

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.		<input type="checkbox"/> 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.	
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.			
<div>21836931023834</div> <div>AL HOLBELD, JR. LAW OFFICES OF AL HOLBELD, JR. LLC 208 S LASALLE STREET CHICAGO, IL 60604</div> <div>AL Holfeld, Jr. Law offices of AL Holfeld, Jr., LLC 1525 E. 53rd St., #903, Chicago, IL 60615</div>			
Creditor Telephone Number () 773-241-5844		<input type="checkbox"/> Check box if address is where Notice is to be sent.	
Name and address where payment should be sent (if different from above): JACKSONVILLE, FLORIDA		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
Payment Telephone Number () 773-241-5844		THIS SPACE IS FOR COURT USE ONLY	
1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ 2,000.00 (See "Basis for Claim" attached)			
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.			
<input type="checkbox"/> 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: <i>See attached explanation with exhibits</i>		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: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other		Secured Claim Amount: \$ Unsecured Claim Amount: \$ Amount of arrearage and other charges as of time case filed included in secured claim.	
Value of Property: \$ Annual Interest Rate: % if any: \$		Basis for Perfection:	
5. PRIORITY CLAIM			
<input type="checkbox"/> 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. You MUST specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> 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). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		Unsecured Priority Claim Amount: \$ Include ONLY the priority portion of your unsecured claim here.	
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.) 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.			
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 Proc 18750 Lake Drive East Chanhassen, MN 55317	
DATE 6-14-10		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. <i>AL Holfeld, Jr.</i> Scanned: 6/15/2010 11:32:09 AM	

Basis For Claim

Claimant, The law Offices of Al Hofeld, Jr., LLC ("Hofeld firm"), seeks to have Taylor Bean and Whitaker Mortgage Corp ("Taylor Bean") honor a portion of the binding settlement agreement that Taylor Bean entered into with Ida Mae Whitley and Clyde Whitley ("plaintiffs") prior to the filing of its bankruptcy on August 24, 2009.

On May 30, 2008, plaintiffs filed a lawsuit against Taylor Bean and other defendants, Whitley v. Taylor Bean, et al., 2008 CV 3114 (N.D.Ill.). A copy of plaintiff's second amended complaint is attached hereto as Exhibit A. On April 20, 2009, the U.S. District Court for the Northern District of Illinois sustained most of plaintiff's claims, denying in large part the motions to dismiss filed by various defendants, including Taylor Bean. A copy of the Court's Memorandum Opinion is attached hereto as Exhibit B.

On July 23, 2009, plaintiffs and the remaining defendants, including Taylor Bean, entered into a binding settlement agreement at a settlement conference with the assigned Magistrate Judge, Judge Maria Valdez. A copy of the settlement term sheet signed by counsel for all parties, including counsel for Taylor Bean, is attached hereto as Exhibit C. The original is on file on Judge Valdez's chambers. Section F. of the term sheet indicates that the settlement was "binding" as of July 23, 2009. (Exhibit C, p. 3). A copy of the Order entered by Judge Valdez on the same date is attached hereto as Exhibit D. It indicates that "parties agree to the terms of settlement." On July 30, 2009, counsel for Taylor Bean e-mailed plaintiff's counsel a draft settlement agreement containing all of the terms that the parties had agreed to at the settlement conference, a copy of which is attached hereto as Exhibit E. After plaintiffs' counsel sent minor revisions to the agreement to Taylor Bean's counsel on August 10, 2009, Taylor Bean's counsel announced on August 24 or 24, 2009, that Taylor Bean had filed bankruptcy and that the settlement agreement was now indefinitely "on hold." Since that time, Taylor Bean has taken no action to perform any of its obligations under the settlement agreement.

