

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**PROOF OF CLAIM**

In re: **TAYLOR, BEAN & WHITAKER MORTGAGE CORP.** Case Number: **3:09-bk-07047-JAF**

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

**CLAIM FILED**

Name of Creditor and Address: the person or other entity to whom the debtor owes money or property. If necessary, please cross out pre-printed address and write in change of address.  
**JACKSONVILLE, FLORIDA**

21836931023730  
 KRATOVIL & AMORE, PLLC  
 AARON C AMORE  
 211 W WASHINGTON ST.  
 CHARLES TOWN, WV 25414

**JUN 15 2010**

CLERK, U. S. BANKRUPTCY COURT  
 MIDDLE DISTRICT OF FLORIDA

If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

**THIS SPACE IS FOR COURT USE ONLY**

Creditor Telephone Number **(304) 728-7718**  Check box if address is where Notice is to be sent.

Name and address where payment should be sent (if different from above):

Payment Telephone Number ( )

Check this box if you are the debtor or trustee in this case.

Check this box to indicate that this claim amends a previously filed claim.

Claim Number (if known):

Filed on:

**1. AMOUNT OF CLAIM AS OF DATE CASE FILED** \$ 10,000.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

**2. BASIS FOR CLAIM: Attorney's fees for representation of Wayne & Alice Derflinger & Mary Mason in civil litigation suit. See Attached.** (See instructions: #2 and #3a on reverse side.)

**3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:** 3a. Debtor may have scheduled account as:

**4. SECURED CLAIM** (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information

**Nature of property or right of setoff:** Describe:

Real Estate  Motor Vehicle  Other

Value of Property: \$ \_\_\_\_\_ Annual Interest Rate: \_\_\_\_\_ % if any: \$ \_\_\_\_\_ Basis for Perfection: \_\_\_\_\_

Secured Claim Amount: \$ \_\_\_\_\_

Unsecured Claim Amount: \$ \_\_\_\_\_

Amount of arrearage and other charges as of time case filed included in secured claim, **DO NOT** include the priority portion of your claim here.

**5. PRIORITY CLAIM**

Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Unsecured Priority Claim Amount: \$ \_\_\_\_\_

Include **ONLY** the priority portion of your unsecured claim here.

**You MUST specify the priority of the claim:**

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries, or commissions (up to \$10,950\*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

Up to \$2,425\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a) ( \_\_\_\_\_ ).

\* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

**6. CREDITS:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

**7. SUPPORTING DOCUMENTS:** Attach redacted copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See definition of "redacted" on reverse side.)

If the documents are not available, please explain.

**DATE-STAMPED COPY** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

**DO NOT SEND ORIGINAL DOCUMENTS ATTACHED. DOCUMENTS MAY BE DESTROYED AFTER SCANNING.**

The original of this completed proof of claim form must be sent by mail, hand, courier or overnight delivery (facsimile, telecopy or other electronic means NOT accepted), so that it is actually received on or before 5:00 p.m. prevailing Eastern Time on June 15, 2010, the Bar Date (as defined in the Bar Date Notice).

**THIS SPACE FOR COURT USE ONLY**

By Regular Mail to: BMC Group, Inc., Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Processing, PO Box 3020, Chanhassen, MN 55317-3020

By Hand, Courier, Or Overnight Delivery to: BMC Group, Inc., Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Pro, 18750 Lake Drive East, Chanhassen, MN 55317

T, B & W Mortgage Corp.  
 03014

DATE: **6/10/10**

SIGNATURE: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

**Aaron C. Amore, Esquire**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**ALICE DERFLINGER  
WAYNE DERFLINGER, SR.,  
and MARY MASON,**

Plaintiffs,

v.

**Civil Action No. 3:08-CV-15  
(Judge Bailey)**

**TAYLOR, BEAN & WHITAKER MORTGAGE  
CORP., and AMERICAN MORTGAGE GROUP,  
INC., d/b/a ZEN LOANS,**

Defendants,

and

**TAYLOR, BEAN & WHITAKER MORTGAGE CORP.**

Defendant/Third-Party Plaintiff,

v.

