

6-30-2011

Edwards v. Mortgage Electronic Registration Augmentation Record Dckt. 38604

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Edwards v. Mortgage Electronic Registration Augmentation Record Dckt. 38604" (2011). *Idaho Supreme Court Records & Briefs*. 3576.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/3576

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

In the Supreme Court of the State of Idaho

LESLIE JENSEN EDWARDS,)

Plaintiff-Appellant,)

v.)

MERS, a foreign corporation; QUALITY)
LOAN SERVICES CORP OF)
WASHINGTON, a foreign corporation; and)
PIONEER LENDER TRUSTEE SERVICES)
LLC, an Idaho limited liability company,)

Defendants-Respondents,)

and)

AURORA LOAN SERVICES, INC. and)
LEHMAN BROTHERS BANK FSB,)

Defendants.)

ORDER GRANTING IN PART AND
DENYING AS MOOT IN PART
APPELLANT'S MOTION TO
AUGMENT

Supreme Court Docket No. 38604-2011
Kootenai County Docket No. 2010-2745

A MOTION TO AUGMENT/AFFIDAVIT OF LESLIE JENSEN EDWARDS was filed by Appellant on June 21, 2011 requesting the inclusion of a transcript and numerous documents. The Reporter's Transcript filed with this Court June 28, 2011 included the requested hearing of September 30, 2010; however, the Clerk's Record did not include the affidavits requested in Appellant's Motion to Augment. Therefore, good cause appearing.

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT/AFFIDAVIT OF LESLIE JENSEN EDWARDS is DENIED AS MOOT as to the inclusion of the transcript of the September 30, 2010 hearing for the reason it was already included in the Reporter's Transcript filed with this Court on June 28, 2011.

IT FURTHER IS ORDERED that Appellant's motion to augment the record with various affidavits which were attached to Appellant's motion be, and hereby is, GRANTED, and the appeal record shall include the documents listed below, file-stamped copies of which accompanied the Motion:

1. Affidavit (with attachments) of Charles Horner filed in district court August 19, 2010.
2. Second Affidavit (with attachments) of Charles Horner filed in district court September 16, 2010.

IT FURTHER IS ORDERED that the due date for filing of Appellant's Brief shall be set, and APPELLANT'S BRIEF shall be filed with this Court ON OR BEFORE THIRTY-FIVE (35) DAYS OF THE DATE OF THIS ORDER.

DATED this 30 day of June, 2011.

For the Supreme Court

Stephen Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record
Pro Se

LAW CLERK

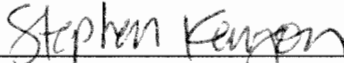
AUGMENTATION RECORD

1. Affidavit (with attachments) of Charles Horner filed in district court August 19, 2010.
2. Second Affidavit (with attachments) of Charles Horner filed in district court September 16, 2010.

IT FURTHER IS ORDERED that the due date for filing of Appellant's Brief shall be set, and APPELLANT'S BRIEF shall be filed with this Court ON OR BEFORE THIRTY-FIVE (35) DAYS OF THE DATE OF THIS ORDER.

DATED this 30 day of June, 2011.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
Pro Se

2018 AUG 19 PM 12:42

CLERK DISTRICT COURT

Patty Bayles
DEPUTY *pb*

MONICA FLOOD BRENNAN, P.C.
ATTORNEY AT LAW
Spokesman Review Building
608 Northwest Boulevard, Suite 101
Coeur d'Alene, Idaho 83814
Telephone: 208-665-0088
Facsimile: 208-676-8288
Idaho State Bar No. 5324
Attorney for

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

LESLIE JENSEN EDWARDS,

Plaintiff,

v.

MORTGAGE ELECTRONIC

REGISTRATI
ON
SYSTEMS,
INC. a
foreign
corporatio
n; QUALITY
LOAN
SERVICE
CORP OF
WASHINGTON
, a
foreign
corporatio
n; and
PIONEER
LENDER
TRUSTEE
SERVICES
LLC, an
Idaho

CV10-2745

CASE NO. ~~CV 2010~~

AFFIDAVIT OF
CHARLES HORNER

Limited
Liability
Company,

Defendants.

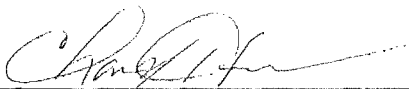
STATE OF IDAHO)
)ss.
County of Kootenai)

I, CHARLES HORNER, after having been duly sworn upon oath
depose and say:

- 1. I am a forensic examiner of mortgage documents and loan materials.
- 2. I prepared a Mortgage Document Examination and Investigation Report in the Leslie Jensen Edwards loan. It is attached hereto as Exhibit 1-A. It has exhibits attached within it. The Examination and Investigation together with my credentials is a total of 21 pages.
- 3. I am available to be called to testify as an expert witness in this matter if it is allowed to proceed to trial.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 19 day of August, 2010.

By: 
Charles Horner

SUBSCRIBED AND SWORN to before me this 19th day of August, 2010.

AFFIDAVIT OF
CHARLES HORNER

State of California
County of San Diego

Subscribed and sworn to (or affirmed) before me on this
19th day of August, 2010, by
Date Month Year

CHARLES HORNEK
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.

Signature [Handwritten Signature]
Signature of Notary Public



Place Notary Seal Above



EXHIBIT 1-A

Member

American College of Forensic Examiners InstituteSM

Charles J. Horner & Associates
Forensic Document Examiners
4045 Bonita Road Suite 211
Bonita, CA 91902

Ph: 619-475-8412

Fax: 619-475-8468

Email:

charles@thedoce Examiner.com

Copyright Warning – The contents of this report as to form, format, language, methods and attachments are the exclusive property of Charles J. Horner & Associates. Any copying, duplication, alteration, or recalculation herein and hereof without the written consent of Charles J. Horner & Associates is strictly prohibited.

Examination Date: 08/16/2010

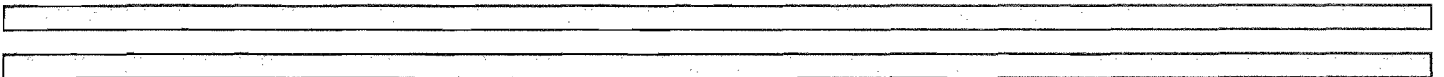
**Mortgage Document
Examination &
Investigation Report**

For

Leslie J. Edwards

Address

17287 West Summerfield Road
Post Falls, ID 83854



Understanding The Examination Report

1. Sections - There are various sections to the Examination which identifies the entity that section applies to. For example, the first section will typically be the Broker's section and identified by the broker's name if a broker was involved in the transaction. The sections between the entities are divided by two gray bars.

2. Violations - Violations discovered during the Examination are identified by a brief description of the statute or code which applies to the violation followed by a descriptive paragraph outlining the violation. The statute or code is in bold font and precedes the descriptive paragraph which is in normal font. There may be more than one relative law that applies to same violation. In this case, each law that applies is listed first with the descriptive paragraphs following.

3. Referencing – Each section is identified by the entity that the violations apply to. Each section begins a series of letters identifying the statute or the code. Example; the first statute or code would begin with (A) or (A1) if there is more than one statute or code connected with the violation. The descriptive paragraph following the statute(s) or code(s) is numbered. Example; 1. There may be more than one violation which applies to the same statutes or codes and therefore the descriptive paragraphs will be numbered accordingly. To reference a particular violation, you would note the statute such as; “under Lender (B2) paragraph 3.”

4. Gray Bars – Each section that begins a new entity, or represents the last section before the final disclosures are divided by two gray bars. A single gray bar divides the series within a section. Example; under the broker's section, a single gray bar would divide the (A) series and (B) series. At the end of the section, two gray bars will began a new section preceding a different entity.

5. Formats – There are two formats offered for the Examination. The PDF format is the primary format provided to non-legal organizations or individuals. Both PDF and Word formats are provided to Attorneys.

6. Exhibits – Exhibits which support the findings of the Examination will be attached in the PDF format following the report. They will not be attached to the Word format if that format is requested by Attorneys.

Disclaimer

The content of this report is for informational purposes only and is not to be construed as giving “legal advice.” You are strongly advised to seek legal consultation from an attorney in connection with the content of this report. If you do not already have an attorney, at your request, we will refer this case to an attorney for you. In such case where an attorney is referred, you are advised that additional fees may be charged by the attorney and those fees may only be discussed between you and the attorney. We do not quote nor provide estimates of those fees.

