The Real Estate Problem Solvers

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Newark, NJ 07104
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FORENSIC LOAN AUDIT

ANALYSIS REPORT

MORTGAGE COMPLIANCE

<u>Prepared for:</u>

PROPERTY ADDRESS

HOMEOWNER NAME

<u>TRANSACTION DETAILS</u>

Borrowers Home Address:
XXXX XXXX XXXXX

XXXXXXXXXXXX, XX 99999

Subject Property: Ownership & Type:
Same- Primary

TRANSACTION PARTICIPANTS

Original Mortgage Lender/ Table Funder:
XXXXXXXXXXXXXXX XXXXXXXX, Inc.
Address of Lender

SECURITIZATION

First Mortgage
Interest Rate: 7.05%
Program: 40 year, due in 30 years

REFINANCE

Close Date: November 13, 2006
Amount: $551,000
Appraisal: $740,000

Dear Mr. & Mrs. XXXXXXXXXXXXX,

Your Forensic Loan Audit has been completed. The examination has covered all documents provided, including any Broker Disclosures, Lender Disclosures, Closing Documents and Settlement papers.

The scope of the examination is limited to a determination of the accuracy and compliance of the loan documentation with Federal, State, and Local laws as they may apply to the loan. Particular attention is paid to the discovery of evidence that would support legal action against the current lender(s) to either modify, or rescind the existing loan(s), or in the event of an executed foreclosure, overturn the action.

The actual audit will be broken down into different parts. The purpose of breaking down the audit into these parts is to allow the attorney a manner in which they can plan a strategy to get the lenders to participate in a discussion. Current strategies based upon just the Truth in Lending and RESPA violations are proving difficult to achieve because lenders know what the expect and when confronted with court actions, will simply have the case 'remanded' to Federal Courts, where they tend to have more favorable results.

Attorneys should pay attention to the UDAP strategy.

Real Estate and Lending Market Overview

Prior to the year 2000, the Real Estate lending market was a conservative operation. Borrowers were subjected to means testing of their ability to repay loans. There were three basic components to the approval process:

The ability to pay: Did the borrower make enough income to support the loan? Were the debt ratios appropriate? This would be 32% for housing expenses and 38% total. Was the purchase of the home more than three times the annual income of the borrower(s)? Was there a down payment involved?

Willingness to pay: Did their credit histories show a pattern of being able to pay credit on time? If there were credit issues, were they addressed properly; with a substantial reason? Was credit used appropriately?

Stability: Did the borrower's job history show a pattern of reliability and stability? Did it appear that the borrower would likely remain in the position and continue to thrive?

Sometime at the beginning of the year 2000, the methods of approving a loan became significantly altered. The standards in which a loan was underwritten became significantly altered. The introduction of the Automated Underwriting System (AUS) would allow the decision of a loan in minutes. This system's decision replaced a human's decision when granting a loan.

Also, during this time Wall Street stocks were being hit hard by the dot.com bust, and investors were hesitant to put their money 'into the game.' Therefore, Wall Street looked towards real estate as a way to lure investors back to the stock market. The returns would be great, and with large amounts of money, Wall Street could offer money for lending through warehouse lines, secure the loans, and sell them to different funds and investors worldwide.

By 2003, the Real Estate and Lending market had been thriving because of its upward motion. New construction was at record highs. Existing home values were increasing in double digit margins. While interest rates were at an all time low. Real estate agents, brokers, loan officers, and the media all proclaimed real estate was the best investment going. The market would not go down, and the attitude was 'buy now or miss out.'

By 2004, most qualified borrowers had already bought or refinanced. Therefore, brokers and real estate agents went looking for renters. Many of these renters did not have sufficient credit to obtain a home or a proper down payment. Also, they were after homeowners who were interested in 'buying up' to their dream homes.

Because of the need to finance this new batch of home buyers, products such as Option ARMS, stated income loans, and 100% financing products became available.

During this time, the examiner was an Underwriter for a subprime mortgage company. She remembers how almost weekly a new product, that was even more relaxed than previous products, was being introduced.

By the start of 2005, home prices had reached an unsupportable level, even for the best of buyers. An article in the San Jose Mercury News discussed how a couple making $60,000 a year would ever be able to buy a home in San Jose, where the median price was over $600,000. This was the year when home prices topped. The prices remained high, but lenders were still able to find buyers and borrowers because of their 'creative' loan programs. Great profits were still being made by the lenders during this period.

The ‘real estate bubble’ began to burst in the summer of 2006. In some markets, home values fell 40% over their 2005 highs. There were some ripples through the subprime mortgage industry that the party may be over, but they continued to lend.

In the beginning of 2007, the first subprime lenders began to fail; home values were dropping fast, and foreclosure notices were beginning to be filed. However, these desperate times meant that lenders would fund their entire loan portfolio, no matter what; even if the borrower couldn’t pay.

In the summer of 2007, the ‘bubble burst,’ the end was here. On June 29, 2007 American Home Loans failed, and the landslide began.

Because of the historical backdrop of the last few years, this audit must be viewed.

Loan Audit Results

PART 1: Truth In Lending, RESPA, State Violations

Section 1: Broker Findings

Licensing

Examiner has investigated the licensing status of XXXXXX XXXXX Mortgage. She found it was licensed at the time of the loan.

Mortgage Loan Origination Agreement

Under California Law, a broker is required to execute a Mortgage Loan Origination Agreement with the borrower. **There is no evidence in file of one being executed**. If the broker has failed to comply with this part of the statute, it may invalidate their role in the transaction. Any payment of fees to the broker resulting from this failure to comply may be invalid under California law.

The importance of this document is immense. The Agreement establishes the relationship between the broker and client and the services to be provided. Only after the execution of a FULLY COMPLETED document can actual work on procuring a loan begin.

You would need to sign an affidavit testifying to not receiving this Agreement.

SECTION 50700-50706-50701, Mortgage Loan Origination Agreement

(a) As soon as practical after a borrower requests that the licensee arrange a loan to be made by another institutional lender, and before the licensee performs brokerage services for the borrower, the licensee and borrower shall enter into a written loan brokerage agreement that satisfies the requirements of this section.