**CHARLES L. BLACK, JR., PAUL K. BARNETT, III  
JENNIFER CANBY and ROBERT BRYSON,**

Third-Party Defendant.

and

**EVANSTON INSURANCE COMPANY,**

Intervenor Plaintiff,

v.

**FREEDOM TITLE SERVICES, LLC and  
JENNIFER CANBY,**

Intervenor Defendant.

**ORDER STAYING CASE**


On a previous day, this Court stayed the above-styled matter in anticipation of Defendants Taylor, Bean & Whitaker Mortgage Corp.'s impending bankruptcy. See Doc. 148. On August 24, 2009, those defendants did file their petition in the United States Bankruptcy Court. Therefore, in recognition of the Suggestion of Bankruptcy [Doc. 151], the automatic stay provisions of 11 U.S.C. § 362 are now in effect. Accordingly, this action must be **STAYED** until the automatic stay is lifted.

For the reasons stated above, the current stay in this action shall continue until such time as the automatic stay expires or is lifted.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

**DATED:** September 2, 2009.

  
**JOHN PRESTON BAILEY**  
**UNITED STATES DISTRICT JUDGE**

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG DIVISION

**FILED**

**JAN 17 2008**

US DISTRICT COURT  
MARTINSBURG, WV 25401

**ALICE DERFLINGER,  
WAYNE DERFLINGER, SR.,  
and MARY MASON**

**Plaintiffs,**

CIVIL ACTION NO. 3:08 cv 15

v.

**FREEDOM TITLE SERVICES,  
TAYLOR, BEAN & WHITAKER MORTGAGE CORP.  
and AMERICAN MORTGAGE GROUP, INC., d/b/a  
ZEN LOANS,**

**Defendants.**

**NOTICE OF REMOVAL**

Defendants, Taylor, Bean & Whitaker Mortgage Corp. ("TBW"), by counsel, Freedom Title Services ("Freedom Title"), and American Mortgage Group, Inc., d/b/a Zen Loans ("Zen Loans"), pursuant to 28 U.S.C. Section 1446, jointly file this Notice of Removal. The specific grounds for Defendants' removal are set forth as follows:

1. Defendants TBW, Freedom Title, and Zen Loans jointly remove this civil action from State Court to Federal District Court.
2. Jurisdiction resides with the Federal District Court pursuant to diversity of citizenship and amount in controversy under 28 U.S.C. § 1332 and 28 U.S.C. § 1441.
3. The above-titled action was commenced originally in the Circuit Court of Berkeley County, West Virginia, on or about December 14, 2007, as Civil Action No. 07-C-1410 ("state court action"), which action is now pending in that court. The Summons and Complaint,

MA206265.1

which were duly filed in the Office of the Clerk of the Circuit Court of Berkeley County, were served upon the Defendants on or about December 19, 2007, through the West Virginia Secretary of State.

4. This case is removed on the basis that the matter in controversy exceeds seventy five thousand dollars (\$75,000.00) and is between citizens of different States pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441.

5. Plaintiffs allege that Defendants induced them to sign two high interest rate mortgages with excessive fees and charges through a practice known as predatory lending. The Plaintiffs seek cancellation of these notes, actual and punitive damages, and other relief. The combined amount of the notes at issue is two hundred one thousand, six hundred dollars (\$201,600.00).

6. Plaintiffs allege that they each reside in Berkeley County, West Virginia.

7. Defendants Freedom Title and Zen Loans are incorporated in Virginia with their principal place of business located in Winchester, Virginia. Defendant TBW is incorporated in Florida and its principal place of business is located in Ocala, Florida.

7. Plaintiffs claims exceed the statutory minimum set forth in 28 U.S.C. § 1332 and the parties are citizens of different states Accordingly, this Court has subject matter jurisdiction pursuant to the provisions of 28 U.S.C. § 1332 and 28 U.S.C. § 1441.

8. This Notice of Removal is filed in this Court within thirty (30) days after the receipt by Defendants, through service or otherwise, of a copy of Plaintiffs' Complaint setting forth their claims for relief.