Loan Information

Broker

Pacific Mortgage Advisors Inc.
720 4th Avenue Suite 104
Kirkland, WA 98033

Lender

Lehman Brothers Bank
3400 118th Street SW# 285
Lynnwood, WA 98307

Servicing

Aurora Loan Services
P.O Box 78111
Phoenix, AZ 85062

Acct #: 0035446129

Loan Type

30-Year Fixed
Refinance

Loan Amount: \$345,00.00 @ 6.000%

Document Date: 05/18/2005

Close Date: 05/24/2005

Examination Report

Pacific Mortgage Advisors Inc. (Broker)

1. **Licensing-** I have investigated the broker's licensing status at the time of the consummation of this loan and have been unable to determine if the broker was properly licensed in the State of Idaho under the Bureau Of Occupational Licenses.

Lehman Brothers Bank (Lender)

Violations

(A1) C.F.R. § 226.17 - § 226.23 **Right of rescission** "In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership is or will be subject to the security interest has the right to rescind the transaction. Lenders are required to deliver two copies of the notice of the right to rescind and one copy of the disclosure statement to each consumer entitled to rescind." The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

- (i) The retention or acquisition of a security interest in the consumer's principal dwelling.
 - (ii) The consumer's right to rescind the transaction.
 - (iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.
 - (iv) The effects of rescission, as described in paragraph (d) of this section.
 - (v) The date the rescission period expires.
- (2) **Proper form of notice.** To satisfy the disclosure requirements of paragraph (b)(1) of this section.

(A2) C.F.R. 226.23 (b) 3. **Content.** The notice must include all of the information outlined in section 226.23(b)(1)(i) through (v). The requirement in § 226.23(b) that the transaction be identified may be met by providing the date of the transaction.

1. **No Right To Cancel Provided-** I have concluded that the borrower was in possession of all documents provided to her at time of consummation of this loan. I have noted that two completed copies of the documents titled "Notice Of Right To Cancel", was not provided to the borrower and therefore, I maintain that the borrower has an extended 3 year right to cancel this loan in accordance with § 226.23 (3) with tolling pursuant to paragraph (A2).

(Continued On Page 2)

5

Attorney Note: Title 15 section §1635 (c) “Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof”

Attorney Note: See addendum titled “Your Right To Rescind The Loan” attached to this report.

Attorney Note: In connection with this examination, I have determined that the 3-year Statute Of Limitations has expired. See “Arguments For Tolling The Statute Of Limitations” on last page of this report.

(B1) 12 C.F.R. 226.23(a)(3). Failure to make clear, conspicuous, and accurate material disclosures also triggers an extended right of rescission. Material disclosures include the: (1) annual percentage rate, (2) finance charge, (3) amount financed, (4) total payments, (5) or payment schedule.

(B2) Truth In Lending Act (15 USC 1601 et seq.). The purpose of TILA is to promote the informed use of consumer credit by requiring disclosures about its terms, cost to standardize the manner in which costs associated with borrowing are calculated and disclosed. TILA requires uniform or standardized disclosure of costs and charges so that consumers can shop and compare. Misleading or misrepresentation of those charges voids the consumer's ability to shop for comparable loan products that may be available through other lenders. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

1. Understated Amount Financed – I have compared the Finance Charges used to calculate the APR in the Final Truth In Lending Statement (Exhibit 1) with the Estimated Settlement Statement (Exhibit 2), and have determined that the Amount Financed on exhibit 1 when deducted from the loan amount of \$345,000.00 reveals \$1,845.97 as the amount of finance charges used to calculate the Amount Financed. When recalculating the finance charges as disclosed on exhibit 2, the resulting total is \$2,067.45. Pursuant to 6500 FDIC § 226.4 which states “The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.” It’s important to note that in a refinance loan, the lender engages third party service providers as these services are required by the lender. Therefore, pursuant to § 226.4 (a) (1) & (2), the cost of third party service providers such as escrow related costs, lender required recording fees, notary fees, title endorsements etc. or any other services required by the lender are considered a “Finance Charge” if the lender requires the use of that service. Because the lender did not include these charges, the adjusted Amount Financed is \$342,932.55. Therefore, the Final Truth In Lending Statement (Exhibit 1) understates the amount of Finance Charges by the amount of \$221.48. It’s also important to note that pursuant to C.F.R. §226.23 (g), finance charges may not be understated by more than \$100.00 for the purpose of damages or, pursuant to § 226.23 (i), \$35.00 for the purpose of rescission if foreclosure proceedings have been initiated.

2. Under Disclosure of Finance Charge – I have investigated the Finance Charge as disclosed on the Final Truth In Lending Statement (Exhibit 1) by running a 30 year amortization schedule and have noted that the total of interest the lender will receive is \$399,641.75. When added to finances charges of \$2,067.45, the total Finance Charge is \$401,709.20. Therefore, the Finance Charge is under disclosed by an amount of \$221.79.

(C) FCRA 15 U.S.C. 1681 Section 212 Subsection 609(g) a lender must provide the following to the consumer as soon as reasonably practicable: **1. The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit; 2. The range of possible credit scores under the model used; 3. All of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed four (4), unless a key factor that adversely affects the consumer's credit score consists of the number of enquiries made with respect to a consumer report. In this case, then five (5) key factors may be listed; 4. The date on which the credit score was created and; 5. The name of the person or entity that provided the credit score or credit file upon which the credit score was created.**

1. Failure To Disclose – Pursuant to this section the lender must provide the most recent credit score the lender used to make an underwriting decision. I have noted that the lender did not provide the credit scores on the document titled “Credit Score Disclosure.”

(D) 15 U.S.C. § 1681s-2] (A) 7 NOTICE TO CONSUMER REQUIRED- (i) IN GENERAL- If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

1. Failure To Disclose – The lender has a one-time duty under this section of the FCRA to provide a notice to the consumer that they have or will furnish negative information to a consumer reporting agency. Typically, a lender will provide this notice along with the other disclosures at the time of loan consummation. I have concluded that no disclosure titled “Furnishing Of Negative Information” was provided to the borrower at any time during the processing of this loan. Thus, it is highly likely that if the lender has reported negative information with the credit repositories, they have done so in violation of this section.

(Continued On Page 4)

(E) 15 USC, Subchapter I, Gramm-Leach-Bliley Act. Disclosure of Nonpublic Personal Information Sec. 6803. Disclosure of institution privacy policy (a) Disclosure required. At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to; (1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;

1. Failure To Disclose - I have concluded that the borrower was not provided the "Privacy Pledge" disclosure or the required "Privacy Choices" disclosure pursuant to the above subsections.

(F) 24 CFR 3500.6(a). Requires certain disclosures such as but not limited to, Servicing Transfer, Right to Copy of Appraisal, Federal Equal Opportunity, and various other exhibits to be provided to the borrower.

1. Failure To Disclose - My inventory of the documents that were provided to the borrower has revealed that the required disclosures pursuant to this section were not provided to the borrower at any time during the process of this loan.

Alliance Title & Escrow Corp. (Settlement Agent)

Violations

(A) RESPA § 3500.10 - One-day advance inspection of HUD-1 or HUD-1A settlement statement; delivery; record keeping. (a) *Inspection one day prior to settlement upon request by the borrower.* The settlement agent shall permit the borrower to inspect the HUD-1 or HUD-1A settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement.

1. Failure To Provide One Day Inspection – Pursuant to this section, the Settlement Agent must offer, at the request of the borrower, a one day inspection prior to the settlement of the transaction. “Settlement,” as defined, means “the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan.” I have noted that the borrower in this transaction was not informed of their right to an advanced copy, nor offered an advance review of the final settlement statement prior to executing the legally binding documents.

Arguments For Tolling The Statute Of Limitations

(1) **The Doctrine Of Fraudulent Concealment** - If a lender conceals wrongdoing, thereby preventing a borrower from discovering a cause of action, the statute of limitation will be tolled until the date the plaintiff, through due diligence, would have learned of the existence of a claim. The doctrine of fraudulent concealment operates to toll the statute of limitations when a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part. *Holmberg v. Armbrrecht* , 327 U.S. 392, 397 (1946) (quoting *Bailey v. Glover* , 88 U.S. (21 Wall.) 342, 348 (1874); see *Maggio v. Gerard Freezer & Ice Co.* , 824 F.2d 123, 127 (1st Cir. 1987).

