McCarthy, and Motion for a Temporary Restraining Order and Order to Show Cause, there appears good cause to issue a Temporary Restraining Order and Order to Show Cause why the foreclosure sale scheduled for April 12, 2010, should not be enjoined. It appears the Plaintiff has raised genuine issues that the Defendants did not comply with or conform to the requirements Idaho Code 45-1502 et. seq., the requirements of the Home Affordability Modification Program, and raised genuine issues regarding the right of the Defendant to maintain this foreclosure proceeding, and the non-judicial foreclosure sale is likely to irreparably harm Plaintiff if the Court later

determines the Plaintiff has valid causes of action. It further appears from the Verified Complaint that the Temporary Restraining Order may enhance judicial economy and efficiency.

THIS Order is granted without notice because there is only a short period of time before the intended sale and time is of the essence; therefore,

IT IS ORDERED that Defendants Transnation Title and Escrow Company and Met Life Home Loans are restrained from conducting a non-judicial foreclosure sale of TRACT B IN JF READ'S SUBDIVISION of the City of Rupert Lot 3 in Block 11 of Magic Meadows No. 2 Subdivision, Jerome County Idaho, according to the official plat thereof in the records of Jerome County, Idaho, commonly known as 749 E. 18th Avenue, on April 12, 2010; Minidoka 908 A STREET ON MARCH 26, 2010 at 11:00 AM.

and that this Temporary Restraining Order shall expire within fourteen (14) days, unless for good cause it is extended in accordance with the Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Defendants appear before this Court on the 6th day of April, 2010, at 9:30 a.m. MDT, or as soon thereafter as this cause may be heard, and show cause why the restraining order should not remain in full force and effect during the pendency of this action, and why Plaintiff should not be granted an injunction.

IT IS HEREBY FURTHER ORDERED that a copy of this Order be served upon the Defendant at least five (5) days prior to the date set for hearing in this matter.

THIS ORDER expires Fourteen (14) days from the date of issuance if no show cause hearing is held.

DATED this 26th day of March, 2010, at Rupert, Idaho, at 9:24 o'clock a.m., and expires the 9th day of April, 2010, at the hour of 9:00 o'clock a.m.



Jonathan Brody
The Hon. Jonathan P. Brody
District Judge

Michael F. McCarthy
Attorney at Law, ISB # 3448
IDAHO LEGAL AID SERVICES, INC.
475 Polk Street
P.O. Box 1296
Twin Falls, ID 83303-1296
Telephone: (208) 734-7024
Facsimile: (208) 734-7067
Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

VIRGIL RALPH)	
)	
Plaintiff,	)	CASE NO. CV 2010-200
)	
vs.	)	PLAINTIFF'S FIRST SET OF
	)	INTERROGATORIES, REQUESTS
MET LIFE HOME LOANS, a division,	)	FOR PRODUCTION, AND REQUESTS
of MET LIFE BANK, NA, and	)	FOR ADMISSION
TRANSNATION TITLE AND ESCROW,)	
)	
Defendants.)	
_____)	

TO: The above-named Defendant Met Life Home Loans, a division of Met Life Bank N.A., and
to its' attorney of record:

INTERROGATORIES

YOU WILL PLEASE TAKE NOTICE that the Plaintiff requires you to respond in writing
under oath to the following interrogatories and respond to the requests for production within thirty
(30) days of service hereof, and in conformance with all provisions of Rules 33, 34, and 36 of the
Idaho Rules of Civil Procedure.

**INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUEST FOR
ADMISSIONS -- PAGE 1**

DEFINITIONS

Unless otherwise indicated, the following definitions will be applicable to these Interrogatories, Requests for Production, and Requests for Admissions.

A. "You" or "your" shall mean and refer to Defendant, Met Life Home Loans, Met Life Bank, N.A., First Horizon Home Loans, First Tennessee Bank, N.A., their agents, officers, representatives, employees, assignors, and anyone acting on their behalf.

B. "Person" shall mean and include a natural person, partnership, firm or corporation or any other kind of business or legal entity, its agents or employees. In each instance wherein you are asked to "identify" a person or the "identity" of a person, state with respect to each such person his name and last known residence, business address, and telephone number.

C. The words "document" and "documents" mean all written, recorded, or graphic matters, however produced or reproduced, pertaining in any way to the subject matter of this action. This definition includes, but is not limited to, any and all originals, copies or drafts of any and all of the following: records, notes, summaries, schedules, contracts, agreements, drawings, sketches, invoices, orders, acknowledgments, diaries, reports, forecasts, appraisals, memoranda, telephone logs, letters, telegrams, telexes, cables, tapes, transcripts, recordings, photographs, pictures, films, motion pictures, records of meetings, computer programs or other graphic, symbolic, recorded or written materials of any nature whatsoever. Any document which contains any comments, notations, addition, insertion or marking of any kind which is not part of another document is to be considered as a separate document. In each instance wherein you are asked to "identify" or describe a document, your description should include, but not be limited to the following:

(1) The name, address, telephone number, occupation, job title and employer of the present custodian of the document;

(2) The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

D. The "subject transaction" or "subject account" means the transaction(s) which occurred on October 1, 2007, including any prior or ongoing contract or communication relating to the transaction and/or account, up to and including the date of your answer to these interrogatories. Specifically, the "subject transaction" includes each and every agreement, contract, communication or transaction between Virgil Ralph, and "MERS," First Horizon Home Loans, Met Life Home Loans, N.A. and their assignees, including but not limited to, their agents, representatives and employees.

E. "Met Life " means First Horizon Home Loans, Met Life Home Loans, N.A., Met Life Bank, N.A., and its subsidiaries, branches, divisions, affiliates, or assignees.

F. "HAMP" means the Home Affordable Modification Program.

G. "The deed of trust" means and refers to the deed of trust executed on October 1, 2007, by Virgil Ralph, as Borrower, and "MERS" as Beneficiary.

H. The "Note" means and refers to the "Note" executed by Virgil Ralph as "Borrower" to First Horizon Home Loans, a division of First Tennessee Bank, N.A., as "Lender", on October 1, 2007.

I. "Servicing" means collecting the principal, interest, or escrow account payments.

J. "Riverside Mortgage " means the entity or individual who was paid a 1% loan

origination fee in the subject transaction.

INTERROGATORY NO. 1: State the name, job title, and business address of the person(s) providing information in response to these discovery requests.

INTERROGATORY NO. 2. WITNESSES. State the name, address and telephone number of each person you intend to call as a witness at the hearing or trial of this matter and the substance of the facts to which you expect the witness to testify.

INTERROGATORY NO. 3: EXPERT WITNESSES. Separately identify each person whom you may call as an expert witness at any hearing or trial of this action, state the subject matter on which such expert is expected to testify, the opinion or opinions to which such expert is expected to testify, their education, training, or other qualifications for rendering such an opinion, and the facts or data relied on for rendering such opinion or opinions.

INTERROGATORY NO. 4: Identify each assignment of the beneficial interest in the deed of trust since October 1, 2007, including the name of the assignor, the name of the person or entity to whom it was assigned, the date of said assignment, and the date said assignment was recorded in the Minidoka County Recorder's office.

INTERROGATORY NO. 5: Identify the eligibility criteria you used in determining whether the Plaintiff qualified for a HAMP loan modification.

INTERROGATORY NO. 6: Identify the facts or data you used in determining whether the Plaintiff qualified for a HAMP loan modification.

INTERROGATORY NO. 7: Did you identify the net present value of a loan modification compared to the net present value for no modification? If yes, please set forth the criteria you used and the results.

INTERROGATORY NO. 8: Did you consider the Plaintiff for a "non-HAMP" loan modification? If yes, please identify the criteria you employed, the facts or data you relied on , and the basis for rejecting him.

INTERROGATORY NO. 9: Identify all contacts made, communications with, or notices issued to the Plaintiff before entering into the subject transaction on October 1, 2007.

INTERROGATORY NO. 10: Identify all contacts made, communications with, or notices issued to the Plaintiff from October 1, 2007 to March 5, 2009.

INTERROGATORY NO. 11: Identify all contacts made, communications with, or notices issued to the Plaintiff after March 5, 2009 to the present time.

INTERROGATORY NO. 12: Identify all documents reflecting or relating to the contacts made, communication with, or notices issued to the Plaintiff advising him that his request for a loan modification had been denied.

INTERROGATORY NO. 13: Identify each failure to make payments and/or default under the "note" and deed of trust.

INTERROGATORY NO. 14: Identify all appointments of successor trustees to the Deed of Trust of October 1, 2007, and when and where said appointments or assignments are recorded in Minidoka County.

INTERROGATORY NO. 15: Identify all assignments of the beneficial interest in the "Note."

INTERROGATORY NO. 16: While servicing the loan, did you ever change the monthly payment amount ? If yes, identify when said change was made, the basis for the change, and how the Plaintiff was notified of the change.

**INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUEST FOR
ADMISSIONS -- PAGE 5**

INTERROGATORY NO. 17: Did the Plaintiff ever dispute or inquire about the amount being charged or collected for principal, interest or escrow account payments while you were servicing the loan ? If yes, please identify the nature of the communication, the date received, and your response.

INTERROGATORY NO. 18: Identify the relationship you had or have with Riverside Mortgage including any agreements related to the payment of fees or commissions.

REQUESTS FOR PRODUCTION

At 11:00 a.m. on the 31st day of August, 2010, unless a greater time is agreed to by DEFENDANT, produce for inspection and copying, at the office of Michael F. McCarthy, Attorney at Law, Idaho Legal Aid Services, Inc., 475 Polk Street, Twin Falls, Idaho, 83301, the following documents. You may satisfy this Request for Production by mailing copies thereof to Defendant's attorneys prior to August 18, 2010. Without limitation of the foregoing, request is made for the following documents:

REQUEST FOR PRODUCTION NO. 1: Please produce copies of any and all documents you intend to produce at any hearing or the trial in this matter.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of any and all documents related to the subject transaction of October 1, 2007.

REQUEST FOR PRODUCTION NO. 3: Please produce the records, progress notes, reports, statements, appraisals, data or other information, relied on by any expert witness you intend to call at any hearing or trial of this action.

REQUEST FOR PRODUCTION NO. 4: Please produce a curriculum vitae, resume or

similar document which sets forth the education, training, or other qualifications of any experts you intend to call at any hearing or trial of this action.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents used in determining whether the Plaintiff qualified for a modification under the HAMP program.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents reflecting an assignment of the beneficial interest in the deed of trust to a successor beneficiary.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents reflecting an assignment of the beneficial interest in the note.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents reflecting a change in the trustee of the deed of trust.

REQUEST FOR PRODUCTION NO. 9: Please produce all documents used in determining whether the Plaintiff qualified for a non-HAMP loan modification.

REQUEST FOR PRODUCTION NO. 10: Please produce all documents used in determining the net present value of a HAMP loan modification.

REQUEST FOR PRODUCTION NO. 11: Please produce all documents used in determining the net present value of a non HAMP loan modification.

REQUEST FOR PRODUCTION NO. 12: Please produce all documents advising the Plaintiff he does not qualify for either a HAMP or non-HAMP loan modification.

REQUEST FOR PRODUCTION NO. 13: Please produce a copy of all documents related to all communication between MET LIFE and the Plaintiff.

REQUEST FOR PRODUCTION NO. 14: Please produce a copy of all pooling and servicing agreements between you and any third parties related to the subject transaction.

INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUEST FOR ADMISSIONS -- PAGE 7

REQUEST FOR PRODUCTION NO. 15: Please produce a copy of all documents notifying the Plaintiff that the amount of his monthly payment was being changed.

REQUEST FOR PRODUCTION NO. 16: Please produce a copy of all documents relating to the relationship you had or have with Riverside Mortgage including any contracts or agreements related to the payment of fees or commissions

REQUESTS FOR ADMISSION

At 11:00 a.m. on the 31st day of August, 2010. unless a greater time is agreed to by DEFENDANT, admit or deny the following:

REQUEST FOR ADMISSION NO. 1: Admit that Met Life is a HAMP participant.

REQUEST FOR ADMISSION NO. 2: Admit that Met Life signed an agreement promising to abide by the HAMP guidelines.

REQUEST FOR ADMISSION NO. 3: Admit that the Plaintiff is a third party beneficiary of the HAMP agreement.

DATED this 30 day of July, 2010.

IDAHO LEGAL AID SERVICES, INC.

By: 
MICHAEL F. McCARTHY
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Michael F. McCarthy, hereby certify that on the 30 day of July, 2010, I served a true and correct copy of the within **INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSION** upon the following interested party(s), by regular US Mail:

Laura E. Burri
RINGERT LAW
P.O. Box 2773
Boise, ID 83701



Michael F. McCarthy
Attorney for Plaintiff

Michael F. McCarthy
Attorney at Law
IDAHO LEGAL AID SERVICES, INC.
475 Polk Street, Ste. 4
Twin Falls, ID 83301
Telephone (208) 734-7024, ext. 1605
Facsimile (208) 734-7067
Idaho State Bar # 3448

Attorney for Plaintiff

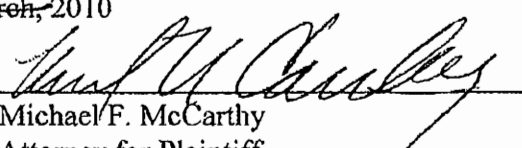
**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

VIRGIL RALPH,)	
	)	CASE NO. CV 2010-200
Plaintiff,)	
	)	MOTION FOR MEDIATION
)	
vs.)	
)	
MET LIFE HOME LOANS, a division)	
of MET LIFE BANK, NA, and)	
TRANSNATION TITLE AND ESCROW,)	
)	
Defendants.)	
_____)	

COMES NOW, Plaintiff, by and through his attorney, Michael F. McCarthy, of Idaho
Legal Aid Services, Inc., and moves that the parties be ordered into mediation..

This motion is based on the Verified Complaint, the Affidavit(s) and other pleadings on
file herein. Oral argument on this motion is requested.

DATED this 1st day of April, 2010


Michael F. McCarthy
Attorney for Plaintiff

MOTION FOR MEDIATION

Michael F. McCarthy
Attorney at Law, ISB #3448
IDAHO LEGAL AID SERVICES, INC.
475 Polk Street
P. O. Box 1296
Twin Falls, ID 83303-1296
(208) 734-7024
(208) 734-7067 (fax)
Attorney for Plaintiff

 **FAXED**
07/10
Filed by Fay

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

VIRGIL RALPH,	)	CASE NO. CV 2010-200
)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	PRELIMINARY INJUNCTION
)	
vs.)	
)	
MET LIFE HOME LOANS, a division,)	
of MET LIFE BANK, NA, and)	
TRANSNATION TITLE AND ESCROW)	
Defendants.)	
)	

Rule 65 (e). Idaho Rules of Civil Procedure, provides that a preliminary injunction can
issue under the following circumstances:

(2) When it appears by the complaint or affidavit that the commission or
continuance of some act during the litigation would produce waste, or great or
irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing, or threatens,
or is about to do, or is procuring or suffering to be done, some act in violation of
the plaintiff's rights, respecting the subject of the action, and tending to render the
judgment ineffectual.

IRCP 65 (e)(3).

“On application for a preliminary injunction, it is not necessary that a case should be made out that would entitle complainant to relief at all events on the final hearing. If, from the pleadings and affidavits, it appears that a case is presented proper for its investigation on a final hearing, a preliminary injunction may issue to preserve the property or rights in controversy in *statu quo* and to prevent irreparable injury thereto.” *Blue Creek Land & Livestock Comp v. Battle Creek Sheep Comp.*, 52 Idaho 728, 733 (Idaho 1933).

The Plaintiff has raised substantial issues. The Defendants have been engaged in loan modification discussions with this Plaintiff pursuant to the federal HAMP program for over a year and as recently as March 26, 2010. See Plaintiff's Affidavit, page 1, paragraph 1. One would assume the Defendants would not be acting in this way if they did not have an obligation to pursue modification. Since July, 2009, they have postponed the sale.

If the Defendants have not been engaged in a good faith effort to modify the loan, then these actions, i.e. to simultaneously pursue a foreclosure sale while soliciting information for a modification, would seem to constitute an “unfair or deceptive practice.”


