

Law Offices of John Doe
12324 Rodeo Drive Suite 400
Beverly Hills, CA

January 25, 2010

MERS
Mortgage Electronic Registration Systems, Inc.
P.O. Box 2036
Flint, IM 48051

America's Wholesale Lender
P.O. Box 10219
Van Nuys, CA 91410

All Pacific Financial, Inc
16530 Ventura Blvd
Encino, CA 91436

First American Title
520 North Central Avenue -5thFl
Glendale, CA 91203

CTC Real Estate Services
400 Countrywide Way
MSN SV-88
Simi Valley, CA 93065

Re: **Demand & Notice of Rescission**
Property: 1234 Main Street, Beverly Hills, CA 90210
Originating Loan Number: 1234567890124-001

Dear Sirs and/or Madams:

This correspondence will serve to memorialize my [hereinafter "Borrower"] dispute with the above referenced mortgage loans through your office, and as Notice of my Intent to file legal action pursuant to the Cal. Code of Civil Procedure within 30 days from this date.

Further, this notice will serve as a notice to rescind the above-referenced mortgage loan based on your violations of the each of the following federal and state laws, including, but not limited to, the Truth in Lending Act ("TILA") and Real Estate Settlement Procedures Act ("RESPA"), California Unfair/Deceptive Business Practices Act, Breach of Fiduciary Duty, Breach of the Implied Covenant of Good Faith and Fair Dealing, Civil Code § 1688, and others.

Please be advised that the security interest in the above reference property is now void per this notice and that you have twenty (20) days to return all payments made on this loan and to do your part to terminate the security interest in the home. Upon compliance with the above, we will be contacting you to discuss the tender of the reduced payoff amount subject to offset all damages and costs.

VIOLATION OF TRUTH IN LENDING ACT (TILA)

The purpose of TILA is “to assure meaningful disclosure of credit terms to enable consumers to become informed about the cost of loans and to compare the credit options available to them.” If the interest rate is not fixed, then the Truth in Lending Disclosure Statement must inform the borrower of the variable rate feature of the loan. Additionally, federal courts have held that “a misleading disclosure is as much a violation of TILA as a failure to disclose at all.”¹

- Did not deliver good faith estimates of disclosures (preliminary TILDS) within 3 days of loan application.²
- Did not provide 2 copies of the completed Right to Cancel³
- The Truth in Lending disclosure was not provided⁴
- Hazard insurance disclosure was not provided⁵
- Consumer Handbook on Adjustable Rate Mortgage⁶ (CHARM) was not provided within 3 days of application.⁶

Each of these violations are subject to civil remedies in law and equity, in addition to the recovery of attorney’s fees and costs of litigation.

VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT

There is no evidence to confirm that the borrower received all of the disclosures mandated by law. The transfer servicing disclosures, special information booklet and affiliated business agreement disclosures do not appear to have been received by the borrower.

- Did not disclose all affiliated business arrangements.⁷
- HUD-1 was not provided at closing (or 1 day before if requested) and accurate.⁸

¹ *Smith v. Chapman*, 614 F.2d 968, 977 (5th Cir. 1980); and *Barnes v. Fleet Nat'l Bank*, 370 F.3d 162, 174 (5th Cir. 2004) (quoting *Smith v. Chapman*).

² 12 C.F.R. §§ 226.19(a)

³ 12 C.F.R. § 226.23(b)

⁴ 12 C.F.R. §§ 226.17, 226.18

⁵ 12 C.F.R. § 226.4(d)(2)

⁶ 12 CFR § 226.19(b)

⁷ 24 C.F.R. § 3500.15

Transfer servicing disclosure was not provided at or prior to closing⁹

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE¹⁰, BREACH OF FIDUCIARY DUTY, AND BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Unfair competition includes any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. Here, numerous violations of the CA B&P Code have occurred.

