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# I. INTRODUCTION

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

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

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

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

## A. WHAT IS PREDATORY MORTGAGE LENDING?

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

## B. WHAT REMEDIES ARE AVAILABLE?

1. Rescission that voids the lender's security interest, enabling clients to get back fees and interest paid
2. Statutory penalties designed to curtail predatory practices
3. Actual and/or punitive damages under Unfair and

Deceptive Acts and Practices (UDAP) laws, common law, tort and contract theories

4. Cancellation of loan under door-to-door or warranty claims
5. Bankruptcy filing/foreclosure defense to assert borrower rights and protections
6. Renegotiation or refinancing at better rate and affordable terms after negotiation to reduce principal balance in predatory loan

15 U.S.C. §§ 1601 *et seq.*

**C. PRIMARY TOOLS**

15 U.S.C. §§ 1602(aa), 1639

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

## II. WHO ARE THE VICTIMS?

### A. VICTIM 1

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

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

### B. VICTIM 2

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

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

### C. VICTIM 3

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

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

### D. VICTIM 4

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

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

### E. VICTIM 5

Bruce Lambert, "New York

1. Long Island couple missed one monthly payment on

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

mortgage

2. Interest rate jumped from 14% to 24%

#### F. VICTIM 6

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

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

#### G. VICTIM 7

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

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

#### H. VICTIM 8

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

1. California couple received in the mail and cashed a “live check” for \$5,000 from Household
2. Household recontacted to offer refinancing to consolidate \$129,185 first mortgage and to extend \$10,000 “revolving” loan
3. Household told couple new loans would save money, produce a lower effective interest rate
4. Did not disclose actual APR, finance charges

5. Did not tell that payments would not include escrow for taxes, as original mortgage did
6. Revolving loan had interest rate of 23.9 % and did not completely amortize, resulting in balloon payment
7. Sold credit life insurance at cost of \$5,265 that offered protection for first 5 years of 30-year mortgage



### III. WHAT ARE THE SIGNS?

#### A. ASSORTED LENDING PRACTICES AND HOME LOAN PRODUCTS

##### 1. High interest rates

Reg. Z, 12 C.F.R. § 226.32(a)(i)

Rates also at [www.federalreserve.gov](http://www.federalreserve.gov)

**SEE:** Fannie Mae Press Release, March 2, 2000 at [www.fanniemae.com/news/pr/essreleases](http://www.fanniemae.com/news/pr/essreleases)

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

12 C.F.R. § 226.32(a)(ii)

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

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

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

**PRACTICE TIP:** All lenders market their services and products. Apply Unfair and Deceptive Acts and Practices (UDAP) provisions for practices/ messages/promotions that “get out of bounds.”

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

##### 2. Excessive fees and charges

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

##### 3. Aggressive/deceptive marketing and practices

- a. Deliberately misleading solicitations by phone, door-to-door, direct mail, TV, Internet, flyers to homeowner who may otherwise not be interested in refinancing
- b. “Rescuing” homeowner from foreclosure

- 1) Once credit ruined by high interest loan, predatory lenders are the only lenders willing to make credit available, but at higher terms thus creating captive market
  - 2) Homeowners who have received foreclosure notices report aggressive solicitations from lenders to refinance
- c. Home improvement contractors
- 1) May get commission for arranging loans as quasi mortgage brokers
  - 2) Arranging financing deals allows unscrupulous contractors to charge more
  - 3) Lender may pay contractor directly before work completed, leaving homeowner with no leverage for unsatisfactory work
- d. High referral fees to mortgage brokers
- 1) "Yield spread premium" (YSP) is commission paid to broker by a mortgage lender for arranging mortgage loan with an inflated interest rate to cover the cost of the commission
  - 2) Broker represents to homeowner that has found best rate, when actually homeowner gets higher rate than he might otherwise qualify for, plus pays fee
  - 3) Borrower may not be aware that dealing with broker rather than with lender, i.e., home improvement contractors or mobile home dealers

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

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

**BUT SEE:** *Costa v. SIB Mortgage Corp.*, 210 F.R.D. 84 (2002)(refusing to grant class certification to challenge YSPs as illegal based on HUDs 2001 policy statement); *Glover v. Standard Federal Bank*, 289 F.3d 558 (8<sup>th</sup> Cir. 2002)(district court abused its discretion in certifying nationwide class because question of whether payment of YSP violates Real Estate Settlement Procedures Act (RESPA) requires loan-

specific analysis to determine if is payment based upon services or illegal referral).

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

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

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

- e. Forgery of loan documents
  - 1) Loan terms left blank or changed after signature
  - 2) Dates changed or signatures forged on disclosure notices
- f. Borrower's income inflated
  - 1) Application makes it appear that borrower is qualified
  - 2) Enables quick sale in secondary market
  - 3) May involve falsified W-2 or 1040 forms
  - 4) Happens when lender prepares application as "service" to borrower
  - 5) Traps borrower in loan payment that is too high
- g. Inflated assessed value of home
  - 1) Assessors "told" the expected value
  - 2) Traps borrower in loan based on inflated equity
- h. Bait and switch
  - 1) Advertised terms not available at settlement time
  - 2) Lender "lowers" monthly payment by switching from conventional loan to balloon loan
  - 3) Lender "lowers" monthly payment by not collecting taxes for escrow, leaving borrower with unexpected high tax bill
- 4. Equity stripping
  - a. Charging excessive points, fees and settlement charges that are added to loan principal
    - 1) increases borrower's debt

and possibly other state and federal laws.

2) reduces equity

b. Maximizing the up-front fees in a loan to convert as much equity as possible into cash for the original lender or broker

c. Lending is based on equity in the home, not on borrower's ability to repay

1) Monthly payments at unaffordable rate

2) When loan cannot be repaid, lender recovers investment via foreclosure

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

d. HOEPA prohibits a pattern or practice of "extending credit to a consumer based on consumer's collateral if, considering the consumer's current and expected income, the consumer will be unable to make the scheduled payments to repay the obligation."

e. Points, fees and charges financed into loan's principal and depletes equity

f. Early default remedied with offer to refinance and pack in more settlement charges

g. When equity used up, foreclosure inevitable

#### 5. Loan flipping

a. Homeowner induced to refinance mortgage multiple times

b. Homeowner charged new points and fees with each refinancing to increase amount borrowed

c. Previous lender often charges pre-payment penalties

d.

**SEE:** *Hoffman v. Stamper*, 155 Md. App. 247, 843 A.2d 153 (2004)(the Maryland Court of Appeals affirmed a \$1.3 million compensatory damages verdict against a lender for turning a willful 'blind eye' to a conspiracy among the seller, the lender's loan officer and the appraiser to 'flip' nine properties at inflated prices). *U.S. v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Nov. 12,

#### 6. Property Flipping

a. Buying distressed property at bargain price, making cosmetic repairs and selling at an inflated price

b. Appraiser inflates value, buyer pays more than he/she should

c. Lender may be aware of actual property value

#### 7. Late posting of payments

a. Generates late charges that are added to principal total to be repaid

2003)(alleging that defendants, *inter alia*, failed to post mortgage payments on time, and charged illegal late fees and other unauthorized fees, resulted in a \$40 million settlement for consumer refunds). Online at [www.ftc.gov/opa/2003/11/fairbanks.htm](http://www.ftc.gov/opa/2003/11/fairbanks.htm)

**NOTE:** On or after October 1, 2002, Freddie Mac does not invest in subprime mortgages with prepayment penalty terms greater than 3 years. [www.freddiemac.com/news/archives2002/subprime\\_030102.htm](http://www.freddiemac.com/news/archives2002/subprime_030102.htm)

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

**SEE:** *F.T.C. v. Stewart Finance Co.*, No. 103CV-2648 (N. Dist. GA 2003).

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

- b. Another demerit to credit report
- c. May trigger increase in interest rate

8. Prepayment penalties

- a. Eighty percent of subprime loans have prepayment penalties versus two percent of prime loans
- b. Penalty charged in first 1 to 5 years if loan paid off before end of term
- c. Cannot be a requirement of loan
- d. Similar to points charged to back end of loan, supposedly to compensate lender for lost profit
- e. Difficult and expensive for homeowner to get out of bad loan
- f. If loan is refinanced, prepayment penalties added on to new principal amount
- g. As principal amount due increases, equity declines, making market-rate refinancing more difficult

9. Loan packing

- a. Adding on unnecessary fees by “selling the monthly payment” and glossing over costs as being included in the payment
- b. Loan originator has financial incentive to make principal of loan as large as possible
- c. Exorbitant or fraudulent costs
  - 1) Charging \$50 for credit report that costs \$15 and pocketing the difference
  - 2) Financing “optional” insurance as mandatory component of loan

- 3) Padding recording fees
- d. Inflated appraisal
- e. Duplicative “services”
- f. Credit life insurance
  - 1) Lender sells credit life, accident, unemployment, health insurance
  - 2) Primarily protects lender in event of borrower’s death
  - 3) Inflated premiums compared to insurance policy purchased outside of settlement
  - 4) Described as mandatory
  - 5) Premiums financed as lump sum at settlement
  - 6) Sold even when borrower not qualified, e.g. too old, or has active work requirement
  - 7) Term of insurance much less than term of loan

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

**HOW PREDATORY LENDER PROFITS**

Original Loan Amount	\$30,000	
10 Points	\$3,000	\$3,000 lender profit
“Enhanced “ Closing Costs	\$2,000	\$1,000 lender profit
Credit Insurance Premium	\$2,200	\$1,000 lender commission
Total amount borrowed	\$37,200	
Lender’s immediate profit		\$5,000

(or 16% of the loan amount, not including interest to be earned over the life of the loan if these costs are financed)

10. Negative amortization

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

## B. TARGETED TO VULNERABLE POPULATIONS

**SEE:** *Predatory Lending: Are Federal Agencies Protecting Older Americans from Financial Heartbreak?* Statement Before the Special Committee on Aging of the U.S Senate, February 24, 2004. Available at [www.aarp.org/research/press/testimony/Articles/a2004-02-26-testimony.html](http://www.aarp.org/research/press/testimony/Articles/a2004-02-26-testimony.html)