(b) Both the licensee's authorized representative and the borrower shall sign and date the loan brokerage agreement, and the licensee shall deliver a copy of the fully executed loan brokerage agreement to the borrower either upon execution, if the documents are signed in the licensee's office or within three business days after execution.

The failure to provide a Loan Origination Agreement could also be considered an Unfair and Deceptive Act and Practice under *California Unfair Competition Law, CA Business & Professions Code 17200.*

Initial Disclosures

There are indications of initial broker disclosures among the documents provided. The disclosures are mandated under *the California Business and Professions Codes 10240-10248.3, 10241, 12 C.F.R. 226.23 (a) (3), 6500- FDIC §226.19, and Truth In Lending Act (15 USC 1601 et seq.)*

These disclosures are not signed. Examiner cannot determine whether these disclosures were provided in escrow or prior to escrow. She suspects that these disclosures were provided in escrow because the initial lender documents (Lender/ Broker Service Provider Disclosure) showing broker charges that are different from the final changes were found among the documents. The charges that are on the broker Good Faith Estimate are consistent with the final loan documents and Settlement Statement that the broker charged. This would suggest that the Good Faith Estimate was not initially provided to the borrower.

An investigation should be made to determine if the borrower had received initial loan disclosures from the broker. If the borrower was not provided initial disclosures within three days from the date of the original loan application, they should be required to complete an affidavit testifying to that affect.

The following codes apply to broker disclosures.

6500- Federal Deposit Insurance Corporation Consumer Protection, § 226.18 (c) § 226.19 § 226.18 (c) Itemization of Amount Financed. (Good Faith Estimate) § 226.19 (a) Residential mortgage transactions subject to RESPA,-- (1) Time of disclosures. In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) the creditor shall make good faith estimates of the disclosures required by §226.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier.

Truth In Lending Act (TILA), 15 United States Code 1601 et seq

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 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, the First and Fifth Circuits have held that a 'misleading disclosure is as much a violation of the TILA as a failure to disclose at all.' Smith v. Chapman, 614 F.2d. 968, 977 (5th Cir. 1980); Barnes v. Fleet National Bank, 370 F.3d 164, 174 (1st Cir. 2004) (quoting Smith v. Chapman).*

Truth In Lending Act (15 United States Code 1601 et seq.)

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

12 Code of Federal Regulations. 226.23 (a) (3)

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

24 Code of Federal Regulations 3500.6 (a)

Requires certain disclosures such as but not limited to Good Faith Estimate, Truth In Lending, Servicing Transfer, Adjustable Rate Booklet, Right to Copy of Appraisal, Federal Equal Opportunity, and various other exhibits to be provided to the borrower with in three days from the date of original application (early disclosures).

California State Law Violations

California Business & Professions Code 10241(c)- Good Faith Estimate
Prior to becoming obligated on the loan the borrower shall acknowledge, in writing, receipt of the 'good faith estimate' and all applicable disclosures required by the Truth In Lending Act. The real estate broker shall retain on file for a period of three years a true and correct copy of the signed acknowledgement and a true and correct copy of the 'good faith estimate'

and all applicable disclosures required by the Truth In Lending Act as acknowledged by the borrower.

California Business and Professions Codes 10240-10248

(a) Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower. No real estate licensee shall permit the statement to be signed by a borrower if any information required by Section 10241 is omitted.

10241.

The statement required by Section 10240, the form which shall be approved by the commissioner, shall set forth separately the following items:

(a) The estimated maximum costs and expenses of making the loan, which are to be paid by the borrower, including, but not limited to, the following:

(1) Appraisal Fees
(2) Escrow Fees
(3) Title Charges
(4) Notary Fees
(5) Recording Fees
(6) Credit Investigation Fees

The failure to provide initial disclosures could also be considered an Unfair and Deceptive Act and Practice under *California Unfair Competition Law, CA Business & Professions Code 17200.*

SECTION 2: Lender Findings

Licensing

I have investigated the lender's licensing status at the time of the loan and have determined the lender was properly licensed in the State of California at the time.

Lender Initial Disclosures

Under Federal RESPA and TILA law, upon receipt of an application from a broker or borrower, a lender has three days to issue required disclosures. **The Examiner has found initial disclosures among the documents provided are not in compliance with disclosure requirements, the documents in file are dated the same day as the closing documents, not three days after the initial loan application was taken.**

The borrower would need to sign an affidavit testifying to not receiving the initial disclosures.

PART 2: Underwriting

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 the loan is based upon employment and income in large measure, which is provided by getting paystubs, 1040s, W-2s, 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 made in relation to the loan amount. Approvals and denials would be made based upon a realistic likelihood of repayment.

Automated Underwriting Systems

The underwriter's role in approving loans has been delegated to a support role in the past decade. Automated Underwriting Systems (AUS) became the normal approval method in many instances. An underwriter, or even a loan officer, would simply input the data and the system would give an approval or denial. Any documents requested would be gathered, loan documents drawn, and then signed.

The real issue with AUS is they were not designed to be the 'final word' in an approval process. The system approval was designed to be a guide, a preliminary approval. In fact, the AUS approval should have been reviewed by an Underwriter, along with supporting documentation, prior to a final approval being issued.

It is imperative to note; a Senior Underwriter knew when a loan made sense and when it did not. There were many instances the Examiner knew of, when a loan was declined by an Underwriter, but approved by 'someone higher up the chain.' In many instances, this person would be receiving a bonus based on the amount of loans funded in the office, so it was in their financial best interest to approve the loan.

Since the Examiner was an experienced Underwriter, she will be reviewing the file as one.