9. Defendants will, after the filing of this Notice of Removal, promptly give written notice thereof to all adverse parties as required by law, and will file a true and correct copy

of this Notice of Removal with the Clerk of the Circuit Court of Berkeley County, West Virginia, as provided by law.

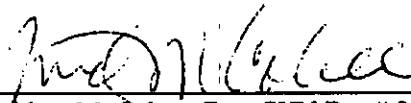
WHEREFORE, Defendants hereby remove the action currently pending in the Circuit Court of Berkeley County, West Virginia, as Civil Action No. 07-C-1410, to this Honorable Court.

Pursuant to the provisions of 28 U.S.C. §1446(d), the State Court must proceed no further with this action.

Respectfully submitted this 16<sup>th</sup> day of January, 2008.

**TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,**

**Defendant  
By Counsel**



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Bridget M. Cohee, Esq. (WV Bar # 8526)  
Steptoe & Johnson PLLC  
1250 Edwin Miller Blvd, Suite 300  
P.O. Box 2629  
Martinsburg, WV 25402-2629  
Tel: (304) 263-6991  
Fax: (304) 262-3541

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG DIVISION**

**ALICE DERFLINGER,  
WAYNE DERFLINGER, SR.,  
and MARY MASON**

**Plaintiffs,**

**CIVIL ACTION NO.**

**v.**

**FREEDOM TITLE SERVICES,  
TAYLOR, BEAN & WHITAKER MORTGAGE CORP.  
and AMERICAN MORTGAGE GROUP, INC., d/b/a  
ZEN LOANS,**

**Defendants.**

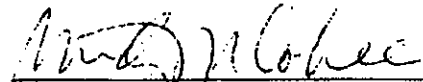
**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of January, 2008, I served the foregoing "NOTICE OF REMOVAL" upon counsel of record, by depositing a true copy thereof in the United States mail, postage prepaid, in an envelope addressed as follows:

Aaron C. Amore, Esq.  
James T. Kratovil, Esq.  
Kratovil & Amore PLLC  
211 Washington Street  
Charles Town, WV 25414  
*Counsel for Plaintiffs*

Ms. Jennifer Canby  
47 West Jubal Early Drive  
Winchester, Virginia 22601

Mr. Charles Black  
American Mortgage Group, Inc., d/b/a Zen Loans  
116 Creekside Lane  
Winchester, VA 22602

  
Bridget M. Cohee, Esq.



IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

ALICE DERFLINGER,  
WAYNE DERFLINGER, SR.,  
and MARY MASON

Plaintiffs,

v.

CIVIL ACTION NO. 07-C- 1410

FREEDOM TITLE SERVICES,  
TAYLOR, BEAN & WHITAKER MORTGAGE CORP.  
and AMERICAN MORTGAGE GROUP, INC., d/b/a  
ZEN LOANS,

Defendants.

COMPLAINT

1. This action arises out the practice known as predatory lending,<sup>1</sup> whereby the Defendants solicit unsophisticated borrowers with equity in their homes and persuade them into unwise high-interest rate mortgage loans with excessive fees and charges. The Defendants in this case participated in a scheme to induce the Plaintiffs into taking a high-interest rate mortgage loan, with an exploitive balloon payment and pre-payment penalties. The Plaintiffs bring this action for cancellation of this note, actual and punitive damages, and other relief.

2. The Plaintiffs, Alice Derflinger, Wayne Derflinger, Sr., and Mary Mason, (hereafter "Plaintiffs" ); are citizens and residents of Berkeley County, West Virginia. Damages were accrued to them at this location. They own their residential property in Berkeley County, West Virginia with an address of 803 Central Avenue, Martinsburg, West Virginia 25401. See,

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<sup>1</sup> See HUD-Treasury National Predatory Lending Task Force, Joint Report: Curbing Predatory Home Mortgage Lending, (visited September 30, 2002) <<http://www.hud.gov/library/bookshelf18/pressrel/pr00-142.html>>.

Exhibit A, for a formal description.

3. The Defendant Taylor, Bean & Whitaker Mortgage Corp., (hereafter "Taylor Bean") is a corporation doing business as a licensed mortgage lender in West Virginia, with its principal place of business at 101 NE 2<sup>nd</sup> Street, Ocala Florida 34470.