Calhoun *et al.* *Home Loan Protection Act: A Model State Statute* (2001). Available at [http://research.aarp.org/consume/d17346\\_loan.html](http://research.aarp.org/consume/d17346_loan.html)

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

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

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

1. Elderly
  - a. Over 80% of persons 65+ are homeowners
  - b. 80% of these homeowners own homes “free and clear”
  - c. Est. 700,000 older homeowners, have lived in home for 20+ years, have no mortgage, have incomes of less than \$30,000, have equity of more than \$100,000
  - d. Disproportionately at risk to predatory practices
    - 1) Borrowers 65+ are 3 times more likely to hold subprime mortgage than borrowers younger than 35 years of age.
    - 2) 11% of older borrowers with subprime mortgage have credit backgrounds that would likely qualify for prime loans at lower costs
- e. Low-Income/Financial Crisis
  - 1) Illness or medical expenses
  - 2) Reduced income through retirement or loss of spouse

- 3) Major home repairs
- 4) Family members exploiting borrower
- f. Older deteriorating homes needing repair
  - 1) Fall prey to unscrupulous home improvement contractors
  - 2) Given loans with inflated interest rates, outrageous fees, unaffordable repayment terms
- g. Financially unsophisticated
  - 1) Unsure of credit history and loan eligibility
  - 2) Often have limited education
  - 3) Unaware of mortgage details
  - 4) Older subprime borrowers are less likely than prime borrowers to report having searched for best available mortgage rates
  - 5) Older subprime borrowers say they are less likely than prime borrowers to say they feel well prepared to take out a note

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

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

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

[www.responsiblelending.org/r](http://www.responsiblelending.org/r)

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

eports/ppp2005.cfm

neighborhoods are 35% more likely to be charged prepayment penalties on mortgage loans than those living in largely non-minority areas.



## IV. HOW PREDATORY MORTGAGE PRACTICES DEVELOPED

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

**SEE:** Remarks of Federal Reserve Governor, May 21, 2004 at [www.federalreserve.gov/boarddocs/speeches/2004/20040521/default.htm](http://www.federalreserve.gov/boarddocs/speeches/2004/20040521/default.htm)

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

**SEE:** Economic Issues in Predatory Lending, U.S. Dept. of Treas., OCC Working Paper (7/30/03).

### A. CONTRIBUTING FACTORS

1. Tax code changes on deductibility of home-secured debt
2. Dramatic increase in home values
3. Rise in equity-rich, cash-poor older homeowners
  - a. Estimates based on American Housing Survey suggest that elderly, female, single-person households hold approximately \$570 billion in home equity
  - b. Elderly female homeowners likely to have incomes of less than \$30,000 and home equity of \$100,000 or more
4. Federal deregulation: eliminated all usury controls on first lien mortgages by permitting lenders to charge higher interest rates to borrowers with weak or uncertain credit (securitization)
5. Deregulation of consumer credit industry
6. Increasing home ownership in lower income and minority families: sixty-seven percent of persons 65 years old and over, at or below the federal poverty level, own homes
7. Expansion of mortgage broker industry
  - a. Role in financing process generally not understood by consumers
  - b. Can be highly lucrative with low overhead
  - c. Not regulated by the traditional banking industry
8. Secondary Market
  - a. Bundling of loans for resale to secondary investors
  - b. Creates potential for immediate profit for loan originator
  - c. "Hit and run": Loan originator has financial incentive to make loan, get immediate profit from up-front costs, and pass on risk of default to investor
9. Rise in subprime lending
  - a. HUD: Subprime loans increased from 5% in 1994 to 8.6% in 2002

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

Walters & Hermanson, *Subprime Mortgage Lending and Older Borrowers* (2001) AARP Public Policy Institute. Available at [http://research.aarp.org/cons/ume/dd57\\_lending.html](http://research.aarp.org/cons/ume/dd57_lending.html)

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

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

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

**B. CONSEQUENCES**

- 1. Loss of major/only asset and financial security through foreclosure
- 2. Foreclosure growth
  - a. Over 250% increase between 1980 and 2001
  - b. Subprime loans in foreclosure in 2<sup>nd</sup> quarter of 2003 were 6.8% compared to .53% of prime loans (1/12 of subprime foreclosure rate)

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

- c. Delinquency rate for subprime mortgages was at 10.44% in late 2002, compared to .55% for all conventional (prime) loans
  
- 3. Destruction/destabilization of neighborhoods when long-term homeowners move out and absentee speculators move in
  
- 4. Loss of tax base for cities



## V. HOW TO PREPARE A CASE

**SEE:** Appendix C: Interview Guide

### A. CLIENT INTAKE

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

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

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

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

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

### B. ESSENTIAL DOCUMENTATION

1. Preclosing papers
  - a. Good Faith Estimates

**SEE:** Appendix E: Good Faith Estimate

**SEE:** Appendix M:  
Regulation Z Disclosures

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

2. Note

- a. Contract between borrower and lender
- b. Amount of money borrowed
- c. Interest rate charged
- d. Term of loan
- e. Schedule for repayment
- f. Type of loan

**SEE:** Appendix F: Fixed  
Rate Loan Note

- 1) Fixed rate
- 2) Adjustable Interest Rate

- g. Special features such as balloon
- h. Other obligations

3. Deed of Trust or Mortgage

- a. Creates the security interest in borrower's home
- b. Gives lender (or lender's agent, the trustee) right to foreclose
- c. Defines default

- 1) Nonpayment of principal and interest
- 2) Nonpayment of real estate taxes
- 3) Failure to maintain the property (“waste”)
- 4) Failure to maintain property insurance

**SEE:** Appendix G:  
Prepayment Addendum to  
Note

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

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

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

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

- 5. Truth in Lending (TILA) Disclosure (“Federal Box”)
  - a. Required to be given to borrower before note and mortgage signed
  - b. Typically given at loan closing
  - c. Supposed to “translate” legalese of Note and Trust
    - 1) Aid in comparison shopping
    - 2) Aid in understanding loan costs
    - 3) Aid in understanding loan provisions

**ANNUAL PERCENTAGE RATE    FINANCE CHARGE    AMOUNT FINANCED    TOTAL OF  
PAYMENTS**

The cost of my credit as a yearly rate provided to me or on my behalf	The dollar amount the credit will cost me	The amount of credit
15%	\$225,000	\$90,000
	\$225,000	\$315,000

Reg. Z, 12 C.F.R. §  
226,18(g)

- d. Schedule of Payments
  - 1) Must include the number of payments, the amount of the payment, and the date payment is due

- 2) The single final payment is the balloon payment due at the end of the loan's term

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

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

Reg. Z, 12 C.F.R. § 226.4

Reg. Z, 12 C.F.R. § 226.4(b)(1-10)

- e. Annual Percentage Rate (APR)
  - 1) Combines interest rate and other costs as yearly rate
  - 2) Other costs now include financed credit insurance for HOEPA loans
  - 3) The APR will be higher than the interest rate
  
- f. Finance Charge
  - 1) Cost of credit or total amount of interest payments and certain fees
    - a. "Any charge payable directly or indirectly by consumer imposed directly or indirectly as incident to extension of credit"
    - b. Generally includes:
      - interest*
      - service charges*
      - points*
      - Insurance or guarantee premiums*
      - loan origination fee*
      - underwriting fees*
      - discount points*

*broker fee*

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

c. Generally excludes:

application fees

seller's points

anticipated late payment charge

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

Reg. Z, 12 C.F.R. § 226.18(b)

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

g. Amount Financed

1) Amount borrowed without credit costs OR

2) Amount borrowed that benefits the borrower

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

**SEE:** TILA Chart on page 22 of this module.

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

h. Total of Payments

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

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

Reg. Z, 12 C.F.R. § 226.23(b)(1)

**SEE:** Appendix L: Notice of Right to Cancel

Reg. Z, 12 C.F.R. § 226.23(a)(3)

6. TILA notice of right to cancel

a. Must provide 2 copies to EACH homeowner at settlement

b. Must provide homeowner with notice that s/he has until midnight of the 3<sup>rd</sup> business day to rescind or cancel

1) Third business day starts from the latest of:

a) Consumation of loan transaction,

- b) Delivery of proper notice of right to rescind, or
- c) Delivery of all material disclosures (correctly made)

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

c. Three-day period includes Saturday

**SEE:** Appendix I: HUD -1A Form

HUD has consumer-friendly explanation of the HUD-1A form at [www.hud.gov/offices/hsg/sfh/res/sc3secta.cfm](http://www.hud.gov/offices/hsg/sfh/res/sc3secta.cfm)

The HUD consumer guide for home buyers is at [www.pueblo.gsa.gov/cic\\_text/housing/settlement/sfhrestc.html](http://www.pueblo.gsa.gov/cic_text/housing/settlement/sfhrestc.html)

7. HUD -1A Form

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

5) Pay off unsecured credit card debt (line 1504) 6) I

**PRACTICE TIP:** Refer to state laws regarding broker agreements.

8. Broker agreements

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

9. Loan applications

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

10. Post-closing documents

- a. Disbursement check to borrower: If borrower received before three days after closing, may indicate violation of TILA right to rescind
- b. Rescission Waiver: Borrower may have been instructed to sign at settlement, in violation of TILA right

Reg. Z, 12 C.F.R. § 226.23(c)

Reg. Z, 12 C.F.R. §

226.23(e)

to rescind

- c. Amended TILA and/or HUD -1: May be indicated if lender made any post-closing changes

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

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

11. Collection and foreclosure documents

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

12. Other loans

- a. If client promised lower monthly payments through refinancing, prior loan papers will indicate if it actually happened
  - c. Prior loan could have had prepayment penalty
  - d. Prior loan could have been subsidized by government or nonprofit organization (i.e., Habitat for Humanity)