Loan Application- Key Points

Examiner has reviewed the loan application in file:

1. There is no original application for the Examiner to review.
2. The monthly property taxes on the application show $288.30. This was based on the original purchase price. However, reassessments are done on a regular basis, therefore, based on the new value of $740,000, the monthly payment for property taxes should be $770.83.
3. As with property taxes, homeowner's insurance rates are based upon the value of the home. On the application the monthly payment is $108.80, but based on the new value, it should be $308.33.
4. With the corrections to the property taxes and homeowner's insurance above, the monthly housing debt should have been $4523.28, instead of $3841.02.
5. The final application shows two accounts being paid down to get borrowers to qualify for the loan.

In most instances, paying down a credit card to get a borrower to qualify is not beneficial. It has been shown, a majority of the time, the borrowers will reuse the credit card after the loan funding, causing them to have an excessive debt ratio.

Income and Credit Criteria

1. The ability to pay. Did the borrower make enough income to support the loan? Were debt ratios appropriate?

Analysis of the loan application leads the Examiner to believe the loan was Full Documentation. This means the borrowers were qualified on paystubs and W-2's. However, the borrower's gross income was used to qualify. In reality, borrowers do not bring home their gross income. The standard, after taxes, insurance, 401K, is approximately 70% of their gross income. I have used the 70% for my qualifications below.

Income & Debt

Mr. Xxxxxxx's gross income: $7667.40. Net income: $5367.18
Mrs. Xxxxxx's gross income: $3749.50. Net income: $2624.65
Their combined income for qualifying purposes will be $7991.83.
Housing Debt: $4523.28
Other Debt: $2084.00

Debt Ratio Analysis- Current Loan- Qualified Initial Rate

Housing Payment	Total Debt	Income	Housing Ratio	Total Debt Ratio
$4523.28	$6594.28	$7991.83	56.60%	82.51%

The analysis of this Debt Ratio shows the borrower would be not be approved under any guidelines for a loan.

Debt Ratio Analysis- Current Loan- Fully Ammortized Rate

This loan was calculated as a 40 year payment, but due in 30 years. The Examiner has calculated the payment if the lender would have put the borrowers into a traditional 30 year fixed mortgage. Instead of a monthly payment of $3444.12, the payment would have been $3684.34.

Housing Payment	Total Debt	Income	Housing Ratio	Total Debt Ratio
$4763.50	$6847.50	$7991.83	59.60%	85.68%

The analysis of this Debt Ratio shows the borrower would be declined under all underwriting scenarios.

It should be noted, the OCC and other agencies have issued guidance that borrowers should be qualified at the fully amortized rate, and not the initial rates on loans.

Original Debt Ratio Analysis

This is how the lender qualified the borrower for the loan.

Housing Payment	Total Debt	Income	Housing Ratio	Total Debt Ratio
$3841.02	$5925.02	$11416.90	33.64%	51.90%

The analysis of this Debt Ratio shows the borrowers still should not have qualified for a loan. On a subprime loan, the maximum total debt ratio should be no more than 50%. The Examiner believes this is why the lender wanted the borrowers to pay down some of their debt. With a lower balance, the monthly payments would be lower, allowing them to qualify. Unfortunately, on the final application, the new monthly payments were not calculated.

The Examiner has determined, under all underwriting scenarios, the borrowers should NOT have been approved for this loan.

2. Willingness to pay. Did their credit histories show a pattern of being able to pay credit on time? If there were credit issues, were they addressed properly; with a substantial reason? Was credit used appropriately?

The Examiner was not able to review the borrower's credit report; it was not in the file.

3. Stability: Did the borrower's job history show a pattern of reliability and stability? Did it appear that the borrower would likely remain in the position and continue to thrive?

Based on the credit report, the Examiner has determined the borrowers were stable in their jobs. Mr. Xxxxxx has been with the same company, in the same line of work, for 10 years. While Mrs. Xxxxxx has been with the same company for over 18 months.

Risk Layering

Risk layering is the concept of borrowers having multiple elements of risk in any one loan. Risk would be greater as the different factors that lenders should be concerned about were found in each loan. Layers of risk in this loan include…

1. The credit application did not include the proper monthly payments for the borrower's monthly bills (property taxes, homeowner's insurance, credit cards, auto loans, etc)
2. The use of the borrowers gross income, as opposed to their net income.
3. Qualifying the borrowers with a 40 year payment, instead of a 30 year payment.
4. Approving the loan with an excessive total debt ratio. Over 51%.
5. Combined Loan to Value is 100%

The loan has an increased level of risk as reflected by the above factors. These factors necessarily should lead to the increased scrutiny of the approval process, including more extensive documentation of the loan.

Compensating Factors

A compensating factor is defined as a factor which should be considered when making a loan. In most cases, when a loan is considered on the edge of being approved or declined, these factors should be used to determine the borrower's credit worthiness.

In this case, there are two compensating factors:

1. The borrowers have been in the home 5 years.
2. Mr. Xxxxx has been with the same company for 10 years.

Even though there are two compensating factors on this loan, the Examiner does not believe they are a good reason to have approved the loan with the excessive debt ratio.

Appraisal

An appraisal is used to determine the value of the borrower's home at the time of the loan.

The appraisal was not in file; therefore the Examiner could not review it.

Summary of Underwriting Decision by Examiner

Examiner has reviewed the approval process of this loan. She finds for all purposes, underwriting for this loan was non-existent. The lender has ignored prudent standards of underwriting, knowing full well the loan would be securitized and any default would be the concern of another party.

No consideration of the ability of the borrower to repay this loan with a realistic means test has been made. This is especially true when the adjustment of the interest rate has been taken into consideration.

It is the opinion of the Examiner this loan should have been declined.

Several statutes have addressed the issue of ability to repay a loan, as well as the risk determination. These are…

Paragraph 34 (a) (4) Repayment Ability, TILA (A) (4)

1. Income. Any expected income can be considered by the creditor, except equity income that would be realized from collateral. For example, a creditor may use information about income other than regular salary or wages such as gifts, expected retirement payments, or income from self-employment, such as housecleaning or childcare.

2. Pattern or practice of extending credit- repayment ability. Whether a creditor is engaging or has engaged in a pattern or practice of violations of this section depends on the totality of the circumstances in the particular case. While a pattern or practice is not established by isolated, random or accidental acts, it can be established without the use of a statistical process. In addition, a creditor might act under a lending policy (whether written or unwritten) and that action alone could establish a pattern or practice of making loans in violation of this section.