4. The Defendant, Freedom Title Services, (hereafter "Freedom Title"), is a company which does business in West Virginia, with its principal place of business at 47 West Jubal Early Drive, Suite 100, Winchester, Virginia 22601.

5. That the Defendant, American Mortgage Group, Inc., d/b/a Zen Loans (hereafter "Zen Loans") is a company which does business in West Virginia, with its principal place of business at 116 Creekside Lane, Winchester, Virginia 22602.

#### FACTS

6. That on or about January 5, 2007, the Plaintiffs executed a promissory note and a deed of trust in favor of Freedom Title, in the amount of \$179,200.00, loan number 1531725. Said deed of trust was recorded with the Clerk of the County Commission of Berkeley County, West Virginia at Deed of Trust Book \_\_\_\_\_ page \_\_\_\_\_.

7. That on or about January 5, 2007, the Plaintiffs executed a promissory note and a deed of trust in favor of Freedom Title, in the amount of \$22,400.00, loan number 1544628. Said deed of trust was recorded with the Clerk of the County Commission of Berkeley County, West Virginia at Deed of Trust Book \_\_\_\_\_ page \_\_\_\_\_.

8. That at the time the Plaintiffs executed both notes, there was an outstanding note and deed of trust to Well Fargo Home Mortgage in which it was the first lien holder in the amount of \$138,535.02, more or less.

9. That in or about December, 2006, or January, 2007, Freedom Title did provide the Plaintiffs with a good faith estimate for a loan of \$179,200.00.

10. That in or about December, 2006, or January, 2007, Freedom Title did provide the Plaintiffs with a good faith estimate for a loan of \$22,400.00.

11. That in or about January, 2007, the Plaintiffs executed a promissory note and deed of trust in favor of Taylor Bean in the amount of \$179,200.00. Said deed of trust was recorded with the Clerk of the County Commission of Berkeley County, West Virginia at Deed Book \_\_\_\_ page \_\_\_\_\_.

12. That in or about January, 2007, the Plaintiffs executed a promissory note and deed of trust in favor of Taylor Bean in the amount of \$22,400.00. Said deed of trust was recorded with the Clerk of the County Commission of Berkeley County, West Virginia at Deed Book \_\_\_\_ page \_\_\_\_\_.

**COUNT I – CLAIM FOR BREACH OF DUTY OF GOOD FAITH  
AND FAIR DEALING**

13. The Plaintiffs incorporate paragraphs 1 through 12 by reference.

14. The Defendants Freedom Title, Taylor Bean and Zen Loans have breached their duty of good faith and fair dealing implied in every contract that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of their contract.

15. The Defendants Freedom Title, Taylor Bean and Zen Loans as a matter of intentional and planned business practices, breached their duty by:

(a) preceding into foreclosure despite clear inaccuracies in the title and obvious illegality;

- (b) assessing unauthorized charges; and
- (c) pursuing foreclosure in lieu of other legal remedies.

**WHEREFORE**, Plaintiffs respectfully pray that the Court enter judgment in their favor and against the Defendants as follows:

(a) The Court enter declaratory judgment that practices are illegal as alleged, and enjoin the Defendants from any further attempt to engage in the conducted prohibited by law:

(b) Appropriate damages against the Defendants Freedom Title, Taylor Bean and Zen Loans; and

(c) Reasonable attorney's fees and the cost of this litigation ; and such other relief as the Court may deem equitable and just.

#### **COUNT II - ILLEGAL LOAN ORIGINATION/CLOSING**

16. The Plaintiffs incorporate paragraphs 1 through 15 by reference.

17. In or around December, 2006, or January, 2007, the Plaintiffs were solicited by a broker, The American Mortgage Group, Inc., d/b/a Zen Loans, who worked with the Defendant Freedom Title for the purpose of obtaining a home loan.

18. That the Plaintiffs were led to believe that they would be better off refinancing their debt and rolling their outstanding loan into two mortgages. The first mortgage in the amount of \$179,200.00 payable over thirty (30) years. The second balloon mortgage in the amount of \$22,400.00 payable over fifteen (15) years.