(2) **Argumentum Theory** – As in criminal codes, the District Attorney must bring charges against a bank robber within 5 years. However, if the bank robber leaves the State, the Statute Of Limitation stops to accrue until such time as the bank robber returns to the jurisdiction. Same can be argued if the lender leaves the state, goes out of business, or the address and phone number disclosed on a document for communication purposes is no longer valid, time should stop running as of the date of the lender’s disappearance and not started again until a receiver of liabilities is notoriously identified.

(3) **Fraud In The Factum** - The misrepresentation must go to the essential nature or existence of a contract, for example, a misrepresentation that an instrument is a promissory note when in fact it is a mortgage. Or, a misleading statement by an agent that a loan contains certain terms desirable to the consumer when it does not.

(4) **Fraud In The Inducement** - The use of deceit or trick to cause someone to act to his/her disadvantage, such as signing an agreement or deeding away real property. The heart of this type of fraud is misleading the other party as to the facts upon which he/she will base his/her decision to act. Example: "there will be tax advantages to you if you let me take title to your property," or "you don't have to read the rest of the contract, it is just routine legal language" but actually includes a balloon payment or other features that left undisclosed, induces the consumer into signing the documents.



(Continued On Page 6)

Disclosure: I have completed my examination and investigation of the mortgage documents for which you have engaged me. The scope of my examination is to determine the accuracy and compliance with Federal, State, and local laws as they may apply to your loan(s). I pay particular attention to discovery of evidence that would support legal action against the current lender(s) to either modify, or rescind the existing loan(s), or in the event of an executed foreclosure, overturn the action. The recommendations and opinions entered herein by me are not intended as legal advice or counseling. I strongly advise that you consult with an attorney in matters related to this examination and the report hereof.

Thank you for your business. I look forward to being of further service.



Charles J. Horner, ACFEI, CREB
Chief Examiner

For Rescission

Semar v. Platte Valley Fed. S&L. Assn., 791 F.2d 699 (9th Cir. 1986)
Williamson v. Lafferty, 698 F.2d 767, 768-69 (5th Cir.1983)
Aquino v. Public Finance Consumer Discount Co., 606 F.Supp. 504, 507 (E.D.Pa.1985)

Arguments For Technical Violations Of TILA & RESPA:

Mars v. Spartanburg Chrysler Plymouth, Inc., 713 F.2d 65, 67 (4th Cir.1983)
Huff v. Stewart-Gwinn Furniture Co., 713 F.2d 67, 69 (4th Cir.1983)

Other Information:

1. Creditors are also liable for actual damages, statutory damages in the amount of twice the finance charge, up to \$2,000, and attorney's fees and costs. 15 U.S.C. § 1640(a). Failure to respond to the rescission notice as spelled out in 12 C.F.R. 226.23(d)(1), results in another violation and an additional award of statutory damages. White v. WMC Mortgage, 2001 U.S. Dist. LEXIS 15907, at * 5 (E.D. Pa. July 31, 2001); Mayfield v. Vanguard Savings & Loan, 710 F. Supp. 143, 145 (E.D. Pa. 1989).

2. **§1641.(a) Prerequisites:** Except as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter or proceeding under section 1607 of this title which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to;

(1) a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned, or

(2) a disclosure which does not use the terms required to be used by this subchapter.

(c) **Right of rescission by consumer unaffected;** Any consumer who has the right to rescind a transaction under section 1635 of this title may rescind the transaction as against any assignee of the obligation.

3. To fulfill the congressional purpose of RESPA and TILA, material violations, as set forth therein, are to be "strictly construed": there is no such thing as a mere "technical" violation which does not give rise to liability: " The Seventh Circuit, like most courts interpreting TILA, maintains that disclosures made pursuant to the statute should be viewed from the vantage point of an ordinary consumer as opposed to that of a skilled or informed business person. TILA is aimed at deceptive practices by lenders, not the subjective beliefs or actions of borrowers. Moreover, a plaintiff need not show actual harm to recover from technical violations of TILA, as they are strict liability offenses." Adams v. Nationscredit Financial Services Corp., 351 F. Supp.2d 829 (N.D. Ill. 2004).

4. Title 15 section §1635 (c) "Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof"

CITY/STATE/ZIP: POST FALLS, ID 83854
 PROPERTY: 17287 WEST SUMMERFIELD ROAD
 POST FALLS ID 83854

INTEREST RATE: 6.000

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. <i>under 6.016</i> .0320 6.028	FINANCE CHARGE <i>under 221.79</i> The dollar amount the credit will cost you. 401,709.20 401,487.41	Amount Financed The amount of credit provided to you or on your behalf. 343,154.03	Total of Payments The amount you will have paid after you have made all payments as scheduled. ✓ 744,641.44
---	---	---	--

PAYMENT SCHEDULE:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE MONTHLY BEGINNING	NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE MONTHLY BEGINNING
359	2,068.45	7/01/2005	744	573.55	399,641.95
1	2,067.89	6/01/2005	2	167.89	total int.
			744	641.44 ✓	

DEMAND FEATURE: This loan does not have a Demand Feature. This loan has a Demand Feature as follows:

VARIABLE RATE FEATURE:
 This Loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

SECURITY: You are giving a security interest in the property located at: 17287 WEST SUMMERFIELD ROAD
 POST FALLS, ID 83854

ASSUMPTION: Someone buying this property cannot assume the remaining balance due under original mortgage terms
 may assume, subject to lender's conditions, the remaining balance due under original mortgage terms.

FILING / RECORDING FEES: \$ 100.00

PROPERTY INSURANCE: Property hazard insurance in the amount of \$ 345,000.00 with a mortgage clause to the lender. is a required condition of this loan. Borrower may purchase this insurance from any insurance company acceptable to the lender.
 Hazard insurance is is not available through the lender at an estimated cost of _____ for a _____ year term.

LATE CHARGES: If your payment is more than 15 days late, you will be charged a late charge of 5.00 % of the overdue payment.

PREPAYMENT: If you pay off your loan early, you
 may will not have to pay a penalty.
 may will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information regarding non-payment, default, required repayment in full before scheduled date, and prepayment refunds and penalties.
 * means estimate

I/We hereby acknowledge reading and receiving a complete copy of this disclosure.

Leslie J Edwards 5/18/05
 LESLIE J EDWARDS BORROWER/DATE

BORROWER/DATE

Exhibit 1

OF SELLER:

F. NAME & ADDRESS OF LENDER: Lehman Brothers Bank, FSB
 3400 11th Street SW, # 283, Lynnwood, WA 98037

G. PROPERTY LOCATION: 17287 West Summerfield Road, Post Falls, ID 83854

H. SETTLEMENT AGENT: Alliance Title & Escrow Corp.
 PLACE OF SETTLEMENT: 1270 Northwood Center, Coeur D' Alene, ID 83814 (208) 667-3402

I. SETTLEMENT DATE: 5/24/2005 Estimated

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower:		400. Gross Amount Due To Seller:	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	9,431.59	403.	
104. Property Tax-2004 Second Half Taxes	3,504.65	404.	
105. Payoff To Aurora Loan Services Inc.	319,940.05	405.	
Adjustments For Items Paid By Seller In Advance:		Adjustments For Items Paid By Seller In Advance:	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
120. Gross Amount Due From Borrower:	332,876.29	420. Gross Amount Due To Seller:	
200. Amounts Paid By Or In Behalf Of Borrower:		500. Reductions In Amount Due To Seller:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	345,000.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff 1st Mtg. Ln.	
205.		505. Payoff 2nd Mtg. Ln.	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller:		Adjustments For Items Unpaid By Seller:	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower:	345,000.00	520. Total Reductions In Amount Due Seller:	
300. Cash At Settlement From/To Borrower:		600. Cash At Settlement From/To Seller:	
301. Gross amount due from borrower (line 120)	332,876.29	601. Gross amount due to seller (line 420)	
302. Less amount paid by/for borrower (line 220)	345,000.00	602. Less reductions in amount due seller (line 520)	
303. Cash (<input type="checkbox"/> FROM) (<input checked="" type="checkbox"/> TO) Borrower:	12,123.71	603. Cash (<input type="checkbox"/> TO) (<input type="checkbox"/> FROM) Seller:	0.00