3. Discounted introductory rates.:.In transactions where the creditor sets an initial interest rate to be adjusted later (whether fixed or to be determined by an index or formula),in determining repayment ability the creditor must consider the consumer's ability to make loan payments based on the non-discounted or fully-indexed rate at the time of consummation.

4. Verifying and documenting income and obligations.:. Creditors may verify and document a consumer's repayment ability in various ways. A creditor may verify and document a consumer's income and current obligations through any reliable source that provides the creditor with a reasonable basis for believing that there are sufficient funds to support the loan. Reliable sources include, but are not limited to, a credit report, tax returns, pension statements, and payment records for employment income.

The Examiner believes the lender has violated these rules by using the borrowers gross income, and a 40 year monthly payment to qualify the borrowers for their loan.

12 Code Federal Regulations 30

II.OPERATIONALAND MANAGERIAL STANDARDS

C. loan documentation. An institution should establish and maintain loan documentation practices that:

1. 1.Enable the institution to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;
2. Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;
5. Take account of the size and complexity of a loan.

D. Credit underwriting. An institution should establish and maintain prudent credit underwriting practices that:

1. *1.Are commensurate with the types of loans the institution will make and consider the terms and conditions under which they will be made;*

Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed

5000-FEDERALDEPOSIT INSURANCE CORPORATION Statements of Policy–

"When an institution offers nontraditional mortgage loan products, underwriting standards should address the effect of a substantial payment increase on the borrower's capacity to repay when loan amortization begins." Ensure that loan terms and underwriting standards are consistent with prudent lending practices, including consideration of a borrower's repayment capacity;" For all nontraditional mortgage loan products, an institution's analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule"

And

Risk-layering features In a subprime mortgage loan may significantly increase the risks to both the institution and the borrower. Therefore, an institution should have clear policies governing the use of risk-layering features, such as reduced documentation loans or mortgage loan, an institution should demonstrate the existence of effective mitigating factors that support the underwriting decision and the borrower's repayment capacity. Recognizing that loans to subprime borrowers present elevated credit risk, institutions should verify and document the borrower's income (both source and amount),assets and liabilities. Stated income and reduced documentation loans to subprime borrowers should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Reliance on such factors also should be documented. Typically, mitigating factors arise when a borrower with favorable payment performance seeks to refinance an existing mortgage with a new loan of a similar size and with similar terms, and the borrower's financial condition has not deteriorated. Other mitigating factors might include situations where a borrower has substantial liquid reserves or assets that demonstrate repayment capacity and can be verified and documented by the lender. However, a higher interest rate is not considered acceptable mitigating factor.

Office of the Comptroller o(the Currency Guidance Letter Ai 2003-3

.........the OCC believes that a fundamental characteristic of predatory lending is the provision of credit to borrowers who simply cannot afford the credit on the terms being offered. Typically, such credit is underwritten predominantly on the

basis of the liquidation value of the collateral, without regard to the borrower's ability to service and repay the loan according to its terms ,absent resorting to that collateral. When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments in accordance with the terms of the loan, the lender is effectively relying on its ability to seize the borrower's equity in the collateral to satisfy the obligation (including accrued interest)and to recover the typically high fees associated with such credits.

Predatory and abusive loans originated through brokers or by third-party lenders also present a wide range of heightened legal risks for national banks, and could subject them to both supervisory action and civil liability. For example, borrowers victimized by oppressive loan terms or other unscrupulous conduct of a mortgage broker or loan originator may have remedies against the ultimate creditor under common law theories of fraud or unconscionability .In addition, predatory loans originated through mortgage brokers, or purchased from third-party lenders, may subject national banks to liability or supervisory action under a wide range of federal consumer protection laws. For example, in typical mortgage broker transactions, the loan will be closed in the name of the bank as the initial creditor and thus, the bank generally will have direct liability for any violations of law committed in connection with the loan. In addition, the bank could be liable under agency, "common enterprise, "or other theories for violations committed by the broker, and may be jointly and severally ,liable with the broker -for example, under the Real Estate Settlement Procedures Act (RESPA)-for violations it is deemed to commit in conjunction with the broker. Even in table-funded or purchase transactions, a bank may have liability for violations of law as a successor or assignee of the original creditor. It is now readily apparent after reading the above excerpts and regulations that underwriting for this loan was flawed. There was no determination of the ability of the borrower to repay the loan ,with complete disregard for the Guidance Letters issued by Federal Agencies and even Federal and State Law. This disregard for the borrower leads to the potential for legal action under many different legal statutes, UDAPlaws, and common law principles.
The failure to adequately underwrite this loan could be actionable under

<u>California Unfair Competition Law, CA Business &Professions Code 17200.</u>
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.

<u>California Unconscionability Law</u>
A court has the power to refuse to enforce a contract or a clause in a contract that is unconscionable when made (CC1670.5(a),1770(s)).

<u>California Rescission Law for Fraud, Mistake, Undue Influence, Breach, Illegality</u>

If the buyer's consent to a contract was induced by the seller's fraud,or was given by mistake, or under duress ,menace or undue influence,t he buyer can elect to rescind the contract (CC16S9(b)).

The Examiner believes, the lender violated these rules by these causes of action, including:

Fraud for false income by the broker.
Aiding and abetting by the lender for allowing the fraudulent income loan.
Lack of due diligence by the lender in approving the loan.
Lack of Good Faith and Fair Dealings by the Lender.
Fiduciary Duty by the broker for doing a loan where it could lead to default.
Unconsciousability by the lender for doing the loan.

Part 3:Closing Documents

Examiner has inspected the Closing Instructions and the Settlement Statement and other significant documents. Findings are:

Truth In Lending Accuracy

First Mortgage

The Examiner has evaluated the Truth In Lending statement in the file. Unfortunately, there was no original Good Faith Estimate to compare it to, so the Examiner cannot determine if the fees disclosed on the GFE were equal to the ones on the TIL.