I. Underwriting Standards Were Ignored; Borrower Qualification Based on Value of Collateral, Rather than Ability to Repay the Loan

The purpose of an underwriter is to determine whether the borrower can qualify for a loan and if the borrower has the ability to repay the loan. This determination of the ability to repay a loan is based upon employment and income in large measure, proved by getting pay stubs, 1040's, W-2's and a Verification of Employment and Income on the borrowers.

If an underwriter has evaluated the loan properly, then there should be no question of the ability of the borrower to repay the loan. Debt ratios will have been evaluated, credit reviewed and a proper determination of risk should have been made in relation to the loan amount. Approvals and denials would be made based upon a realistic likelihood of repayment.

If the underwriter had performed his/her duties accordingly, he/she would have declined this loan due to the inability of the borrower to pay. Further the loan was a stated income loan and was apparently underwritten with an automated underwriting system which is merely intended to be a guide or a preliminary approval system. The underwriter failed to properly examine this loan, and as a result, borrower has been seriously damaged.

II. Predatory Lending

The Office of Comptroller of the Currency defines Predatory Lending as any lien secured by real estate which shares well known common characteristics that result in unfair and deceptive business practices. Some of those characteristics here include:

- Borrower was a minority and/or the transaction was conducted in a foreign language.¹¹
- Other unfair, deceptive, or fraudulent practices in transaction.

⁸ 24 C.F.R. § 3500.8(b)

⁹ 24 C.F.R. § 3500.21

¹⁰ As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1(commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. Violations of specific code sections 10240-10248.3 10241

¹¹ California Civil Code §1632

Mortgage broker and corresponding lender involved.

III. Breach of Fiduciary Duty

Both lender and broker have a fiduciary responsibility to the borrower. The fiduciary duty of the broker (i.e. duty of trust) is to deal with the consumer in good faith. If the broker knew or should have known that the borrower will or has a likelihood of defaulting on this loan, he/she had a fiduciary duty to the borrower to not place them in that loan (in harms way).

The fiduciary duty of the broker, as agent for the lender, is the same – to deal with the consumer in good faith, educate the borrowers about loan programs, other options are available to the borrowers, perform their own diligence to determine if the borrowers are being placed in a loan that is legal, properly disclosed, is the best loan for the borrower given their financial circumstance, and is affordable over the life of the loan.

Here, the Borrower was placed into the current loan product without regard for the ability to repay the loan, likely they would default or incur bankruptcy as a result of the loan and it was reasonably foreseeable that such would occur.

In addition, the above-described acts were a breach of the implied covenant of good faith and fair dealing.

VIOLATION OF CALIFORNIA CIVIL CODE

The California Civil Code has certain provisions that are intended to protect borrowers when attempting to procure a loan from a financial institution or lender:

First, the law requires certain procedural safeguards to protect the borrower such as receipt of specific disclosure notices from the lender. Civil Code §§ 1916.5 and 1916.7. An applicant for a loan pursuant to the provisions of this section must be given a disclosure notice in the following form:

“NOTICE TO BORROWER IMPORTANT INFORMATION ABOUT THE ADJUSTABLE PAYMENT, ADJUSTABLE-RATE LOAN. PLEASE READ CAREFULLY”...

This disclosure was not provided to the borrower at any time during the processing of this loan, nor was any alternative loan products offered to the borrowers.

Also, the lender must notify borrowers of any changes in the interest rate and monthly payment of a loan. The fully amortized rate changes monthly, so the borrower should be notified monthly in accordance with the above statute. Lender has failed to do so and violated the law.

Additional violations of Civil Code §§ 1920-1921 have occurred: adjustment of rate did not take into consider the ability of borrower to repay; change in rate was not reflected in security instrument; borrower was not provided notice of change of rate monthly; there was a prepayment penalty in the note; borrower was not adequately advised of negative amortization.

These civil code violations carry with them damages, attorney’s fees, costs of suit, and other legal and equitable relief.