13. Loan Payment history

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

14. Client Financial Records

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

- b. Client bank statements may reveal unauthorized automatic withdrawals

## VI. CONSUMER REMEDIES

### A. INTRODUCTION

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

### B. TECHNICAL DEFENSE TO FORECLOSURE

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

### C. TRUTH IN LENDING ACT (TILA)

1. History

15 U.S.C. §§ 1601 *et seq.*

- a. Originally enacted in 1968; simplified in 1980

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

- b. Further amended by Home Ownership and Equity Protection Act of 1994 (HOEPA)

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

- c. Implemented by Federal Reserve Board's Regulation Z

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

- d. Reg. Z amended December 14, 2001. The amendments

- 1) extended the scope of mortgage loans subject to HOEPA's protections
- 2) restricted certain acts and practices

- 3) strengthened HOEPA's prohibition on loans based on homeowners' equity without regard to repayment ability, and 4) enhanced HOEPA disclosures received by consumers before closing

69 Fed. Reg. 16769 (Mar.31, 2004)(codified at 12 C.F.R. §

226). See,  
[www.federalreserve.gov/boarddocs/press/bcreg/2004/20040326/default.htm](http://www.federalreserve.gov/boarddocs/press/bcreg/2004/20040326/default.htm)

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

## 2. Purpose

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

Reg. Z, 12 C.F.R. § 226.23(a),  
(f)

## 3. Necessary definitions for rescission

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

Reg. Z, 12 C.F.R. §  
226.2(a)(17)

**NOTE:** These definitions can change depending on type of loan

## c. Material Disclosure

- 1) Failure to properly disclose any of the following on TILA Disclosure extends the 3 day right to rescind to 3 years

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

- a) Finance charge
  - b) Annual Percentage Rate
  - c) Amount Financed
  - d) Schedule of Payments
  - e) Total of Payments
- 15 U.S.C. § 1635(f); *See also Stanley v. Household finance Corp. III (In re James B. Stanley)*, 315 B.R. 602 (Bankr. D. Kan. 2004)(plaintiff/borrower entitled to, *inter alia*, void his mortgage and costs when lender failed to provide two right to rescind notices and failed to provide clear and conspicuous disclosures).
- 15 U.S.C. § 1639(c); Reg. Z, 12 C.F.R. § 226.31
- 15 U.S.C. § 1641(c)
- 15 U.S.C. § 1640(a)(2)(A)(iii), (e)
- 15 U.S.C. § 1640(h)
- 15 U.S.C. § 1640(a)(3)
- 15 U.S.C. § 1640(e)
- 2) Failure to provide 2 copies of Notice of Right to Rescind (per borrower) extends to 3 years the right of rescission
    - a) Finance charge
    - b) Annual Percentage Rate
    - c) Amount Financed
    - d) Schedule of Payments
    - e) Total of Payments
  - 3) Failure to provide 2 copies of HOEPA notice (per borrower) also extends right to 3 years
  - 4) Assignees always liable for rescission
  - 5) Statutory damages between \$200 and \$2000
    - a) Defensively, via set-off
    - b) Offensively, if homeowner files within 1 year of transaction, or
    - c) 1 year after lender fails to honor valid rescission and
    - d) Assignees liable for damages if violation apparent on the face of the loan documents
  - 6) Attorneys fees and costs are available
  - 7) Statute of Limitations (SOL)
    - a) One year from date of the occurrence of violation
    - b) With right of rescission, SOL runs from date rescission procedure violated (up to three years)

15 U.S.C. § 1640(c)

- c) Over one year if raised defensively, via set-off or recoupment to creditor claim
- d) SOL can be tolled if fraudulent concealment

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

#### 4. Rescission

##### a. Introduction

1) Absolute right to cancel loan and void mortgage

a) If within three business days after signature

b) No reason, any reason

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

2) If lender failed to make correct material disclosures or failed to afford the three-day cancellation period, right to rescind extended to three years

Reg. Z, 12 C.F.R. § 226.23(a)(3)

3) Must be non-purchase money security interest in consumer's primary residence

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

4) Limited right to rescind current loan if it refinanced a prior loan from the same lender; may be able to rescind the prior loan

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

##### b. Effect

1) Security interest is void, thus creditor cannot foreclose

2) Creditor's interest in property is automatically negated

3) Creditor cannot collect any finance or other fees on loan

4) Creditor must return or credit against principal all interest paid, and/or property which reduces amount owed

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

5) Homeowner responsible only for net amount owed after all interest and fees have been returned or credited

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

c. Three Step Rescission Process

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

Reg. Z, 12 C.F.R. § 226.23(d)(1)

Reg. Z, 12 C.F.R. § 226.23(d)(2)

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

**NOTE:** Some of the steps are subject to the court's equitable modification authority. See, e.g., Reg. Z, 12 C.F.R. §§ 226.15(d)(4), 226.23(d)(4).

- 1) Starts when borrower sends valid cancellation notice to creditor.
  - a) Security interest automatically voided and borrower's obligation to pay finance charge and other charges automatically eliminated
  - b) Lender has 20 days to refund or credit money or property given/paid (including to third party) and take steps to void security interest

- c) When lender has performed, borrower must tender back remaining balance
- 2) Payments already made should be credited to loan proceeds

5. Tolerance for Error in Disclosures

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

- a. Law allows some leeway for error in the required financial disclosures
- b. Tolerance for Error is an affirmative defense raised by creditor, not an element of borrower's claim
- c. Prior to 1995, borrower could rescind if

- 1) Calculation of finance charge off by \$10 or less
  - 2) Calculation for amount financed had any error
  - 3). Calculation error = failure to disclose = extended right to rescind
- d. *Rodash v. AIB Mortgage*, 16 F.3d 1142 (11th Cir. 1994)
- 1) Creditor's failure to include \$22 courier fee was a basis to uphold borrower's right to rescind

15 U.S.C. § 1605(f); *Truth in Lending*, 5<sup>th</sup> ed. & 2004 Supp., § 4.6.3. NCLC at [www.consumerlaw.org](http://www.consumerlaw.org)

- e. Rodash Relief (TILA Amendments of 1995)
- 1) Expanded/defined tolerances for error for loans consummated after 9/30/95
  - 2) Complicated set of rules to determine if error is within limits
  - 3) Depends on type of transaction, i.e., open-end or closed-end, and type of error, whether affirmative or defensive, and amount financed
  - 4) Somewhat different rule for loans consummated before 9/30/95

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

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

15 U.S.C. § 1640(a)(3)

**NOTE:** Closed-end loans have fixed terms.

6. TILA Damages (closed-end transactions)

- a. Statutory damages of twice the finance charge with \$200 minimum, \$2000 maximum for failure to disclose:
  - 1) Total finance charges
  - 2) Amount financed
  - 3) Annual Percentage Rate (APR)
  - 4) Payment schedule
  - 5) Total of payments
  - 6) Security interests
- b. Actual damages for failure to properly disclose:

**BUT SEE:** *Smith v. Gold Country*

*Lenders*, 289 F.3d 1155 (9<sup>th</sup> Cir. 2002)(borrower must show detrimental reliance on inaccurate disclosure to obtain actual damages).

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

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

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

1. Amends TILA
2. Applies to closed-end mortgage loans with high interest rates, and/or points and fees
3. Does not cover home purchase, reverse mortgages, open-end credit
4. Expands assignee liability
5. HOEPA applies if EITHER of two triggers is met:
  - a. “High interest” trigger for first-lien mortgage is: APR more than 10 points above yield on Treasury securities with comparable maturity. Reduced to 8 points for loan consummated after 10/1/02. Junior liens remain at 10 points
  - b. “High fee” trigger is: If total of certain points and fees exceeds greater of 8% of “total loan amount” or \$499 (2004), loan is covered by HOEPA
    - 1) Dollar amount adjusted annually based on consumer price index (CPI-U)

Reg. Z, 12 C.F.R. § 226.32(a)(1)(i)

**NOTE:** For Treasury bond rates see [www.federalreserve.gov/releases/h15/current/](http://www.federalreserve.gov/releases/h15/current/)

15 U.S.C. § 1602(aa)(1)(B)

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

**NOTE:** Correct amount financed

6. Total loan amount = **correct** amount financed minus certain points and fees that are financed plus prepaid interest
  - a. Points and fees that must be subtracted from amount financed to calculate “total loan amount”

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

12 C.F.R. § 226.2(b)(1)(iii)-(iv)

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

Reg. Z, 12 C.F.R. § 226.23(b)(1)

15 U.S.C. § 1639(b)(1)

15 U.S.C. § 1639(a)(1)

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

- 1) Commissions paid to mortgage brokers
- 2) Settlement charges that are normally excluded under Reg. Z, 12 C.F.R. § 226.4(c)(7)
  - a. Unless charge is reasonable, and
  - b. Creditor gets no direct or indirect compensation, and
  - c. Charge is not paid to an affiliate of creditor
  - d. Premiums for credit, life, accident, health, loss of income insurance, and debt cancellation coverage

6. Additional “material” disclosures

a. Creditor must provide:

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

b. Required HOEPA disclosure

- “You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.”

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

15 U.S.C. § 1641(d)

7. Assignee liability

- a. For HOEPA loan can assert all claims against all assignees that could have asserted against original creditor

- b. Enhanced damages available under HOEPA are 2 times rescission amount
- c. Claim for statutory damages for TILA violations, if apparent on the face of the loan documents (\$200 - \$2000)

Reg. Z, 12 C.F.R. § 226.32(d)(1-8)

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

- a. Balloon payment if the loan term is less than 5 years
- b. Negative amortization, which occurs where borrower’s payments are less than the interest accruing on the loan, causing the principal to grow over the course of the loan rather than decreasing as would happen in an amortizing loan
- c. Advance payments defined as a payment schedule which consolidates more than two periodic payments and pays them in advance from loan proceeds.
- d. Interest rate that increases after default
- e. Rebates which are calculated by a method unfavorable to the consumer, i.e., more than simple interest
- f. Prepayment penalties with certain important exceptions:
  - 1) Penalty can be exercised only for the first five

years following consummation,

- 2) Source of the prepayment funds is not a refinancing by the creditor/affiliate of the creditor, and
  - 3) At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the his/her monthly gross income
- g. Due-on-demand clauses that permits the creditor to terminate the loan in advance of the original maturity date and to accelerate the entire loan balance (10/1/02)

Reg. Z, 12 C.F.R. § 226.34(a)(1-4)

9. Prohibited practices

- a. Extending credit to consumers where income insufficient to repay loan:  
Presumption of violation if creditor does not verify and document borrower's ability to repay (for loans after 10/1/02)
- b. Paying home improvement contractor directly from loan proceeds
- c. Not providing buyer/assignee of loan with notice that "This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."
- d. Refinancing by same lender, affiliate, or loan servicer within a year (for loans after 10/1/02)
- e. Wrongfully documenting loans as open-ended credit

**PRACTICE TIP:** Check to see if disbursement check was payable jointly to contractor and borrower or to borrower or to 3rd party escrow.