The ultimate relief sought by the Plaintiff is to enjoin the sale and put into place a new loan that preserves the Plaintiff's home while also providing the Defendant an income stream. While a temporary injunction will not usually be allowed where its effect is to give the plaintiff the principal relief he seeks without bringing the cause to trial, “neither should a preliminary injunction be dissolved where its effect would be such as to give the defendant the relief he seeks without bringing the cause to trial.” *Lawrence Warehouse v Rudio Lumber Co.*, 89 Idaho 389, 394, (Idaho 1965) 9556, quoting *Roland v. Kellog Power & Water, Co.*, 40 Idaho 216, 225, 233

P. 869 (1925). To not grant the injunction in this case would give the Defendants the relief they seek without a trial, i.e., possession of the home.

The rule provides for an adequate undertaking in a sum the court "deems proper." Rule 65(c). In this case the value of the home is sufficient to cover the potential damage to the Defendant without an additional undertaking. The home is worth approximately \$89,000, while the loan amount is around \$50,000. Plaintiff's Affidavit, p. 3. "By terms of this rule, the provision of security is necessary only in such sum as the court finds necessary to secure the enjoined party against loss that may be incurred if it is ultimately found that the preliminary injunction was unwarranted." *Hinkle v Winey*, 126 Idaho 993 999 (Idaho App. 1995) 20912. Not every dollar of fees incurred to dissolve a TRO must be recovered. "The Rule strikes a balance, articulated by Justice Cardozo, between protecting wrongfully restrained defendants and avoiding undue hard ship for plaintiffs who present facially meritorious claims in good faith." *McAtee v Faulkner Land & Livestock, Inc.*, 113 Idaho 393, 400 (Idaho App 1987) , 16491.

For these reasons the Plaintiff asks the Court to grant a preliminary injunction and enjoin the Defendant from proceeding with the foreclosure while this matter is pending.

DATED this 5th day of April, 2010



Michael F. McCarthy
Attorney for Plaintiff

COPY

4/6/10

FILED
CASE #

2010 APR -5 AM 10:52

DUANE L. CLARK
CLERK
DEPUTY

Michael F. McCarthy
Attorney at Law
IDAHO LEGAL AID SERVICES, INC.
475 Polk Street, Ste. 4
Twin Falls, ID 83301
Telephone (208) 734-7024, ext. 1605
Facsimile (208) 734-7067
Idaho State Bar # 3448

Attorney for Defendant/Counterclaimants

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

DEUTSCHE BANK NATIONAL
TRUST COMPANY,

Plaintiff/Counterdefendants,

vs.

LARRY FLAMENT and
DOREEN FLAMENT, husband and
wife and all other residents
designated as John Does I-X,

Defendant/Counterclaimants.

CASE NO. CV-2010-155

ANSWER AND COUNTERCLAIM

Fee Category
Filing Fee: Exempt
Fee Waived Under Rule 10(a)(6)

COMES NOW the Defendants, LARRY AND DOREEN FLAMENT, by and through
their counsel of record, Michael F. McCarthy, of Idaho Legal Aid Services, Inc., and answers the
complaint as follows:

1. Defendant denies each and every allegation contained in the Complaint unless specifically admitted herein.
2. Responding to Paragraph 1 of Plaintiff's Complaint, Defendant is without sufficient knowledge to admit or deny said paragraph and therefore denies the same.

ANSWER AND COUNTERCLAIM - 1

3. Responding to Paragraph 2 of Plaintiff's Complaint, Defendant admits the allegations of said paragraph.

4. Responding to Paragraph 3 of Plaintiff's Complaint, Defendant Larry Flament admits he executed a Note and Deed of Trust for the subject property, but denies it was for the purchase of said property.

5. Responding to Paragraph 4 of Plaintiff's Complaint, Defendants admit they failed to make some payments under the terms of the note and deed of trust, but are without sufficient knowledge to admit or deny the other allegations in said paragraph and therefore denies the same.

6. Responding to Paragraphs 5, 6 and 7 of Plaintiff's Complaint, Defendants are without sufficient knowledge to admit or deny the allegation of said paragraph and therefore deny the same.

7. Responding to Paragraph 8 of Plaintiff's Complaint, Defendants admit the allegations of said paragraph.

8. Responding to Paragraph 9 of Plaintiff's Complaint, Defendants admit they are in possession without Defendant's permission, but are not aware of "other demands" for possession by this Plaintiff, and therefore deny the remaining allegations of said paragraph.

9. Responding to Paragraphs 10, 11, 12, 13, 14, 15, and 16, of Plaintiff's Complaint, Defendants deny the allegations of said paragraphs for the reasons set forth in the remainder of this answer and counterclaim.

WHEREFORE, Defendants pray for judgment as follows:


1. That Plaintiff's complaint be dismissed.
2. For costs and attorneys fees as provided by Idaho Code 12-120 and 12-121.

ANSWER AND COUNTERCLAIM - 2

3. For such other and further relief as the court deems just and equitable.

DATED This 29 day of April, 2010.

IDAHO LEGAL AID SERVICES, INC.

By 
MICHAEL F. MCCARTHY
Attorney for Defendants

COUNTERCLAIM

COMES NOW, the Defendants, by and through their counsel of record, MICHAEL F. MCCARTHY of IDAHO LEGAL AID SERVICES, INC., and hereby counterclaim and allege as follows:

A. PRELIMINARY STATEMENT

1. This action is brought by the Plaintiffs, LARRY AND DOREEN FLAMENT, against the alleged beneficiary of a deed of trust, DEUTSCHE BANK NATIONAL TRUST COMPANY, and the mortgage company that services that deed of trust on their home, RESIDENTIAL CREDIT SOLUTIONS, INC. ("RCS").
2. Defendant, DEUTSCHE BANK, has refused to modify the loan pursuant to the Home Assistance Modification Program despite the fact it has received federal funding in exchange for a promise to consider such modifications. In addition, it appears Defendant lacks the authority to maintain this action, and has engaged in unfair and deceptive and unfair practices in violation of the Idaho Consumer Protection Act.
3. Defendant, RCS, has failed to consider this loan for modification pursuant to the Home Assistance Modification Program despite the fact it has received federal funding in

exchange for a promise to consider such modifications. In addition, Defendant has engaged in unfair and deceptive practices, including but not limited to promising to consider the loan for modification, and to vacate the proposed foreclosure sale, and then failing to do either and proceeding with the foreclosure.

B. PARTIES

4. The Defendants are husband and wife who first purchased the home located at 1521 T Street, Heyburn, Idaho, in June, 1986, and have lived there ever since. Doreen is disabled. Larry works as a truck driver for Kloper Concrete.

5. Plaintiff, DEUTSCHE BANK, purports to be the beneficiary of Defendant's deed of trust.

6. Plaintiff, RCS, is a loan servicer of the Defendant's deed of trust.

C. FACTUAL ALLEGATIONS

7. The Plaintiffs purchased their home in 1986. In 1996, the Flaments were contacted by a broker about refinancing their home. The Flaments refinanced their home using some of the additional funds to make renovations.

8. In 1997, Doreen's health problems forced her to discontinue working. Doreen's monthly prescriptions exceed \$250 per month. A few years ago, Larry was diagnosed with diabetes, hypertension, and high cholesterol. His monthly prescription costs approximate \$220 per month. Although disabled, Doreen does not qualify for Social Security disability benefits, and Larry's income disqualifies her for SSI and Medicaid benefits.

9. Larry's checks began being garnished for a judgment stemming from an unpaid medical bill. In addition, Larry's employment is seasonal and his hours traditionally reduce in

the winter.

10. These circumstances lead to the Flaments falling behind in their mortgage payments in the spring of 2009. They received a letter from the Loss Mitigation department of RCS dated April 6, 2009. Doreen called and spoke with a representative. The representative indicated the Defendants needed to pay about \$1600 to cure the default. The representative did not offer a loan modification.

11. The Defendants tried to obtain financing from other sources and also spoke with RCS. At some point, the Flaments learned about the HAMP PROGRAM. On or around August 1, 2009, Mr. Flament called RCS and spoke with an employee. The employee told him they would send him a package of documents to complete regarding a modification. The Defendants did not receive the promised documents from, RCS.

12. On August 31, 2009, Plaintiff sent Defendants a Notice of Trustees Sale which scheduled the sale for January 5, 2010. That notice is signed by Kara Lansberry, Assistance Trustee Officer for Pioneer Lender Trustee Services LLC, Trustee, c/o Regional Trustee Services Corporation.

13. On September 12, 2009, Defendants sent a check in the amount of \$540.42 in an effort to reinstate their loan.

14. On September 24, 2009, RCS returned that a check with a letter stating that "certified funds are required" and it was an "insufficient amount to total amount due."

15. On September 16, 2009, Ms. Flament called RCS. She discussed the loan modification program with an employees named "Spencer." He informed her that "Crystal" was in charge of her case. She also discussed the case with "Paul." He promised to send her a

“hardship package” and advised her RCS would not discuss the financial issues until they received the financial documentation.

16. On September 16, 2009, Defendants contacted a HUD approved housing counselor, Michael Purce, with Pocatello Neighborhood Services. He promised to assist Defendants in submitting a request for loan modification paperwork.

17. On September 17, 2009, Ms. Flament spoke with a female at RCS who informed her that the package was sent out “yesterday by Spencer.” She indicated as soon as it was completed and returned it would be sent to Crystal. She also advised that Crystal was in charge of the Flaments’ case.

18. On September 24, 2009, Defendants received the loan modification packet.

19. On September 25, 2009, Defendant Doreen Flament called RCS again and spoke with Vickie. Vickie informed her that the papers had been sent out on September 17, 2009, from their office in Texas.

20. On September 29, 2009, Defendant spoke with Melinda of RCS, who advised her about how to complete the forms.

21. With the assistance of housing counselor Michael Purce of Pocatello Neighborhood Housing, the Defendants faxed their request for a loan modification packet on October 3, 2009.

22. On October 5, 2009, Defendant Doreen Flament spoke with RCS’s employee Kenisha, who acknowledged receipt of the loan packet by fax. Defendant indicated she would be mailing hard copies and mailed a hard copy on October 5, 2009. The Defendants included in their submission a financial hardship affidavit, a statement of their circumstances, income and

expense information and wage stubs.

23. On October 30, 2009, Defendants spoke with employee James who requested more information regarding insurance on the house. Defendant, Doreen Flament spoke with her insurance officer and advised LaWana to fax the insurance information to Crystal at RCS per James' instructions.

24. On November 9, 2009, Defendant spoke with another RCS's employee named Lilly.

25. Ms. Flament spoke with RCS's employees several times over the course of the following two months. She was assured by those employees that the foreclosure would not proceed until her loan modification was considered. Her last conversation with a RCS's employee occurred on December 19, 2009.

26. On November 12, 2009, Defendant discussed the case with a RCS's employee named Richard who informed her "there wasn't anything in his paperwork stating foreclosure status." He promised to get a message to Crystal and Yenny.

27. On December 11, 2009, Defendant spoke with RCS's employee Eric Young who requested additional information including two recent check stubs, three months of checking account statements, and another hardship statement. Defendant faxed the requested information on December 15, 2009.

28. On December 16, Defendant spoke with RCS to see if they received the papers. She spoke with Beverly who said she did not know. Beverly suggested calling back on Thursday.

29. On December 19, 2009, Defendant spoke with RCS's employee JC, who advised

that all papers were received on the 15th. JC stated they had everything they needed and they required nothing further from Defendants.

30. On January 13, 2010, a woman who identified herself as Kelly Runyon came to Defendants' home stating she was there to offer "cash for keys." She offered \$500 to leave within twenty (20) days. Defendants indicated there must be a mistake as they were under consideration for a hardship package and showed her the various documents, notes and correspondence she had regarding this matter. Ms. Runyon indicated she would check on it further. Defendant spoke with Ms. Runyon one or two times thereafter and she said the house had been foreclosed.

31. Defendants were then served with an Eviction Notice on or around the 23rd of January, 2010.

D. HOME AFFORDABILITY MODIFICATION PROGRAM

32. In 2009, the Congress enacted the Home Affordability Modification Program ("HAMP"). The purpose of the program is to assist homeowners at risk of losing their homes to foreclosure to keep their homes through the use of loan modifications. Participating servicers were provided with federal funds. In exchange for such funds, participating servicers agreed to consider homeowners for loan modifications before proceeding to foreclosures, and to make loan modifications in appropriate cases

33. RCS is a participating servicer in the HAMP.

34. As a participating servicer, RCS has agreed to follow the program's guidelines and procedures. Supplemental Directive 09-01 states that mortgage servicers have to suspend foreclosure proceedings until the borrower has been evaluated for the program and if eligible,

offered an opportunity to participate in the HAMP Program.

35. The Plaintiffs failed to consider the Defendants for a modification. The foreclosure sale should be declared a nullity and rescinded; and Plaintiff enjoined from further interference with Defendants' possession until such time as a modification is considered.

36. Under the circumstances in this action, a modification that conforms to the HAMP program is clearly appropriate.

E. FAIR DEBT COLLECTION PRACTICES ACT

37. The allegations of paragraphs 1 through 36 above are realleged and incorporated herein by reference.

38. Plaintiff and its' agent, RCS violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. ' 1692f, by using unfair and unconscionable means to collect the debt owed by the Defendants, including but not limited to advising the Defendants they were under consideration for a loan modification; advising them that in the interim, the foreclosure would be vacated; and failing to consider them for a modification and proceeding with a foreclosure action.

39. Plaintiff violated the FDCPA, 15 U.S.C. 1692e(2), by misrepresenting the character, amount and legal status of the Defendants' debt.

40. Plaintiff violated the FDCPA, 15 U.S.C.1692e(5)and 1692f(6), by threatening to foreclose on the Defendants home even though Plaintiff, has no present right to possession of the property under its security agreement, and by threatening to take other action prohibited by law.

F. THE IDAHO CONSUMER PROTECTION ACT

41. The allegations of paragraphs 1 through 40 above are realleged and incorporated herein by reference.

Plaintiff and/or its agents violated the Idaho Consumer Protection Act Idaho Code 48-601 et seq (hereafter "the Act").

42. At all times relevant the Defendant was a consumer as that term is used by the Act.

43. At all times relevant the Plaintiff was engaged in trade or commerce as defined by the Act.

44. The Act prohibits unfair or deceptive acts and practices. A violation of the Act may be based on any law, statute, regulation or order which proscribes unfair methods of competition, or unfair or deceptive or unconscionable or practices.

45. The Plaintiff and/or its assignor has violated the Act by:

a. Employing a string of successive trustees and beneficiaries without notice to the Defendants as part of a scheme or practice designed to hide the true identity of the successive Beneficiaries as the loan was sold.

b. By assuring the Defendants their loan was under consideration for modification and the foreclosure sale postponed and then following through with the foreclosure proceedings.

46. As a direct result of the Plaintiff's unfair and deceptive practices, the Defendants have been damaged and such damage has been proximately caused by the Plaintiff's failures, acts or omissions.

G. THE DEFENDANTS RIGHT TO PROCEED IS QUESTIONABLE

47. Defendants are the owners of the real property which is the subject of this action. Defendants seek a determination as to the legal status of the parties as to the Note and the Deed

of Trust.

48. On the face of the pleadings, it appears a person other than the true owner of the claim sued upon is prosecuting this foreclosure. The original loan was made by Pacific Thrift and Loan Company. Deutsche Bank National Trust Company is not the real party in interest and is not authorized to foreclose on this deed of trust.

49. Plaintiff is required to provide the original note with the appropriate endorsements thereon to Defendants or this Court so that it may determine under Idaho law who owns the right to receive payments and exercises the rights relating to said ownership.

50. Only the Note Holder is authorized to collect payments and, in the event of a default, commence foreclosure proceedings, including authorizing the substitution of a Trustee.

51. Based on this failure to disclose and the lack of consideration, the Deeds of Trust were never perfected and are a nullity as to the Deutsche Bank and Pioneer Lender Trustee Services LLC.

52. If a party with no interest in the note or deed of trust records it in his or her name, the recorded deed is a Nullity.

H. FRAUD

53. A claim of fraud requires showing nine elements.

54. Plaintiff and/or its agents made several false statements of fact including that Defendants were being considered for a loan modification, and the foreclosure proceedings would be postponed until such time as that modification was considered.