SECURITIZATION & MERS & QUALIFIED WRITTEN REQUESTS

Mortgage Electronic Registration System (MERS) has been named the beneficiary for this loan. MERS was created to eliminate the need for the executing and recording of assignment of mortgages, with the idea that MERS would be the mortgagee of record. This would allow "MERS" to foreclose on the property, and at the same time, assist the lenders in avoiding the recording of the Assignments of Beneficiary on loans sold. This saved the lenders money in manpower and the costs of recording these notes. It was also designed to "shield" investors from liability as a result of lender misconduct regarding the process of mortgage lending.

MERS is simply an "artificial" entity designed to circumvent certain laws and other legal requirements dealing with mortgage loans. By designating certain member employees to be MERS corporate officers, MERS has created a situation whereby the foreclosing agency and MERS "assigned officer" has a conflict of interest.

Since neither MERS nor the servicer have a beneficial interest in the note, nor do they receive the income from the payments, and since it is actually an employee of the servicer signing the assignment in the name of MERS, the assignment executed by the MERS employee is illegal. The actual owner of the note has not executed the assignment to the new party. An assignment of a mortgage in the absence of the assignment and physical delivery of the note will result in a nullity.

It must also be noted that the lender or other holder of the note registers the loan on MERS. Thereafter, all sales or assignments of the mortgage loan are accomplished electronically under the MERS system. MERS never acquires actual physical possession of the mortgage note, nor do they acquire any beneficial interest in the note.

The existence of MERS constitutes numerous violations of the California Business and Professions Code, as well as Unfair and Deceptive Acts and Practices, due to the conflicting nature and identity of the servicer and the beneficiary. Each of these practices was intentionally designed to mislead the borrower and benefit the lenders.

To the extent that this loan has been sold, transferred or assigned, this letter shall also serve as a Qualified Written Request pursuant to RESPA (12 USC §2601 et seq.), for the following information:

1. All documents which relate to the original loan transaction which is the subject of this request (hereinafter, the "transaction"), including but not limited to, loan application(s), good faith estimate(s), loan commitment letter(s), Truth in Lending Disclosure Statement(s), Notice(s) of Right to Cancel, HUD-1 or final settlement statement(s), promissory note(s)/agreement(s), mortgage(s)/deed(s) or trust.
2. All purchase and sale of mortgage agreements, sale or transfer of servicing rights or other similar agreement related to any assignment, purchase or sale of the mortgage loan or servicing rights by you, any broker, affiliate company, parent company, servicers, bank, government sponsored enterprise, sub-servicers, mortgage broker, mortgage banker or any holder of any right related to the mortgage, promissory note and deed of trust from the inception of the loan to the present date.
3. All assignments, transfers, or other documents evidencing a transfer, sale or assignment of the mortgage, deed of trust, promissory note or other document that secures payment by me to the obligation in this account from the inception of the loan to the present date.
4. All deeds in lieu, modifications to the mortgage, promissory note or deed of trust from the inception of the loan to the present date.

5. Each and every canceled check, money order, draft, debit or credit notice issued to any servicer of the account for payment of any monthly payment, other payment, escrow charge, fee or expense on the account.

6. All escrow analyses conducted on the account from the inception of the loan until the date of this letter.

7. Each and every canceled check, draft or debit notice issued for payment of closing costs, fees and expenses listed on the disclosure statement including, but not limited to, appraisal fees, inspection fees, title searches, title insurance fees, credit life insurance premiums, hazard insurance premiums, commissions, attorney fees, points, etc.

8. Copies of all payment receipts, checks, money orders, drafts, automatic debits and written evidence of payments made by borrower(s) or by others on the account.

9. All letters, statements and documents sent to borrower(s) by your company.

10. All letters, statements and documents sent to borrower(s) by agents, attorneys or representatives of your company.

11. All letters, statements and documents sent to borrower(s) by previous servicers, sub-servicers or others in your loan file or in your control or possession or in the control or possession of any affiliate, parent company, agent, sub-servicer, servicer, attorney or other representative of your company.

12. All letters, statements and documents contained in the loan file or imaged by you, any servicer or sub-servicers of the mortgage from the inception of the loan to present date.