**E. REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)**

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

1. Purpose is to protect consumers from unnecessarily high settlement costs and abusive mortgage practices
2. Applies to almost all home secured loans, including purchase and refinance

24 C.F.R. § 3500.2(b)(7)

- a. Does not apply to a bona fide transfer of a loan in the secondary market
- b. Limited to federally related mortgage loans

3. Disclosure requirements

24 C.F.R. § 3500.7

**SEE:** Appendix E: Good Faith Estimate

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

a. Good Faith Estimate (GFE) of settlement costs

- 1) To borrower no later than 3 days after loan application
- 2) Itemization of costs including
  - a) Mortgage broker fee
  - b) Real estate agent fee
  - c) Tax and recordation

d) Appraisal e) Closing attorney fee

f) Points, loan origination fees, etc.

g) Any other fee

b. HUD -1A settlement sheet

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

4. Servicer obligations

12 U.S.C. § 2605

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

15 U.S.C. § 2605(b)(3)(A-G)

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

12 U.S.C. § 2605(f)

5. Damages

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

12 U.S.C. § 2607

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

6. Kickbacks and referral fees

- a. Illegal to give, receive, or split fees or kickbacks for referral of settlement service if fee is not paid for goods or services actually rendered
- b. “Settlement service” broadly defined to include everything paid for in transaction

- 1) Appraisal
- 2) Title insurance
- 3) Mortgage broker
- 4) Survey
- 5) Attorney fees
- 6) Real estate broker fees
- 7) Funding of the loan itself

c. Penalties for Violations

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

d. Yield Spread Premium (YSP)

- 1) Fee to broker from lender when broker is able to get borrower to take loan at higher rate than would otherwise be eligible for
- 2) Lender recoups amount paid to broker through higher interest rate to borrower
- 3) Rewards brokers who steer borrowers to more expensive loans
- 4) Borrower may be led to believe “best loan you can get”

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

5) May be in addition to fee borrower knowingly pays to broker

12 U.S.C. § 2607(c)(2)

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

6) Mortgage industry justifies as “payment for services actually performed”

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

7) Issues:

- a) Did borrower agree to pay the yield spread premium?
- b) If so, what services did borrower get for this agreement to pay?
- c) Is the amount reasonable for services provided?

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

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

## 7. Remedies

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

deception

## F. UNFAIR AND DECEPTIVE ACTS AND PRACTICES (UDAP)

*Unfair and Deceptive Acts and Practices*. National Consumer Law Center (6<sup>th</sup> ed. 2004).  
[www.nclc.org/publications/manuals/](http://www.nclc.org/publications/manuals/)

1. State specific
  - a. All 50 states, D.C., and Puerto Rico have UDAP laws
  - b. UDAP violations include issues of:
    - 1) Equity stripping
    - 2) Loan terms
    - 3) YSPs
    - 4) Closing practices
  - c. Provide state and private enforcement and remedies
  - d. Many provide for attorney fees and punitive damages
  - e. Almost any abusive consumer practice is (arguably) a UDAP violation
    - 1) Not UDAP violation if practice specifically falls outside state law
2. General provisions
  - a. Unfair or misleading business practices
    - 1) May not need to prove lender's intent to mislead or borrower's reliance on misrepresentation
    - 2) Example: Lender misrepresents APR at 10% when actually charging 16%
    - 3) Example: Upcharging, or charging fees for services that are grossly in excess of marketplace charges
    - 4) Example: Taking advantage of person who is unable to protect own interest due to age, physical or mental infirmity
  - b. May provide for treble and punitive damages and attorneys' fees

## G. OTHER REMEDIES

## 1. Home Solicitation Sales Rule

16 C.F.R. § 429

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

## 2. Private Remedies

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

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

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

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

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

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

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

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

3. Common Law Torts: Fraud, Deceit and Misrepresentation
  - a. Misrepresentation:
    - 1) failure to state a fact or false representation of a fact
    - 2) fact must be fraudulent or material
    - 3) Borrower relied on misrepresentation
    - 4) Damage resulted to borrower based on misrepresentation
  - b. Non-disclosure can be basis for fraud claim
    - 1) Common basis for canceling contract
    - 2) Contract entered into based on fraudulent statements = rescission and restoring borrower to pre-contract position
  - c. Can file simultaneously with a UDAP claim
  - d. Common Law torts = punitive damages
4. State or local licensing laws
  - a. Lender, mortgage broker, real estate broker, or home improvement contractor may have to be properly licensed under state law to do business
  - b. Check if any parties are bonded, if required
  - c. May be prohibitions against signing documents in blank, settlement in borrower's home, exclusive dealing clauses, loans made with intent to foreclose
  - d. May be record keeping requirements
  - e. May be additional disclosure requirements
5. Breach of fiduciary duty
6. Duress, Coercion and Undue influence
  - a. Basis for rescinding contract
  - b. Physically or psychologically overpowering borrower, or
  - c. One party uses dominant position to influence weaker party
7. Incapacity to Contract

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

- a. Defense to contract if it is established that borrower lacked capacity to contract, i.e.,
    - 1) under guardianship;
    - 2) an infant;
    - 3) mentally ill; or
    - 4) intoxicated.
  - b. Requires expert testimony on capacity
  - c. If shown, contract can be voided = both sides return what they gave
8. Racketeer Influenced and Corrupt Organization Act (RICO)
- a. May challenge collection of unlawful debt if:
    - 1) Hidden interest, i.e., fictitious fees, points, commissions are treated as interest
    - 2) Unlawful debt = usurious and unenforceable that bears an interest rate of least two times the enforceable rate.
    - 3) Must show creditor collected debt that was at least 2x the enforceable rate
9. Civil conspiracy
10. Forgery
11. Unjust enrichment
- a. Equitable doctrine: Must show that no adequate legal remedy exists
  - b. Lender/creditor receives benefit that is unjust to keep
  - c. Remedy is restitution = return what borrower gave
12. Warranty claims
13. Credit repair statutes: many of these state laws cover loan brokers
14. Duty of good faith and fair dealing
15. Equal Credit Opportunity Act: Prohibits discrimination in

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

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

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

15 U.S.C. § 1691 *et seq.*

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

73 Am. Jur. 2d *Statute of Frauds* § 468 (2004).; *Vigneaux v. Carriere*, 2003 R.I. Super. LEXIS 79 (document contained the

necessary elements to satisfy the state statute of frauds: It named the parties, described the premises to be sold, set the purchase price and method of payment, and it was signed by the seller, the party to be charged).

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

any aspect of credit on the basis of age , race, ethnicity, nationality and more

16. Fair Housing Act

- a. Prohibits discrimination in lending based upon race, ethnicity, nationality etc.

17. Statute of Frauds (SOF)

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

18. Legal Malpractice

**SEE:**  
[www.mortgagebankers.org/resources/predlend/index.html](http://www.mortgagebankers.org/resources/predlend/index.html)

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

**H. REVERSE MORTGAGE**

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

- 1. Loan that allows homeowner to convert portion of home equity into cash
- 2. Possible alternative to generate cash for older homeowner
- 3. Can be means to refinance predatory loan to more favorable terms
- 4. No repayment required until borrower/homeowner no longer uses home as principal residence

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

- 5. Some reverse mortgages can be predatory
- 6. Description
  - a. Loan against home that can provide cash to pay off less favorable loan
  - b. Amount owed increases during life of the loan in

contrast to regular mortgage balance that declines over time

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

**SEE:**

[www.hud.gov/offices/hsg/sfh/hecm/rmtopten/cfm](http://www.hud.gov/offices/hsg/sfh/hecm/rmtopten/cfm)

- a) Includes 1-4 units
- b) Includes some condos/PUDs
- c) Excludes co-ops
- 3) Do not repay loan until borrower stops living in house as primary residence
- 4) Property must be in good condition or repaired with proceeds from the reverse mortgage
- 5) Borrower receives independent counseling by public/nonprofit entity before application
- 6) Maximum lending limit varies from 160,200 - 290,300
  - a) Maximum limit adjusts annually

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

c. HECM Payment options

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

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

d. Costs and fees

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

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

[www.fanniemae.com/homebuyers/findamortgage/reverse/](http://www.fanniemae.com/homebuyers/findamortgage/reverse/)

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

[www.financialfreedom.com](http://www.financialfreedom.com)

12. Financial Freedom Cash Account ("jumbo" reverse mortgages)
  - a. Covers homes at 500k + but virtually no max home value or limit
  - b. Age 62 or over
  - c. Lifetime interest rate capacity of 6% over initial APR
13. Other equity conversion options
  - a. State/local property tax postponement
  - b. State/local deferred payment loans for home improvement
  - c. Sale with leaseback transaction
  - d. Life Estate/Remainder plans

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

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

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

*Tips on Home Improvement* (D17556)

*Home-Made Money* (D12784)  
For single orders call (800) 424-3410  
[www.aarp.org/revmort](http://www.aarp.org/revmort)

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

*Reverse Mortgage Choices* (video)

Two 15-minute videotapes

Part I A New Source of Retirement Income

Part II A Closer Look

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

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

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

## **OTHER RESOURCES**

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

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

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

National Consumer Law Center, [www.consumerlaw.org](http://www.consumerlaw.org)  
Publications: (617) 542-9595 or 77 Summer Street, 10<sup>th</sup> Floor, Boston, MA 02110,

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

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

*Truth in Lending* (4<sup>th</sup> ed. & 2004 Supp.)