55. These statements were false and material.

56. Plaintiff knew the representations were false and the Plaintiff intended for the

Defendants to rely on their false representations.

57. The Defendants were ignorant of the falsity, relied on the statements and their reliance was justifiable.

58. The Defendants were injured and suffered damages as a result of the Plaintiff's false statements.

PRAAYER FOR RELIEF

WHEREFORE, the Defendants respectfully request that this Court:

1. Find that the Plaintiff failed to consider the Defendants for a loan modification, as required under federal statues and the contractual obligations, and rescind the foreclosure and enjoin the Plaintiff from commencing or pursuing further foreclosure or other interference with Defendants' possession until such time as all rights to possession are properly determined.
2. Declare the Plaintiff's practices to be in violation of the Fair Debt Collection Practices Act.
3. Declare the Plaintiff's practices to be in violation of the Idaho Consumer Protection Act, and enjoin the Plaintiffs from further deceptive and unfair practices.
4. Find the Plaintiff has committed fraud and enter appropriate remedies including rescission and damages.
5. Rescind the foreclosure and quiet title in the Defendants.
6. Award the Defendants actual damages as proven at trial.
7. Award attorney's fees and costs as provided under the applicable state and federal statutes and regulations including Idaho Code 12-120, 12-121.
8. Grant such other further relief as the court deems just and equitable.

DATED this 29 day of April, 2010.

IDAHO LEGAL AID SERVICES, INC.

By: [Signature]
Michael F. McCarthy
Attorney for Defendants

VERIFICATION

STATE OF IDAHO)
 : ss.
County of Twin Falls)

I, DOREEN FLAMENT, do hereby depose and state that I have read the foregoing Verified Answer and Counterclaim, know the contents thereof, and believe them to be true.

DATED This 2nd day of April, 2010.

[Signature]
Doreen Flament

SUBSCRIBED AND SWORN To before me this 2nd day of April, 2010.

[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at Rupert, Id
Commission Expires 4-15-2015

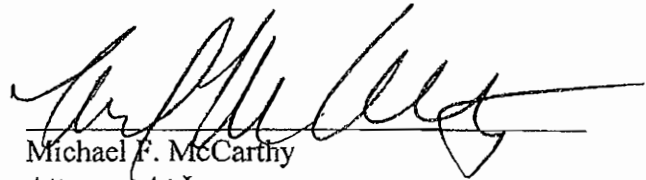


ANSWER AND COUNTERCLAIM - 13

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing VERIFIED ANSWER AND COUNTERCLAIM, was sent via U.S. Mail on this 20 day of April, 2010, with sufficient postage prepaid thereon to:

Ms Laura Burri
Attorney at Law
P. O. Box 2773
Boise Idaho 83701-2773
Sent via facsimile (208) 342-4657



Michael F. McCarthy
Attorney At Law

COPY

Michael F. McCarthy
Attorney at Law
IDAHO LEGAL AID SERVICES, INC.
475 Polk Street, Ste. 4
Twin Falls, ID 83301
Telephone (208) 734-7024, ext. 1605
Facsimile (208) 734-7067
Idaho State Bar # 3448
Attorney for Defendant/Counterclaimants

FILED DISTRICT COURT
CASE #

2010 APR 29 AM 10:42

DUANE SMITH, CLERK
DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

DEUTSCHE BANK NATIONAL
TRUST COMPANY,

Plaintiff/Counterdefendants,

vs.

LARRY FLAMENT and
DOREEN FLAMENT, husband and
wife and all other residents
designated as John Does I-X,

Defendant/Counterclaimants.


CASE NO. CV-2010-155

MOTION FOR MEDIATION

COMES NOW, Defendants, Larry and Doreen Flament, by and through their attorney,
Michael F. McCarthy, of Idaho Legal Aid Services, Inc., and moves that the parties be ordered
into mediation.

This motion is based on the Verified Complaint, the Affidavit(s) and other pleadings on
file herein. Oral argument on this motion is requested.

DATED this 27 day of April, 2010.

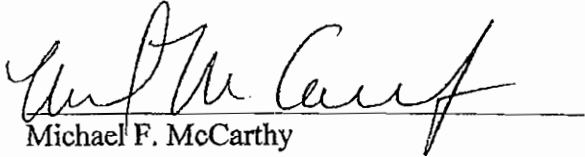

Michael F. McCarthy
Attorney for Defendants

MOTION FOR MEDIATION

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION FOR MEDIATION, was sent via U.S. Mail on this 29 day of April, 2010, with sufficient postage prepaid thereon to:

Ms. Laura Burri
Attorney at Law
P.O. Box 2773
Boise, ID 83701



Michael F. McCarthy
Attorney At Law

MOTION FOR MEDIATION

COPY

Michael F. McCarthy
Attorney at Law, ISB # 3448
IDAHO LEGAL AID SERVICES, INC.
475 Polk Street
P.O. Box 1296
Twin Falls, ID 83303-1296
Telephone: (208) 734-7024
Facsimile: (208) 734-7067
Attorney for Defendants

FILED
CASE #

2010 JUN 11 AM 10:20

DUNNE, CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

DEUTSCHE BANK NATIONAL)	
TRUST COMPANY,	)	CASE NO. CV-2010-155
)	
Plaintiff/Counterdefendants,	)	DEFENDANTS' FIRST SET OF
	)	INTERROGATORIES, REQUESTS
	)	FOR PRODUCTION, AND REQUESTS
vs.	)	FOR ADMISSION
)	
LARRY FLAMENT and)	
DOREEN FLAMENT, husband and)	
wife and all other residents)	
designated as John Does I-X,)	
)	
Defendant/Counterclaimants.)	
)	

TO: The above-named Plaintiff and to its' attorney of record:

INTERROGATORIES

YOU WILL PLEASE TAKE NOTICE that the Defendant requires you to respond in writing under oath to the following interrogatories and respond to the requests for production within thirty (30) days of service hereof, and in conformance with all provisions of Rules 33, 34, and 36 of the Idaho Rules of Civil Procedure.

INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUEST FOR ADMISSIONS -- PAGE 1

DEFINITIONS

Unless otherwise indicated, the following definitions will be applicable to these Interrogatories, Requests for Production, and Requests for Admissions.

A. "You" or "your" shall mean and refer to Plaintiff, its agents, officers, representatives, employees, assignors, and anyone acting on its' behalf.

B. "Person" shall mean and include a natural person, partnership, firm or corporation or any other kind of business or legal entity, its agents or employees. In each instance wherein you are asked to "identify" a person or the "identity" of a person, state with respect to each such person his name and last known residence, business address, and telephone number.

C. The words "document" and "documents" mean all written, recorded, or graphic matters, however produced or reproduced, pertaining in any way to the subject matter of this action. This definition includes, but is not limited to, any and all originals, copies or drafts of any and all of the following: records, notes, summaries, schedules, contracts, agreements, drawings, sketches, invoices, orders, acknowledgments, diaries, reports, forecasts, appraisals, memoranda, telephone logs, letters, telegrams, telexes, cables, tapes, transcripts, recordings, photographs, pictures, films, motion pictures, records of meetings, computer programs or other graphic, symbolic, recorded or written materials of any nature whatsoever. Any document which contains any comments, notations, addition, insertion or marking of any kind which is not part of another document is to be considered as a separate document. In each instance wherein you are asked to "identify" or describe a document, your description should include, but not be limited to the following:

(1) The name, address, telephone number, occupation, job title and employer of the present custodian of the document;

(2) The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

D. The "subject transaction" or "subject account" means the transaction(s) described in Paragraph 3 of your Complaint, including any prior or ongoing contract or communication relating to the transaction and/or account, up to and including the date of your answer to these interrogatories. Specifically, the "subject transaction" includes each and every agreement, contract, communication or transaction between Larry and /or Doreen Flament, and Pacific Thrift and Loan Company, and it's assignees, including but not limited to, Residential Credit Solutions (RCS), Aames Capital Corporation, Aames Mortgage Investment Trust 2005-3, Deutsche Bank National Trust Company, and their agents, representatives and employees.

E. "RCS" means Residential Credit Solutions Inc. and it subsidiaries, branches, divisions, affiliates, or assignees.

F. "HAMP" means the Home Affordable Modification Program.

G. "The deed of trust" means and refers to the deed of trust executed on April 15, 1996, by Larry Flament, presumptively subject to the community interest of Doreen Flament, his wife as Grantor, to Land Title and Escrow, Inc., as Trustee, and to Pacific Thrift and Loan Company, as Beneficiary.

INTERROGATORY NO. 1: State the name, job title, and business address of the person providing information in response to these discovery requests.

INTERROGATORY NO. 2. WITNESSES. State the name, address and telephone number of each person you intend to call as a witness at the hearing or trial of this matter and the substance

of the facts to which you expect the witness to testify.

INTERROGATORY NO. 3: EXPERT WITNESSES. Separately identify each person whom you may call as an expert witness at any hearing or trial of this action, state the subject matter on which such expert is expected to testify, the opinion or opinions to which such expert is expected to testify, their education, training, or other qualifications for rendering such an opinion, and the facts or data relied on for rendering such opinion or opinions.

INTERROGATORY NO. 4: Identify each assignment of the beneficial interest in the deed of trust since April 15, 1996, including the name of the person or entity to whom it was assigned, the date of said assignment, and the date said assignment was recorded.

INTERROGATORY NO. 5: Identify each assignment of the beneficial interest in the promissory note since April 15, 1996, including the name of the person or entity to whom it was assigned, the date of said assignment, and the date said assignment was recorded.

INTERROGATORY NO. 6: Identify the eligibility criteria you used in determining whether the Defendants qualified for a HAMP loan modification.

INTERROGATORY NO. 7: Did you identify the net present value of a loan modification compared to a net present value for no modification? If yes, please set forth the criteria you used and the results.

INTERROGATORY NO. 8: Did you consider the Defendants for a "non-HAMP" loan modification? If yes, please identify the criteria you employed, and the basis for rejecting them.

INTERROGATORY NO. 9: Identify all contacts made, communications with, or notices issued to the Defendants in the course of consideration for a loan modification of any kind.

INTERROGATORY NO. 10: Identify all documents reflecting or relating to the contacts

made, communication with, or notices issued to the Defendants in the course of consideration for a loan modification including but not limited to letters, faxes, notes, internal memoranda, calendars, computer data and credit applications, etc.

INTERROGATORY NO. 11: Identify all documents reflecting or relating to the contacts made, communication with, or notices issued to the Defendants advising them that their request for a loan modification had been denied.

INTERROGATORY NO. 12: Identify each failure to make payments and/or default under the note and deed of trust.

INTERROGATORY NO. 13: Identify all appointments of successor trustees to the Deed of Trust of April 15, 1996, and when and where said appointments of assignments are recorded in Minidoka County.

INTERROGATORY NO. 14: Identify all assignments of the deed of trust by the beneficiary.

INTERROGATORY NO. 15: Identify when and where said assignments were recorded in the mortgage records of Minidoka County.

REQUESTS FOR PRODUCTION

At 11:00 a.m. on the 15th day of July, 2010, unless a greater time is agreed to by DEFENDANT, produce for inspection and copying, at the office of Michael F. McCarthy, Attorney at Law, Idaho Legal Aid Services, Inc., 475 Polk Street, Twin Falls, Idaho, 83301, the following documents. You may satisfy this Request for Production by mailing copies thereof to Defendant's attorneys prior to July 15, 2010. Without limitation of the foregoing, request is made for the following documents:

REQUEST FOR PRODUCTION NO. 1: Please produce copies of any and all documents you intend to produce at any hearing or the trial in this matter.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of any and all documents related to the subject transaction of April 15, 1996.

REQUEST FOR PRODUCTION NO. 3: Please produce the records, progress notes, reports, statements, or other data or information, of any expert witness you intend to call at any hearing or trial of this action.

REQUEST FOR PRODUCTION NO. 4: Please produce a curriculum vitae, resume or similar document which sets forth the education, training, or other qualifications of any experts you intend to call at any hearing or trial of this action.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents used in determining whether the Flaments qualified for a modification under the HAMP program.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents reflecting an assignment of the note and/or deed of trust to a successor trustee or successor beneficiary.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents used in determining whether the Flaments qualified for a non-HAMP loan modification.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents advising the Flaments they do not qualify for either a HAMP or non-HAMP loan modification.

REQUEST FOR PRODUCTION NO. 9: Please produce all communication between RCS and the Flaments.

REQUEST FOR PRODUCTION NO. 10: Please produce a copy of all pooling and servicing agreements between you and any third parties related to the subject transaction.

INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUEST FOR ADMISSIONS -- PAGE 6

REQUESTS FOR ADMISSION

At 11:00 a.m. on the 15th day of July, 2010. unless a greater time is agreed to by

DEFENDANT, admit or deny the following:

REQUEST FOR ADMISSION NO. 1: Admit that Residential Credit Solutions (RCS) is a HAMP participant.

REQUEST FOR ADMISSION NO. 2: Admit that RCS signed an agreement promising to abide by the HAMP guidelines.

REQUEST FOR ADMISSION NO. 3: Admit that the Defendants are third party beneficiaries of the HAMP agreement.

REQUEST FOR ADMISSION NO. 4: Admit that on September 24, 2009, RCS returned a loan payment in the amount of \$540.42.

DATED this 20 day of June, 2010.

IDAHO LEGAL AID SERVICES, INC.

By: 

MICHAEL F. MCCARTHY

Attorney for Defendant

Sunrise Ayers, ISB #7535
IDAHO LEGAL AID SERVICES, INC.
310 N 5th St.
PO Box 1683
Boise, ID 83701
Telephone: 208-345-0106, ext 111
Fax: 208-342-2561

Attorney for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE

U.S. BANK NATIONAL ASSOCIATION,)
AS TRUSTEE FOR GSAA HOME)
EQUITY TRUST 2006-3)

Plaintiff,)

vs.)

DORRIS MURDOCK and)
JOHN DOE MURDOCK, and John Does)
1-10 as Occupants of the Premises located)
at 3770 Highway 21, Idaho City, ID 83631)

Defendants.)

Case No. CV-09-30

**ANSWER AND DEMAND FOR JURY
TRIAL**

Fee Category: U

Fee: **Waived**

The Defendant Dorris Murdock, through her attorney Sunrise Ayers of Idaho Legal Aid Services, Inc., answers the Plaintiff's Complaint on file in this matter as follows:

1. The Defendant denies each and every allegation not hereby specifically admitted.
2. Defendant admits the allegations in paragraphs V and VI of the Plaintiff's Complaint.
3. As to paragraph III of the Plaintiff's Complaint, the Defendant admits that she is an individual currently residing in Boise County.

4. The Defendant denies for lack of sufficient information or knowledge, the allegations contained in paragraphs I , II, VII, VIII, and IX of the Complaint.

FIRST AFFIRMATIVE DEFENSE

By way of affirmative defense, Defendant alleges:

5. The Defendant incorporates all parts of these pleadings as though fully set forth again.

6. That Plaintiff, “U.S. Bank National Association, as Trustee for GSAA Home Equity Trust” is not the real party in interest in this action.

7. That, to the best of the Defendant’s knowledge and belief, Plaintiff is not the owner of the real property located at 3770 Highway 21 in Idaho City, Idaho, (hereinafter, “the real property”) because the real property was purportedly sold at foreclosure to the lender through a credit bid, and neither GSAA Home Equity Trust nor U.S. Bank is the lender.

8. That the Plaintiff is not the owner of the real property because Plaintiff has not recorded a valid written conveyance for said property. The Trustee’s Deed, Plaintiff’s Exhibit A, does not comply with Idaho Code § 55-601 because it does not contain the name and complete mailing address of the grantee. Therefore, the instrument fails to convey the real property to the Plaintiff.

9. That the Trustee’s Deed, Plaintiff’s Exhibit A, is not properly acknowledged as there is no attestation that the signor personally appeared before the notary.

10. That the Trustee’s Deed, Plaintiff’s Exhibit A, does not comply with Idaho Code § 55-601 because, to the best of Defendant’s knowledge, there is no writing authorizing Sandra L. Hickey to sign the document as agent for Recontrust Company.