19. The said Defendants Taylor Bean and Freedom Title, arranged for a bogus appraisal of his property that overinflated its value.

20. That the Defendants Taylor Bean and Zen Loans /The American Mortgage Group arranged for two loans for the purposes of duplicating their origination fees, broker's fees and other related fees.

21. That the Defendant Taylor Bean did provide for payment of a late fee in excess of that permitted under West Virginia law.

22. That the Defendants Taylor Bean had in its possession releases for tax and other income releases and should have known the Plaintiff's true income.

23. That the Defendants Taylor Bean and Zen Loans /The American Mortgage Group did not provide the required number of copies of the Truth in Lending Recession Notice.

24. The Plaintiffs were directed to sign papers without being provided copies, and without notice of the amount of payments.

26. The loan ended up being far excess of what they could afford based upon his limited income and age.

27. That only the Plaintiff Alice Derflinger's credit score appears on the loan application.

28. That only the Plaintiff Alice Derflinger was used on the credit application and no employment was listed. In fact, the only income this Plaintiff had was her benefits from the Social Security Administration.

29. That Wayne Derflinger was listed as a borrower even though his only income is Social Security Benefits

30. That the Plaintiff Mary Mason was unemployed and had no income at the time the note and deed of trust were signed and had no ability to pay such a debt.

31. Under applicable West Virginia law, the "principal," *see* W. VA. CODE § 46A-1-102(36), in the loan includes the following:

- (a) the net amount paid on behalf of the debtor;
- (b) plus additional charges permitted by the chapter, *see* W. VA. CODE § 46A-3-109(a)(5), *i.e.*, reasonable closing costs, *see* W. VA. CODE § 46A-1-102(7);

(c) The Defendants cannot include in the principal the following charges:

The charges listed immediately above fall within the definition of "loan finance charge." *See* W. VA. CODE § 46A-1-102(26) ("[C]harges . . . imposed directly or indirectly by the lender as an incident to the extension of credit.").

(d) On information and belief certain fees and charges were not reasonable or bona fide.

**WHEREFORE**, the Plaintiffs respectfully request the following relief:

- (a) Actual damages;
- (b) A civil penalty of \$4,230 for each violation, pursuant to *West Virginia Code* sections 46A-5-101(1) & 106;
- (c) The Court declare that the loan agreement is void and unenforceable pursuant to *West Virginia Code* section 46A-5-101(2) & ;
- (d) Reasonable attorney fees and the cost of this litigation pursuant to *West Virginia Code* section 46A-5-104; and §31-17-17.
- (e) Such other relief as the Court may deem equitable and just.

### COUNT III - PREDATORY LENDING

32. The Plaintiffs incorporate paragraphs 1 through 31 by reference.

33. The Defendant lenders have engaged in a pattern of home equity skimming and predatory lending practices to make unfair loans in order to transfer home equity from borrowers to lenders.

34. That the Plaintiff's application showed no current income or employment at the time of application.

35. The Plaintiffs are unsophisticated consumers with little understanding of complicated financial matters.

36. On information and belief, the loan agreements, contained the following unfair terms, which constituted an unfair surprise to the Plaintiffs:

- (a) Excessive fees and costs; and
- (b) Finance charges that were represented to the Plaintiffs to be principal, thereby making the interest charges higher than represented and requiring the finance charges to be paid as principal upon refinancing.
- (c) Excessive appraisal loan.

37. The loan agreement was induced by unconscionable conduct, specifically, the Plaintiffs were induced into a loan agreement on terms favorable to the lenders, which flipped them into unfair terms and fees.

38. The Defendants' conduct in inducing the Plaintiffs into the loan was unconscionable in violation of *West Virginia Code* section 46A-2-121 and in violation of §31-17-8.

39. The loans issued to the Plaintiffs were unconscionable, under all circumstances alleged, at the time the loans were made and/or were induced by unconscionable conduct, and therefore are unenforceable under *West Virginia Code* section 46A-2-121.