*Unfair and Deceptive Acts and Practices* (6<sup>th</sup> ed. & 2004 Supp.)

*Consumer Law Pleadings* (2004 on CD ROM)

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

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

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

## **FEDERAL CONTACT NUMBERS**

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

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

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

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

For information regarding housing discrimination issues contact:  
Office of Fair Housing and Equal Opportunity (See above HUD address)  
1-800-669-9777  
Web site: [www.hud.gov/offices/fheo/index.cfm](http://www.hud.gov/offices/fheo/index.cfm)

For information about RESPA contact:  
Office of Consumer and Regulatory Affairs (See above HUD address)

## **OTHER AGENCIES**

For information about programs and pamphlets offered by the Department of Veterans Affairs, contact your nearest VA Regional Office:  
Web site: [www.homeloans.va.gov/](http://www.homeloans.va.gov/)

For information about rural housing loan programs contact:  
Department of Agriculture  
Rural Development/Rural Housing Services  
Stop 0783  
Washington, DC 20250  
Web site: [www.rurdev.usda.gov](http://www.rurdev.usda.gov)

For information about the Truth in Lending Act contact:  
Federal Deposit Insurance Corporation at [www.gov.regulations/laws/rules/6500-200.html](http://www.gov.regulations/laws/rules/6500-200.html)

For information on the Equal Credit Opportunity Act contact:  
[www.usdoj.gov/crt/housing/housing\\_ecoa.htm](http://www.usdoj.gov/crt/housing/housing_ecoa.htm)

For information about reverse mortgages contact  
Web site: [www.aarp.org/revmort](http://www.aarp.org/revmort)

Neighborhood Reinvestment Training Institute (for 2-day counselor training)  
(800) 438-5547  
Web site: [www.nw.org](http://www.nw.org)

National Center for Home Equity Conversion  
(651) 222-6775  
Web site: [www.reverse.org](http://www.reverse.org) with calculator, selecting reliable reverse mortgage lenders and counselors, FAQ, etc.



## **APPENDICES**



## Early Warning Signs of Predatory Lending

-	LINE #	MARKETING
	1	Aggressive solicitations to targeted neighborhoods
	2	Door-to-door solicitation (of loans and/or home improvements)
	3	Home improvement scams
	4	Kickbacks to mortgage brokers
	5	Bait and switch: promised low-rate raised at closing
	6	"Rescue" from foreclosure
	7	Steering to high rate lenders
	8	Mortgage broker appears to be lender
-	LINE #	SALES
	9	Loan Structured unaffordable payments
	10	Loan application falsified as to borrower's income
	11	Unlikely co-signers
	12	Homeowner mentally incapacitated
	13	Forged signatures on disclosure documents
	14	Lower rate debt paid off
	15	Unsecured debt shifted to secured debt
	16	Unnecessary debt consolidation to expand amount borrowed ("upselling")
	17	Loan to Value (LTV) in excess of 100%
	18	Rushed loan closing
	19	Misrepresentation of loan as line of credit or "open ended"
	20	Incorrect credit scoring; charging higher rate in excess of risk
	21	Change in terms from estimate/offer
	22	Back-dating of documents
	23	Disclosure documents withheld
-	LINE #	LOAN TERMS
	24	High interest rate

	25	High points
	26	Padded closing costs
	27	Balloon payment
	28	Variable rates that only/quickly go up
	29	Negative amortization
	30	Inflated appraisal
	31	Padded recording fees
	32	Fees for unprovided/duplicative services
	33	Required/overpriced life/disability insurance
	34	Bogus broker fees/yield spread premium
	35	Mandatory arbitration clause
	36	Excessive prepayment penalties
	37	Excessive late penalty
	<b>LINE #</b>	<b>AFTER CLOSING</b>
	38	Flipping or multiple refinancings
	39	Delayed posting
	40	Failure to distribute loan proceeds
	41	Daily interest on late fees
	42	Contractor fraud/failure to perform work
	43	Abusive collection practices
	44	Foreclosure abuses

Adapted from *Helping Homeowners Avoid Delinquency and Predatory Lenders*, Neighborhood Reinvestment Training Institute, Washington, DC 12 (August 20, 2001). Also see NCLC, *Stop Predatory Lending* § 2.3.7 and footnotes.

## Case Studies

### **Case Study #1**

Karen and Wilbert Mitchell are elderly residents of the District of Columbia. They have owned their own home for many years in a predominately African-American neighborhood that has had its ups and downs. Their combined household income is his postal pension totaling \$1,604, plus \$400 a month from a roomer. They only have about \$10,000 remaining on their mortgage with Standard Federal. They did have a DC-sponsored loan for \$14,000 for home improvements at 0% interest that does not need to be repaid until the house is sold. Other debts include a balance of about \$5,000 on a car loan and \$3,000 in credit card debts.

Due to the gradual deterioration of the house and Mr. Mitchell's ability to do all of the home maintenance he did when he was younger, they realized that they were going to have to hire someone to fix some decaying boards, steps and railing on their front porch. They received a number of flyers in the mail and phone calls from Able Doers, a neighborhood company that does home repairs and improvements. The Able Doers representative, Mr. Green, came by their home and quickly wrote up a job description and gave them a quote of \$18,000. When the Mitchells protested that the estimate was too high and they didn't have enough money to pay for the work, Mr. Green said that he could arrange a home improvement loan for them. He also said that they could save money if they consolidated all of their debts. Green asked for, and received a list of all of the Mitchells' debts. The Mitchells specifically stated that they did not want to pay off the DC loan because it had no interest and was not due until the house was sold. Green advised that they would be in a better financial position by paying off all their old debts and just have to make one low monthly payment.

A few days later Green sent a cab to pick up the Mitchells and take them to the office of AAA Mortgage Inc. where they signed papers for a home improvement loan for \$66,000. The loan paid off their DC loan, back property taxes, car and credit card debts and included \$9216.75 in closing costs. Included in the closing costs was a yield spread premium of \$1,800. No papers were left with the Mitchells at the settlement. About a month later they received in the mail a stapled batch of documents which contained the terms of the loan transactions. One document that the Mitchells signed and dated on the date of the settlement stated that they had received notice of their right to rescind and that they had waived their right and that all repairs were performed to their satisfaction.

### **Case Study #2**

Laid off after 29 years of working for a local company, Mrs. Green was struggling. She had a part-time job driving a bus, but did not earn enough to pay her bills. When she received a call from a man who offered to help her come up with some cash, it seemed like a godsend. The man said he worked for a home improvement company and that he could find her a loan that would both pay for some remodeling on her house and leave enough cash left over to pay her bills.

Unfortunately, the salesman was actually a mortgage broker, and he was not peddling home improvement, but a refinancing of her existing home mortgage at a high interest rate. He met her at her home and chatted with her while he filled out a mortgage application for her. He did give her the required "good faith estimate," but the loan was not a home equity loan for the \$6,000 that she needed to pay off bills, it was a loan for \$76,500 that refinanced her entire home mortgage at a higher interest rate.

Mrs. Green signed the loan papers and left with a check for \$1,900. She did not know that her loan terms had changed since she received the good faith estimate. The mortgage broker had added \$6,500 in fees to her loan, and changed the loan from a fixed-rate to a more expensive adjustable-rate mortgage. Her loan charged 10% interest, was packed with inflated fees, including a loan origination fee of \$7,500, 10% of the cost of the loan, and the mortgage company took a \$3,500 fee out of Mrs. Green's home equity to pay the mortgage broker who took advantage of her.

The mortgage broker also tried to sell Mrs. Green credit life insurance, another service that is generally only sold on subprime loans. If she should die, the credit life insurance policy would pay off some of the principal left on the loan. She decided not to buy the insurance because it was too expensive, but the mortgage broker slipped the credit insurance papers into the stack of closing documents that Mrs. Green signed.

For the credit insurance she did not want, Mrs. Green paid \$3,000 financed over the 30 years of the loan. She will pay for 30 years on a life insurance product that is only good for five years. She will pay \$10,000 for this insurance over 30 years.

This high-rate loan prevents Mrs. Green from refinancing for a better rate because, under the terms of her loan, a large penalty is charged if she prepays the loan. These penalties are typical on subprime loans.

Mrs. Green was a victim of predatory lending. Before this loan, Mrs. Green had built up \$23,000 of equity in her home. After the loan, she had less than \$2,000 left. More than half of her home equity was lost to fees. She will also end up paying more over the long term: her monthly mortgage payments jumped from \$500 a month to \$740 a month.

### **Case Study #3**

Mike Knox thought he had run out of ways to pay off his credit card bills when he got the salesman's call two years ago. To wipe out his nearly \$20,000 debt, he was told, all he had to do was take out a new, bigger mortgage on his house.

Mr. Knox, then 60 and on disability, signed up. The mortgage broker sent him eight checks already made out to his creditors, and Mr. Knox dashed to the post office the day they arrived to mail them.

But the bigger house payment devoured 75 percent of his income. He quickly fell behind. In late January, with Mr. Knox in arrears, the Wall Street firm that had bought his mortgage informed him that it was taking away his home.

"They're going to have to carry me out of here," he told a lawyer in early March. Days later, Mr. Knox, who had suffered for years from depression, was found dead of carbon monoxide poisoning in his sealed-up car.

Mr. Knox had already refinanced twice in six months when he got the call from an Aames Financial broker. In qualifying Mr. Knox for a \$90,000 mortgage at 9.23 percent that he ultimately could not afford, company records show, Aames waived its own rules for verifying income and employment. The mortgage was also based on an assessment of his house that was considerably higher than an official county estimate.

Mr. Knox had expected the new mortgage to leave him free and clear. Borrowing \$90,900 cost him \$7,259 in fees and other expenses. After repaying his existing \$67,000 mortgage and mailing \$15,574 to his creditors, he still owed \$3,800 in credit card bills.

He did what most borrowers do in this situation, debt counselors say: he ran up more credit card debt. Even filing for bankruptcy on this new debt, which he did six months later, could not save his home. The mortgage alone was simply too big.