The Examiner has found, in most cases, the fees on the GFE and TIL are not consistent. If the same is true with this loan, then the following rules apply.

Foreclosure -Finance Charge [226.18(dJI--IMPORTANT NOTE: The error tolerances for finance charges have gotten more complicated:

For real estate secured loans entered into after 9/30/95, the tolerance is $100 for under disclosed finance charge (no remedy for over, disclosure)for the damage remedy .For rescission purposes, unless a foreclosure is underway, the tolerance is 1/2%of the total credit extended, *over or under* (1%if a refinance and no new money lent).The finance charge tolerance for defendants in foreclosure actions is $35 (for rescission),

12 Code of Federal Regulations.226.23(a) (3)

.Failure to make clear, conspicuous, and accurate material disclosures also triggers an extended right of rescission. Material disclosures include the:

(1)annual percentage rate,
(2)finance charge,
(3)amount financed,
(4)total payments,
(5)or payment schedule.

The failure to provide truthful and accurate disclosures could also be considered an Unfair and Deceptive Act and Practice under

California Unfair Competition Law, CA Business &Professions Code 17200.

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.

California Unconscionability Law

A court has the power to refuse to enforce a contract or a clause in a contract that is unconscionable when made (CC1670.5(a),1770(s)).

California Rescission Law for Fraud, Mistake, Undue Influence ,Breach, Illegality

If the buyer's consent to a contract was induced by the seller's fraud, or was given by mistake, or under duress, menace or undue influence, the buyer can elect to rescind the contract (CC 1689(b)).

Lender may attempt to claim that the Statute of Limitations has passed, but "tolling" is applicable for the following, as well as being in bankruptcy tolls the Statute.

A2J Code Of Civil Procedure Section 337.3.

An action based upon the rescission of a contract in writing. The time begins to run from the date upon which the facts that entitle the aggrieved party to rescind occurred. Where the ground for rescission is fraud or mistake, the time does not begin to run until the discovery by the aggrieved party of the facts constituting the fraud or mistake. The time does not begin to run until the representation becomes false.

And

The federal doctrine of fraudulent concealment operates to toll the statute of limitations" where a plaintiff has been injured by fraud and 'remains in ignorance of it without any fault or want of diligence or care on his part. '"Holmberg v.Armbrecht,327 U.S.392,397 (1946) (quoting Bailey v.Glover,88 U.S.(21 Wall.)342,348 (1874));see Maggio v.Gerard Freezer & Ice Co.,824 F.2d 123,127 (1st Cir.1987).

<u>Credit -Egual Opportunity Credit Act-Regulation B</u>

Sec.202.1 Authority, scope and purpose.(b)Purpose. The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract);to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans;and to provide applicants with copies of appraisal reports used in connection with credit transactions.

Under the EOCA, a borrower is entitled to the same terms of credit issuance that another borrower of equal characteristics is entitled to. The lender placed borrower into a loan that had a significantly higher interest rate than what was qualified for. The increase in the interest rate and monthly payment, in order to receive a Yield Spread Premium, is a violation of the EOCA.

<u>Part 4: Borrower, Broker, Lender Relationship-Assignee Status</u>

Examiner has been concerned for a great length of time about the duties of the loan officer or loan broker to the borrower. Most have held the opinion that because the Mortgage Loan Origination Agreement claims that they are independent contractors and only do loans, that there is no fiduciary relationship between the broker and the borrower. This is even in the face of the Fiduciary Duties that are acknowledged in Realtor/Buyer relationships.

Examiner has always believed that a fiduciary duty exists between a broker and a borrower. This belief is based upon a number of factors including the fact that brokers and loan officers are licensed, considered professionals by those inside and outside the industry, and viewed by the clients as representing the borrower's interests. To deny such would relegate the broker/loan officer to the status of a "Used Car Salesman". The CAORE has confirmed this relationship:

Per the Department of Real Estate website, found at http:Uwww.dre.ca.gov/

"A person who provides brokerage services to a borrower in a covered loan transaction by soliciting lenders or otherwise negotiating a consumer loan secured by real property, is the fiduciary of the consumer, and any violation of the person's fiduciary duties is a violation of this law."
"A broker who arranges a covered loan owes this fiduciary duty to the consumer regardless of whom else the broker may be acting as an agent for in the course of the loan transaction."

The National Association of Mortgage Brokers has adopted a Code of Ethics which requires, among other things, that the broker's duty to the client be paramount. Paragraph 3 of the Code of Ethics states:

In accepting employment as an agent, the mortgage broker pledges himself to protect and promote the interest of the client. The obligation of absolute fidelity to the client's interest is primary.

Pierce v.Hom,178 Cal.Rptr.553,558 (Ct.App.1981)(mortgage broker has duty to use his expertise in real estate financing for the benefit of the borrower);

Wyatt v.Union Mtge.Co.,24 Co/3d 773,782,157 Ca/.Rptr.392,397,598 P.2d 45 (1979).

The Duty

The fiduciary duty of the broker (i.e. duty of trust) should be 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 they have a fiduciary duty to the borrower to NOT place them in that loan (in harms way).

Additionally broker has a contractual duty of good faith and fair dealings with the lender which would be breached if they knowingly placed a loan with the lender failing to disclose the material fact that the borrower will likely default or file BK.

It is the opinion of the examiner that the broker may have violated his Fiduciary Responsibility to the borrower by:

> *1. Placing the borrowers into his current loan product without regard for other products that might have suited the borrower better.*

2. Placing the borrower into a loan whereby it was likely the borrower would default or incur bankruptcy as a result of the loan and it was reasonably foreseeable that such would occur.
3. Placing the borrower into a loan without a realistic test of the ability of the borrower to repay the loan.
4. Placing the borrower into a loan with a significantly higher monthly payment in order to receive a Yield Spread Premium.
5. Failing to provide initial disclosures.
6. Debt Consolidation of short-term debt into long term debt.