**WHEREFORE**, the Plaintiffs respectfully request the following relief:

- (a) Actual damages;
- (b) A civil penalty of \$4,230 for each violation, pursuant to *West Virginia Code* sections 46A-5-101(1) & 106;
- (c) The Court declare that the loan agreement is void and unenforceable pursuant to *West Virginia Code* section 46A-5-101(2) & ;
- (d) Reasonable attorney fees and the cost of this litigation pursuant to *West Virginia Code* section 46A-5-104; and §31-17-17.
- (e) Such other relief as the Court may deem equitable and just.

**COUNT IV – ILLEGAL MORTGAGE SOLICITATION - BROKER**

40. The Plaintiffs incorporates paragraphs 1 through 39 by reference.

41. The broker – with respect to the extension of credit by others and in return for the payment of money – has represented it can obtain an extension of credit, within the meaning of *West Virginia Code* section 46A-6C-2(a)(2).

42. The broker failed to provide the Plaintiffs with a written broker agreement they could keep that was consistent with West Virginia law, and thereby failed to disclose adequately to the Plaintiffs the following:

- (i) The services to be performed by the broker;
- (ii) The cost of the broker services to be performed; and



(iii) Notice of cancellation rights of the broker services.

43. (a) The lenders knew or should have known that the broker had not complied with *West Virginia Code* section 46A-6C-5.

(b) The lender failed to seek or obtain any evidence that the broker had complied with the requirements of West Virginia law.

(c) The Defendants' brokering and lending activities were in violation of *West Virginia Code* section 46A-6C-6 & -7.

**WHEREFORE**, Plaintiffs respectfully pray for the following relief:

(a) A declaration that because the Defendants violated *West Virginia Code* section 46A-6C-1 *et seq.*, the loan agreement or the illegal portions thereof are void and unenforceable pursuant to *West Virginia Code* section 46A-2-121;

(b) Civil penalty of \$4,230 pursuant to *West Virginia Code* section 46A-5-101(1) & -106;

(c) Actual damages, not less than the broker fees, and punitive damages, pursuant to *West Virginia Code* sections 46A-2-101 & 46A-6C-9;

(d) Reasonable attorney fees and the cost of this litigation pursuant to *West Virginia Code* sections 46A-2-104 & 46A-6C-9; and

(e) Such other relief as this Court deems equitable and just.

**COUNT V – BREACH OF FIDUCIARY DUTY - BROKER**

44. The Plaintiffs incorporate paragraphs 1 through 43 by reference.

45. The broker owed a fiduciary duty to the Plaintiffs as a broker (a) to disclose the existence and terms of the broker relationship; (b) to act on their behalf and to obtain and pursue

loans with the best available terms; (c) to provide them a written agreement disclosing the services to be performed and the total cost thereof; (d) to provide them notice and an opportunity to cancel the broker agreement; and (d) to disclose to them the range of options and risks associated with their loan.

46. The broker breached its fiduciary duty to the Plaintiffs by engaging in the following activities (this list is not necessarily exhaustive):

(a) failing to disclose adequately, and in compliance with West Virginia law, the nature and terms of the agreement between the Plaintiffs and the broker;

(b) failing to seek out and obtain credit for the Plaintiffs on the best terms available; and

(c) obtaining credit terms without regard for the Plaintiffs ability to pay.

47. The Plaintiffs were injured by the broker's breach of its fiduciary duty when they incurred excessive fees and costs and were induced into a loan agreement on terms favorable to the broker and lenders without regard to terms more favorable to the Plaintiffs that may have been obtained from other lenders.

48. As a direct and proximate result of the broker's breach of its fiduciary duty, the Plaintiffs suffered substantial monetary losses and the annoyance, inconvenience, worry and stress of losing their home.