## INTERVIEW GUIDE

### **FINANCIAL STATUS**

- ◆ When did you purchase the house? \_\_\_\_\_
- ◆ How much did you pay for it? \_\_\_\_\_
- ◆ Was anyone else a co-owner? \_\_\_\_\_
- ◆ How did you finance that purchase? \_\_\_\_\_
  - Was anyone else on that mortgage?* \_\_\_\_\_
  - What were the terms of the original mortgage?* \_\_\_\_\_
  - Was it ever paid off?* \_\_\_\_\_
  - What is the current value of your house?* \_\_\_\_\_
  - What is tax assessment?* \_\_\_\_\_
  - What was value at last appraisal?* \_\_\_\_\_
  - Any recent neighbor sales?* \_\_\_\_\_
- ◆ Are you current on your house payments? If no, \_\_\_\_\_
  - How far behind?* \_\_\_\_\_
  - Is your lender still accepting payments?* \_\_\_\_\_
  - Have you received a letter demanding that you pay off the loan in full (acceleration)?* \_\_\_\_\_
  - Have you received any notice from the lender about foreclosure?* \_\_\_\_\_
  - Have you received any certified mail from the lender?* \_\_\_\_\_
  - Did you sign for it or refuse it?* \_\_\_\_\_
  - Have you received any court papers?* \_\_\_\_\_
  - What happened that caused you to get behind in the payments?* \_\_\_\_\_
  - Other bills?* \_\_\_\_\_

*Surprised by the amount of the monthly payment (higher than told)?*

\_\_\_\_\_

*Other mortgage?*

\_\_\_\_\_

*Illness?*

\_\_\_\_\_

*Death of spouse?*

\_\_\_\_\_

◆ **What is your gross income now?**

■ **Social Security**

\_\_\_\_\_

■ **SSI**

\_\_\_\_\_

■ **Annuity**

\_\_\_\_\_

■ **Pension**

\_\_\_\_\_

■ **Wages**

\_\_\_\_\_

◆ **Was your gross income the same when you took out the loan? (Be exact.)**

\_\_\_\_\_

*Does anyone help you with your mortgage payments?*

\_\_\_\_\_

*Anyone else co-sign on your mortgage?*

\_\_\_\_\_

*How many people live in the home?*

\_\_\_\_\_

◆ **When did you take out the loan?**

\_\_\_\_\_

◆ **Why did you take out the loan with this lender?**

\_\_\_\_\_

*How did you find out about this lender?*

\_\_\_\_\_

*Previous loan?*

\_\_\_\_\_

*Advertisement in mail, TV, flyer, phone call came to door?*

\_\_\_\_\_

◆ **Why did you want to borrow money?**

\_\_\_\_\_

*Were you trying to reduce your monthly payments?*

\_\_\_\_\_

*Were you promised a reduction in monthly payments?*

\_\_\_\_\_

**Did you need to make any home improvements?**

*What work did you want to have done?*

*How much did it cost?*

*Who was contractor?*

*Did the contractor arrange the financing or tell you which lender to use?*

◆ **How many other mortgage loans have you had?**

*Same broker?*

*Same lender?*

◆ **Who did you think was making the loan (e.g., thought broker was the bank)**

◆ **Were you facing foreclosure on a previous loan when you refinanced?**

◆ **Were you told to stop paying on any of your existing loans by the person who was going to make the new loan?**

◆ **What were you told about this loan before you signed the papers?**

◆ **What loan terms were you expecting?**

*Why did you expect these terms?  
(e.g., promised a 7% loan on the phone, came to house with 11%)*

◆ **If previous mortgage refinanced, what was the monthly payment on your previous mortgage?**

*What were the terms?*

◆ **If credit card debts refinanced, what were your monthly payments?**

*Interest rates?*

**What papers did you get before you signed the loan papers?**

*Were these papers mailed or delivered?*

**Get any papers a few days before settlement  
(before you signed the loan papers?)**

---

**Where was the loan closed?**

---

**Who else was present?**

---

**Were you asked to sign anything on any day  
before the closing?**

---

**What papers did you actually get the day  
of closing?**

---

***Do you have copies of all the papers  
that you signed?***

---

***Did you get any closing papers after  
the day of closing?***

---

***Did you sign any papers after the day  
of closing?***

---

**Did you ask questions at the settlement?**

---

***What answers, if any, were given?***

---

**Did you have time to look at each paper?**

---

***If not, why not?***

---

**Did they do anything to discourage you  
from looking at the papers?**

---

***Were the papers on a clipboard? Stapled?***

---

***Held down by someone else? Kept far  
from you on the desk?***

---

***Did you want to sign the papers at that time  
or did you want to study them?***

---

***Did you ask if you could sign the papers later?***

**When did you get checks from the closing?**

---

**Did you ever try to cancel the loan?**

---

***What did you do to try to cancel the loan?***

---

*Phone call*

---

*To whom? When?*

---

Letter \_\_\_\_\_

To whom? When? \_\_\_\_\_

With the client, go over all the papers they received at closing to determine their understanding of the loan terms and settlement charges. Go over the HUD1/Settlement Statement line-by-line.

**If broker:**

- **Did you know the broker was not the lender?** \_\_\_\_\_
- **Did you know the broker would be charging you a fee to find you a lender?** \_\_\_\_\_

**If there's a charge for "YSP" or yield spread premium which is marked "POC"**

- **Did you know the broker would also receive a payment from the bank because the bank charged you higher interest rate?** \_\_\_\_\_

**How is your health now?** \_\_\_\_\_

*When did you last visit a doctor?* \_\_\_\_\_

*What prescriptions do you take?* \_\_\_\_\_

**How was your health when you took out the loan?** \_\_\_\_\_

*Were you taking any medication when you signed the loan papers?* \_\_\_\_\_

*Were you in any physical pain when you signed?* \_\_\_\_\_

*Were you wearing your glasses when you signed?* \_\_\_\_\_

**How far did you get in school?** \_\_\_\_\_

**Have you had any experience or training in finance, real estate?** \_\_\_\_\_

**Where do/did you work?** \_\_\_\_\_

**Are your property taxes current?** \_\_\_\_\_

**Are water/sewer bills current?** \_\_\_\_\_

**Have you had any previous lawsuits?** \_\_\_\_\_

**Have you ever filed for bankruptcy?**

---

**Have you had any criminal convictions?**

---

## PLAYERS AND POSSIBLE DEFENDANTS

**Mortgage Broker:** Person or agency who purports to find best available mortgage terms for borrower. May make inquiries among various lenders to compare terms or bird dog for particular lender. Does not make the loan, although borrowers are sometimes confused or misled as to broker's relationship to actual loan. May have contract and get fee from borrower for service. May get additional fee from lender for bringing borrower to lender at higher interest rate (yield spread premium). Frequently low overhead, light capitalization, store front or home office operation. The broker should have a fiduciary duty towards the borrower, court opinions are mixed.

**Loan Originator:** Lender who makes the original loan. Generally lender of record who may not bear any risk of loss. The lender is compensated through up-front fees financed by the loan amount and/or by selling the loan at a premium. Some lenders have affiliated companies which also receive fees from the loan such as a title search company, a provider of credit insurance or a tax service company.

**Loan Holder:** Most originators do not hold the loan to keep in their portfolio. They bundle loans to sell to buyers in the secondary market (called investors). Loans may be sold to wholesale lenders who buy loans from smaller lenders or to trust companies (trust administrators) who provide the capital for the loan and service the for a fee to the investors who buy certificates or securities in the pooled mortgages. The actual holder of a loan may be a separate entity called a securitization trust—which is a pool of loans. The trust will have a custodian which will act as the holder for some purposes such as foreclosure. These custodians are often depository institutions such as federal savings banks.

**Loan Servicer:** Company that collects monthly payments, posts payments, keeps late charges and may initiate foreclosure. Generally not the holder or lender of record. The duties and authority of a loan servicer is usually spelled out in a "pooling and servicing agreement" between the trust and the servicer.

**Government sponsored enterprises (GSE):** Federal National Mortgage Association (Fannie Mae) and Federal Home Mortgage Corporation (Freddie Mac) also purchase mortgages on the secondary market, providing capital for lenders to make additional loans.

**Government Mortgage Guarantors:** Government National Mortgage Association (Ginnie Mae), a quasi-government agency, guarantees pools of Federal Housing Administration (FHA) and Veterans Administration (VA) loans.



# AAA Mortgage Corporation

\_\_\_\_\_REGULAR PROGRAM \$150k+ \_\_\_\_\_ \*NO CLOSING COST-REFINANCE(\$200k+)

Borrower Name(s): Karen and Wilbert Mitchell  
Property Address: 456 Uptha Creek, Yourtown, USA

This Mortgage Loan Disclosure Statement/Good Faith Estimate is being provided by AAA Mortgage Corporation, a mortgage banker acting as a mortgage lender or broker, pursuant to the Federal Real Estate Settlement Procedures Act (RESPA) and similar state law. In the following, Investor implies the ultimate lender to which the Broker submits the loan application. In a transaction subject to RESPA, an ultimate lender will provide you with an additional Good Faith Estimate within three business days of the receipt of your loan application. You will also be informed of material changes before settlement/close of escrow.

## GOOD FAITH ESTIMATE OF CLOSING COSTS

The information provided below reflects estimates of the charges you are likely to incur at the settlement of your loan. The fees, commissions, costs and expenses listed are estimates; the actual charges may be more or less. Your transaction may not involve a charge for every item listed and any additional items charged will be listed. The numbers listed beside the estimate generally correspond to the numbered lines contained in the HUD-1 Settlement Statement which you will receive at settlement if this transaction is subject to RESPA, which contains the actual costs for the items paid at settlement.