SECOND AFFIRMATIVE DEFENSE

By way of affirmative defense, Defendant alleges:

12. The Defendant incorporates all parts of these pleadings as though fully set forth again.

13. That the Trustee's Sale did not convey title to the Plaintiff because the Trustee failed to comply with the requirements of Idaho Code § 45-1506.

14. That the Trustee postponed the sale date "more than thirty (30) days subsequent to the date from which the sale [was] postponed," September 23, 2008. Idaho Code § 45-1506(8).

15. That the Notice of Default was not properly recorded because it was not acknowledged.

16. That the Notice of Trustee's Sale failed to give Defendant actual notice of the impending sale because the document was not signed by the Trustee.

17. That the Trustee's Sale was invalid because, to the best of Defendant's knowledge, the sale was not conducted by the Trustee or the Trustee's attorney, as required by Idaho Code § 45-1506(8), but was instead conducted by a third party with no authority or right to conduct the sale, namely, Mountain View Title of Idaho City, Idaho.

THIRD AFFIRMATIVE DEFENSE

By way of affirmative defense, Defendant alleges:

18. The Defendant incorporates all parts of these pleadings as though fully set forth again.

19. That Plaintiff is in the business of selling or renting dwellings as that term is defined and covered by the Fair Housing Act of 1968, 42 U.S.C. § 3603.

20. That, as a covered provider of housing, Plaintiff is subject to the provisions of 42 U.S.C. § 3604(f)(3)(B), which requires a covered provider to make reasonable accommodation in rules, regulations, policies, practices, or services when such accommodations are necessary

for the use of the dwelling.

21. That Defendant is a person with a handicap as defined by 42 U.S.C. § 3602(h) because she suffers from a condition, colon cancer, which substantially limits one or more of her major life activities.

22. That, pursuant to the Fair Housing Act, 42 U.S.C. § 3601 et seq., Defendant requested a Reasonable Accommodation on or about January 12, 2009 (See Defendant's Exhibit 1) requesting more time to vacate the property because, due to her disability, she could not vacate during winter months and needed additional time to find suitable housing. As of this date, Countrywide Financial, and its successors in interest, have failed to respond to the Defendant's Reasonable Accommodation request. The requested accommodation was necessary to afford Defendant an equal opportunity to use and enjoy the dwelling and was reasonable because it imposed no fundamental alteration in the nature of the program or undue financial or administrative burdens.

23. That pursuit of eviction proceedings without first answering Defendant's Reasonable Accommodation request would constitute discrimination on the basis of handicap pursuant to 42 U.S.C. § 3604(f), wherein discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, Defendant alleges:

24. The Defendant incorporates all parts of these pleadings as though fully set forth again.

25. That, under Idaho law, implied in all contracts is a covenant of good faith and fair

dealing.

26. That, to the extent Plaintiff purports to represent or be the agent for the actual lender to Defendant, the Consent Judgment between Countrywide Financial Corporation (and its subsidiaries) and the Idaho State Attorney General dated Dec. 22, 2008 required Plaintiff to “make an individualized evaluation of Borrower’s circumstances . . . to determine if alternatives to foreclosure are available.” (Case No. CV OT 0824037, page 10 of Stipulation).

27. That Defendant delivered a “short sale” offer to Countrywide for its consideration in August of 2008. Countrywide failed provide any answer or reply to the short sale offer prior to foreclosing on the real property in January 2009.

28. That Countrywide’s actions therefore violated Idaho law and the Consent Judgment, making the subsequent foreclosure invalid and void.

DEMAND FOR JURY TRIAL

Defendant hereby demands a jury trial composed of no less than twelve (12) persons on all issues so triable, pursuant to Idaho Rule of Civil Procedure 38.

WHEREFORE, the Defendant prays as follows:

1. That Plaintiff’s Complaint and claim for possession of the premises be dismissed with prejudice; and
2. That the Court grant any other relief it deems just.

DATED this ____ day of March, 2009.

IDAHO LEGAL AID SERVICES, INC.

Sunrise Ayers, Attorney for Defendant

VERIFICATION

DORRIS MURDOCK, being first duly sworn on oath, deposes and says:

That she is the Defendant in the above matter, has read the foregoing document, knows the contents thereof and believes the same to be true and correct.

DATED this ____ day of March, 2009.

Dorris Murdock

STATE OF IDAHO)
 : ss.
County of Ada)

On the _____ day of March, 2010, before me, the undersigned Notary Public, personally appeared Dorris Murdock, known to me to be the person whose name is subscribed to the foregoing instrument, and she acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.

Notary Public for Idaho
Residing at _____
Commission Expires: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of March, 2009, I served a true and correct copy of the foregoing document, entitled ANSWER AND DEMAND FOR JURY TRIAL, by the method and to the interested parties listed below:

Lance E. Olsen & Derrick J. O'Neill
ROUTH CRABTREE OLSEN P.S.
3535 Factoria Blvd. SE #200
Bellevue, WA 98006

 x U.S. Mail, Postage Prepaid
 Personal Delivery
 Overnight Mail
 Via Facsimile

Attorney for Plaintiff

By: _____
Sunrise Ayers, Attorney at Law

Sunrise Ayers
IDAHO LEGAL AID SERVICES, INC.
310 North Fifth Street
Boise, ID 83702
(208) 345-0106/Ext. 111, Fax (208) 342-2561
ISB #7535

Attorney for Defendant Dorris Murdock

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE**

U.S. BANK NATIONAL ASSOCIATION,	)	Case No. CV-09-30
AS TRUSTEE FOR GSAA HOME)	
EQUITY TRUST 2006-3)	
)	
Plaintiff,)	
	)	MOTION FOR MEDIATION
vs.)	
	)	Fee Category: <u>U</u>
DORRIS MURDOCK and	)	Fee: <u>Waived</u>
JOHN DOE MURDOCK, and John Does)	
1-10 as Occupants of the Premises located)	
at 3770 Highway 21, Idaho City, ID 83631)	
)	
Defendants.)	
)	

Defendant Dorris Murdock, by and through her attorney of record Sunrise Ayers of Idaho Legal Aid Services, Inc., respectfully moves this Court under Rule 16(k), Idaho Rules of Civil Procedure, for an order appointing a mediator to assist the parties in reaching a mutually acceptable agreement regarding the matters presented in the pleadings on file in this action.

Murdock makes this motion on the grounds that the matters presented in the pleadings—possession of the home where Murdock currently resides—are of the kind typically resolved through appointment of a mediator by this Court.

Murdock requests that the Court appoint a mediator available through the Ada County Small Claims Mediation Program at no cost to the parties. Murdock requests the mediation order require that the parties' representatives at mediation have authority to resolve all matters presented in the pleading and that the plaintiff's representative be allowed to participate in mediation by telephone.

This motion is supported by the pleadings, exhibits, and other papers already on file in this case. Oral argument is requested.

WHEREFORE, the defendant requests an order appointing a mediator available at no cost to the parties and referring this case to mediation.

DATED this ____ day of June, 2010.

IDAHO LEGAL AID SERVICES, INC.

Sunrise Ayers
Attorney for Dorris Murdock

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of _____, 2010, I
served a true and correct copy of the foregoing document, entitled MOTION FOR MEDIATION,
by the method and to the interested parties listed below:

Derrick J. O'Neill
ROUTH CRABTREE OLSEN, PS
225 North 9th Street, Suite 800
Boise, ID 83702
Fax: 208-331-1529

_____ U.S. Mail, Postage Prepaid
_____ Personal Delivery
_____ Overnight Mail
_____ Via Facsimile

By: _____

Sunrise Ayers
IDAHO LEGAL AID SERVICES, INC.
310 North Fifth Street
Boise, ID 83702
(208) 345-0106/Ext. 111
(208) 342-2561 Fax
Idaho State Bar No. 7535

Attorney for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE

U.S. BANK NATIONAL ASSOCIATION,)	Case No. CV-09-30
AS TRUSTEE FOR GSAA HOME)	
EQUITY TRUST 2006-3)	
)	
Plaintiff,)	
)	STIPULATION
vs.)	
)	Fee Category: <u>U</u>
DORRIS MURDOCK and)	Fee: <u>Waived</u>
JOHN DOE MURDOCK, and John Does)	
1-10 as Occupants of the Premises located)	
at 3770 Highway 21, Idaho City, ID 83631)	
)	
Defendants.)	
_____)	

The plaintiff U.S. Bank Association and the defendant Dorris Murdock, through their respective attorneys, stipulate as follows to resolve this action:

1. **Claim to title of property.** Defendant will immediately and irrevocably relinquish any and all claims to title to the real property located at 3770 Highway 21 in Idaho City, Idaho.
2. **Defendant will vacate by July 31, 2010.** By 11:59 p.m. on July 31, 2010, the defendant will remove herself and her personal belongings from the residence located at 3770 Highway 21 in Idaho City, county of Boise, Idaho ("the property"). In the event that Defendant fails to vacate by the above date, the Court may enter an Order for restitution of the premises to the plaintiff as of 12:00 a.m. on August 1, 2010, with a writ of restitution to issue as early as August 1, 2010, as set out in Paragraph 7 of this Stipulation.
3. **Homeowner's insurance.** Defendant agrees to make a one-time payment to Plaintiff of \$700 as reimbursement for property insurance costs. This \$700 payment will be delivered to the office of Derrick O'Neill no later than 10 business days after Defendant has received a copy of the homeowner's insurance policy. If

Plaintiff has fulfilled its obligations under the Stipulation and Defendant has failed to make payment of the \$700, as agreed, within 10 business days of receiving a copy of the policy, Defendant agrees to the entry of a Judgment for Eviction and Writ of Restitution to be entered without hearing, but with ten (10) days prior written notice to Defendant.

4. **Showing the property.** Defendant agrees to cooperate fully in showing the property to prospective buyers, subject to customary limitations, beginning April 1, 2010.

5. **Notice of Intent to Rent Property.** Plaintiff agrees that, should Plaintiff decide to rent the property, that Plaintiff would provide Defendant ten (10) days prior written notice of such intent to rent. This right to notice would commence on July 21, 2010 and would terminate on October 1, 2010.

6. **Release of Liability.** Defendant agrees to grant Plaintiff a release from liability against 3rd party claims arising from the property and agrees to indemnify Plaintiff for such claims, except to the extent such claims are covered by the Plaintiff's insurance on the property. Defendant's release of liability shall commence on the date Defendant receives a copy of the Plaintiff's insurance policy for the property and shall terminate on August 1, 2010.

7. **Performance satisfying stipulation.** If Defendant has fulfilled her obligations under the Stipulation, including vacating as agreed, by July 31, 2010, Plaintiff shall dismiss its unlawful detainer action by filing a notice of dismissal, under Idaho Rule of Civil Procedure 41(a)(1)(i), within 5 days, and the parties will bear their own costs and fees. If Plaintiff has fulfilled its obligations under the Stipulation and Defendant has failed to vacate, as agreed, by July 31, 2010, Defendant agrees to the entry of a Judgment for Eviction and Writ of Restitution to be entered on August 1, 2010 without further notice to Defendant and without hearing.

Dated

Derrick O'Neill, Attorney for Plaintiff

Dated

Sunrise Ayers, Attorney for Defendant

Sunrise Ayers
IDAHO LEGAL AID SERVICES, INC.
310 North Fifth Street
Boise, ID 83702
(208) 345-0106/Ext. 111
(208) 342-2561 Fax
Idaho State Bar No. 7535

Attorney for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE

U.S. BANK NATIONAL ASSOCIATION,)	Case No. CV-09-30
AS TRUSTEE FOR GSAA HOME)	
EQUITY TRUST 2006-3)	
)	
Plaintiff,)	
)	STIPULATION
vs.)	
)	Fee Category: <u>U</u>
DORRIS MURDOCK and)	Fee: <u>Waived</u>
JOHN DOE MURDOCK, and John Does)	
1-10 as Occupants of the Premises located)	
at 3770 Highway 21, Idaho City, ID 83631)	
)	
Defendants.)	
_____)	

The plaintiff U.S. Bank Association and the defendant Dorris Murdock, through their respective attorneys, stipulate as follows to resolve this action:

1. **Claim to title of property.** Defendant will immediately and irrevocably relinquish any and all claims to title to the real property located at 3770 Highway 21 in Idaho City, Idaho.

2. **Defendant will vacate by September 30, 2010.** By 11:59 a.m. on September 30, 2010, the defendant will remove herself and her personal belongings from the residence located at 3770 Highway 21 in Idaho City, county of Boise, Idaho ("the property"). In the event that Defendant fails to vacate by the above date, the Court may enter an Order for restitution of the premises to the plaintiff as of 12:00 p.m. (noon) on September 30, 2010, with a writ of restitution to issue as early as September 30, 2010, as set out in Paragraph 5 of this Stipulation.

3. **Showing the property.** Defendant agrees to cooperate fully in showing the property to prospective buyers, subject to customary limitations.

4. **Non-discrimination in post-possession sale.** Plaintiff agrees that, *after Defendant has vacated the*

property and Plaintiff is in possession of the property, that Plaintiff and its agents will not discriminate against Defendant's family members in considering offers to purchase the property.

5. **Performance satisfying stipulation.** If Defendant has fulfilled her obligations under the Stipulation, including vacating as agreed, by September 30, 2010, Plaintiff shall dismiss its unlawful detainer action by filing a notice of dismissal, under Idaho Rule of Civil Procedure 41(a)(1)(i), within 5 days, and the parties will bear their own costs and fees. If Plaintiff has fulfilled its obligations under the Stipulation and Defendant has failed to vacate, as agreed, by September 30, 2010, Defendant agrees to the entry of a Judgment for Eviction and Writ of Restitution to be entered on September 30, 2010 without further notice to Defendant and without hearing.

Dated

Derrick O'Neill, Attorney for Plaintiff

Dated

Sunrise Ayers, Attorney for Defendant

- I. Intro: May it please the court, my name is Sunrise Ayers, attorney for defendant Dorris Murdock. Plaintiff's motion for judgment on the pleadings should be denied because U.S. Bank's claim of title to the property cannot be established solely on the pleadings and U.S. Bank would not have standing to evict Ms. Murdock if it is not, in fact, the owner of the property.
- II. Facts: 81 yo; terminal colon cancer diagnosis; property in question is her current residence.
- III. Argument: Defendant has alleged deficiencies in the foreclosure sale and in the execution of the trustee's deed that call into question Plaintiff's claim of title to the property.
- a. First, **Idaho Code 45-1503** states that transfers in trust may be made to secure the performance of an obligation of the grantor to a beneficiary.
- i. Statute does not suggest lender and beneficiary can be different.
 - ii. Pleadings alone do not establish that Mortgage Electronic Registration Systems (MERS) was the holder of the note = no authority to foreclose under statute.
 - iii. Because: statute contains 2 requirements: beneficiary can transfer where grantor owes obligation to the beneficiary.
 - iv. Although MERS was the beneficiary, if MERS was not the holder of the note, then Ms. Murdock owed no obligation to MERS and thus the requirements of 45-1503 were not met.¹
- b. Second, the foreclosure sale was not conducted by the trustee,² but by an employee of Mountain View Title. Idaho Code **45-1506** requires that the sale be conducted by the trustee or the trustee's attorney.
- i. Prejudice? → Not knowing who was conducting the sale could make location of the sale unpredictable for potential third party buyers, could make it difficult for third party buyers to know who to contact to obtain information about the sale.
- c. Third, the trustee's sale was postponed by more than 30 days. (Postponed from Sept to Jan)
- i. Idaho Code **45-1506(8)**: "No sale may be postponed to a date more than 30 days subsequent to the date from which the sale is postponed."
 - ii. Prejudice = longer delays could result in fewer interested third party buyers = property not sold for its highest possible value.
- d. Fourth, the trustee's deed failed to comply with Idaho Code **55-601** because it failed to include the name and complete mailing address of the grantee.

¹ Additionally, a credit bid is treated as the equivalent of cash sale only where the holder of the deed of trust note is also the bidder, as stated in *Federal Home Loan Mortgage Corporation v. Appel* (at 45).