Previous Edition Is Obsolete
 Form No. 1581
 3/86

SB-4-3538-000-1
 HUD-1 (3-86)
 RESPA, HB 4305.2

Page 1 of 3

Exhibit 2

13

804. Credit report to: Pacific Mortgage Advisors		8.75	*
805. Lender's inspection fee			
806. Mortgage insurance application fee			
807. Assumption fee			
808. Tax Registration To: Lehman Brothers Bank, FSB		75.00	*
809. Underwriting Fee To: Lehman Brothers Bank, FSB		395.00	*
810. Administration Fee To: Lehman Brothers Bank, FSB		200.00	*
811. Wire Fee To: Lehman Brothers Bank, FSB		25.00	*
812. Handling Fee To: Lehman Brothers Bank, FSB		40.00	*
813. Flood Determination To: Lehman Brothers Bank, FSB		17.00	*
814. Yield Spread Premium To: Pacific Mortgage Advisors POC	\$6,037.50		
815.			
816.			
900. Items Required By Lender To Be Paid In Advance:			
901. Interest from 5/24/2005 to 6/01/2005	@ \$ 56.7120 /day	453.70	*
902. Mortgage insurance premium for	mo. to		
903. Hazard insurance premium for	hrs. to		
904. Flood insurance premium for	hrs. to		
905.			
906.			
1000. Reserves Deposited With Lender:			
1001. Hazard insurance	9 months @ \$ 85.42 per month	768.78	
1002. Mortgage insurance	0 months @ \$ 0.00 per month		
1003. City property taxes	0 months @ \$ 0.00 per month		
1004. County property taxes	2 months @ \$ 187.15 per month	374.30	
1005. Annual assessments	0 months @ \$ 0.00 per month		
1006. Flood insurance	0 months @ \$ 0.00 per month		
1007.	0 months @ \$ 0.00 per month		
1008. Aggregate Adjustment		(397.94)	
1009.			
1100. Title Charges			
1101. Settlement or closing fee to Alliance Title & Escrow Corp.		300.00	*
1102. Abstract or title search to			
1103. Title examination to			
1104. Title insurance binder to			
1105. Document preparation to			
1106. Notary fees to			
1107. Attorney's fees to			
(includes above item Numbers:)		
1108. Title insurance to Alliance Title & Escrow Corp.			
(includes above item Numbers:)	1,070.00	
1109. Lender's coverage \$345,000.00 Premium: \$1,070.00			
1110. Owner's coverage \$			
1111. Document Retrieval Fee to Alliance Title & Escrow Corp.		25.00	*
1112. Messenger Fee to Alliance Title & Escrow Corp.		40.00	*
1113. Wire/Express to Alliance Title & Escrow Corp.		25.00	*
1114. Exhibit "A" Attached Herein		103.00	
1200. Government Recording and Transfer Charges:			
1201. Recording fees: Deed \$ 0.00 ;Mortgage \$ 60.00 ;Releases \$ 0.00		60.00	*
1202. City/county tax/stamps: Deed \$ 0.00 ;Mortgage \$ 0.00			
1203. State tax/stamps: Deed \$ 0.00 ;Mortgage \$ 0.00			
1204.			
1205.			
1300. Additional Settlement Charges:			
1301. Survey to			
1302. Pest inspection to			
1303. Consumer Debt to Bank Of America/Alaska Airlines		6,049.00	
1304.			
1305.			
1306.			
1307.			
1308.			
1309.			
1310.			
1311.			
1312.			
1313.			
1400. Total Settlement Charge (Enter on line 103, Section J, and - line 502, Section K)		9,431.59	

Exhibit J

*= TILA Finance Charges = \$ 2,067.45

Exhibit 2 page 3 of 3

Your Right To Rescind The Loan

Over the past year the United States has seen a staggering increase in the number of defaults of residential mortgages, specifically those involving "sub-prime" borrowers and "predatory lending" practices. The defaults will continue to lead to foreclosures, short sales, subsequent property devaluation, and other related adverse circumstances. Many borrowers will end up in bankruptcy, often reaching out to attorneys for direction. Arguably the most valuable remedy available exists in The Truth In Lending Act ("TILA"), promulgated by Regulation Z, in the form of the borrowers right to rescind certain loans.

Most people are familiar with the "Three-day Right to Cancel" period after signing a refinance loan secured by a principle dwelling. Lenders even provide documentation that clearly identifies the procedure for canceling the loan and the time in which it can be done. What the documentation fails to explain is that if any one of three key aspects of the loan documents are not properly completed, the three day period is extended to three years.

Before explaining what these three defects are, it is helpful to first understand what canceling, or "rescinding" a loan really means. In a very general sense, to rescind is to "undo", to put the injured party back to their original position. When a person rescinds a loan during the three day period the loan is simply not funded. There are no closing costs because there is no closing (exceptions such as appraisal fees may apply). The borrower simply keeps their existing loan; but what about when the loan has already closed? What about when the borrower has made payments on the loan for say, two and half years? In that case, what happens is that all closing costs and all interest paid to date on the loan must be returned to the borrower by the lender.

What Makes a Loan Rescindable for More than Three Days?

First, a loan must qualify, that is it must be a refinance, or non-purchase loan, secured by a principle dwelling (Second mortgages and home equity lines of credit qualify since they meet the requirements above.) 15 U.S.C. § 1635(a); 12 C.F.R. §§ 226.15(a) 226.23(a)

Second, there must be a failure by the creditor to provide accurate material disclosures or the Notice of Right to Cancel in the prescribed manner. 12 C.F.R. §§226.15(a)(3), 226.23(a)(3). Regulation Z defines, in no uncertain terms, what the term material disclosures is intended to include. "The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total payments, the payment schedule, and the disclosures and limitations referred to in sections 226.32(c) and (d)." 12 C.F.R. §226.23(a)(3)(fn48). In a typical loan transaction these terms can be found on a document called "Truth In Lending Disclosure Statement". The numbers on this disclosure statement must be accurate to within very narrow tolerances. Depending on the type of loan, the Annual Percentage Rate (APR) must be within 1/8 of 1percentage point of the actual APR. 12 C.F.R. § 226.22(a)(2). The total finance charge can not be understated by more than \$100 in most cases, and not more than \$35 if the creditor has initiated foreclosure proceedings. 12 C.F.R. §§ 226.23(g), 226.23(h). It is necessary to carefully examine the final closing statement and compare it to the Truth In Lending Disclosure Statement to identify possible discrepancies.

The Notice of Right to Cancel is perhaps the most straight forward requirement of the creditor set forth by TILA, yet the most commonly violated in predatory lending. It seems apparent from reading TILA, Regulation Z and the associated commentary, that Congress was concerned with

two aspects of the creditor/borrower relationship. First, they wanted to make sure borrowers received as much disclosure as practical so that they can make an informed decision. Second, they wanted to make sure that borrowers had ample time to consider this decision after being presented with all the details. The three-day right to cancel is intended to satisfy this second concern. The law is very clear on what is required when it comes to the Notice of Right to Cancel. Each borrower, must receive two Notices of Right to Cancel which clearly and conspicuously disclose: (1) the retention or acquisition of a security interest in the consumer's principal dwelling; (2) the consumer's right to rescind the transaction; (3) how to exercise the right to rescind with a form for that purpose, designating the address of the creditor's place of business; (4) the effects of rescission; and (5) the date the rescission period expires (Regulation Z § 226.23(b)(1)(i-v)). In an effort to assist creditors, Regulation Z even includes a model form showing exactly what must be disclosed. 12 C.F.R. § 226 App. H. Unfortunately, creditors often leave the completion of these forms to the closing agent or notary public. Given the recent rise of "mobile notaries" or "loan document signers", the environment is fraught with negligence when it comes to this duty.