Agency

Another issue that has bothered the examiner is the relationship between the broker and the lender. This relationship is especially bothersome when viewed in the following context:

Lender will pay a Yield Spread Premium to the broker as an inducement to bring them business.

Lender has "buy back" provisions in the broker agreements whereby for fraud or default, the broker maybe required to "buy back" the loan.

Lender/broker agreements reflect that the lender has some significant measure of control over the broker.

Wyatt v Union Mortgage, CA State Supreme Court,1979

Montoya v.McLeod (1985)176 Cal.App.3d 57,64,221 Cal.Rpt,.353,held that a broker was the lenders' agent even though he had no written agency agreement with the lenders and was paid by a third party, because the broker negotiated the lenders' loan and executed a promissory note in their favor. See also Vargas v.Ruggerio (1962)197 Cal.App.2d 709,17 Cal.Rpt,.558 (agency status may be shown by the parties' conduct and does not depend on proof of compensation);

Factors the Montoya court considered in determining agent status included:(1)the principal's right to control the agent's activities;(2)the agent's right to exercise discretion in dealings with third parties on the principal's behalf;(3)whether the principal pays compensation to the agent; and (4)the principal's intent to retain the agent and the agent's intent to represent the principal. Miller &Starr,supra,sec.3:5.

California Civil Code section 2079.16,Agency Relationships

A 1991 decision by a California appellate court held that a mortgage broker can have an obligation to a lender-client as well (Barry v.Raskov,23 Cal.Rptr.463).

RICHARD MORRIS and YVONNE MORRIS,(Plaintiffs,)NOVASTAR MORTGAGE,INC., COLUMBIA MORTGAGE,and LAURA T.WOODHEAD,

*"In determining whether an agency relationship exists,the primary issue is the principal's right to control the agent."Gunderson v.ADM Investor Servs.,Inc.,2000 u.s.App.LEXIS 20971,at *5 (8th Cir.2000).An agent's authority may be express, implied, or apparent. Actual authority exists if the principal has given the agent authority to act on its behalf either expressly or by implication. ASA Brandt,Inc.v.ADM Investor Servs.,344 F.3d 738,749 (8thCir.2003).*

Apparent authority is "determined by what the principal does,rather than by any acts of the agent.Id." Apparent authority is the power held by an agent or any other actor to affect a principal's legal relations with a third party when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations. "Id.(quoting Restatement (Third)of Agency §2.03).As discussed in the Brandt case, "the existence of documents disclaiming an agency relationship only negates the existence of actual authority; it does not however, affect the creation of an agency relationship through apparent authority."Brandt,344 F.3d at 749-50.

In this case, there is a Broker Agreement signed by both NovaStar and Columbia that disclaims an agency relationship between the two parties. There is at least a genuine issue of material fact as to whether there was an agency relationship created by apparent authority between Columbia and NovaStar, such that NovaStar may be held liable for Columbia's fraudulent misrepresentations. At this point in the case, it is clear from the Broker Agreement that NovaStar exercised significant control over the dealings of Columbia with third parties. Plaintiffs have also come forward with contradictory evidence as to whether Columbia was in fact acting as an agent on their behalf. Viewing these facts in favor of the non-moving party, the Court will deny summary judgment with respect to NovaStar's liability to the Morrises for Columbia's alleged fraudulent conduct. The Court believes that plaintiffs' fraud claim is pled with sufficient particularity pursuant to Federal Rule of Civil Procedure 9(b).

The examiner concludes that it is conceivable that the mortgage broker is an agent of both of the borrowers. Therefore,the mortgage broker has failed to disclose his Dual Agency Relationship as required by both CA statutes and RESPA.

Additionally, the lender now assumes a secondary liability for the actions of the broker under agency relationships.

Aiding and abetting, and contractual interference may also be used under UDAP to 'increase the pressure on the lender.'

Part 5:Predatory lending -Unfair Business Practices -Deceptive Business Acts

Examiner suggests that this loan be viewed through the prism of the following:

Assignments of Beneficiary

Ownership of notes is an issue now coming to the forefront in foreclosure actions. Who has the legal standing to foreclose? CACivil Code 2932.5 covers assignments.

CA Civil Code 2932.5 –Assignment

Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee if the assignment is duly acknowledged and recorded.

When a mortgage loan is executed, there is a process that all must go through to make them legal. The is the signing of the Deed of Trust and the Note, and then the recording of the Deed of Trust and the Note in the local County Recorders office.

The significant elements of the Deed of Trust are:

1. *The "conditions" of the Deed, detailing important information.*
2. *The name of the Trustor, known otherwise as the borrower.*
3. *The lender who "lends" the money, known also as the beneficiary until recent years.*
4. *The Trustee who is an impartial third party, usually a Title Company or attorney.*
5. *In recent years, the Beneficiary, or the Nominee of the Beneficiary, identified to be MERS, aka Mortgage Electronic Registration Systems.*

Often, a Note will be sold to another lender. When this occurs, an Assignment of Beneficiary must be recorded with the Recorder's Office, to make the selling of the Note legal. At the same time, the Note must be Endorsed and Signed on the back of the Note, to show the new lender. Failure to do either makes the sell of the Note invalid.

With this note, there is no documentation regarding Assignments of Beneficiary. It is recommended that all Assignments be requested to determine a Chain of Title, unbroken, and who has legal standing to foreclose.

In this case, the borrowers worked with XXXXXXX XXXXX Mortgage to obtain the loan. The loan was then sold to YYYYY YYYYY Mortgage. It has been discussed previously, this was not the best loan for the borrowers, which could lead to the conclusion, it was a loan which would allow XXXXXXX XXXXXX Mortgage some additional financial benefit when sold to YYYYYY YYYYYY Mortgage.

Securitization

There is a growing concern about Securitization and what investor or organization actually owns the note. But what exactly is Securitization and how did it work?