13. All electronic transfers, assignments, sales of the note, mortgage, deed of trust or other security instrument.

14. All agreements, contracts and understandings with vendors that have been paid for any charge on the account from the inception of the loan to the present date.

15. All agreements, contracts and understanding between you and the loan originator for this transaction.

16. All loan servicing records, payment payoffs, payoff calculations, ARM audits, interest rate adjustments, payment records, transaction histories, loan histories, accounting records, ledgers, and documents that relate to the accounting of the loan from the inception of the loan until present date.

17. All loan servicing transaction records, ledgers, registers and similar items detailing how the loan has been serviced from the from the inception of the loan until present date.

18. All loan servicing agreements between the servicer(s) and the loan holder, lender, and/or trustees.

19. Copies of all sales contracts, servicing agreements, assignments, transfers, indemnification agreements, recourse agreements and any agreement related to the loan from its inception to the current date written above.

Further, please provide, in writing, the answers to the questions listed below.

- 1) Please identify the name, address and telephone number of the current holder (or owner) of the note.
- 2) Please identify the name, address and telephone number of the current holder (or owner) of the mortgage (or deed of trust).
- 3) Identify the name, address and telephone number of the mortgage broker involved in the transaction.
- 4) Identify any and all fees or any "things of value" provided to mortgage broker in the transaction.
- 5) Identify specifically how the "Annual Percentage Rate" and "Amount Financed" were calculated in connection with this loan.
- 6) Please identify where the originals of the entire loan file are currently located and how they are being stored, kept and protected.
- 7) Where is the "original" promissory note or mortgage located? Please describe its physical location and anyone holding this note as a custodian or trustee if applicable.
- 8) Where is the "original" deed of trust located? Please describe its physical location and anyone holding this note as a custodian or trustee if applicable.
- 9) Has the mortgage loan been made a part of any mortgage pool since the inception of the loan? If yes, please identify each and every loan mortgage pool that the mortgage has been a part of from the inception of the loan to the present date.
- 10) Have there been any "investors" who have participated in any mortgage-backed security, collateral mortgage obligation or other mortgage security instrument that the mortgage loan has ever been a part of from the inception of the mortgage to the present date? If yes, please identify the name and address of each and every individual, entity, organization or company.
- 11) Please identify the parties and their addresses to all sales contracts, servicing agreements, assignment transfers, indemnification agreements, recourse agreements and any agreement related to the loan from its inception to the current date written above.

Borrower hereby demands:

- That, pursuant to the above regulations, lender shall rescind the loan made by defendants to secure the property and all security instruments in connection with those loans; and that all costs to acquire those loans plus all interest paid shall be refunded to borrower.
- That defendants will re-secure the property with a new loan at an amount equal to today's current market value, and with the terms that were originally disclosed, but at a payment not to exceed 28-31% of borrower's income as should have been done in the first place.
- That lender reimburse plaintiffs for all costs to resolve this issue, including but not limited to attorney's fees, investigation fees, and out of pocket costs and expenses.
- That lender pay damages in the amount of \$_____ to borrower for stress, harassment, threats, and public detriment of borrower's character.

- That, pursuant to the requests above, a statutorily timely response to the request for documents and information be provided.

Demand is herewith made that all efforts at sale, eviction or foreclosure be stopped immediately as the property is scheduled for eviction or sale.

Furthermore, and in accordance with the Fair Credit Reporting Act, while this matter is in dispute, the lender must not report any negative information on this account to the reporting agencies, and that with resolution of this matter, the lender will report the account "paid as agreed" and will remove all derogatory information from their credit report, to include any foreclosure filings.

If this does not immediately comport with your full understanding of this matter or you do not agree with this demand, you are instructed to contact my lawyer.

You have twenty (20) days from receipt of this letter to comply with these demands, please govern yourselves accordingly. We look forward to your timely compliance.

Respectfully,

Law Offices of John A. Doe

CFLA SAMPLE DEMAND LETTER