HUD-1	ITEMS	Paid to Others	Paid to Broker
<b>0800</b>	<b>Items Payable in Connection with Loan</b>		
0801	Loan Origination Fee ....(pay to lower rate).....	\$	\$ <u>950</u>
0802	Loan Discount Points ....(pay to lower rate).....	\$	\$
0803	Appraisal Fee.....	\$ <u>225</u>	\$
0804	Credit Report.....	\$ <u>25</u>	\$
0805	Lender's Inspection Fee (waived).....	\$	\$
0808	Mtg Broker Processing Fee.....	\$	\$ <u>4,000</u>
0809	Tax Service Fee ....(\$0 waived).....	\$	\$
0810	Administration Fee (waived).....	\$	\$
0811	Commitment Fee ....(\$0 waived).....	\$	\$
0812	Wire Transfer Fee ....(*\$0 waived).....	\$	\$
0813	Flood Certificate Fee ....(*\$0 waived).....	\$ <u>19</u>	\$
<b>0900</b>	<b>Items Required by Lender to be Paid in advance (Pre-paid)</b>		
0901	Interest for <b>15 days</b> at \$ _____ per day.....		
0902	(rate/100 X \$MTG.AMT = Yearly/365 days X 15 days).....	\$	\$ <u>292</u>
0903	Mortgage Insurance Premiums.....	\$	\$
0904	Hazard(Homeowner) Insurance(12 months).....	\$	\$
0905	County Property Taxes.....	\$ <u>1,278.56</u>	\$
0906	VA Funding Fee.....	\$	\$
<b>1000</b>	<b>Reserves Deposited with Lender(Escrows)</b>		
1001	Hazard(homeowner) Insurance: <b>2 months</b> at \$ _____/mo.....	\$	\$
1002	Mortgage Insurance: <b>2 months</b> at \$ _____/mo.....	\$	\$
1004	County Property Tax: <b>3 months</b> at \$ _____/mo.....	\$	\$
<b>1100</b>	<b>Title Company Charges</b>		
1101	Title Company Fee..(**\$300-\$325).....	\$ <u>325</u>	\$
1105	Document Preparation Fee....(\$100-\$150).....	\$ <u>100</u>	\$
1106	Title Examination Fee.....	\$ <u>105</u>	\$
1108	Title Insurance (PURCHASE offers joint policy discount).....	\$	\$
1109	Owner's Policy (required of PURCHASE \$3.75/1000 for purchase price)	\$	\$
1109	or-Lender's Policy....(REFINANCE:\$2.75/1000 AMOUNT financed).....	\$ <u>325</u>	\$
<b>1200</b>	<b>Government Recording and Transfer Charges</b>		
1201	Recording Fees....(\$150 or higher, based on pages).....	\$ <u>150</u>	\$
1202	City/County Tax/Stamps:....(PURCHASE: transfer tax).....	\$	\$
<b>1300</b>	<b>Additional Settlement Charges</b>		
1302	Survey if Purchase.....	\$	\$
	<b>Subtotal of Fees, Commissions, Costs &amp; Expenses</b> .....	<b>\$2552.56</b>	<b>\$5242</b>
	<b>Total of Initial Fees, Commissions, Costs &amp; Expenses:</b> .....		<b>\$7794.56</b>
	<b>Compensation to Broker (Not Paid Out of Loan Proceeds):</b> .....		<b>\$550.00</b>
	(X) Compensation from Investor (0-4%)(Not known).....		

Borrower's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Co-Borrower's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

I/We understand this does not indicate approval of my/our loan. My rate floats until locked by me/us. Please call us to Lock.

## FIXED RATE LOAN NOTE

We the borrowers, Karen and Wilbert Mitchell, of 456 Upha Creek, Yourtown, USA, do hereby agree to repay AAA Mortgage, Inc., or it transfers and assigns under the following provisions and terms,

1. **Borrowers' Promise to Pay.** In return for the loan we have received, we promise to repay \$55,000 (the "principal amount"), plus interest to AAA Mortgage Co. We understand that this note may be transferred at any time to another holder. If the loan is transferred, we agree to pay the new holder under this contract.
2. **Interest.** Interest will be charged on the principal amount until the loan is fully paid. We will pay interest at a yearly rate of 10%.
3. **Payments.** We will make our principal payment on the first of every month starting on August 1, 1999. Each monthly payment will be in the amount of \$597.68. All payments will be paid first to any charges due and owing on the account under the terms of this note, then to interest, then to reduce the principal amount. We will make payments on this account until the principal, interest and other charges due on this account are fully paid. If the note is not fully paid by July 1, 2015, the lender may declare the remaining principal, interest and other charges dues and owing full at that time.
4. **Prepayment.** If this loan is prepaid in whole or in part, we agree to pay a penalty of 5% of the principal balance due on the date of prepayment.
5. **Rider.** Other terms of this loan are contained in the rider attached hereto. That rider is a part of this contract as it set put fully herein.

By signing below, the borrowers agree to all terms and covenants contained in this loan note.

X     Karen Mitchell      
Karen Mitchell

X \_\_\_\_\_  
Wilbert Mitchell

\_\_\_\_\_  
Date

Source: NCLC, Stop Predatory Lending: A Guide for Legal Advocates



## PREPAYMENT ADDENDUM TO NOTE

**FOR VALUE RECEIVED**, the undersigned borrower(s) agree(s) that the following provisions shall be incorporated into and shall be deemed to amend and supplement the mortgage, Deed of Trust, or Security Deed of Trust or Security Deed of even date herewith (the Security Instrument) executed by Borrower, as trustor or mortgagor, in favor of AAA Mortgage Company, its successors and or assigns (Lender) as beneficiary or mortgagee, and also into that certain promissory note of even date herewith (the note) executed by Borrower in favor of Lender. To the extent that the provisions of this prepayment rider (the Rider) are inconsistent with the provisions of the Security Instrument and/or the Note, the provisions of this Rider shall prevail over and shall supersede any such inconsistent provisions of the Security Instrument and/or Note.

The section of the Note pertaining to the Borrower(s) right to prepay is amended to read in its entirety as follows:

### **BORROWER'S RIGHT TO PREPAY: PREPAYMENT CHARGE**

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayment. However, if I make a prepayment in excess of ten (10%) of the principal during the first year, I will have a prepayment charge of four percent (4%) of the Loan Amount at the time of prepayment.

If I make a prepayment during the second, third, fourth and fifth year, I will pay a prepayment charge of two percent (2%).

The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

**Karen Mitchell**

---

Borrower

Karen Mitchell

Date

**Wilbert Mitchell**

---

Borrower

Wilbert Mitchell

Date



## TRUTH-IN-LENDING DISCLOSURE

**Lender:**

AAA Mortgage Co.  
123 Main Street  
Anytown, USA

**Borrowers:**

Karen and Wilbert Mitchell  
456 Upha Creek  
Yourtown, USA

Preliminary                       Final

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
14.593%	\$166,656.04	\$48,513.81	\$215,169.85

Payment: Your payment schedule will be:

Number of Payments	Amount of Payment	When Payments Are Due <i>Monthly Beginning</i>
359	597.68	07/01/99
1	602.73	06/01/29

DEMAND FEATURE: This obligation has a demand feature.

VARIABLE RATE FEATURE: Your loan contains a variable rate feature. Disclosures about the variable rate feature have been provide to you.

INSURANCE: You may obtain property insurance from anyone you want that is acceptable to the creditor.

SECURITY: You are giving a security interest in:

The goods or property being purchased.  Real property you already own.

FILING FEES: \$70.00

LATE CHARGE: If payment is more than 10 days late, you will be charged 5%

PREPAYMENT: If you pay off early, you

may  will not have to pay a penalty.

may  will not be entitled to a refund of part of the finance charge.

ASSUMPTION: someone buying your property

may  may, subject to conditions  may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties.

Each of the undersigned acknowledges receipt of a complete copy of this disclosure. The disclosure does not constitute a contract or a commitment to lend.

---

Applicant

Date

---

Applicant

Date





## HUD-1A

### Reading Between the Lines of HUD-1A

TO BORROWER	AMOUNT	LINE	EXPLANATION
Proceeds	\$3,048.99	1604	Cash to borrower. Did borrower get it?
Pay off property tax	\$1,278.56	1501	Was tax actually paid? Check cancelled check.
Pay off DC loan	\$14,000.00	1502	0% loan that borrower specifically did not want paid off.
Pay off loan	\$4,325.25	1503	Flipping of own loan? Was payoff correctly calculated?
Pay off credit card	\$1,440.00	1504	Transferring unsecured debt to secured debt. Was it paid?
Pay off car loan	\$5,150.00	1505	Transferring loan secured by car to loan secured by home. Was it paid?
Pay Home improvement	\$18,000.00	1506	Payment directly to contractor? Did borrower get value?
<b>TOTAL LOAN</b>	<b>\$47,242.80</b>		

TO THIRD PARTIES			
Broker	\$4,000.00	808	Note additional \$550 paid out of settlement for total payment to broker of \$4,550. If refinance of lender's own loan, why need broker?
Flood Certificate	\$19.00	809	Necessary? What third party? Is AAA an affiliate?
Settlement fee	\$220.00	1101	Reasonable for locale? Who/what is "independent"? Unbundled fees?
Title examination	\$130.00	1103	Bona fide? Duplicative?
Document preparation	\$250.00	1105	Bona fide? Duplicative? How different than settlement fee?
Title insurance	\$325.00	1108	Market rate?
Recording fee	\$216.00	1201	Check clerk's office for actual disbursement in this amount.
<b>TOTAL FEES</b>	<b>\$5,160.00</b>		

TO LENDER			
Loan origination	\$950.00	801	Points (under 2%)
Appraisal	\$225.00	803	Is this market rate? Actually done? Drive-by appraisal?
Processing Fee	\$450.00	810	Fee for service?
Underwriting fee	\$550.00	811	Fee for service?
Daily Interest	\$292.20	901	Correctly calculated?
Later Date	\$30.00	1305	Cost to redo paperwork when date of settlement changes?
Overnight fee	\$100.00	1306	Expensive courier service
<b>TOTAL FEES</b>	<b>\$2,597.20</b>		

## What Happened to the Mitchells?

**First Issue:** The Mitchells were convinced to consolidate their other debts with their initial request to obtain an \$18,000 home improvement loan so that the NEW loan amount is now \$47,242.80 (including almost \$3,000 cash that they may not have received and over \$7,000 in fees).