Securitization is the process whereby mortgage loans were made and then turned into negotiable securities sold to Wall Street. Loans were funded, packaged together and sold to Wall Street, or at least that was the way it was explained. The reality is much different.
Wall Street (Wall Street Investment Banks)decided that loan securitization was a new methodology whereby they could lure investors into buying subprime and other loans as a new investment vehicle. This would provide the investor with a good Rate of Return on investments, while providing Wall Street with a new method of generating commissions .It has generally been assumed that these funds consisted of Wall Street's own funds, but that is far from the truth. The methodology for Securitization is:

1. Wall Street promoted the Investment Vehicles and received AAA ratings on them. They went to investors, and sold them on the idea. The investors then put up the money for the loans.
2. Wall Street created pooling agreements where they defined in the agreements the loans that they would accept for each investment vehicle. They executed agreements with the lenders and then immediately issued warehouse lines of credit to the lenders.
3. Lenders then let brokers know the loan parameters to meet the pooling agreement guidelines and the brokers went out and found the borrowers.
4. Wall Street took all the loans, packaged them up and sold them as bonds and other security instruments to other investors, i.e.Joe's Pension, and paid off original investors or reissued new line of credit, and earned commissions on both ends.
5. The process was repeated time and again.
6. The reality is that the reported lender on the Deed of Trust was NOT the actual lender. The actual lender who lent the money was the Wall Street Investment Bank. They simply ***rented*** the license of the lender, so that they would not run afoul of banking regulations and/or avoid liability and tax issues. For all purposes, Wall Street was the true lender and there are

arguments that suggest that Disclosures should have been required naming Wall Street as the lender.

This explains securitization in a very simplistic manner.

Courts and Securitization

Courts in judicial foreclosures are increasingly looking at foreclosure cases and the securitization issue, postponing foreclosures until it is determined who actually owns the note, whether assignments of the note have been in compliance with law, and who the holder in due course is. This leads to the following:

In the case of mortgage foreclosures, **prove up of the claim** requires that the foreclosing party be able to produce the original Note, and history of assignments in order to show that they have the legal standing to foreclose on the property. If the foreclosing party cannot show that they have the original note and/or prove that the note belongs to them, then foreclosure proceedings are postponed. In cases where the Note cannot be found, then there is no note or lien.

Supporting Case Law

Where the complaining party cannot prove the existence of the note, then there is no note.

Pacific Concrete F.C.U.V.Kauanoe,62 Haw.334,614 P.2d 936 (1980),

GECapital Hawaii,Inc.v.Yonenaka 25 P.3d 807,96 Hawaii 32,(Hawaii App 2001),'

Fooks v.Norwich Housing Authority 28 Conn.I.Rptr.371,(Conn.Super.20DD),and Town of Brookfield v.Candlewood Shores Estates,Inc.513 A.2d 1218,201 Conn.I (1986).

Solon v.Godbole,163 III.App.3d 845,114111.Dec.890,516 N.E.2d 1045 (3Dist.1987).

Staff Mortgage.&Inv.Corp.,550 F.2d 1228 (9th Cir 1977)."Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party ,his agent or bailee.

Examiner suggests that with any action, proof of ownership of the original note should be required.

Assignee Liability

Assignee liability is another issue being contested. Under TILA and RESPA ,if on the face of the loan documents it is evident that there are violations of the statutes, then assignees have a significant liability when they assume the loan. However, the question arises as to if assignee liability can be claimed when there are no violations on the face of the documents. The following case law gives one angle of attack. This can be used for loans that were "table-funded" by mortgage bankers, and immediately sold to the true lender, i. e. Wall Street or Correspondent Lenders. The reasoning behind this is that the "buying" lender has purchasing agreements with the funding lender to take these loans under specific guidelines.

In ***Cazares v Pacific Shore Fundinq***,CD.Col.Jon 3,2006,assignee that actively participated in original lender's act and dictated loan terms may be liable under UDAP.

The question then arises as to assignments further down the "chain of title" .Under these circumstances, the UDAP codes can be utilized for attacking the lenders. Show fraud and other causes of action, then the contracts can be "voided or rescinded "under common law and UDAP codes; especially *CA B&P 17200,and CA Civil Code* 1689,which allows for contract rescission.

The most important is to determine who the "Holder in Due Course"is.

Since the loan was originated by XXXXXXXXXXXX XXXXX Mortgage, then assigned to YYYYYYY YYYYY Mortgage. The above concerns should be reviewed.

Additional Findings

There are no additional findings.

CONCLUSION

The examiner has attempted to point out specific violations of statutes and codes related to this loan. She has also reviewed underwriting approval, fiduciary issues and even securitization issues. Her focus has been not just on Truth In Lending and RESPA violations, but the more inclusive State Violations that can be used to keep any actions out of Federal Court.

Examiner has concluded that this loan should never have been approved by the lender. The lender has failed in its due diligence to both borrowers and investors on this loan.

Examiner suggests that the following causes of action should be reviewed to determine applicability regarding this loan.

Unconscionability using Common Law, UCC2-3202 and UDAP statutes. Johnson v Long Beach Mortgage, UDAP claim for debt ratio, age, education, comprehension***: Strong v Option One***

Duty of Good Faith and Fair Dealing under UCC and Common Law.
Fiduciary Duties

Fraud through the use of the borrowers gross income, there has been a falsification of the credit application by seller or broker***. US vs Robinson*** 4th Cir,2004

Unfair and Deceptive Acts and Practices CA B&P 17200

Predatory Lending

The terms "abusive lending "or "predatory lending" are most frequently defined by reference to a variety of lending practices. Although it is generally necessary to consider the totality of the circumstances to assess whether a loan is predatory ,***a fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered***.

Typically, such credit is underwritten predominantly on *the basis of the liquidation value of the collateral, without regard* to *the borrower's ability to service and repay the loan according* to *its terms absent resorting* to *that collateral.* When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments under the terms of the loan, based on the borrower's current and expected income, current obligations, employment status, and other relevant financial resources, the lender is effectively counting on its ability to seize the borrower's equity in the collateral to satisfy the obligation and to recover the typically high fees associated with such credit. Not surprisingly, such credits experience foreclosure rates higher than the norm.

While such disregard of basic principles of loan underwriting lies at the heart of predatory lending, a variety of other practices may also accompany the marketing of such credit.