To understand how this negligent disclosure occurs, it is important to understand how a loan signing is conducted in practice. After loan documents are generated and issued by the lender, they are sent to an escrow company designated often times by the mortgage broker. Typically the loan documents are transmitted via email but regardless of the form, the escrow company prints out the loan document package, including the lender documents with documents prepared by escrow. The Notice of Right to Cancel is one of the documents provided by the lender, however since the lender does not know when the borrower will ultimately sign the documents, they typically leave certain fields on the notice blank, specifically the date the rescission period expires (see item #5 above). The documents are then presented to the borrower, often in the comfort of their home with a "mobile notary" present to notarize the requisite documents and direct the signing. The notary public will usually present the borrowers with a "copy package" of the loan documents that is an exact duplicate of the ones to be executed and returned to escrow. This is often where the problem arises. A prudent lender will put sufficient copies of the Right to Cancel in the loan documents when they deliver them to escrow. In a transaction with a husband and wife this usually means a total of five (5) copies, two per borrower as required by statute, and one to be acknowledged by the borrower and returned to the lender. However the notary will often presume that the copy package contains all necessary paperwork for the borrower(s) and proceed to have them execute all notices and retain them in the package. When the lender receives five notices they logically presume that the borrower is in possession of a copy package and thus the remaining four are redundant. The problem is that the notary never opened up the copy package and properly completed these notices and thus, the borrower never received adequate Notices of Right to Cancel. This scenario has numerous variations but the result is that many borrowers were never properly given their Notice of Right to Cancel, and as such, are entitled to rescission pursuant to TILA for up to three years after the loan closed.

In defense, a lender will undoubtedly raise is that they are in possession of an acknowledged copy of the Notice of Right to Cancel which clearly states the borrower acknowledges that they received two copies of such notice. TILA addresses this defense in section 1635(c) stating "Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof. (emphasis added)". 15 U.S.C. 1635(c). Further case law has indicated that this is a low burden (See ***Cooper v. First Gov't Mortg. & Investors Corp.***, 238 F. Supp. 2d 50 (D.D.C. 2002)). Presumably the defective notices the borrower has in their possession from their copy package is at least strong evidence in overcoming the presumption.

11/4/08

Raising the Issue of Rescission

Although a rescission claim can be brought initially in a complaint, it is often prudent, and more cost effective to do so by sending a letter. The letter should be sent to the current lender who although may not have been the original party to the loan transaction, is still liable under TILA. 15 U.S.C. § 1641(a). A borrower should be prepared to "tender" which is a requirement of TILA and basically means the borrower must return the money that is still owed to the creditor. 15 U.S.C. 1635(b).

Essentially, the calculation requires taking the money that was actually received by the borrower or paid to others on their behalf (such as the payoff of the previous loan), and deducting all interest payments and attorney's fees. Since it is likely the borrower will not have this money on hand, it is best to have the borrower arrange for a new loan conditioned on the rescission, and notify the creditor of this fact in the rescission letter. Technically, the lender has 20 days after receipt of a notice of rescission to terminate the security interest and return all monies owed. 15 U.S.C. 1635(b). Returning the monies owed is usually done in the form of a new "payoff statement" reflecting the adjusted amount. Given the severity of this remedy, a lender will often respond with reasons as to why they do not feel rescission is proper. A discourse can ensue that can last for any length of time. At some point it may be necessary or appropriate to file a suit in order to conduct proper discovery and ultimately have the question resolved in court. Regardless of the method of obtaining a rescission it is important to note that the lender is responsible for reasonable attorney's fees and costs. 15 U.S.C. 1640(a)(3). This is of particular importance because without such a provision the remedy is often meaningless to a borrower despite obvious justification.

Some may argue a violation such as the failure to properly date the right to cancel notice is overly technical and abusive. This position is myopic in that it minimizes the value a remedy such as rescission plays in defending borrowers against predatory lending. A borrower who is satisfied with their loan and the transaction that proceeded rarely seek legal counsel; rather it is those who have stories of misrepresentations and deceptive practices that do so. Violations of TILA may not be the sole cause of action in a case, but it certainly is one that can potentially provide the greatest relief, that is, returning the borrower to their original position. Failure to identify a potential rescission effectively denies a key remedy available to a borrower in need. In addition to a thorough understanding of TILA and Regulation Z, a solid understanding of the loan process is critical. Discussing a borrower's transaction with a mortgage broker, escrow officer or notary public can be extremely enlightening in bridging this gap.

The law in this area will continue to evolve as we are already seeing numerous court decisions hand down significant rulings with respect to predatory lending. Unscrupulous lenders will always be a part of home financing, but at least with remedies available such as the ones provided under TILA, a borrower will have some recourse, and hopefully, lenders will weight the risks of such activity and err on the side of caution.

American College of Forensic Examiners Institute

recognizes

Charles J. Horner

as a

Member

with all the rights and privileges pertaining thereto, as long as annual membership requirements are met and the principles of professional practice are upheld.

Robert L. O'Block

Robert L. O'Block, M.Div., Ph.D., Psy.D., D.Min.
Founder & Chief Executive Officer

Cyril H. Wecht

Cyril Wecht, MD, JD, FACFEI, DABFM, DABFE, CMI-V, CFP
Chairman, Executive Board of Advisors for Professional Standards

Member since
March 2010

Expiration Date
March 2011

Identification Number
112340



19

This certificate is the property of the American College of Forensic Examiners Institute conveying competency that the individual has met the minimum requirements to attain this credential based on specifications set forth by the American College of Forensic Examiners Institute and U.S. accreditation standards.



The Forensic Examiner Creed

I do affirm that:

I shall investigate for the truth.

I shall report only the truth.

I shall avoid conflicts of advocacies.

I shall conduct myself ethically.

I shall seek to preserve the highest standard of my profession.

As a Forensic Examiner, I shall not have a monetary interest in any outcome of a matter in which I am retained.

I shall share my knowledge and experience with other examiners in a professional manner.

I shall avoid conflicts of interest and will continue my professional development throughout my career through continuing education, seminars, and other studies.

As a Forensic Examiner, I will express my expert opinion based only upon my knowledge, skill, education, training, and experience.

The light of knowledge shall guide me to the truth and with justice the truth shall prevail.

To all these things, I affirm to uphold.

*American College of Forensic Examiners Institute
www.acfei.com*



ACFEI's Principles of Professional Practice

ACFEI and its members are to remain completely objective and use their ability to serve justice by the accurate determination of the facts involved.

ACFEI members are not advocates for one side or the other. Members should not intentionally withhold or omit any findings or opinions discovered during a forensic examination, which would cause the facts to be misinterpreted or distorted.

ACFEI members should not misrepresent or overstate their credentials, education, training, expertise or membership status.

ACFEI members are expected to refrain from any conduct that would be adverse to the best interest and purpose of the ACFEI. Members are to be forever vigilant of the importance of their role and to conduct themselves only in the most ethical and professional manner at all times.

*American College of Forensic Examiners Institute
www.acfei.com*

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2010 SEP 16 PM 2:48

CLERK DISTRICT COURT

Mallyferental
DEPUTY

MONICA FLOOD BRENNAN, P.C.
ATTORNEY AT LAW
Spokesman Review Building
608 Northwest Boulevard, Suite 101
Coeur d'Alene, Idaho 83814
Telephone: 208-665-0088
Facsimile: 208-676-8288
Idaho State Bar No. 5324
Attorney for Plaintiff
Leslie Edwards

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

LESLIE JENSEN EDWARDS,

Plaintiff,

v.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. a
foreign corporation; QUALITY
LOAN SERVICE CORP OF
WASHINGTON, a foreign
corporation; and PIONEER
LENDER TRUSTEE SERVICES LLC,
an Idaho Limited Liability
company,

Defendants.

CASE NO. CV-2010-2745

SECOND AFFIDAVIT OF
CHARLES HORNER

STATE OF California)
County of San Diego) ss.

I, CHARLES HORNER, after having been duly sworn upon oath
depose and say:

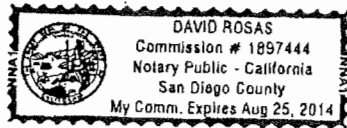
1. I am a forensic examiner of mortgage documents and loan materials.
2. I have prepared a second Mortgage Document Examination and Investigation Report in the Leslie Jensen Edwards loan with Lehman Brothers Bank. It is attached hereto as Exhibit 2-A. It has exhibits attached within it. The Examination and Investigation attached hereto is a total of 14 pages.
3. I am available to be called to testify as an expert witness in this matter if it is allowed to proceed to trial.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 16 day of September, 2010.

By: 
Charles Horner

SUBSCRIBED AND SWORN to before me this 16th day of September, 2010.