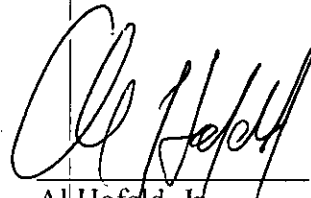
As is apparent from the attached term sheet and settlement agreement, Taylor Bean agreed, as part of settlement, to pay plaintiffs' attorney's fees and costs to plaintiffs' counsel, the Law Offices of Al Hofeld, Jr., LLC, in the amount \$32,000.¹

LAW OFFICES OF AL HOFELD, JR., LLC
AND THE SOCIAL JUSTICE PROJECT, INC.

AL HOFELD, JR.
ATTORNEY AT LAW

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Al Hofeld, Jr.
Law Offices of Al Hofeld, Jr., LLC
Counsel for Ida Mae Whitley
And Clyde Whitley

¹ Plaintiffs have also filed a separate claim in the amount of \$89,272.40 for the relief that Taylor Bean was supposed to provide to plaintiffs, including the \$32,000 in attorney's fees and costs. This was done in the event that the Court considers plaintiffs, not their counsel's firm, to be the proper claimant for the attorney's fees and costs portion of the settlement.

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IDA MAE WHITLEY and CLYDE WHITLEY,)	
)	
Plaintiffs,)	08 CV 3114
)	
v.)	
)	Judge Castillo
TAYLOR, BEAN & WHITAKER MORTGAGE)	
CORP.; ADVANCE LENDING GROUP, CORP.;)	
OSWALDO OCHOA; JHONFREY OSPINA;)	Magistrate Judge Valdez
ANITA LOGAN; FAVIAN CARDENAS;)	
BLUE HORIZON REAL ESTATE CORP.;)	
and DOES 1-10,)	JURY DEMANDED
)	
Defendants.)	

SECOND AMENDED COMPLAINT

INTRODUCTION

1. Plaintiffs Ida Mae Whitley, Clyde Whitley and Kenna Whitley bring this action against a sub-prime mortgage lender, a mortgage broker, a real estate agent and others to secure redress for fraud, negligence, discrimination and other predatory lending practices.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 28 U.S.C. §§1331 (general federal question), 1337 (interstate commerce), 15 U.S.C. § 1679b (Credit Repair Organizations Act), 12 U.S.C. Sect. 2601, et seq. (Real Estate Settlement Procedures Act), 42 U.S.C. Sect. 1981 (Civil Rights Act), 42 U.S.C. Sect. 3605 (Fair Housing Act) and 15 U.S.C. Sect. 1691 (Equal Credit Opportunity Act), and 1367 (supplementary jurisdiction).

3. Defendants all transact business in the District and are deemed to reside here.

PARTIES

4. Plaintiffs Ida Mae Whitley and Clyde Whitley are first-time home owners who, with their adult daughter, plaintiff Kenna Whitley, and her son, reside in a single-story, raised ranch house located at 8519 S. Kenton Avenue, Chicago, IL 60652.

5. Plaintiffs are African-American.

6. Defendant Taylor, Bean & Whitaker Mortgage Corp. ("TB&W") is a residential mortgage lender with corporate headquarters in Ocala, Florida. TB&W is primarily a wholesale lender in that most of its mortgage loans are arranged or brokered by authorized mortgage brokers and small banks. TB&W also maintains a number of retail branch offices throughout the United States, including one in Oakbrook Terrace, Illinois. TB&W's registered agent in Illinois is Frances M. Kristina, Taylor, Bean & Whitaker Mortgage Corp., 1 South 443 Summit Avenue, Suite #204, Oakbrook Terrace, Illinois, 60181.

7. Defendant Advance Lending Group, Corp. [sic] ("Advance Lending") is an Illinois mortgage broker with offices at 1830 West Foster Avenue, Chicago, Illinois, 60640 and/or 4457 West Fullerton Avenue, Chicago, Illinois, 60639. Advance Lending's registered agent is O. Allen Fridman, 555 Skokie Boulevard, Suite #500, Northbrook, Illinois, 60062.

8. Oswaldo Ochoa (a.k.a. "Ozzie") is or was Advance Lending's president and secretary. On information and belief, he resides at 6345 S. Keeler, Chicago, Illinois, 60629.