² Trustee = Recontrust

- i. Neither Idaho Code 55-601 nor 45-1509 carve out an exception to this requirement for trustee's deeds.
 - ii. ***Riley v. W.R. Holdings***: "I.C. 55-601 requires the name and complete mailing address of the grantee to appear on any instrument conveying real property." 143 Idaho 116, 122 (Idaho 2006).
- e. Because Idaho is a non-judicial foreclosure state – strict adherence to the statutory requirements for the foreclosure sale are the only protections afforded homeowners and consumers.
- f. Countrywide Consent Decree
 - i. The Consent Judgment between Countrywide Financial Corporation and the Idaho State Attorney General did put certain obligations on Countrywide regarding working with Idaho borrowers on loan modifications and "other foreclosure avoidance measures."
 - ii. It cannot be established solely on the pleadings that Countrywide complied with its obligations under the Consent Judgment in its dealings with Ms. Murdock

IV. Conclusion –

- a. Throughout the foreclosure process, Ms. Murdock was attempting to find solutions that would allow her to avoid foreclosure: short sale, family purchase, offered to enter into rent agreement in Jan of 09.
 - i. The non-compliance with Idaho law in the foreclosure sale and trustee's deed caused the foreclosure process to be unnecessarily confusing to Ms. Murdock and made it more difficult for her to determine who to contact or negotiate with, who the holder of her note was, or where she was at in the foreclosure process.
 - ii. Son attempted to be present at the trustee's sale and found nothing taking place at the time, date, and location Ms. Murdock understood the sale to be occurring. Ms. Murdock's children had intended to attempt to bid at the trustee's sale, because of lack of compliance with the statutes and lack of proper notice, they were deprived of that opportunity.
- b. As recognized by the court in ***Federal Home Loan Mortgage Corp v. Appel***, foreclosing entities must be held to high standard in meeting statutory obligations b/c Idaho is a non-judicial foreclosure state.³ If the statutory requirements were not met then plaintiff may not be able establish valid legal title to the property and would not be the real party in interest with standing to evict.
- c. The pleadings alone do not conclusively establish that Plaintiff has a valid and legal claim to title of the property. **For the above-stated reasons, Plaintiff's motion for Judgment on the Pleadings should be denied.**

³ *Fed Home v. Appel*, 143 Idaho 42, at 46.

V. Rebuttals to Plaintiff's arguments

- a. Plaintiff argues that it is entitled to relief as a matter of law because Idaho Code 45-1510 states that the issuance of a trustee's deed carries the prima facie showing of compliance. This, however, creates only a rebuttable presumption in plaintiff's favor. Defendant has alleged various deficiencies that could rebut such a presumption. In analogous case of *Fed Home Mortgage v. Appel*, court found that Fed Home Mortgage was not entitled to the protections of 45-1510 because of non-compliance with the statutory notice requirements for foreclosures.
- b. Defenses should have been brought prior to the foreclosure sale while Defendant still had standing.
 - i. Defendant does not allege an ownership interest in the property; she simply alleges that Plaintiff is not the owner of the property and therefore is not entitled to bring an action for eviction against her.
 - ii. Defendant did attempt to file a pro se request for injunction prior to the foreclosure sale, which was denied.
 - iii.
- c. Plaintiff alleges that Defendant had actual knowledge of the postponed trustee's sale.
 - i. It is not established in the pleadings that Defendant had actual notice of the date, time, and location of the sale.⁴ Additionally, Idaho Supreme Court stated in *Fed Home*, "Even if the appellants did have notice of the sale, it may not have made a difference. We are dealing here with non-judicial trust deed foreclosure. The procedures to foreclose on trust deeds outside of the judicial process provide the express-lane alternative to foreclosure in the judicial system and strip borrowers of protections embedded in a judicial foreclosure." At 46.
- d. Defendant is not eligible to participate in the Consent Judgment
 - i. Falls within def of Borrower on pg 4 of Stipulation/Consent Judgment
- e. Defendant has not paid rent.
 1. Defendant did make an offer in January of 2009 to Countrywide Financial to pay rent and she received no reply to her offer.

⁴ Actual notice? No – attempted to go to the sale and it was not occurring where and when they believed it would be taking place

Sunrise Ayers
IDAHO LEGAL AID SERVICES, INC.
310 North Fifth Street
Boise, ID 83702
(208) 345-0106/Ext. 111
(208) 342-2561 Fax
Idaho State Bar No. 7535

Attorney for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE

U.S. BANK NATIONAL ASSOCIATION,)	Case No. CV-09-30
AS TRUSTEE FOR GSAA HOME)	
EQUITY TRUST 2006-3)	
)	
Plaintiff,)	
)	STIPULATION
vs.)	
)	Fee Category: <u>U</u>
DORRIS MURDOCK and)	Fee: <u>Waived</u>
JOHN DOE MURDOCK, and John Does)	
1-10 as Occupants of the Premises located)	
at 3770 Highway 21, Idaho City, ID 83631)	
)	
Defendants.)	
_____)	

The plaintiff U.S. Bank Association and the defendant Dorris Murdock, through their respective attorneys, stipulate as follows to resolve this action:

1. **Claim to title of property.** Defendant will immediately and irrevocably relinquish any and all claims to title to the real property located at 3770 Highway 21 in Idaho City, Idaho.
2. **Defendant will vacate by July 31, 2010.** By 11:59 p.m. on July 31, 2010, the defendant will remove herself and her personal belongings from the residence located at 3770 Highway 21 in Idaho City, county of Boise, Idaho ("the property"). In the event that Defendant fails to vacate by the above date, the Court may enter an Order for restitution of the premises to the plaintiff as of 12:00 a.m. on August 1, 2010, with a writ of restitution to issue as early as August 1, 2010, as set out in Paragraph 7 of this Stipulation.
3. **Homeowner's insurance.** Defendant agrees to make a one-time payment to Plaintiff of \$700 as reimbursement for property insurance costs. This \$700 payment will be delivered to the office of Derrick O'Neill no later than 10 business days after Defendant has received a copy of the homeowner's insurance policy. If

Plaintiff has fulfilled its obligations under the Stipulation and Defendant has failed to make payment of the \$700, as agreed, within 10 business days of receiving a copy of the policy, Defendant agrees to the entry of a Judgment for Eviction and Writ of Restitution to be entered without hearing, but with ten (10) days prior written notice to Defendant.

4. **Showing the property.** Defendant agrees to cooperate fully in showing the property to prospective buyers, subject to customary limitations, beginning April 1, 2010.

5. **Notice of Intent to Rent Property.** Plaintiff agrees that, should Plaintiff decide to rent the property, that Plaintiff would provide Defendant ten (10) days prior written notice of such intent to rent. This right to notice would commence on July 21, 2010 and would terminate on October 1, 2010.

6. **Release of Liability.** Defendant agrees to grant Plaintiff a release from liability against 3rd party claims arising from the property and agrees to indemnify Plaintiff for such claims, except to the extent such claims are covered by the Plaintiff's insurance on the property. Defendant's release of liability shall commence on the date Defendant receives a copy of the Plaintiff's insurance policy for the property and shall terminate on August 1, 2010.

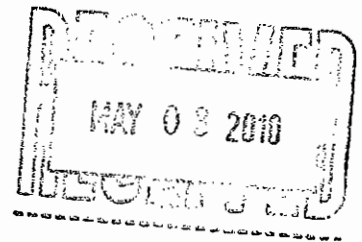
7. **Performance satisfying stipulation.** If Defendant has fulfilled her obligations under the Stipulation, including vacating as agreed, by July 31, 2010, Plaintiff shall dismiss its unlawful detainer action by filing a notice of dismissal, under Idaho Rule of Civil Procedure 41(a)(1)(i), within 5 days, and the parties will bear their own costs and fees. If Plaintiff has fulfilled its obligations under the Stipulation and Defendant has failed to vacate, as agreed, by July 31, 2010, Defendant agrees to the entry of a Judgment for Eviction and Writ of Restitution to be entered on August 1, 2010 without further notice to Defendant and without hearing.

Dated

Derrick O'Neill, Attorney for Plaintiff

Dated

Sunrise Ayers, Attorney for Defendant



U.S. Department Of Housing and Urban Development
Northwest/Alaska Area
Office of Fair Housing and Equal Opportunity
Seattle Region
Program Center, Enforcement/Intake Branch
909 First Avenue, Suite 205
Seattle, Washington 98104-1000

April 27, 2010

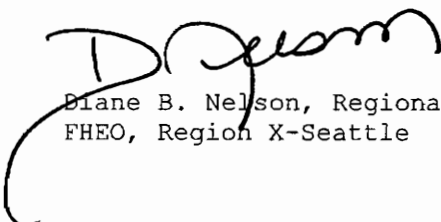
Zoe Ann Olson
Attorney
Idaho Legal Aid Services
310 North 5th Street
Boise, ID 83702

Dear Representative (of Carl Ford):

Subject: Housing Discrimination Complaint
Ford v. Midland Mortgage
HUD Case No.10-10-0245-8

Attached is a copy of the Notification Letter and attachments sent to your client on the filing of the subject Housing Discrimination Complaint.

Sincerely,


Diane B. Nelson, Regional Director
FHEO, Region X-Seattle

Enclosures

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER: 10-10-0245-8

1. **Complainants**

Carl Ford
17020 N. Lyonsdale Place
Nampa, ID 83687

Terri Ford
17020 N. Lyonsdale Place
Nampa, ID 83687

Representing Carl and Terri Ford:

Zoe Ann Olson
Attorney
Idaho Legal Aid Services
310 North 5th Street
Boise, ID 83702

2. **Other Aggrieved Persons**

None.

3. **The following is alleged to have occurred or is about to occur:**

Discriminatory terms, conditions, privileges, or services and facilities.
Failure to make reasonable accommodation.

4. **The alleged violation occurred because of:**

Handicap.

5. **Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):**

Nampa, ID

6. **Respondents**

Midland Mortgage Company
999 NW Grand
Oklahoma City, OK 73118

Registered Agent for Midland Mortgage Company:

David D. Morgan
Legal Department
501 NW Grand Blvd.
Oklahoma City, OK 73118

Alexander "Doe"
Midland Mortgage
999 NW Grand
Oklahoma City, OK 73118

Kelly "Doe"
Midland Mortgage
999 NW Grand
Oklahoma City, OK 73118

Timothy "Doe"
Midland Mortgage Company
999 NW Grand
Oklahoma City, OK 73118

7. The following is a brief and concise statement of the facts regarding the alleged violation:

Complainants Carl and Terri Ford live in Nampa, Idaho. Complainants purchased their home in 2003. On or about June 2009, Complainant Carl Ford became severely disabled after brain surgery.

Complainants' mortgage lapsed due to Complainant Carl Ford's disability. In October 2009, Complainants received a Notice of Default from Respondent Midland Mortgage Company. Also in October 2009, Complainants received a Notice of Trustee's Sale from Respondent Midland Mortgage Company. Complainants requested a reasonable accommodation due to Complainant Carl Ford's disability as he was working on processing his Social Security Disability Income. Complainants were granted the reasonable accommodation request and the foreclosure sale was postponed from February 23, 2010 to March 26, 2010.

On March 12, 2010, Respondent Kelly "Doe" told Complainants that the foreclosure sale was postponed until May 25, 2010, to review Complainants' loan modification application. On March 26, 2009, Respondent Alexander "Doe" denied Complainants' loan modification application.

On March 26, 2010, Complainants submitted a reasonable accommodation request to postpone the foreclosure to May 25, 2010, in order to obtain Complainant Carl Ford's Social Security Disability benefits. On March 29, 2009 Complainants submitted another reasonable accommodation request to accept Complainants' Request for Occupied Conveyance application to rent their home. Complainant Carl Ford stated that without housing, his disability would be exacerbated. Respondent Midland Mortgage did not respond to his requests.

On April 5, 2010, Complainant Carl Ford contacted Respondent Timothy "Doe" who asked if Complainant Carl Ford received Social Security Disability. Complainant Carl Ford was unable to articulate his status in completing the process to obtain his Social Security Disability benefits. Complainant Carl Ford asked Respondent Timothy "Doe" to talk to his representative, Zoe Ann Olson. Complainants had previously faxed a release on March 11, 2010, for Ms. Olson to represent the Complainants on their behalf, but no one at Respondent Midland Mortgage would talk to Ms. Olson.

On April 8, 2010, Complainants submitted another reasonable accommodation request to postpone the sale of the foreclosure of their home. However, on April 8, 2010, Respondent Midland Mortgage sold Complainants' home. Complainants believe they were not given

the opportunities to save their home from foreclosure or rent their home using the Request for Occupied Conveyance application, but others who are not disabled are given that opportunity.

Complainants believe they were discriminated against because of Carl Ford's disability, which is a violation of the Fair Housing Act.

8. The most recent date on which the alleged discrimination occurred:

April 8, 2010.

9. Types of Federal Funds identified:

None.

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Sections 804b or f and 804f3B of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

Carl Ford
Carl Ford

4-26-10
(Date)

Terri L Ford
Terri Ford

4-26-10
(Date)

NOTE: HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.



U.S. Department of Housing and Urban Development

Northwest/Alaska Area
Office of Fair Housing and Equal Opportunity
Seattle HUB
909 First Avenue, Suite 205
Seattle, WA 98104-1000

Sent Registered Mail and email to Beth Schnell at Beth.Schnell@midfirst.com

MidFirst Bank

c/o

Beth Schnell
Assistant General Counsel
Midland Financial Co.
2930 E. Camelback Rd. suite 185
Phoenix, AZ 85016

RE: Case Name: Ford v. Midland Mortgage Company
Title VIII Case Number: 10-10-0245-8
Date Filed: April 27, 2010

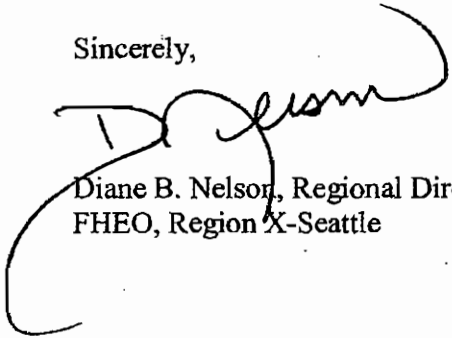
Dear Representative for MidFirst Bank:

The above referenced housing discrimination complaint was originally filed with the Department of Housing and Urban Development ("Department") on April 27, 2010 under the Fair Housing Act.

In the course of the investigation, the Department determined that MidFirst Bank is the legal owner of the property. By this letter, MidFirst Bank is formally named as a respondent in the housing discrimination complaints, pursuant to 24 C.F.R. § 103.202(a).

If you have any questions regarding this matter, feel free to contact Yvonne Marte' at (206) 220-5297. Your cooperation in this matter is appreciated.

Sincerely,



Diane B. Nelson, Regional Director
FHEO, Region X-Seattle

www.hud.gov/washington.html
espanol.hud.gov

cc: Carl and Terri Ford, Complainants
Zoe Ann Olson, Attorney for Complainants
Midland Mortgage Company, Respondent
Beth Schnell, Attorney for Respondent Midland Mortgage Company



Neighborhood Housing Services, Inc.

Building People, Places, and Partnerships throughout Idaho

February 9, 2010

Midland Mortgage

Carl E. Ford
Terri L. Ford
17020 N. Lyonsdale Pl
Nampa, Id 83687

RE: Loan # 0052215427

TO WHOM IT MAY CONCERN:

We live at the above referenced address as our primary residence and have lived there since 2003. We have had the above reference loan since January 25, 2003 when we purchased the home. The existing loan is an FHA 30 year fixed rate loan. We want to stay in our home and need your help.

Our current situation is that Carl has had several brain surgeries and has used up his workers disability. He has applied for Social Security disability and the attorney thinks it should come soon. When we get the disability it should be about \$1,600 a month. This will balance our budget and we will provide any information you need. We want to keep our home but need your help to do so.

We would like you to consider forbearing the past due payments and allowing us to pay partial until we get the SSDI. This would more than balance our budget. We feel that we would be able to keep our obligations current with your help. We really do want to keep our home.

I am working with and have signed an authorization to work on my behalf Tom Birch, Foreclosure & Default Counselor at Neighborhood Housing Services to help save our home. They can be reached at (208) 343-4065 x 111. I am enclosing a budget that outlines our current financial situation. With your assistance and a modification we will be able to make the mortgage payments and and keep other financial obligations current.

My phone number is **208 461 3085**. If there is any additional information that I might provide, please let me know immediately.