**WHEREFORE**, Plaintiffs respectfully pray for the following relief:

(a) A declaration that the broker had a fiduciary duty to the Plaintiffs;

(b) A declaration that the broker breached its fiduciary duty to the Plaintiffs

by, *inter alia*, (I) failing to disclose adequately, and consistent with West Virginia law, the

nature and terms of the agreement between the Plaintiffs and the Defendant brokers; (ii) failing to seek out and obtain credit for the Plaintiffs on the best terms available; (iii) persuading the Plaintiffs to accept a higher interest rate – without their knowledge – in exchange for a secret kickback from the lender; (iv) charging the Plaintiffs excessive broker fees; and (v) arranging for a fraudulent appraisal that resulted in indebtedness that exceeds the market value of the Plaintiff's home

(c) A declaration that the acceptance of a yield spread premium is *per se* a breach of a broker's fiduciary duty to a borrower;

(d) A declaration that by breaching their fiduciary duty to the Plaintiffs, the broker engaged in unconscionable conduct in the inducement of the loan agreement, and the loan is therefore void and unenforceable pursuant to *West Virginia Code* section 46A-2-121;

(e) Actual and punitive damages;

(f) Reasonable attorney fees and the costs of this litigation; and

(g) Such other relief as this Court deems equitable and just.

#### **COUNT VI – JOINT VENTURE, CONSPIRACY, AND AGENCY**

49. The plaintiffs incorporate paragraphs 1 through 48 by reference.

50. Each defendant had a pecuniary interest in the loan transaction with the Plaintiffs.

51. The lender and broker combined their money, skill, and knowledge to carry out the enterprise, that is the home loan to the Plaintiffs.

52. On information and belief, each defendant had an agreement – written, oral, constructive, or otherwise – with one another to close the loan.

53. Each of the acts of the defendants, hereinbefore alleged, were done in furtherance

of a joint venture in which each of the acts of each of the defendants was pursued with a joint purpose.

54. The lender, broker and defendants conspired to commit the unlawful acts, or lawful acts by unlawful means, hereinbefore alleged, and each is responsible for all acts alleged herein.

55. Each of the defendants' acts were conducted as a part of the principal-agency relationship between the Defendants.

#### **COUNT VII – CONSUMER CREDIT ACT VIOLATIONS**

56. The plaintiffs incorporate paragraphs 1 through 55 by reference.

57. That the Plaintiffs did provide certificates of insurance coverage on their residential property that is the subject of this complaint to the Defendant Taylor Bean.

58. That the Defendant Taylor Bean has charged the Plaintiffs for insurance coverage that was not due or required when the Defendant knew or should have known that the Plaintiffs maintained insurance on said property.

59. That the Defendant Taylor Bean has improperly used escrow funds for payment of fees that were not required or necessary under the note.

60. That the Defendant Taylor Bean intentionally charged insurance so as to create an extra fee which illegally increased the Plaintiffs' mortgage payment.

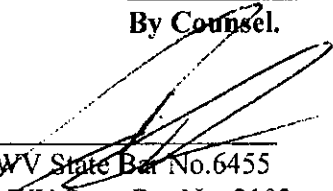
**WHEREFORE**, Plaintiffs respectfully pray for the following relief:

(a) A declaration that because the Defendants violated *West Virginia Code* section 46A-6C-1 *et seq.*, the loan agreement or the illegal portions thereof are void and unenforceable pursuant to *West Virginia Code* section 46A-2-121;

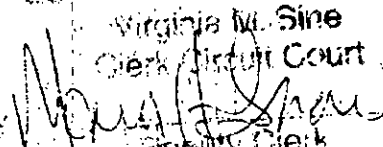
- (b) Civil penalty of \$4,230 pursuant to *West Virginia Code* section 46A-5-101(1) & -106;
- (c) Actual damages and punitive damages, pursuant to *West Virginia Code* sections 46A-2-101 & 46A-6C-9;
- (d) Reasonable attorney fees and the cost of this litigation pursuant to *West Virginia Code* sections 46A-2-104 & 46A-6C-9; and
- (e) Such other relief as this Court deems equitable and just.

