

Forensic Audit Summary

Forensic Loan Documents Audit

Forensic Mortgage Audit

Some of the areas covered are:

- Check Truth in Lending Violations Truth-In-Lending Violations
- RESPA Violations RESPA Violations
- Misrepresentation
- Predatory Lending Predatory Lending
- HOEPA HOEPA (Home Ownership and Equity Protection Act)
- Breach of Contract Breach of Contract

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Date: July 7, 2009

Audit Information

Home Owner Name(s): [REDACTED]
Property Address: [REDACTED]
Lender in Mtg/Hud1: **Nationstar Mortgage, LLC**
Loan Number: [REDACTED]
Current Servicer: **Nationstar Mortgage**
Mortgage Broker: **United Mortgage**
Date Loan Closed: **November 30, 2006**

Loan Information:

(X) Owner Occupied () Investment () Second Home
() Purchase () Refinance (X) Refinance-Cash Out () Simultaneous Close with 2nd

Loan Amount: **\$424,320** Lien Position: **First Lien** Loan Type: **Conventional**

Note Terms: **6.56% 2/1 ARM at LIBOR plus 4.69%; 2 Year Prepayment Penalty;
13.56% Cap Rate; Balloon Payment**

Property Information:

(X) SFR () Condo () PUD () 1-4 Units () 5 Units +

Borrower Information:

(X) Unmarried () Married () Spouse on Loan
() English as 1st Language () English as 2nd Language

Quick Recommendation

(X) Rescission Possible (X) Attorney Fees Statutorily Available
(X) Statutory Damages Possible (X) Other Defenses Available

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Comments

Borrower obtained subject first deed of trust loan for \$424,320 to refinance his primary residence and obtain cash through closing. The loan adjusts in two years by adding a high margin of 4.6% to the LIBOR to get the new rate. The APR on the Truth in Lending Statement is 9.992% and there appears to be substantial fees charged to the borrower at closing, including a 3% Broker Fee and a 3% loan origination fee, indicating high profitability to the mortgage agent for this loan type. The loan is amortized over 40 years (to keep the payments lower) but is due in 30 years and thereby provides for a large balloon payment at end of loan term.

Notice of Right to Cancel: This is a non-purchase transaction that is within the three year statute of limitations. The Notice of Right to Cancel is not included in the loan document copies provided. Each borrower with a security interest must be provided two copies. Failing to provide said copies is a material violation of TILA enabling statutory rescission of the loan.

Recommendation is made to obtain a copy of the Notice of Right to Cancel from the Borrower for further review.

The Truth in Lending Disclosure Statement is present but the statute of limitations to prosecute a regular TILA violation is one year. Nevertheless, the finance charge was audited and the amount of the finance charge disclosed on the Truth in Lending Statement was **understated by \$48.00**. Finance charge tolerance is 1% of the loan amount or \$100, whichever is greater.

When a loan goes into foreclosure, the finance charge is evaluated for an understatement of just \$35 or more. If that understatement exists, the loan is rescindable.

The Truth in Lending Disclosure Statement was examined for compliance and it was discovered to be **in violation of TILA** because the originating APR stated to be 9.992% was actually 10.541%, which is **a difference of .55%**. The tolerance for closed-end credit mortgage transactions is ¼ of 1%.

Subject APR discrepancy indicates loan is rescindable under 12 C.F.R. §226.23.

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Home Ownership and Equity Protection Act: The fees associated with this loan do not appear excessive. HOEPA considers high cost loans as those that exceed 8% of loan amount for first liens and 10% for second, or subordinate liens. **Subject loan fees are just under 6.5% of the principal balance of the loan.**

Balloon Payment: Subject loan provides for a **balloon payment of approximately \$274,307** at end of loan term, due to the 40 year amortization of the loan payments, with payoff in full expected in 30 years. The expectation is that either the borrower will have sold the property or refinanced the loan by the end of the loan term. When the value of properties are in decline, as in the current market, there is a large risk that the loan may not qualify for refinance in sufficient amount to pay off the existing loan.

Appraisal: Refinancing and home equity loans sometimes allow for a little leeway on the numbers, a little adjustment of the appraiser's valuation to get that refinance is sometimes practiced. It is difficult to control since the appraisal is subject to the appraiser's opinion and the comparables used to come to the value.

Subject loan Collateral Review form was observed in the loan documents reviewed. The condition presented prior to funding was **“Need 2nd Appraisal for Higher Value”**. It appears the first appraisal presented didn't substantiate the property's value required for the loan intended. The final (second) appraisal for subject property was prepared by an “Appraiser Trainee”, that is a licensed trainee appraiser who has not yet established sufficient time and hours to be an appraiser without supervision. The trainee appraisal requires a supervisory appraiser to also sign the appraisal and it was done so in this appraisal and the supervisory appraiser has indicated they did NOT inspect the subject property and did NOT inspect the exterior of comparable sales.

Covenant 22 of the Deed of Trust creates a condition precedent to any foreclosure action. The condition requires 30 days written notice before accelerating the loan and initiating foreclosure proceedings.

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Verify if the lender has any type of FTC rulings against it and whether that situation might apply for this borrower, to use as a defense.

SISA: Loan appears to be Stated Income, Stated Assets. This type of loan is not illegal but the federal government issued a "final guidance" letter on October 4, 2006 outlining actions banks should take to ensure borrower income and assets were properly reviewed. The borrower's monthly income was stated to be \$6,150, however there were no reserves shown on the Loan Application. Further, the copy of the Loan application was not signed. Standard underwriting guidelines for stated income loans require verified reserves equaling six months of stated income. Due to this, the borrower should have had verifiable reserves totaling \$36,900.

Verify all cash disbursements from the closing that were supposed to go directly to the borrower actually went to the borrower. Also, make sure that the borrower did not pay any fees directly to the broker that were not disclosed on the HUD-1 Settlement Statement. Any amount that is paid to the broker that is not properly disclosed as a finance charge on the HUD-1 can create a rescindable loan.

The property's current value is estimated by **Zillow** to be \$366,500 with the property currently over-encumbered at \$424,320.