Thank you for your consideration and assistance in helping me save my home from foreclosure.

Respectfully,

Carl E. Ford
Terri L. Ford
17020 N. Lyonsdale Pl (formerly 6320 N. Lyonsdale Pl)
Nampa, ID 83687
Loan # 0052215427


Carl & Terri Ford - FHA loan #: 52215427

REQUESTING A REASONABLE ACCOMMODATION

TO: Midland Mortgage
P.O. Box 268806
Oklahoma City, OK 73126

Just Law Office
331 Shoup Ave, Suite 211
P.O. Box 50271
Idaho Falls, ID 83405

Dear Metlife Mortgage and Just Law Office:

On behalf of Carl Ford, a person with a disability, we are hereby requesting a reasonable accommodation for him at 17020 N. Lyonsdale Place, Nampa, Idaho 83687 pursuant to the Fair Housing Act, 42 U.S.C. § 3604, which requires housing providers to make "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

The accommodation he is requesting is an extension of time to review his modification request so that he can wait for his SSI income that may be awarded. To be without housing would exacerbate his disability.

Upon request he will give you a proof of need letter and permission to contact the person listed on his Proof of Need letter for purposes of verifying that he needs the reasonable accommodation requested above, but he does not give you permission to inquire about the nature or severity of his disability.

Please respond to this reasonable accommodation request in writing within seven (7) days.

Sincerely,

Idaho Legal Aid Services, Inc.

Date

COPY

310 North 5th Street
Boise, ID 83702
208/345/0106
Fax 208/342/2561



IDAHO LEGAL AID SERVICES

Boise Office
www.idaholegalaid.org

May 17, 2010

Ms. Shadow Wynn
Midland Mortgage
999 NW Grand
Oklahoma City, OK 73118
and
Midfirst Bank/
Midland Mortgage
P.O. Box 26648
Oklahoma City, OK 73126-0648

Re: Reasonable Accommodation and Cash-for-Keys Offer
17020 N. Lyonsdale Place, Nampa, Idaho 83687
Loan Number: 0052215427

Dear Ms. Shadow Wynn:

Here is the documentation that you requested regarding Mr. Ford's reasonable accommodation for his disability and the costs to move. He will need \$400 for his security deposit, \$535 for rent, \$97 move-in fee, \$150 to transfer his utilities, \$60 for his storage unit, and \$80 for gas. In addition, we have attached the movers cost estimate; thus, he will need at least \$2,000 to \$3,000 to move. Because Mr. Ford's disability is so severe, he and his wife will need help to move. See attached doctors' letters.

Sincerely,
IDAHO LEGAL AID SERVICES, INC.

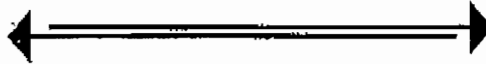


Zoe Ann Olson
Attorney at Law

Enclosures

Cc: Carl and Terri Ford

CROSS TOWN MOVERS



ESTIMATE

May 14, 2010

Zoeann Olson
Idaho Legal Aid
Fax: 342-2561

RE: Move for Carl Ford

Dear Zoeann,

Thank you for allowing Cross Town Movers the opportunity to estimate this move.
We charge \$76.00 an hour for 2 men, a 26' truck, and all the needed equipment.

Mr. Ford stated that this move might be completed in the following ways:

1. Move from 17020 N. Lyonsdale Nampa to storage in Nampa and then at a later date move from the storage to an apartment in Nampa.
2. Move from 17020 N. Lyonsdale Nampa to an apartment in Nampa.
3. Packing and supplying the materials for the move out of 17020 N. Lyonsdale.

For scenario #1 stated above the estimate is 5-7 hours of time for Lyonsdale to storage and then 5-7 hours of time from storage to apartment. In addition to this hourly rate there is a \$38 travel fee each way to go to and from Nampa. Estimate: \$912-\$1216.

For scenario # 2 the estimate is 5-7 hours of time plus the travel fees of \$38 each way. Estimate: \$456-\$608

For scenario # 3 the estimate is 7-8 hours of packing time plus travel fees of \$38 each way. In addition we estimate approximately \$200-\$300 of packing materials. Estimate: \$808-\$984

Please keep in mind that this is a very general estimate and charges can vary if time on the job varies. If you have any questions concerning this estimate or if you have any further questions at all, please call us at 378-0226. Thanks again.

Beth, Cross Town Movers



COPY

310 North 5th Street
Boise, ID 83702
208/345/0106
Fax 208/342/2561

IDAHO LEGAL AID SERVICES

Boise Office

www.idaholegalaid.org

May 17, 2010

MS. CARLITA FLIENT
MICHAELSON CONNOR AND HOUT INC
4400 WILL ROGERS PARKWAY STE 300 S
OKLAHOMA CITY OK 73108

Via mail and facsimile to: (405) 595-5005

Re: Carl Ford, HUD #121-205074

Dear Ms. Flient:

We received your Preliminary Disapproval for Occupied Conveyance on behalf of our client Carl Ford. By this letter we are asking for a reconsideration of this matter. On behalf of Mr. Karl Ford, a person with a disability, we are hereby requesting a reasonable accommodation for him at 17020 N. Lyonsdale Place, Nampa, Idaho 83687 pursuant to the Idaho Human Rights Commission Act, Section 504 of the Rehabilitation Act of 1973, and Fair Housing Act, 42 U.S.C. §3604, which requires housing providers to make "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

The accommodation he is requesting is to lease the property from the Department of Housing and Urban Development/Michaelson, Connor, and Hout, Inc./Midland/Midfirst for \$400.00 until he can locate an affordable place to live that meets the needs related to his disability and so he can access help to pack and move when necessary.

Attached is his Proof of Need letter for purposes of verifying that he needs the reasonable accommodation requested above, but he does not give you permission to inquire about the nature or severity of his disability. Please respond to this reasonable accommodation request in writing within seven (7) days.

Sincerely,

Zoe Ann Olson
Attorney at Law

Enclosures: lease application, Proof Letter
cc: Carl and Terri Ford

Request for Occupied Conveyance

U.S. Department of Housing
and Urban Development
Office of Housing

OMB Approval No. 2502-0268



Public reporting burden for this collection of information is estimated to average 0.25 hours per mortgage and 0.5 hours per occupant, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3500 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0268), Washington, D.C. 20503.

Privacy Act Statement: The Department of Housing and Urban Development (HUD) is authorized to collect this information by 24 CFR 203.675 (b)(3). Section 165 of the Housing and Community Development Act of 1987, 42 U.S.C. 3525, requires persons applying for assistance under HUD programs to furnish his or her Social Security Number (SSN). The information will enable HUD to determine whether you qualify as a tenant, to maintain tenant rental accounts, and will provide the basis for facilitating the management and administration of the property disposition program. The information will be released to the local real estate broker who manages the property to facilitate property management. The information may be used to facilitate collection of overdue rents and may be released to collection agencies, consumer reporting and commercial credit agencies, and attorneys hired by the Department. It may also be released to appropriate Federal, State, and local agencies to facilitate collection of rent and, when relevant, to civil, criminal, or regulatory investigations or prosecutions. The information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law. You must provide all of the information requested, including all SSNs you and all other household members age six (6) years of age and older, have and use. Giving the SSNs of all family members 6 years of age and older is mandatory; failure to provide the SSNs will affect your eligibility in the program. Failure to provide the requested information may result in a delay or rejection of your request to remain as an occupant.

This form must be completed by the Occupant(s). When completed, send to the local HUD Office Manager, Attention: Chief Property Officer

Property Address: 17020 NORTH LYONS DALE PLACE	Unit No.:
City, State & Zip Code: NAMPA IDAHO 83687	
Name of Mortgage Company (Lender): MIDLAND MORTGAGE	Mortgage Loan No.: 0052215427
	FHA Case No.: 1212050746703

Dear Sir:

I(We) desire to continue in occupancy as a tenant of this property if acquired by HUD. I(We) have lived in this property since **1/2003** (please insert date). I(We) will sign a month-to-month lease and pay one month's rent within 15 days of the lease being presented to me(us). I(We) believe that I(we) can afford to make monthly rental payments. In my(our) opinion, this property, in its present condition is structurally sound, free from health and safety hazards, and is otherwise habitable.

You may contact me(us) for arranging a convenient time for HUD's required inspection at the following telephone number: **208-461-3685** or my(our) representative at **208-861-5644** (HUD must be able to make contact during normal working hours).

I(We) understand that HUD's approval of my(our) request will, in part, be based on my(our) ability to make monthly rental payments. To assist HUD in making its determination, I(we) submit the following information concerning my(our) income:

Occupant's Name: CARL FORD	Occupation: DISABLED	Social Security No.: 533-64-1376	Gross Pay Per Month: \$ 0
Employer's Name & Address: N/A		Employer's Telephone No.: N/A	
Spouse's Name: TERRI FORD	Occupation: CLEAN	Social Security No.: 568-29-2418	Gross Pay Per Month: \$ 15.00
Employer's Name & Address: WALMART NAMPA IDAHO		Employer's Telephone No.: 208-461-6481	
Names & Social Security Nos. of all Other Household Members 6 yrs. or older: N/A			

Other Family Income (explain): NONE	Other Sources of Income (if any): NONE
---	--

Obligations (list all obligations including car loans, installment payments, and credit cards)	Present Balance	Monthly Payment
CREDITOR'S NAME: CAPITAL ONE ADDRESS (include city, state, & zip code): WILMINGTON, DE. 19801	\$ 1600	\$ 1.00
CAPITAL ONE WILMINGTON, DE. 19801	1400	75
CHASE CREDIT LOUISVILLE, KY. 40213	1000	60
GAS	116	60
Electric	87.96	45
Water, Sewer, Trash		40

You have my(our) permission to contact any of the above for verification purposes.

Occupant's Signature: Carl E Ford	Spouse's Signature: Terri Ford	Date: 3-26-10
---	--	-------------------------

Employment

and Urban Development
Veterans Administration
USDA, Farmers Home Administration

8 Approval No. 2900-0460
OMB Approval No. 0575-0009

Privacy Act Notice: This information is to be used by the agency collecting it in determining whether you qualify as a prospective mortgagor under its program. It will not be disclosed outside the agency except to your employer(s) for verification of employment and as required and permitted by law. You do not have to give us this information, but if you do not, your application for approval as a prospective mortgagor or borrower may be delayed or rejected. The information requested in this form is authorized by Title 38, USC, Chapter 37 (if VA); by 12 USC, Section 1701 et. seq. (if HUD/FHA); and Title 42 USC, 1471 et. seq., or 7 USC, 1921 et. seq. (if USDA, FmHA).

Public reporting burden for this collection of information is estimated to average 10 to 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Office, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0059), Washington, D.C. 20503.

Lender or Local Processing Agency (LPA): Complete items 1 through 7. Have the applicant complete items 8 and 9. Forward the completed form directly to the employer named in item 1.
Employer: Complete either parts II and IV or parts III and IV. Return the form directly to the lender or local processing agency named in item 2 of part I.

Part I - Requested of:

Requested by:

1. Name & Address of Employer Wal-Mart 2100 12TH AVE N NAMPA, ID 83630		2. Name & Address of Lender or Local Processing Agent (LPA)	
3. Name & Address of Applicant CARL + TEAM FORD 1702 DONALDSON AVE PL NAMPA, ID 83687		4. I certify that this verification has been sent directly to the employer and has not passed through the hands of the applicant or any other interested party. Signature of Employer, Official of LPA, or FmHA Loan Package X	
I have applied for a mortgage loan or rehabilitation loan and stated that I am/was employed by you. My signature in the block below authorizes verification of my employment information.		5. Title	
8. Applicant's Signature Carl Ford	9. Employee Identification Number	6. Date	7. HUD/FHA/CPD, VA or FmHA No

Part II - Verification of Present Employment

10. Present Position	11. Date of Employment	12. Probability of Continued Employment	13a. Salaried <input type="checkbox"/> Yes <input type="checkbox"/> No Commission <input type="checkbox"/> Yes <input type="checkbox"/> No	13b. Is overtime/bonus likely to continue? Overtime: <input type="checkbox"/> Yes <input type="checkbox"/> No Bonus: <input type="checkbox"/> Yes <input type="checkbox"/> No
Current Base Pay: Annual <input type="checkbox"/> Monthly <input type="checkbox"/> Weekly <input type="checkbox"/> Hourly <input type="checkbox"/> Other (specify):		14a. Monthly Taxable Pay (for Military Personnel Only) Base Pay: \$ Career G Pay: \$ Pro Pay: \$ Flight Pay: \$ Other (specify): \$		
15a. Base Earnings Year-to-Date Past Year: \$	16b. Monthly Nontaxable Pay (for Military Personnel Only) Quarters: \$ VHA: \$ Clothing: \$ Rations: \$ Other (specify): \$			
b. Overtime Year-to-Date Past Year: \$				
c. Commissions Year-to-Date Past Year: \$				
d. Bonuses Year-to-Date Past Year: \$				

7. Remarks: If paid hourly, please indicate average hours worked each week during current and past year.

NOT Employed signed up for disability in June of 07

Part III - Verification of Previous Employment

1. Salary/Wage at Termination: Yearly <input type="checkbox"/> Monthly <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> \$ 31.00 hr	Base Pay	Overtime	Commissions	Bonus
Dates of Employment: From 12-20-06 to 3-13-07	20. Reasons for Leaving got sick			
Position Held DRIVER				

Part IV - Certification: Federal statutes provide severe penalties for any fraud, intentional misrepresentation, or criminal connivance or conspiracy purposed to influence the issuance of any guaranty or insurance by the VA or USDA, FmHA Administrators, or the FHA Commissioner.

Signature Carl Ford	23. Title of Employer Fulcher TRUCKING	24. Date 5/1/07
-------------------------------	--	---------------------------

Previous editions may be used until supply is exhausted

FmHA form 410-5

VA form 26-8497

form HUD-92004-G
and L Handbooks 4155.1, 4310.5

CHARLES C. JUST, ESQ. - ISB 1779
 KIPP L. MANWARING, ESQ. - ISB 3817
 JUST LAW OFFICE
 381 Shoup Avenue
 P.O. Box 50271
 Idaho Falls, Idaho 83405
 Telephone: (208) 523-9106
 Facsimile: (208) 523-9146

Attorneys for Plaintiff

FILED
 MAY 26 2010
 AM 7:30 PM

CANYON COUNTY CLERK
 D. BUTLER, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 STATE OF IDAHO, COUNTY OF CANYON**

MIDFIRST BANK,

Plaintiff

vs.

CARL E. FORD and TERRI L. FORD,
 husband and wife, and JOHN DOES I-X,

Defendants.

Case No. CV- 10-5844

SUMMONS

TO: CARL E. FORD
 17020 N LYONSDALE PL.
 NAMPA, IDAHO

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF. THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN TWENTY (20) DAYS. READ THE INFORMATION BELOW.

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated Court within twenty (20) days after service of this Summons on you. If you fail to so respond, the Court may enter judgment against you as demanded by the plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

The nature of the claim against you is for ejectment and granting plaintiff possession of real property.

Summons
 Midfirst vs Ford

JUDGE
 BRADLY S FORD

COPY

An appropriate written response requires compliance with Rule 10(a)(1) and other rules of the Idaho Rules of Civil Procedure, and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named Court.

WITNESS my hand and the seal of this District Court, and dated this 26 day of May 2010.

WILLIAM HURST
CLERK OF THE DISTRICT COURT


DEPUTY CLERK

FILED
11:00 A.M. P.M.

JUN 14 2010

**CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY**

**CHARLES C. JUST, ESQ. - ISB 1779
KIPP L. MANWARING, ESQ. - ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146**

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
STATE OF IDAHO; COUNTY OF CANYON**

MIDFIRST BANK,

Plaintiff

vs.

**CARL E. FORD and TERRI L. FORD,
husband and wife, and JOHN DOES I-X,**

Defendants.