**THE PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

**ALICE DERFLINGER, WAYNE DERFLINGER,**  
**and MARY MASON,**  
**By Counsel.**

  
\_\_\_\_\_  
Aaron C. Amore, Esquire WV State Bar No. 6455  
James T. Kratovil, Esquire WV State Bar No. 2103  
Kratovil & Amore PLLC  
211 West Washington Street  
Charles Town, WV 25414  
304-728-7718

A TRUE COPY  
ATTEST

By   
Virginia M. Sine  
Clerk Circuit Court  
Circuit Clerk

## Exhibit A

That certain lot or parcel of real estate, with the improvements and appurtenances thereunto belonging, situate in the City of Martinsburg, Berkeley County, West Virginia, and more particularly described as follows:

Beginning at an iron pin set along Central Avenue and the center of Lot 84, thence S 72 deg 00' E, 60 feet to a one (1) inch iron pipe set within the boundaries of Lot 84, thence N 29 deg 19' E 102 feet to a two (2) inch pipe set on the boundary of Lot 86, Lot 87, thence N 72 deg 00' W 80 feet to a post, corner of which is Lot 86, Lot 87, Central Avenue, thence S 19 deg 00' W 100 feet to an iron pin, and being the place of beginning, containing 7,000 square feet, as more fully set forth on a survey dated June 2, 1989, by Ralph L Long LLL #403, which plat is attached to a deed recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 450, at Page 606.

AND BEING the same real estate which was conveyed to Jason L Hypes and Crystal G Hypes by deed dated December 16, 1999, from Arlene k Parker, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed 637 at Page 136.

Property Address: 833 Central Avenue Martinsburg, WV 25401  
Tax Map #: 11-0276-0001-0000

**VERIFICATION**

I, Wayne Derflinger, Sr., declare as follows:

I am a Plaintiff in the above-entitled action.

I have read the foregoing Complaint and know its contents. The matters stated in the complaint are true of my own knowledge, except for those items which are alleged on my information and belief, and as to those items, I believe them to be true.

I certify under penalty of perjury under the laws of the State of West Virginia, that the foregoing is true and correct.

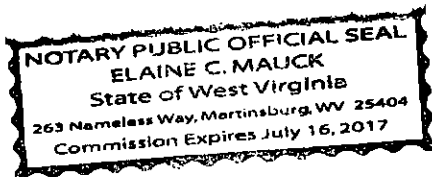
Executed on the 7<sup>th</sup> day of December, 2007.

Wayne Derflinger Sr.  
Wayne Derflinger, Sr.

STATE OF WEST VIRGINIA,

COUNTY OF Berkeley, to wit:

Subscribed, sworn to, and acknowledged before me by Wayne Derflinger, Sr., on this the 7<sup>th</sup> day of December, 2007.



Elaine C Mauck  
Notary Public

My commission expires: July 16, 2017

**VERIFICATION**

I, Mary Mason declare as follows:

I am a Plaintiff in the above-entitled action.

I have read the foregoing Complaint and know its contents. The matters stated in the complaint are true of my own knowledge, except for those items which are alleged on my information and belief, and as to those items, I believe them to be true.

I certify under penalty of perjury under the laws of the State of West Virginia, that the foregoing is true and correct.

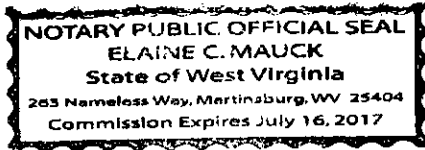
Executed on the 7<sup>th</sup> day of December, 2007.

Mary Mason  
Mary Mason

STATE OF WEST VIRGINIA,

COUNTY OF Berkeley, to wit:

Subscribed, sworn to, and acknowledged before me by Mary Mason, on this the 7<sup>th</sup> day of December, 2007.



Elaine C Mauck  
Notary Public

My commission expires: July 16 2017



**VERIFICATION**

I, Alice Derflinger declare as follows:

I am a Plaintiff in the above-entitled action.

I have read the foregoing Complaint and know its contents. The matters stated in the complaint are true of my own knowledge, except for those items which are alleged on my information and belief, and as to those items, I believe them to be true.

I certify under penalty of perjury under the laws of the State of West Virginia, that the foregoing is true and correct.

Executed on the 7th day of December, 2007.

Alice Derflinger  
Alice Derflinger

STATE OF WEST VIRGINIA,

COUNTY OF Berkeley, to wit:

Subscribed, sworn to, and acknowledged before me by Alice Derflinger, on this the \_\_\_\_\_ day of December, 2007.

Patricia A. Baldwin  
Notary Public

My commission expires: October 1, 2013