9. Defendant Favian Cardenas is an Illinois licensed real estate broker. On information and belief, at the time of plaintiff's transaction he was employed by Gil & Gil Group Corp. Real Estate-Lincoln ("Gil & Gil"), a residential real estate brokerage corporation located at 4306 N. Lincoln Avenue, Chicago, 60618. Also at that time, Cardenas had his own corporation, defendant Blue Horizon Real Estate Corp. ("Blue Horizon"), also a residential real estate

brokerage corporation, which, on information and belief, is currently located at 3526 North Lincoln Avenue, Chicago, Illinois, 60657. On information and belief, Cardenas currently resides at 1024 Austin, Evanston, Illinois, 60602.

10. Johnfrey Ospina (a.k.a. "John") processed and or brokered loans for Advance Lending and/or its president, Ochoa, at the same time that he was employed by LaSalle Bank. On information and belief, Ospina is now employed by Chase Bank.

11. Anita Logan is an employee of TB&W. She works in TBW's Central Document Facility (CDF) or Mortgage Banking Center located at 1417 N. Magnolia Avenue, Ocala, Florida, 34475.

12. DOES 1-10 are any other persons who engaged in or aided and abetted the predatory practices, disclosure violations and other wrongdoing alleged below and whose identities and whereabouts are as yet unknown to plaintiffs.

FACTS RELATING TO ALL CLAIMS

13. Plaintiffs are simple, unsophisticated consumers.

14. Ida Mae had good credit at the time she obtained the loans from defendants. Her credit score was 696.

15. In late 2005, after renting apartments for all of their adult lives - primarily in the dangerous, North Lawndale neighborhood in Chicago - plaintiff and her husband, then ages 56 and 60, respectively, decided to purchase a home in order to have a safe and stable place to live during their retirement.

16. On information and belief, in January, 2006, plaintiffs found Cardenas and Blue Horizon in the Yellow Pages. Plaintiffs explained to Cardenas that they knew nothing about the process of buying a home and that they were looking to him for expertise and help.

Kenna Whitley asked Cardenas to “do for [her parents] what you would do for your own parents.” Plaintiffs placed their trust in Cardenas.

17. However, Cardenas, who was aware of plaintiffs’ limited income, showed plaintiffs homes that he knew they could not afford.

18. At all times, defendants knew that plaintiffs were unsophisticated, first-time home buyers. Defendants took full advantage of these facts.

19. In early April, 2006, plaintiffs decided they liked the home Cardenas showed them at 8519 S. Kenton and wanted to purchase it. Cardenas did not advise or instruct plaintiffs on how to make an informed offer or on how to negotiate the purchase price or other terms of the real estate purchase contract.

20. After plaintiffs’ offer for the asking price was accepted, on information and belief Cardenas arranged many aspects of plaintiffs’ real estate and loan transactions, including but not limited to: the home inspection, the appraisal, the closing attorney, the home owner’s insurance policy and the financing.

21. Plaintiffs dealt with Cardenas and other defendants concerning the terms of financing for the purchase of their new home.

22. Cardenas promised plaintiffs that their monthly mortgage payment would be no more than \$1,800, including principal, interest, and monthly escrow amounts for taxes and insurance. Based on Cardenas’ representation, plaintiffs believed they could afford the monthly payments. At that time, the family’s monthly rental payment was \$925.00.

23. In addition, Cardenas told plaintiffs that, after six months, they could refinance with him in order to obtain a lower interest rate and a lower monthly payment.

24. Cardenas also told plaintiffs that, after closing, they would receive an \$8,000.00 rebate on the purchase of the home.

25. Cardenas then instructed plaintiffs where and when closing would take place, and plaintiffs followed his instructions.

26. Plaintiffs never received any written, preliminary disclosures of loan terms, such as a Good Faith Estimate of Settlement Charges or a preliminary Truth-In-Lending Disclosure Statement, from TB&W or Advanced Lending or any other defendant, in violation of the Real Estate Settlement and Procedures Act.