Some Predatory Lending practices found in this loan:

Ability to Repay the loan

See the Underwriting Section for the complete analysis on this loan.

Full Income Documentation

Based on qualifying the borrowers using their gross income instead of their net income.

Lack of Due Diligence in Underwriting

The loan was underwritten without due diligence by the party originating the loan.
No realistic means test for determining the ability to repay the loan.

High Debt Ratios

This is the practice of approving loans with high debt ratios, usually 50%or more, without determining the true ability of the borrower to repay the loan.

Loan Flipping

Repeated refinancing of borrowers into loans that have no tangible benefit to the borrower. In this case, the borrower purchased the home 4 months prior to the refinance.

Equity Stripping

Loans and refinances whereby equity is removed from the home through repeated refinances, consolidation of short term debt into long term debt, negative amortization or interest only loans whereby payments are not reducing principle, high fees and interest rates. Eventually, borrower cannot refinance due to lack of equity.

Excessive Fees and Rates

Requires borrowers to pay interest rates, fees and/or charges not justified by marketplace economics in place at the time the lien was originated.

Inappropriate Loan Programs

Is materially more expensive in terms of fees, charges and/or interest rates than alternative financing for which the borrower qualifies. This can include prime borrowers who are placed into subprime loans, negative or interest only loans; or any loan terms whereby the borrower can never realistically repay the loan.

High Loan to Value loans

Loans that are done with the borrower having little or no equity in the home; these are usually Adjustable Rate Mortgages that the borrower will not be able to refinance out of when the rate adjusts due to lack of equity.

Deception, Fraud, Unconscionable

Loan is marketed in a way that fails to fully disclose all material terms. Includes any terms or provisions which are unfair, fraudulent or unconscionable. Loan is marketed in whole or in part on the basis of fraud, exaggeration, misrepresentation or the concealment of a material fact. Includes interest only loans, Adjustable Rate loans, Negative amortization. HOEPA loans.

Targeting

Targeting inappropriate or excessively expensive credit products to older borrowers, to persons who are not financially sophisticated or who may be otherwise vulnerable to abusive practices, and to persons who could qualify for mainstream credit products and terms;

Office* of *the Comptroller* of *the Currency

The Office of Comptroller of the Currency has been concerned with Predatory Lending for over a decade. They have addressed this issue time and again through Policy Letters that also address Unfair Business Practices and Deceptive Business Acts.

OCC Policy Letter At 2003-2

.....a fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered. Typically, such credit is underwritten predominantly on the basis of the liquidation value of the collateral, without regard to the borrower's ability to service and repay the loan according to its terms absent resorting to that collateral. The advisory also describes how certain abusive lending can involve unfair or deceptive practices and thus violate section 5 of the Federal Trade Commission Act (FTCAct).

Using loan terms or structures -such as negative amortization -to make it more difficult or impossible for borrowers to reduce or repay their indebtedness; Inadequate disclosure of the true costs, risks and, where necessary, appropriateness to the borrower of loan transactions;

Violations of the FTC Act and Unfair &Deceptive Acts and Practices

National banks are subject to section 5 of the FTC Act ,which makes unlawful "unfair or deceptive acts or practices "in commerce. The OCC has the authority *to enforce section 5 with respect to national banks and to impose sanctions for violations in individual cases...Practices may be found to be deceptive and, therefore, unlawful under section 5 of the FTC Act if each of the following factors is present:*

> *1. There is a representation, omission, act, or practice that is likely to mislead;*
> *2. The act or practice would be likely to mislead a reasonable consumer (a reasonable member of the group targeted by the acts or practices in question);and,*
> *3. The representation, omission, act, or practice is likely to mislead in a material way.*

A practice may be found to be unfair and, therefore, unlawful under section 5 of the FTC Act if each of the following factors is present:

> *1. The practice causes substantial consumer injury, such as monetary harm;*
> *2. The injury is not outweighed by benefits to the consumer or to competition; and*
> *3. The injury caused by the practice is one that consumers could not reasonably have avoided.*

The OCC letter reflects that in this loan, the lender has violated the following section ofthe FTC Act.

FTCSec 5 §45 Unfair methods of competition unlawful:prevention by Commission

(a)Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade: Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

It must be noted that violations of the FTC Act are actionable only through government agencies. Private remedies are not available through FTC.

States have noted this issue and have responded by incorporating the FTC Act concepts of deception and unfairness, and by providing significant state and private remedies, and allowing for widespread redress of marketplace misconduct and abuse of consumers.

The FTC Act can still playa major part with regard to UDAP statutes. This is due to an increasing acceptance of state courts to accept FTC enforcement actions at the national level as a form of precedence and/or guidance for state UDAP actions.

This leads to the CAUDAP statute being used in place of the FTC Act for possible actions regarding this loan.

California Legal Remedies Act

Extensions of Credit Covered*. Jefferson v Chase 2007 N.D.CAl May 7,2007,*

California Unfair Competition Law,CA Business & Professions Code 17200.

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.

California Unconscionability Law

A court has the power to refuse to enforce a contract or a clause in a contract that is unconscionable when made (CC1670.5(a),1770(s)).

California Rescission Law for Fraud, Mistake, Undue Influence, Breach, Illegality

If the buyer's consent to a contract was induced by the seller's fraud, or was given by mistake, or under duress, menace or undue influence, the buyer can elect to rescind the contract (CC 1689(b)).

PART 6:Securitization

Fair Housing Act -targeting of minorities

Contractual Interference with regard to Agency

Improvident Extension of Credit- Adding of consumer debt, failure to disclose per ***Miner vs Beneficial***

Unjust Enrichment: The lender increased the borrower's loan amount without a substantial benefit. The borrowers still had a significant debt ratio.

Disclosure: You have engaged Truth in Lending Auditors, LLC to examine your real estate documents. The recommendations and opinions entered herein are not intended as legal advice or counseling. You are advised to consult with an attorney in matters related to this examination and the report hereof.

Thank you for your business. I look forward to working with you in the future.