David Rosas
Notary Public for ~~Idaho~~ California
Residing at:
Commission Expires:

(seal)

CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of September, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

 US Mail

 Interoffice Mail

 Hand Delivered

 X Facsimile (FAX)

Holger Uhl
Attorney for Defendants
fax: 206-780-6862



Monica Flood Brennan



Member

American College of Forensic Examiners InstituteSM

Charles J. Horner & Associates
Forensic Document Examiners
4045 Bonita Road Suite 211
Bonita, CA 91902

Ph: 619-475-8412
Fax: 619-475-8468

Email:
charles@thedoce Examiner.com

Copyright Warning – The contents of this report as to form, format, language, methods and attachments are the exclusive property of Charles J. Horner & Associates. Any copying, duplication, alteration, or recalculation herein and hereof without the written consent of Charles J. Horner & Associates is strictly prohibited.

Examination Date: 08/16/2010

**Mortgage Document
Examination &
Investigation Report**

For

Leslie J. Edwards

Address

17287 West Summerfield Road
Post Falls, ID 83854

Understanding The Examination Report

1. Sections - There are various sections to the Examination which identifies the entity that section applies to. For example, the first section will typically be the Broker's section and identified by the broker's name if a broker was involved in the transaction. The sections between the entities are divided by two gray bars.

2. Violations - Violations discovered during the Examination are identified by a brief description of the statute or code which applies to the violation followed by a descriptive paragraph outlining the violation. The statute or code is in bold font and precedes the descriptive paragraph which is in normal font. There may be more than one relative law that applies to same violation. In this case, each law that applies is listed first with the descriptive paragraphs following.

3. Referencing – Each section is identified by the entity that the violations apply to. Each section begins a series of letters identifying the statute or the code. Example; the first statute or code would begin with (A) or (A1) if there is more than one statute or code connected with the violation. The descriptive paragraph following the statute(s) or code(s) is numbered. Example; 1. There may be more than one violation which applies to the same statutes or codes and therefore the descriptive paragraphs will be numbered accordingly. To reference a particular violation, you would note the statute such as; “under Lender (B2) paragraph 3.”

4. Gray Bars – Each section that begins a new entity, or represents the last section before the final disclosures are divided by two gray bars. A single gray bar divides the series within a section. Example; under the broker's section, a single gray bar would divide the (A) series and (B) series. At the end of the section, two gray bars will began a new section preceding a different entity.

5. Formats – There are two formats offered for the Examination. The PDF format is the primary format provided to non-legal organizations or individuals. Both PDF and Word formats are provided to Attorneys.

6. Exhibits – Exhibits which support the findings of the Examination will be attached in the PDF format following the report. They will not be attached to the Word format if that format is requested by Attorneys.

Disclaimer

The content of this report is for informational purposes only and is not to be construed as giving “legal advice.” You are strongly advised to seek legal consultation from an attorney in connection with the content of this report. If you do not already have an attorney, at your request, we will refer this case to an attorney for you. In such case where an attorney is referred, you are advised that additional fees may be charged by the attorney and those fees may only be discussed between you and the attorney. We do not quote nor provide estimates of those fees.

Loan Information

Broker

Pacific Mortgage Advisors Inc.
720 4th Avenue Suite 104
Kirkland, WA 98033

Lender

Lehman Brothers Bank
3400 118th Street SW# 285
Lynnwood, WA 98307

Servicing

Aurora Loan Services
P.O Box 78111
Phoenix, AZ 85062

Acct #: 0035446129

Loan Type

30-Year Fixed
Refinance

Loan Amount: \$345,00.00 @ 6.000%

Document Date: 05/18/2005

Close Date: 05/24/2005

Examination Report

Pacific Mortgage Advisors Inc. (Broker)

1. **Licensing-** I have investigated the broker's licensing status at the time of the consummation of this loan and have been unable to determine if the broker was properly licensed in the State of Idaho under the Bureau Of Occupational Licenses.

Lehman Brothers Bank (Lender)

Violations

(A1) C.F.R. § 226.17 - § 226.23 Right of rescission "In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership is or will be subject to the security interest has the right to rescind the transaction. Lenders are required to deliver two copies of the notice of the right to rescind and one copy of the disclosure statement to each consumer entitled to rescind." The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

- (i) The retention or acquisition of a security interest in the consumer's principal dwelling.
 - (ii) The consumer's right to rescind the transaction.
 - (iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.
 - (iv) The effects of rescission, as described in paragraph (d) of this section.
 - (v) The date the rescission period expires.
- (2) Proper form of notice. To satisfy the disclosure requirements of paragraph (b)(1) of this section.

(A2) C.F.R. 226.23 (b) 3. Content. The notice must include all of the information outlined in section 226.23(b)(1)(i) through (v). The requirement in § 226.23(b) that the transaction be identified may be met by providing the date of the transaction.

1. No Right To Cancel Provided- I have concluded that the borrower was in possession of all documents provided to her at time of consummation of this loan. I have noted that two completed copies of the documents titled "Notice Of Right To Cancel", was not provided to the borrower and therefore, I maintain that the borrower has an extended 3 year right to cancel this loan in accordance with § 226.23 (3) with tolling pursuant to paragraph (A2).

Attorney Note: Title 15 section §1635 (c) “Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof”

Attorney Note: See addendum titled “Your Right To Rescind The Loan” attached to this report.

Attorney Note: In connection with this examination, I have determined that the 3-year Statute Of Limitations has expired. See “Arguments For Tolling The Statute Of Limitations” on last page of this report.

(B1) 12 C.F.R. 226.23(a)(3). Failure to make clear, conspicuous, and accurate material disclosures also triggers an extended right of rescission. Material disclosures include the: (1) annual percentage rate, (2) finance charge, (3) amount financed, (4) total payments, (5) or payment schedule.

(B2) Truth In Lending Act (15 USC 1601 et seq.). The purpose of TILA is to promote the informed use of consumer credit by requiring disclosures about its terms, cost to standardize the manner in which costs associated with borrowing are calculated and disclosed. TILA requires uniform or standardized disclosure of costs and charges so that consumers can shop and compare. Misleading or misrepresentation of those charges voids the consumer's ability to shop for comparable loan products that may be available through other lenders. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

1. Understated Amount Financed – I have compared the Finance Charges used to calculate the APR in the Final Truth In Lending Statement (Exhibit 1) with the Estimated Settlement Statement (Exhibit 2), and have determined that the Amount Financed on exhibit 1 when deducted from the loan amount of \$345,000.00 reveals \$1,845.97 as the amount of finance charges used to calculate the Amount Financed. When recalculating the finance charges as disclosed on exhibit 2, the resulting total is \$2,067.45. Pursuant to 6500 FDIC § 226.4 which states “The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.” It’s important to note that in a refinance loan, the lender engages third party service providers as these services are required by the lender. Therefore, pursuant to § 226.4 (a) (1) & (2), the cost of third party service providers such as escrow related costs, lender required recording fees, notary fees, title endorsements etc. or any other services required by the lender are considered a “Finance Charge” if the lender requires the use of that service. Because the lender did not include these charges, the adjusted Amount Financed is \$342,932.55. Therefore, the Final Truth In Lending Statement (Exhibit 1) understates the amount of Finance Charges by the amount of \$221.48. It’s also important to note that pursuant to C.F.R. §226.23 (g), finance charges may not be understated by more than \$100.00 for the purpose of damages or, pursuant to § 226.23 (i), \$35.00 for the purpose of rescission if foreclosure proceedings have been initiated.

4

2. Under Disclosure of Finance Charge – I have investigated the Finance Charge as disclosed on the Final Truth In Lending Statement (Exhibit 1) by running a 30 year amortization schedule and have noted that the total of interest the lender will receive is \$399,641.75. When added to finances charges of \$2,067.45, the total Finance Charge is \$401,709.20. Therefore, the Finance Charge is under disclosed by an amount of \$221.79.

(C) FCRA 15 U.S.C. 1681 Section 212 Subsection 609(g) a lender must provide the following to the consumer as soon as reasonably practicable: **1. The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit; 2. The range of possible credit scores under the model used; 3. All of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed four (4), unless a key factor that adversely affects the consumer's credit score consists of the number of enquiries made with respect to a consumer report. In this case, then five (5) key factors may be listed; 4. The date on which the credit score was created and; 5. The name of the person or entity that provided the credit score or credit file upon which the credit score was created.**

1. Failure To Disclose – Pursuant to this section the lender must provide the most recent credit score the lender used to make an underwriting decision. I have noted that the lender did not provide the credit scores on the document titled “Credit Score Disclosure.”