27. Because plaintiffs had never been through the home purchase and financing process before, none of these representations or omissions seemed unusual or questionable.

28. Closing occurred on or about May 30, 2006. Cardenas was not present, having claimed to be out of town.

29. Plaintiffs were asked to sign documents twice. The signing was rushed. Plaintiffs did not receive any explanation about the contents of the documents they signed or the terms of financing.

30. The following are true and accurate reproductions of documents relating to the loans that TB&W originated to plaintiffs:

- a. A note in the amount of \$235,200.00 at an interest rate of 7.5% (Exhibit A);
- b. A first mortgage (Exhibit B);
- c. A Truth-In-Lending Disclosure Statement (Exhibit C) disclosing an Amount Financed of \$229,587.34 and an APR of 7.7485%;

- d. A HUD-1 Settlement Statement (Exhibit D);
- e. A second mortgage referencing a Note for \$58,000 (Exhibit E);
- f. A Truth In Lending Disclosure Statement disclosing an Amount Financed of \$57,683.81 and an APR of 8.9625% (Exhibit F);
- g. A second HUD-1 Settlement Statement (Exhibit G); and
- h. A 1003 loan application for the smaller loan (Exhibit H).

31. However, at the closing, plaintiffs were not given, to take home with them, copies of all of the documents they signed, including, without limitation, the note for the second-lien loan and the final loan application for the first-lien loan.

32. Unbeknownst to plaintiffs, defendants had arranged for an "80/20" loan from defendant TB&W for 100% of the appraised, market value of the home. Plaintiffs did not discover they had been given two loans until two months following closing, after making the first payment in the amount of \$2,077.34 to TB&W and receiving a phone call from Citimortgage, Inc., which claimed that their payment in the amount of \$462.58 (for a second loan) was overdue.

33. Prior to closing, plaintiffs were never properly informed by TB&W, Advanced Lending or Cardenas that the house payment would be \$2,539.92 per month, inclusive of escrow. This information was concealed from them.

34. Prior to closing, plaintiffs never received from TB&W, Advanced Lending or Cardenas any written or oral notification of change in the payment amount they were quoted by Cardenas or in the loan terms, as required by the Illinois Residential Mortgage License Act.

35. Plaintiffs were never informed by any defendant that, due to TB&W's payment of yield spread premiums to Advanced Lending in connection with both loans (Exhibit

E, page 2, line 808 and Exhibit G, page 2, line 808), TB&W assigned plaintiff Ida Mae Whitley a higher interest rate than she qualified for, as alleged more fully below. No defendant ever explained to any plaintiff the meaning of the YSPs. No defendant made any plaintiff aware of the choice between interest rates or informed them that the rates for the loans were negotiable.

36. The meaning of the YSPs was material information for plaintiffs. Because plaintiff Ida Mae Whitley had good credit, she could have obtained her financing at significantly lower interests rates if TB&W had not secretly agreed in advance of closing to unnecessarily and artificially raise her interest rates and divide the spoils between them, as further explained below.

FACTS RELATING TO FRAUD IN THE INDUCEMENT

Loan Applications

37. In April, 2006, defendants asked plaintiffs for, and plaintiffs provided, truthful and accurate information and documentation concerning their income, employment, education and race.

38. Specifically, Ida Mae Whitley and Clyde Whitley provided to defendants three years of their personal tax returns, including W-2s, copies of Ida Mae Whitley's paycheck stubs for the previous six months, 12 months' worth of bank statements, and 12 months' worth of rent receipts.

39. However, on information and belief, defendants, including TB&W, caused both of plaintiffs' final, 1003 loan applications to be completed utilizing made-up financial and other information about plaintiff Ida Mae Whitley. Defendants fabricated an entire socio-economic profile for her.