Case No. CV- 10-5844

SUMMONS

**TO: TERRI L. FORD
17020 N LYONSDALE PL.
NAMPA, IDAHO**

**NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF. THE
COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE
UNLESS YOU RESPOND WITHIN TWENTY (20) DAYS. READ THE INFORMATION
BELOW.**

**You are hereby notified that in order to defend this lawsuit, an appropriate written
response must be filed with the above designated Court within twenty (20) days after service of
this Summons on you. If you fail to so respond, the Court may enter judgment against you as
demanded by the plaintiff in the Complaint.**

**A copy of the Complaint is served with this Summons. If you wish to seek the advice or
representation by an attorney in this matter, you should do so promptly so that your written
response, if any, may be filed in time and other legal rights protected.**

**The nature of the claim against you is for ejectment and granting plaintiff possession of
real property.**

**Summons
Midfirst vs Ford**



COPY

An appropriate written response requires compliance with Rule 10(a)(1) and other rules of the Idaho Rules of Civil Procedure, and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named Court.

WITNESS my hand and the seal of this District Court, and dated this 14 day of June 2010.

WILLIAM HURST
CLERK OF THE DISTRICT COURT

J. HEIDEMAN
DEPUTY CLERK

CHARLES C. JUST, ESQ. - ISB 1779
KIPP L. MANWARING, ESQ. - ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

FILED
MAY 28 2010

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF CANYON**

MIDFIRST BANK,

Plaintiff

vs.

CARL E. FORD and TERRI L. FORD,
husband and wife, and JOHN DOES I-X,

Defendants.

Case No. CV- 10-5844

COMPLAINT

Fee Category: A.1.

Fee: \$88.00

Plaintiff, for a cause of action against the Defendants, complains and alleges as follows.

1. Midfirst Bank (Midfirst), is a corporation licensed to do business in the State of Idaho and previously held a promissory note secured by a deed of trust on the subject real property described below.

2. The Defendant, Carl E. Ford (Ford), at all times relevant here was a resident of Canyon County, Idaho, and previously held title and interest to the subject real property described below.

3. John Does I through X are persons whose true identities are currently unknown who are asserting or may assert some interest in the subject real property.

4. Midfirst foreclosed Ford's title and interest in the subject real property through nonjudicial foreclosure of its deed of trust, culminating in issuance of a Trustee's Deed to Midfirst on April 14, 2010 and recorded in the Recorder's Office for Canyon County, Idaho as

JUDGE
BRADLY S FORD



Instrument No. 2010018329. A copy of the Trustee's Deed is attached as Exhibit A and is incorporated here by reference.

5. Midfirst now holds paramount title to the subject real property free of Ford's interest, title, claim or right.

6. The subject real property is known by its common address of 17020 N Lyonsdale Pl., Nampa, Canyon County, Idaho and is more particularly described as follows:

Lot 9 in Block 2 of LYONSDALE PARK SUBDIVISION,
Canyon County Idaho, according to the official plat thereof, filed
in Book 31 of plats, Page 30, records of said County.

7. More than ten days have elapsed since conveyance and recording of the Trustee's Deed.

8. In accordance with Idaho Code § 45-1506(11), Midfirst is entitled to possession of the real property obtained through the foreclosure process.

9. On April 24, 2010, Midfirst caused a notice to quit possession to be served upon Ford at the above address. A copy of that notice is attached as Exhibit B and is incorporated here by reference.

10. Ford has continued to occupy the subject real property in derogation of Midfirst's title and right to possession.

11. Ford has no title, interest, or right to possession of the subject real property and by law is a tenant at sufferance.

12. Midfirst has not agreed to any tenancy with Ford, and considers Ford's continued occupancy a trespass.

13. Midfirst is entitled to a writ of ejectment removing Ford, and any and all persons claiming possession or occupancy under him, together with all personal property from the subject real property.

14. Midfirst is entitled to a writ of restitution granting it full possession and occupancy of the subject real property.

15. Midfirst has retained the services of Just Law Office to prosecute this action and in accordance with the terms of the deed of trust and promissory note executed by Ford, Midfirst is entitled to an award of its court costs and reasonable attorney fees. In accordance with Idaho Code §§ 12-120(3) and 12-121, and applicable rules of the Idaho Rules of Civil Procedure,

Midfirst is entitled to an award of its court costs and reasonable attorney fees. In the event this action is uncontested, a reasonable attorney fee is \$350.00. In the event this action is contested, a reasonable attorney fee will be in such further and greater amount as the court may determine.

WHEREFORE, Plaintiff requests relief as follows:

1. Judgment granting a Writ of Ejectment and directing the Sheriff of Canyon County to use such force as reasonably necessary to physically remove the Defendant, and any person claiming possession or occupancy under him, together with all personal property from the subject real property.
2. Judgment granting a Writ of Restitution and directing the Sheriff of Canyon County to place Plaintiff in full possession and occupancy of the subject real property.
3. An Order decreeing that any personal property left on the subject property by the Defendant, or any persons claiming an occupancy right derivatively through the Defendant, is deemed to be abandoned and valueless, and authorizing Plaintiff to take possession of such property or discard or destroy it as Plaintiff shall see fit.
4. Judgment awarding Plaintiff its court costs and reasonable attorney fees.
5. For such further and other relief as the court deems just and equitable.

Dated this 24th day of May 2010.


Kipp L. Manwaring
Attorney for Plaintiff

200909507

RECORDED
 010 APR 21 PM 4 33
 WILLIAM H. HURST
 CANYON CNTY RECORDER
 BY ()

2010018329

TRUSTEE'S DEED

JUST LAW, INC., herein called Successor Trustee under the Deed of Trust hereinafter particularly described, does hereby bargain, sell and convey, without warranty to Midfirst Bank, whose business address is 999 N.W. Grand Blvd., Ste. 110, Oklahoma City, OK 73118-6077, all of the real property situated in the County of Canyon, State of Idaho, described as follows to-wit:

Lot 9 in Block 2 of LYONSDALE PARK SUBDIVISION, Canyon County Idaho, according to the official plat thereof, filed in Book 31 of plats, Page 30, records of said County.

This conveyance is made pursuant to the powers conferred upon the Successor Trustee by the Deed of Trust between Carl E. Ford & Terri L. Ford, husband and wife, as Grantors, Just Law, Inc., as Successor Trustee, and First Horizon Home Loan Corporation as the Beneficiary, under the Deed of Trust recorded January 29, 2003 as Instrument No. 200305640, in the records of Canyon County, Idaho. The Beneficial interest of said Deed of Trust was subsequently assigned to Midfirst Bank, recorded August 4, 2008 as Instrument No. 2008042272, ; and after the fulfillment of the conditions specified in said Deed of Trust authorizing the conveyance as follows:

(a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon the Successor Trustee to sell said property pursuant to the terms of said Deed of Trust. The Notice of Default was recorded as Instrument No. 2009052168, records of said County, Idaho, the nature of such default being set forth in said Notice of Default. Such default still existed at the time of sale.

(b) After recordation of said Notice of Default, Successor Trustee gave notice of the time and place of the sale of said property by registered or certified mail, by personal service upon the occupants of said real property, or by posting in a conspicuous place on said premises and by publishing in a newspaper of general circulation in the county in which the property is situated as more fully appears in affidavits recorded at least 20 days prior to the date of sale as Instrument Nos. 2010001598, 2010001599, and 2010001600, records of said County, Idaho.

(c) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) and of the Affidavits referred to in paragraph (b) shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.

(d) All requirements of law regarding the mailing, personal service, posting, publication and recording of the Notice of Default and Notice of Sale and of all other notices have been complied with.

(e) Not less than 120 days elapsed between the giving of notice of sale by certified mail and the sale of said property.

CONFORM
 REC. DATE

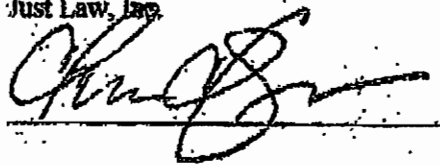
EXHIBIT

A

(f) Successor Trustee, at the time and place of sale fixed by said notices, at public auction, in one parcel, struck off to Midfirst Bank, being the highest bidder, the property herein described for the sum of \$110,176.11, subject however to all prior liens and encumbrances. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances, and costs.

IN WITNESS WHEREOF, the Successor Trustee, Just Law, Inc., has caused his name to be hereunto subscribed this 16th day of April, 2010.

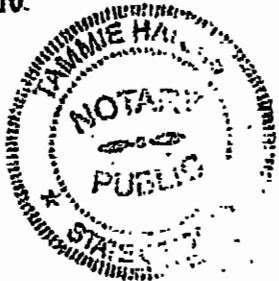
Just Law, Inc.




STATE OF IDAHO)
) ss.
County of Bonneville)

On this 16th day of April, 2010, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Charles C. Just, known to me to be the President of the corporation that executed this instrument or the person who executed the instrument on behalf of said corporation, whose name is subscribed to the within instrument and acknowledged to me that such corporation executed the same as such Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 16th day of April, 2010.




Notary Public for Idaho
Residing at Shoshone Falls
Commission expires: 8-21-2013

CHARLES C. JUST, ESQ. - ISB 1779
 KIPP L. MANWARING, ESQ. - ISB 3817
 JUST LAW OFFICE
 381 Shoup Avenue
 P.O. Box 50271
 Idaho Falls, Idaho 83405
 Telephone: (208) 523-9106
 Facsimile: (208) 523-9146

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 STATE OF IDAHO, COUNTY OF CANYON**

MIDFIRST BANK,

Plaintiff

vs.

CARL E. FORD and TERRI L. FORD,
 husband and wife, and JOHN DOES I-X,

Defendants.

Case No. CV-

NOTICE TO QUIT

NOTICE TO QUIT AFTER FORECLOSURE OF DEED OF TRUST

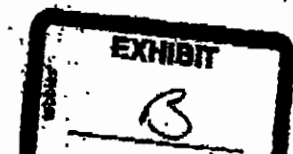
To: Carl E. Ford and Terri L. Ford, or current occupants, of 17020 N Lyonsdale Pl, Nampa, Canyon County, Idaho.

NOTICE IS HEREBY GIVEN in accordance with Idaho Code § 45-1506(11) that if are the above named defendant(s), you must vacate the real property located at 17020 N Lyonsdale Pl, Nampa, Canyon County, Idaho, within three (3) days of the posting or hand delivery of this Notice.

NOTICE IS HEREBY GIVEN in accordance with Idaho Code § 45-1506(11) that in the event you are a bona fide tenant or a subtenant of the above named defendant(s), or a bona fide tenant or subtenant of a successor in interest to said defendant(s), you must vacate the real property located at 17020 N Lyonsdale Pl, Nampa, Canyon County, Idaho, within ninety (90) days of the posting or hand delivery of this Notice.

You are required to vacate and surrender possession of the premises unless you provide evidence to the named attorney that you are a bona fide tenant pursuant to Section 702(a)(2)(A)

Notice To Quit
 Midfirst vs Ford



of the federal "Protecting Tenants at Foreclosure Act of 2009" ("PTFA") or are protected by Section 703 of the PTFA. Please see below for instructions on how to deliver this evidence.

FURTHER NOTICE IS HEREBY GIVEN that Plaintiff named above took title to the above identified real property by Trustee's Deed dated April 16, 2010. You are a tenant at sufferance and are not entitled to possession or occupancy of the real property. There is no right to cure within the relevant time period. Failure to vacate the real property within the relevant time period will result in the filing of an action for ejectment and you may be subject to payment of Plaintiff's court costs and reasonable attorney fees.

Dated this 22nd day of April 2010.

Kipp Manwaring
Kipp L. Manwaring
Attorney for Plaintiff

PAGE 2
ADDENDUM
TENANT INFORMATION

IF YOU ARE A TENANT of the prior owner, you must provide the following documents:

- A copy of your lease
- A return phone number and the time best to reach you
- The receipt for the last six (6) payments made to the landlord for the residence.

by mail, fax, or in person to:

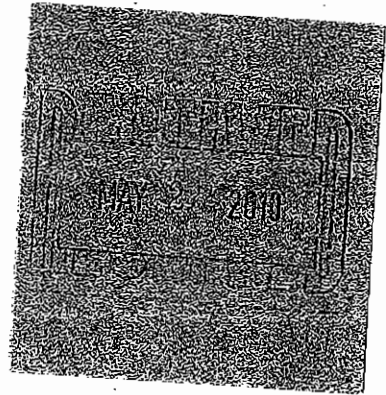
Just Law Office
381 Shoup Ave, Ste 210
PO Box 50271
Idaho Falls, ID 83405

Fax: (208) 523-9146

For any questions, please call (208) 523-9106.



4400 Will Rogers Parkway, Suite 300
Oklahoma City, OK 73108
405-595-2000 Fax 405-595-5005



FINAL DISAPPROVAL OF OCCUPIED CONVEYANCE OF PROPERTIES

May 18, 2010

Carl Ford
17020 N. Lyonsdale Place
Nampa, ID 83687

FHA Case No: 121-205074

Dear Occupant:

We regret that Michaelson, Connor & Boul cannot approve your request to continue living in the property at the above address as a tenant when ownership (title) to the property is transferred to the Department of Housing and Urban Development.

Our reason or reasons for not approving your request are listed below:

It has been determined that none of the following conditions were sufficiently met, which would show it is in HUD's best interest to have an occupied property.

- a) An individual residing in the property suffers from a temporary, permanent, or long-term illness or injury that would be aggravated by the process of moving from the property and the individual meets the eligibility criteria in Section 203.674.a. Validation of illness/injury would have had to be provided at the time of original application by a state-certified physician along with the date the patient could be moved from the property.
- b) Occupancy is essential to protect the property from vandalism (boarding is insufficient) from the time of acquisition to the time of preparation for sale. Property would have to be classified in a high-crime area.

- c) The average time in HUD's unsold inventory in the residential area where property is located exceeds six (6) months.
- d) State or local law prohibits eviction of a bonafide tenant who is making regular monthly payments to the mortgagor (anti-eviction laws).

We are informing the lender of our decision to have the property in which you currently reside transferred to HUD in a vacant condition.

For information regarding counseling services, please look in your phone book under Guide to Human Services for Counseling, Housing or Emergency Shelters or you can access HUD's website www.hudhcc.org. It may be of interest to you to contact HUD's toll free number at (800)569-4287, to obtain a list of HUD approved Counseling agencies available in your local area; and check out these websites: www.grants.gov and www.govbenefits.gov. They may have a program available to assist you.

Este aviso es muy importante. Si necesita ayuda con este aviso, favor de llamar al numero a (800)934-3009. Se habla espanol. Gracias.

****IMPORTANT NOTICE****

This decision is final and you must be prepared to vacate the property. No further extensions will be granted. You may not appeal this decision. Michaelson, Connor & Boul is not evicting you, the mortgage company is. If you have any questions concerning the timing of the eviction, etc., please contact the foreclosing attorney's office. We do not have that information available to us.

Sincerely,



Geoff Grafford
Appeals Supervisor

cc:

Midland Mortgage Company (Midfirst)
999 N Grand Blvd
Oklahoma City, OK 73118

CONCILIATED AGREEMENT

The Complainants, Carl and Terri Ford ("Fords"), by and through its attorney Zoe Ann Olson, and Respondents, MidFirst Bank ("MidFirst") and Midland Mortgage Co. ("Midland"), by and through their representative, Craig Parker, agree to the following for the resolution of this matter between them:

1. The "parties", the Fords and Midland and MidFirst enter these agreements regarding the real property that is the subject of this action, located at and commonly known as 17020 North Lyonsdale Place; Nampa, Idaho 83687 ("Premises").

2. MidFirst and Midland affirmatively represent and therefore the conciliating parties agree that MidFirst now holds paramount title to the Premises, free of any interest, title, claim, or other right of the Fords.

3. MidFirst hereby grants a license for the Premises to the Fords allowing them to continue to occupy the Premises, and to remain in possession of the Premises, from the date of this Agreement through August 1, 2010, at Midnight. The license hereby created shall be a license from day to day. In no event shall the licensees, the Fords, remain in possession of the Premises after August 1, 2010. The Fords shall return the Premises to MidFirst in a vacant and broom clean condition.

4. The Fords and any other persons in possession of the real property located at 17020 North Lyonsdale Place; Nampa, Idaho 83687, shall vacate and surrender empty, possession of the Premises, broom clean, free of interior and exterior debris removed, and the keys to the Premises to the agent for Midland/MidFirst, on or before August 1, 2010, at midnight.