(D) 15 U.S.C. § 1681s-2] (A) 7 NOTICE TO CONSUMER REQUIRED- (i) IN GENERAL- If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

1. Failure To Disclose – The lender has a one-time duty under this section of the FCRA to provide a notice to the consumer that they have or will furnish negative information to a consumer reporting agency. Typically, a lender will provide this notice along with the other disclosures at the time of loan consummation. I have concluded that no disclosure titled “Furnishing Of Negative Information” was provided to the borrower at any time during the processing of this loan. Thus, it is highly likely that if the lender has reported negative information with the credit repositories, they have done so in violation of this section.

(Continued On Page 4)

7

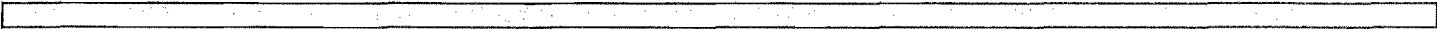
(E) 15 USC, Subchapter I, Gramm-Leach-Bliley Act. Disclosure of Nonpublic Personal Information Sec. 6803. Disclosure of institution privacy policy (a) Disclosure required. At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to; (1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;

1. Failure To Disclose - I have concluded that the borrower was not provided the "Privacy Pledge" disclosure or the required "Privacy Choices" disclosure pursuant to the above subsections.



(F) 24 CFR 3500.6(a). Requires certain disclosures such as but not limited to, Servicing Transfer, Right to Copy of Appraisal, Federal Equal Opportunity, and various other exhibits to be provided to the borrower.

1. Failure To Disclose - My inventory of the documents that were provided to the borrower has revealed that the required disclosures pursuant to this section were not provided to the borrower at any time during the process of this loan.

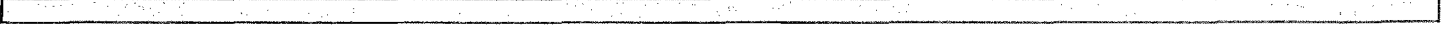
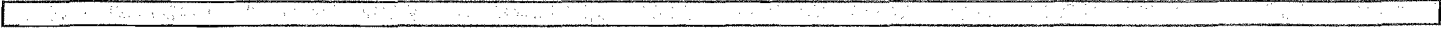


Alliance Title & Escrow Corp. (Settlement Agent)

Violations

(A) RESPA § 3500.10 - One-day advance inspection of HUD-1 or HUD-1A settlement statement; delivery; record keeping. (a) *Inspection one day prior to settlement upon request by the borrower.* The settlement agent shall permit the borrower to inspect the HUD-1 or HUD-1A settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement.

1. Failure To Provide One Day Inspection – Pursuant to this section, the Settlement Agent must offer, at the request of the borrower, a one day inspection prior to the settlement of the transaction. "Settlement," as defined, means "the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan." I have noted that the borrower in this transaction was not informed of their right to an advanced copy, nor offered an advance review of the final settlement statement prior to executing the legally binding documents.



Foreclosure Investigation

(A1) Idaho Code 45-1504. Trustee of trust deed - (2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

(A2) Federal Trade Commission Sec 5 - Unfair Business Practices – Deceptive Business Acts.

1. Unauthorized Agent, Deceptive Business Act (Cart Before The Horse) – – Before a Trustee can commence a foreclosure, they must be empowered by the beneficiary either by a Deed Of Trust or a valid Substitution Of Trustee recorded in the County in which the trust property is situated. I have noted that the original Trustee on the Deed Of Trust was Alliance Title & Escrow. An Appointment Of Successor Trustee (Exhibit A) was allegedly signed on 11/30/2009 by Tara Donzella as Assistant Vice President of Mortgage Electronic Registration Systems Inc. (MERS). This document was acknowledged by the notary Michelle Nguyen on that same date who certified under penalty of perjury that Tara Donzella was who she alleged to be. However, Tara Donzella surfaces again on the Notice Of Trustee's Sale (Exhibit B) and the page 2 of the Notice Of Default (Exhibit C) as Assistant Vice President of Quality Loan Services. I have noted that Michelle Nguyen acknowledged both exhibits A & C on the very same day of 11/30/2009 certifying the Tara Donzella is who she alleges to be on both instruments. I have noted that the language in exhibit B implies that Quality Loan Service Corporation is "Attorney-In-Fact as Trustee" for Pioneer Lender Trustee Services. Now we have a situation whereby Quality Loan Services executed and recorded an Appointment of Successor Trustee (Exhibit D) appointing Pioneer Lender Trustee Services as Trustee then apparently Pioneer Trustee Services conveys Power Of Attorney to Quality Loan Services to carry out the foreclosure process. Comes now page 3 of the Deed Of Trust (Exhibit E) in the paragraph titled "Transfer Of Rights In The Property." This paragraph states that the "Borrower irrevocably grants conveys to **Trustee** in trust with power of sale." It's important to remember that Alliance Title Company was the Trustee empowered by the Borrower's grant and not MERS or anyone else. I have noted that on exhibit A, MERS was the entity that Tara Donzella, an employee of Quality Loan Services executed the instrument for. However, there is no recorded public record pursuant to Idaho Code 45-1504 which substitutes Quality Loan Services as Trustee. It's important to note that Quality Loan Services alleges to be the Attorney-In-Fact for Pioneer Lender Trustee Services and not the Beneficiary. Therefore, Quality Loan Services appointed oneself as Trustee under the disguise of MERS then maliciously and malfeasantly substitutes Pioneer as Trustee who intern awards Quality Power Of Attorney. (See section titled "MERS" attached to this report)

(B) Idaho Code 45-1505. Foreclosure of trust deed - The trustee may foreclose a trust deed by advertisement and sale under this act if: (1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any appointment of a successor trustee are recorded in mortgage records in the counties in which the property described in the trust deed is situated.

1. No Assignment Of Deed Of Trust – Page 1 of the Deed Of Trust (Exhibit F) discloses Lehman Brothers Bank as the original lender. Pursuant to MERS, the present Beneficiary is Fannie Mae (Exhibit G) and Aurora Loan Services is the merely the Servicer. An investigation of the Kootenai County records did not reveal an Assignment Of Deed Of Trust having been recorded that conveys security instruments to either Aurora Loan Services or Fannie Mae. Pursuant to Idaho Code 45-1505 the lender may not foreclose a Trust Deed unless assignments by the Trustee or Beneficiary of record has been recorded. Furthermore, UCC §3-305 states that *“for the note to be enforced, the person who asserts the status of the holder must be in possession of the instrument.”* If Fannie Mae claims to be the existing holder of the Note, it is obvious that this Note is unsecured as there has no recorded record of an assignment of the security instrument that would enforce the Note. Therefore, the Note remains detached from the security instrument that enforces payment to the alleged holder and thus, the Note appears to be unenforceable.

(C) USC § 1341. Mail Fraud And Swindles - Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations; - by placing in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier; - shall be fined under this title or imprisoned not more than 20 years, or both.

1. Mailing Fraudulent And Deceitful Documents – Pursuant to the discoveries made during this investigation regarding the various instruments containing either forgery, fraud, or other deceitful acts or malfeasance, I have noted that these instruments have all been placed in the US Mail or other form of delivery to various individuals and institutions including local government recording offices. It is my belief that these acts constitute mail fraud as cited in USC § 1341 above. Furthermore, a conspiracy to commit mail fraud by all parties named on those instruments exists because of the common knowledge of such wrongdoing and the supervisory responsibilities over employees.