**Second Issue:** Fees to Third Parties and Fees to Creditor are suspicious and probably duplicative, totaling an additional \$7,807.20. That amount is added to the original loan amount for a total "Note Principal" of \$55,000.00 (\$47,242.80 + \$5,160 + \$2,597.20 = \$55,000)

**Third Issue:** Nothing seems to add up after that point. Have TILA/HOEPA disclosure rules been violated?

### Ready Reference of Key TILA Figures

Note Principal ( <i>this figure is a "given"</i> )	\$55,000.00
Amount Financed ( <i>calculated by lender on TILA Disclosure</i> )	- \$48,513.81
Difference Principal and Amount Financed ( <i>simple subtraction</i> )	= \$ 6,486.19
Note Interest ( <i>this figure is a "given"</i> )	12.750%
APR ( <i>calculated by lender on TILA Disclosure</i> )	14.593%

**Total fees = \$7,807.20 or about 16% of amount financed (\$48,513.81):**

### HOEPA Total Loan Amount

#### Calculating HOEPA Trigger Fees

Regular Finance Charges:

Broker fee .....	\$4,000.00
Loan origination .....	+ 950.00
Underwriting fee .....	+ 550.00

Certain closing costs that are NOT reasonable:

Later Date fee .....	+ 30.00
Overnight fee .....	+ 100.00

Some compensation received by creditor or affiliate:

Appraisal (Chesapeake).....	+ 225.00
Flood Certificate (AAA).....	+ 19.00
Processing fee (AAA) .....	+ 450.00

Credit Insurance as of 10/1/02 (none in Mitchells' transaction)

**Total Trigger Fees..... = \$6,324.00**

Note Principal .....	\$55,000.00
Minus Trigger Fees.....	- 6,324.00
Minus per diem interest (line 901, HUD Form) .....	- 292.20
<b>HOEPA Total Loan Amount .....</b>	<b>= \$48,383.80</b>

\$6,324 divided by \$48,383.80 = 13.07%

**This percentage rate is over the 8% limit for a HOEPA loan.**







## FEDERAL TRUTH-IN-LENDING DISCLOSURES REQUIRED UNDER SECTION 226.32 OF REGULATION Z

**Lender:** AAA Mortgage Company  
**Borrowers:** Karen and Wilbert Mitchell  
**Mailing Address:** 456 Uptha Creek, Yourtown, USA

Loan No. 12345

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan agreement. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

The ANNUAL PERCENTAGE RATE on your loan will be 14.693%.

Your regular monthly payment will be \$ 597.68.

Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to \$ 884.14.

The undersigned hereby acknowledge receipt of a completed copy of this disclosure at least three (3) business days (a business day is any calendar day excluding Sundays and federal legal public holidays) prior to consummation of this loan. "Consummation" means the time that each of the undersigned signs the loan documents required by the Lender in connection with this loan. If you have NOT receive a completed copy of this disclosure at least three (3) business days prior to consummation, do not sign any of the loan documents required by the Lender in connection with this loan and contact the Lender and your mortgage broker immediately. This disclosure is neither a contract nor a commitment to lend.

Karen Mitchell  
Applicant Date

\_\_\_\_\_

Wilbert Mitchell  
Applicant Date

July 2, 1999



**NOTICE OF RIGHT OF RESCISSION**

\$ \_\_\_\_\_ Mortgage on Property situated at: \_\_\_\_\_

**Notice to Customer Required by Federal Law:**

You have entered into a transaction on \_\_, 19\_\_ which may result in a lien, mortgage or other security interest on your home. You have a legal right under federal law to cancel this transaction, if you desire to do so, without any penalty or obligation, within three business days from the above date or any later date on which all material disclosures required under the Truth in Lending Act have been given to you. If you so cancel the transaction, any lien, mortgage or other security interest on your home arising from this transaction is automatically void. You are also entitled to receive a refund of any down payment or other consideration if you cancel. If you decide to cancel this transaction, you may do so by notifying

\_\_\_\_\_ [Name of Creditor] at:

\_\_\_\_\_ [Address of Creditor's Place of Business]  
by mail or telegram sent not later than midnight of \_\_, 19\_\_. You may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.

I hereby cancel this transaction.

\_\_\_\_\_ [Date]

\_\_\_\_\_ [Customer's Signature]

See Next Page for Important Information About Your Right of Rescission

Receipt is herewith acknowledged of the foregoing NOTICE,

EACH of the undersigned CUSTOMERS having received two copies thereof, and one copy of the Disclosure Statements concerning the above identified transaction this \_\_ day of \_\_, 19\_\_.

\_\_\_\_\_ & \_\_\_\_\_

**EFFECT OF RESCISSION.** When a customer exercised his right to rescind under paragraph [a] of this section, he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within ten days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, down payment or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligations under this section, the customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within ten days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.



**CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

January 5, 2005

Easy Mortgage Lending, Inc.  
862 Parcel Court  
Norfolk, VA 23687

**NOTICE OF RESCISSION**

Re: [CONSUMER]  
[ADDRESS]

Dear Sir/Madam:

Please be advised that I represent [CONSUMER]. On January 3, 2005, [CONSUMER] entered into a consumer credit transaction (hereinafter "the transaction") with Easy Mortgage Lending, Inc. ("Lender"). In the transaction, Lender took a security interest in [CONSUMER's] residence. Pursuant to the federal Truth in Lending Act ("TILA"), [CONSUMER] has the right to rescind the transaction within 3 days of receipt of his notice of his right of rescission and all other material disclosures required by TILA and the regulations thereunder. 15 U.S.C. § 1635(a).

By this letter, [CONSUMER] rescinds the transaction.

By way of further explanation, material disclosures were omitted or made erroneously in the course of the transaction. These include, (1) [CONSUMER] did not receive an accurate disclosure of her right to rescind the transaction; (2) [CONSUMER] did not receive an accurate disclosure of the amount financed, finance charge and annual percentage rate.

This rescission requires Lender to do the following within 20 days of receipt of this letter: (1) desist from making any claims for finance charges in this transaction; (2) return all money paid in the transaction (or credit such sum against the amount financed); (3) satisfy all security interests, including mortgages, which were acquired in the transaction.

Upon Lender's performance, [CONSUMER] will tender all sums to which Lender is entitled. Any failure on Lender's part to take the above actions in a timely fashion may result in monetary liability under TILA.

Sincerely,  
[CONSUMER'S ATTORNEY]

cc: [DEFENDANT'S ATTORNEY]  
[CONSUMER]



## State Predatory Lending Laws

As of January 2005

STATE	BILL/CODE	EFFECTIVE DATE
Alabama	Ark. Code Ann. § 23-52-102	2003
California	Cal. Fin. Code §§ 4970 <i>et seq.</i>	2001
Connecticut	Conn. Gen. Stat. § 36a-746	2001
District of Columbia	D.C. Code § 26-1151.01 <i>et seq.</i>	2001
Florida	Fla. Stat. § 494.0078, 494.00792	2002
Georgia	Ga. Code Ann. § 7-6A-1 through 6A-10	2002
Illinois	Ill. Rev. Stat. ch. 815, para. 137/1-137/900	2004
Indiana	Ind. Code § 24-9-1-1 through 24-9-5-6	2004
Kentucky	Ky. Rev. Stat. Ann. § 360.100	2003
Maine	Me. Rev. Stat. Ann. Tit. 9-A § 8-103	2003
Maryland	Md. Code Ann. § 12-401 through 12-415	2002
Massachusetts	Mass. Gen. L. ch. 183, § 28c	2004
Michigan	Mich. Comp. Laws § 445.1631 through 1645	2002
Minnesota	Minn. Stat. §§ 47.20-21, 47.54, 47.59(1), 47.204(1), 58.04, 58.137(effective 2003), 334.01(2), 334.022	2002
Nebraska	Neb. Rev. Stat. § 45-174	2003
Nevada	Nev. Rev. Stat. § 598D.010-150	2003
New Hampshire	N.H. Rev. Stat. Ann. §§ 397-A:1, A:5; 398-A:1	2005
New Jersey	N.J. Rev. Stat. Ann. § 46:10B-22	2002

New Mexico	N.M. Stat. Ann. § 58-21A-4	2004
New York	N.Y. Banking Law § 6-L; N.Y. Gen. Bus. Law § 771-A; N.Y. Real Prop. Law § 254(e)	2003
North Carolina	N.C. Gen. Stat. §§ 24-1.1A, 24-1E, 24-8, 24-10.2	2000
Oklahoma	Okla. Stat. Ann. Tit.59 § 2086, 2088-89	2004
Pennsylvania	Pa. Cons. Stat. § 456.501-524	2001
South Carolina	S.C. Code Ann. § 37-23-10-85	2004
Texas	Tex. Fin. Code §§ 343.206	2001
Utah	Utah Code Ann. § 61-2d-101 et. seq.	2001
Virginia	§§ 6.1-411 6.1-413, 6.1-422.1, and 6.1-425, 6.1-425.2, 6.1-428	2001, 2003
Washington	Wash. Rev. Code § 31.04 et seq.	2002
Wisconsin	§§ 138.052 (2)(a)2, 138.052 (9), 138.056 (3)(a), § 428.101 et seq.	2004

## Home Equity Conversion Mortgages (HECM) Reverse Mortgages

### Example of Credit Available to Older Homeowners

Age of Youngest Borrower	\$100,000 Home		\$200,000 Home	
	Tenure	LOC	Tenure	LOC
65	\$292	\$50,104	\$629	\$107,693
75	\$392	\$59,864	\$831	\$126,553
85	\$603	\$70,694	\$1,254	\$146,983

Assumptions:     5.75% Expected Interest Rate (as of 1/24/05)  
                          4.35% Initial Interest Rate (as of 1/24/05)  
                          2% Mortgage Insurance Premium  
                          2% Origination Fee  
                          \$35 monthly servicing fee  
                          Program equity limits are equal to or greater than the property value  
                          Monthly adjustable option tenure