5. Midland/MidFirst agree to pay the Fords Relocation Assistance or Cash for Keys in

consideration for their vacating the property as described herein. Midland/MidFirst agree to pay \$2,500.00 by July 30, 2010 by 12:00 p.m. to their attorney, Zoe Ann Olson, at 310 N. 5th Street; Boise, Idaho 83702. If the Fords have returned all keys on or before midnight on August 1, 2010 and left the Premises in a broom swept, clean condition, free of internal and external debris, then Midland/MidFirst shall pay the Fords the remaining \$500.00 of the Relocation Assistance.

6. All personal property is to be removed from the Premises to receive the \$500.00 remainder of Relocation Assistance. If, at time of Midland/MidFirst agent's inspection, personal property has not been removed, the Midland/MidFirst agent will not pay remainder of Relocation Assistance. If the property is found in broom swept, clean condition, free of interior and external debris, then the remainder of Relocation Assistance will be delivered to the Fords c/o Ms. Zoe Ann Olson, Attorney at Law, 310 N. 5th Street, Boise, ID 83702, by 4:00 p.m. on August 3, 2010.

7. In the event that the Fords return the Premises to Midland/MidFirst in a vacant and broom clean condition on or before midnight on August 1, 2010, then the parties agree that all causes and claims of Midland/MidFirst against the Fords shall be withdrawn, dismissed with prejudice and or waived and all claims of Fords against Midland/MidFirst will be withdrawn, dismissed, and or waived, with each side bearing, as between them, his or its own costs and attorney fees. Midland/MidFirst agrees to submit a separate stipulation for dismissal of its ejectment action with prejudice CV 10-5844, *MidFirst Bank v. Carl E. Ford and Terri L. Ford*, pursuant to Rule 41(a)(1)(ii), Idaho Rules of Civil Procedure, within a reasonable time but no more than five (5) days after the Fords have vacated the Premises and all parties have performed

their obligations under this Agreement.

8. The parties further agree that no license fee or other rent, fee, charge, or other amounts shall be due from Fords to Midland/MidFirst regarding their occupancy of the Premises before, on, or after the date of filing of this Agreement; the stipulating parties further agree that any fees, rents, charges, or other amounts owing on the date of filing of this Agreement from the Fords to Midland/MidFirst, are hereby waived by the Midland/MidFirst and all of its agents, successors, and assigns.

9. Midland/MidFirst agree to waive the deficiency of the loan. Because of Mr. Ford's head injury, his disability, Mr. Ford could not work. Because he could not work it was impossible for his family to pay their mortgage and or the deficiency. Mr. Ford will make a claim for the qualified principle residence indebtedness exclusion because of his financial hardship.

10. The Fords, on behalf of themselves, agents, attorneys, administrators, successors, and assigns, release all claims against any party and discharge Midland/MidFirst, its agents, attorneys, administrators, successors, and assigns, from all actions, causes of action, suits, debts, claims, covenants, damages, judgments, and demands whatsoever, which the Fords, their agents, heirs, executors, administrators, successors and assigns ever had, now have or may hereafter can, shall or may, have for, upon, or by reason of their use and possession of the subject Premises from the beginning of the world through and including the date Fords actually vacate the Premises.

11. Midland/MidFirst, on behalf of themselves, its agents, attorneys, administrators, successors, and assigns, release all claims against any party and discharge the Fords, its agents,

attorneys, administrators, successors, and assigns, from all actions, causes of action, suits, debts, claims, covenants, damages, judgments, and demands whatsoever, which Midland/MidFirst, their agents, heirs, executors, administrators, successors and assigns ever had, now have or may hereafter can, shall or may, have.

12. The parties represent that they have fully read this Agreement and fully understand the rights and obligations set forth hereunder. The parties have either consulted with an attorney regarding this stipulation, or hereby waive the right to consult with an attorney. The parties are signing this Agreement and are agreeing to its terms by their own free will and accord, without duress or undue influence.

13. TIME IS OF THE ESSENCE with respect to all dates stated herein.

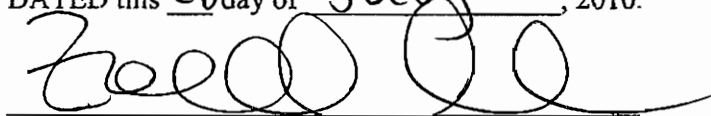
14. A copy of this Agreement may be filed with this Court without further notice.

15. This Agreement cannot be changed or modified except by written instrument signed by all parties hereto.

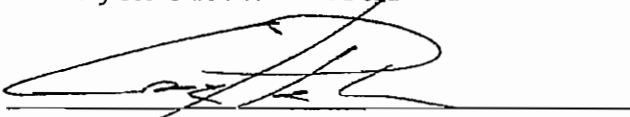
16. The Fords will receive the Relocation Assistance Checks via their Attorney, Zoe Ann Olson, at her office at Idaho Legal Aid Services, Inc.

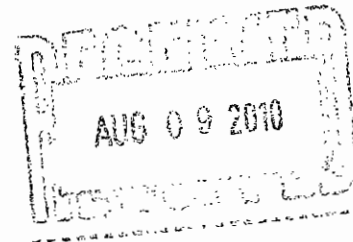
DATED this 28th day of July, 2010.

By:


Attorney for Carl and Terri Ford

By:


Craig Parker
Vice President
MidFirst Bank and Midland Mortgage Co.



U.S. Department Of Housing and Urban Development
Northwest/Alaska Area
Office of Fair Housing and Equal Opportunity
Seattle Region
Program Center, Enforcement/Intake Branch
909 First Avenue, Suite 205
Seattle, Washington 98104-1000

Zoe Ann Olson
Attorney
Idaho Legal Aid Services
310 North 5th Street
Boise, ID 83702

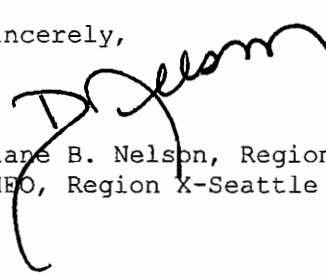
August 4, 2010

Dear Representative (of Carl Ford):

Subject: Housing Discrimination Complaint
Ford v. Midland Mortgage (Lending)
Inquiry No.: 296594
HUD Case No.: 101002458

Attached is a copy of a closure document sent to your client, relating to the subject housing discrimination complaint.

Sincerely,


Diane B. Nelson, Regional Director
FHEO, Region X-Seattle

Enclosure



U.S. Department Of Housing and Urban Development
Northwest/Alaska Area
Office of Fair Housing and Equal Opportunity
Seattle Region
Program Center, Enforcement/Intake Branch
909 First Avenue, Suite 205
Seattle, Washington 98104-1000

Carl Ford
16963 North Denemere Loop
Nampa, ID 83687

August 4, 2010

Dear Complainant:

Subject: Housing Discrimination Complaint
Ford v. Midland Mortgage (Lending)
Inquiry No.: 296594
HUD Case No.: 101002458

On 04/27/2010, the above-referenced housing discrimination complaint was filed with the U.S. Department of Housing and Urban Development (HUD) under the Fair Housing Act of 1968 (Act) as amended [42 U.S.C. §3601 et seq.].

On 07/30/2010, the complainant informed this Office that the parties have agreed to a private settlement of the issues involved in this complaint. The complainant subsequently executed a written withdrawal of the complaint and has submitted it to this Office.

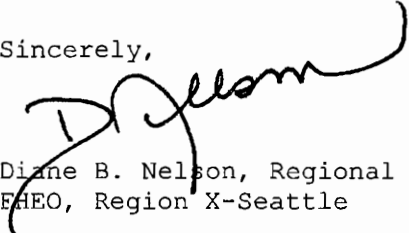
This is to advise you that, after receiving proper notice that the above-referenced complaint has been withdrawn after resolution, HUD has terminated its investigation, and has administratively closed the complaint.

This closure is not a determination on the merits of the allegations contained in the complaint.

Retaliation is a violation of the Fair Housing Act. Section 818 of the Act makes it unlawful to retaliate against any person because he or she has filed a housing discrimination complaint; is associated with a complainant; has counseled or otherwise assisted any person to file such a complaint; or has provided information to HUD during a complaint investigation. Section 818 also protects complainants against retaliatory acts that occur after a complainant has withdrawn, settled, or conciliated a housing discrimination complaint. Any person who believes that he or she has been a victim of retaliation for any of the reasons listed above may file a housing discrimination complaint with HUD within one (1) year of the date on which the most recent alleged retaliatory act(s) occurred or ended.

If you have any questions regarding this closure, please contact Linda M. Radtke, Investigator, at (800) 877-0246, for assistance.

Sincerely,


Diane B. Nelson, Regional Director
FHEO, Region X-Seattle



U.S. Department Of Housing and Urban Development
Northwest/Alaska Area
Office of Fair Housing and Equal Opportunity
Seattle Region
Program Center, Enforcement/Intake Branch
909 First Avenue, Suite 205
Seattle, Washington 98104-1000

Zoe Ann Olson
Attorney
Idaho Legal Aid Services
310 North 5th Street
Boise, ID 83702

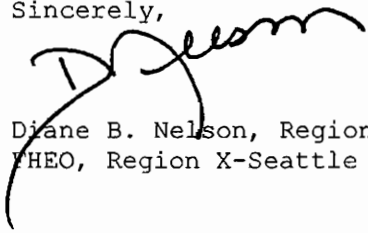
August 4, 2010

Dear Representative (of Terri Ford):

Subject: Housing Discrimination Complaint
Ford v. Midland Mortgage (Lending)
Inquiry No.: 296594
HUD Case No.: 101002458

Attached is a copy of a closure document sent to your client, relating to the subject housing discrimination complaint.

Sincerely,


Diane B. Nelson, Regional Director
FHEO, Region X-Seattle

Enclosure



U.S. Department Of Housing and Urban Development
Northwest/Alaska Area
Office of Fair Housing and Equal Opportunity
Seattle Region
Program Center, Enforcement/Intake Branch
909 First Avenue, Suite 205
Seattle, Washington 98104-1000

Terri Ford
16963 North Denemere Loop
Nampa, ID 83687

August 4, 2010

Dear Complainant:

Subject: Housing Discrimination Complaint
Ford v. Midland Mortgage (Lending)
Inquiry No.: 296594
HUD Case No.: 101002458

On 04/27/2010, the above-referenced housing discrimination complaint was filed with the U.S. Department of Housing and Urban Development (HUD) under the Fair Housing Act of 1968 (Act) as amended [42 U.S.C. §3601 et seq.].

On 07/30/2010, the complainant informed this Office that the parties have agreed to a private settlement of the issues involved in this complaint. The complainant subsequently executed a written withdrawal of the complaint and has submitted it to this Office.

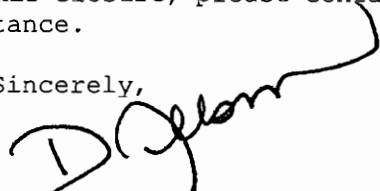
This is to advise you that, after receiving proper notice that the above-referenced complaint has been withdrawn after resolution, HUD has terminated its investigation, and has administratively closed the complaint.

This closure is not a determination on the merits of the allegations contained in the complaint.

Retaliation is a violation of the Fair Housing Act. Section 818 of the Act makes it unlawful to retaliate against any person because he or she has filed a housing discrimination complaint; is associated with a complainant; has counseled or otherwise assisted any person to file such a complaint; or has provided information to HUD during a complaint investigation. Section 818 also protects complainants against retaliatory acts that occur after a complainant has withdrawn, settled, or conciliated a housing discrimination complaint. Any person who believes that he or she has been a victim of retaliation for any of the reasons listed above may file a housing discrimination complaint with HUD within one (1) year of the date on which the most recent alleged retaliatory act(s) occurred or ended.

If you have any questions regarding this closure, please contact Linda M. Radtke, Investigator, at (800) 877-0246, for assistance.

Sincerely,


Diane B. Nelson, Regional Director
FHEO, Region X-Seattle

WITHDRAWAL OF COMPLAINT

Case Name: Ford v. Midland Mortgage Company
Case Number: Title VIII 10-10-0245-8

We, the undersigned, Carl and Terri Ford, hereby withdraw the above-referenced housing discrimination complaint filed with the U.S. Department of Housing and Urban Development (HUD) under the Fair Housing Act (42 U.S.C. 3600-3619). We are withdrawing our complaint for the following reason(s):

The issues have been resolved with a private settlement.

We declare that we are withdrawing our complaint voluntarily and not as a result of any acts of coercion, force, threats, harassment or intimidation on the part of any person.

We understand that our withdrawal of this complaint does not impair our right under the Act to file a new complaint with HUD if the Respondents continue to discriminate against us, or retaliate against us for having filed this complaint.

We understand that, after our withdrawal of this complaint, HUD will not continue to investigate the claims we have made in this complaint.

Although we are withdrawing our HUD complaint, we understand that we may still have the right under the Act to file a complaint in United State District Court, or in a State Court, at any time within two (2) years of the date on which the alleged discriminatory housing practice occurred or ended. I understand that the Court will not count the time during which HUD was processing our complaint when determining whether our complaint was re-filed within the two-year period.

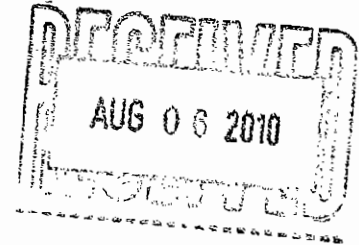
Carl Ford
Carl Ford

7/30/10
Date

Terri L Ford
Terri Ford

7-30-10
Date

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146



Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF CANYON**

MIDFIRST BANK,

Plaintiff

vs.

CARL E. FORD and TERRI L. FORD,
husband and wife, and JOHN DOES I-X,

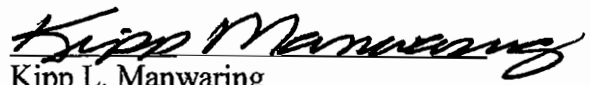
Defendants.

Case No. CV-10-5844

NOTICE OF DISMISSAL

In accordance with I.R.C.P. 41(a)(1), Midfirst Bank, hereby gives notice of the dismissal of its complaint. The defendants, Carl Ford and Terri Ford, have vacated the subject premises, therefore this action may be dismissed.

Dated this 3rd day of August 2010.


Kipp L. Manwaring
Attorney for Plaintiff

CERTIFICATE OF MAILING

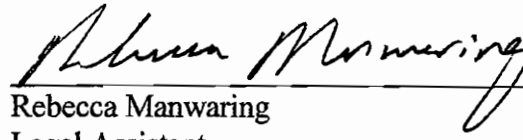
I HEREBY CERTIFY that on the 3rd day of August 2010, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED:

NOTICE OF DISMISSAL

PARTIES SERVED:

Carl and Terri Ford
6320 N Lyonsdale Pl.
Nampa, ID 83687
MAILED

A handwritten signature in cursive script, appearing to read "Rebecca Manwaring", is written over a horizontal line.

Rebecca Manwaring
Legal Assistant

Zoe Ann Olson

From: Zoe Ann Olson [zoeannolson@idaholegalaid.org]
Sent: Monday, August 09, 2010 11:28 AM
To: 'Beth Schnell'
Cc: 'kipp@manwaringlaw.com'; 'Deborah Wolfe'
Subject: RE: Dismissal of the MidFirst v. Ford case

Thank you,

Zoe Ann Olson
Attorney at Law
Idaho Legal Aid Services, Inc.
1-(208)-345-0106, extension 108
310 North 5th Street
Boise, Idaho 83702
zoeannolson@idaholegalaid.org

The contents of this email and any attachments to it contain confidential or legally privileged information from Idaho Legal Aid Services, Inc. This information is only for the use of the intended recipient. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the comments of the contained information is strictly prohibited and that the documents should be returned to this firm immediately. If you have received this email in error, please notify us by email immediately.

From: Beth Schnell [mailto: Beth.Schnell@midfirst.com]
Sent: Monday, August 09, 2010 11:16 AM
To: Zoe Ann Olson
Cc: kipp@manwaringlaw.com; Deborah Wolfe
Subject: RE: Dismissal of the MidFirst v. Ford case

I can confirm the intent was to dismiss the ejectment action with prejudice. mes

Beth Schnell
(o) 602.801.5393
(f) 602.954.5690