(Continued On Page 7)

(10)

MERS

Pursuant to the Deed Of Trust, Mortgage Electronic Registration Systems Incorporated (MERS) is acting solely as nominee for Lender and Lender's successors or assigns and is the beneficiary under that security instrument. In that capacity, MERS initiated the foreclosure process by executing and recording certain instruments which sets in place the entities that carry out the process of foreclosure. However, there are many judicial opinions in several different states that MERS does not have the capacity as only a nominee to execute the process of foreclosure or to assign security instruments from one beneficiary to the other. In Luis E. Gallardo, 10-04710-MM7, vs Movant US Bank National Association, as Trustee for CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-7, a recent San Diego Bankruptcy decision handed down by the Honorable Judge Margaret M. Mann, Judge Mann ruled "*Movant has not supplied evidence that establishes that Movant has standing to seek stay relief. Movant has attached an "Assignment of Deed of Trust" from MERS to Movant, which assigns the trust deed and the related note. But, there is no evidence that MERS ever received an assignment of the note or had the ability to assign the note to Movant. The note attached to the motion does not indicate that the note has been endorsed to Movant or endorsed in blank such that it became bearer paper. Without evidence either that MERS could properly assign the note, or that the note was endorsed to Movant or in blank, Movant has not established standing to seek stay relief.*"

The United States Bankruptcy Court for the Eastern District of California has issued a ruling dated May 20, 2010 in the matter of In Re: Walker, Case No. 10-21656-E-11 which found that MERS could not, as a matter of law, have transferred the note to Citibank from the original lender, Bayrock Mortgage Corp. The Court's opinion is headlined stating that MERS and Citibank are not the real parties in interest.

The court found that MERS acted "only as a nominee" for Bayrock under the Deed of Trust and there was no evidence that the note was transferred. The opinion also provides that "several courts have acknowledged that MERS is not the owner of the underlying note and therefore could not transfer the note, the beneficial interest in the deed of trust, or foreclose on the property secured by the deed", citing the well-known cases of In Re Vargas (California Bankruptcy Court), Landmark v. Kesler (Kansas decision as to lack of authority of MERS), LaSalle Bank v. Lamy (New York), and In Re Foreclosure Cases (the "Boyko" decision from Ohio Federal Court).

The opinion states: "Since no evidence of MERS' ownership of the underlying note has been offered, and other courts have concluded that MERS does not own the underlying notes, this court is convinced that MERS had no interest it could transfer to Citibank. Since MERS did not own the underlying note, it could not transfer the beneficial interest of the Deed of Trust to another. Any attempt to transfer the beneficial interest of a trust deed without ownership of the underlying note is void under most state laws."

(Continued On Page 8)

This opinion thus serves as a legal basis to challenge any foreclosure based on a MERS assignment; to seek to void any MERS assignment of the Deed of Trust or the note to a third party for purposes of foreclosure; and should be sufficient for a borrower to not only obtain a TRO against a Trustee's Sale, but also a Preliminary Injunction barring any sale pending any litigation filed by the borrower challenging a foreclosure based on a MERS assignment.

The Court concluded by stating: "Since the claimant, Citibank, has not established that it is the owner of the promissory note secured by the trust deed, Citibank is unable to assert a claim for payment in this case." Thus, any foreclosing party which is not the original lender which purports to claim payment due under the note and the right to foreclose in on the basis of a MERS assignment does not have the right to do so under the principles of this opinion.

This ruling is more than significant not only for California borrowers, but for borrowers nationwide, as this California court made it a point to cite non-bankruptcy cases as to the lack of authority of MERS in its opinion. Further, this opinion is consistent with the prior rulings of the Idaho and Nevada Bankruptcy courts on the same issue, that being the lack of authority for MERS to transfer the note as it never owned it (and cannot, per MERS' own contract which provides that MERS agrees not to assert any rights to mortgage loans or properties mortgaged thereby.

Authority Of Mortgage Electronic Registration Systems (MERS) MERS is an enterprise that holds the mortgages of 60 million American homes. It was created by the Mortgage Bankers Association in the 1997 to run a computer registry that records mortgage loan trading activities in connection with the securitization of asset backed investments. It was primarily set up to cut costs on paperwork and publication requirements by registering the assignment of security instruments from one investor to the other. In the securitization process, mortgage loans may be purchased by one single investor or a group of many under one depository trustee without the need to record the transaction in the County in which the asset is located. The problem with MERS is that the real beneficiary is faceless and obscured from public records. By MERS standard contract agreement with its member banks, Notes are assigned to MERS in blank in order to affect the transfer of securities from one investor to the other. The problem here is, a blank note does not set a paper trail of who the owners of these investments were at any given time and therefore, a note assigned in blank does little as to enforcement. Essentially, anyone could come forth with a copy and claim to be the owner of the note.

MERS has since evolved from that of a simple registration system to that of the custodian of powers. As such, MERS has essentially blocked homeowners from preventing their houses from becoming foreclosures and loan fraud victims from pursuing their cases in court because they could not identify the companies holding their mortgage notes. Recent court rulings in several states have challenged MERS in foreclosure cases and have found that, at best, MERS only holds a copy of the blank note with the true beneficiary holding the original note. MERS however commences the foreclosure process by supposedly assigning the security instruments to a Trustee. At best, the Trustee is in possession of blank security instruments at the time the Notice Of Default is recorded while the still unidentified holder of the real Note remains obscured.

In a foreclosure situation whereby MERS is the claimed beneficiary and the true beneficiary obtains the Trustee's Deed affecting a credit sale back to the lender, MERS schemes to avoid the transfer tax of the transaction. Furthermore, in non-judicial states, MERS admits to merely holding title as nominee for the true beneficiary. Here is an exert from their on web site. *"Normally, where the name of the grantee under the Trustee's Deed Upon Sale is different than the name of the foreclosing entity, the Trustee's Deed Upon Sale states that the "Grantee was not the foreclosing beneficiary." This designation triggers the imposition of transfer taxes on the sale. It is important to note that in a MERS foreclosure sale, even where the property reverts, the name of the grantee will be different than the name of the entity foreclosing. Nonetheless, the Trustee's Deed Upon Sale should state that "The Grantee was the foreclosing beneficiary." This is because MERS merely holds title as nominee for the true beneficiary; it is the true beneficiary that has actually foreclosed and acquired title".* By this admission, MERS has stated that they are not, and was not, the true beneficiary thereby nullifying the nomination pursuant to the Deed Of Trust.

Pursuant to the foregoing, in non-judicial foreclosure cases, the borrower is encouraged to demand that the foreclosing institutions provide prima fascia evidence that they are indeed the legal beneficiary, and legitimate owner of the Note with power of sale.

Arguments For Tolling The Statute Of Limitations

(1) **The Doctrine Of Fraudulent Concealment** - If a lender conceals wrongdoing, thereby preventing a borrower from discovering a cause of action, the statute of limitation will be tolled until the date the plaintiff, through due diligence, would have learned of the existence of a claim. The doctrine of fraudulent concealment operates to toll the statute of limitations when a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part. *Holmberg v. Armbrrecht*, 327 U.S. 392, 397 (1946) (quoting *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 348 (1874); see *Maggio v. Gerard Freezer & Ice Co.*, 824 F.2d 123, 127 (1st Cir. 1987).

(2) **Argumentum Theory** - As in criminal codes, the District Attorney must bring charges against a bank robber within 5 years. However, if the bank robber leaves the State, the Statute Of Limitation stops to accrue until such time as the bank robber returns to the jurisdiction. Same can be argued if the lender leaves the state, goes out of business, or the address and phone number disclosed on a document for communication purposes is no longer valid, time should stop running as of the date of the lender's disappearance and not started again until a receiver of liabilities is notoriously identified.

(3) **Fraud In The Factum** - The misrepresentation must go to the essential nature or existence of a contract, for example, a misrepresentation that an instrument is a promissory note when in fact it is a mortgage. Or, a misleading statement by an agent that a loan contains certain terms desirable to the consumer when it does not.

(Continued On Page 10)

(4) **Fraud In The Inducement** - The use of deceit or trick to cause someone to act to his/her disadvantage, such as signing an agreement or deeding away real property. The heart of this type of fraud is misleading the other party as to the facts upon which he/she will base his/her decision to act. Example: "there will be tax advantages to you if you let me take title to your property," or "you don't have to read the rest of the contract, it is just routine legal language" but actually includes a balloon payment or other features that left undisclosed, induces the consumer into signing the documents.

Disclosure: I have completed my examination and investigation of the mortgage documents for which you have engaged me. The scope of my examination is to determine the accuracy and compliance with Federal, State, and local laws as they may apply to your loan(s). I pay particular attention to discovery of evidence that would support legal action against the current lender(s) to either modify, or rescind the existing loan(s), or in the event of an executed foreclosure, overturn the action. The recommendations and opinions entered herein by me are not intended as legal advice or counseling. I strongly advise that you consult with an attorney in matters related to this examination and the report hereof.

Thank you for your business. I look forward to being of further service.



Charles J. Horner, ACFEI, CREB
Chief Examiner