40. Completed by TB&W's agent, Anita Logan, the application for the smaller loan (Exhibit H, the only application of which plaintiff has a copy) makes plaintiff Ida

Mae Whitley out to be a white, upper-middle-income, highly educated female with a high-skilled job. It discloses that she is "White" and "Not Hispanic or Latino" (Section X.), has 16 years of education (i.e., a college degree)(Section III), is employed by the City of Chicago as a "Mechanic" (Section IV.) and earns \$6,800.00 per month gross in income from employment (Section V.), the equivalent of \$81,600 annually.

41. The only truth in this profile is that plaintiff is female.

42. In fact, Ida Mae Whitley and her husband are dark-complexioned, and Mrs. Whitley has a 7th grade education from public schools in Tunica, MI, a notoriously impoverished part of the U.S.

43. Further, while Mrs. Whitley is employed by the City of Chicago, her position is that of a "Garage Attendant," not a "Mechanic." She is responsible for checking the fluid levels on trucks and no more.

44. In fact, in May, 2006, she earned \$16.50 an hour or about \$2,840 gross per month, which translates to about \$34,000 annually – less than half the amount the loan application says she earned.

45. In fact, plaintiffs were paying \$925.00 per month in rent in May, 2006, not \$1,100, as the application states (Section V.).

46. Further, Mr. Whitley receives a Social Security disability benefit as his sole income.

47. While Mrs. Whitley was ultimately the sole borrower, defendants planned on making Mr. Whitley a co-borrower, and defendants knew, even after they decided not to utilize him as a co-borrower, that he and other family members would be helping to make the mortgage payment each month.

48. Plaintiffs Clyde Whitley and Kenna Whitley contributed to making the mortgage payments on both loans each month, until the family could no longer afford to make the payments on the larger or first-lien loan. Plaintiffs remain current on the second loan.

Appraisal

49. Prior to April 13, 2006, Cardenas, Ospina and/or Advance Lending ordered and arranged for an appraisal of the property at 8519 S. Kenton in Chicago.

50. The appraiser was Daniel Sompolski, an Illinois licensed appraiser and real estate broker. As a real estate broker, Sompolski was disciplined in 2004.

51. Sompolski was Cardenas', Ospina's and/or Advance Lending's agent for purposes of performing the appraisal of the property.

52. On information and belief, defendant(s) conspired with Sompolski prior to April 13, 2006 to arrange for a fraudulently inflated appraisal of the market value of the property.

53. On information and belief, defendants contacted Sompolski prior to that date and advised him of the value they ultimately needed (i.e., at least \$294,000, which was the contract purchase price) in order to support the loan amounts they wanted to make to plaintiffs. They agreed upon a value in advance of the appraisal inspection and report.

54. Sompolski obliged in order to continue to receive a stream of business from Advanced Lending. On information and belief, a significant share of the volume of Sompolski's business in 2006 came through Advanced Lending.

55. On or about April 13, 2006, Sompolski appraised the home and property and prepared an appraisal report stating that the market value was \$295,000. This amount was significantly and artificially inflated relative to comparable homes in the area.

56. On information and belief, defendants conspired and arranged to insert false information onto plaintiff Ida Mae Whitley's loan applications and to inflate the home's appraised value in order to make it appear that plaintiffs could afford to repay the loans.

57. The income on the loan application and the reported, appraised value support the amount of financing defendants needed to originate in order to finance the contract price. Defendants inserted the false information onto the final loan applications and arranged for plaintiff Ida Mae Whitley to sign them at closing.

58. TB&W was not only aware of the fraud on the loan applications but knowingly participated in it. Its employee, Anita Logan, completed and, on information and belief, signed plaintiffs' loans applications on behalf of TB&W. Even though the "Name and Address of Interviewer's Employer" section on the loan application (Exhibit H, page 4) indicates that Logan was employed by Advanced Lending, in fact she was employed by TB&W, and the phone number below her name on the application is a main number to TB&W's offices in Florida.

59. In addition or alternatively, on information and belief, prior to May 30, 2006, Cardenas, Ospina and/or Advanced Lending transmitted the fraudulent information about plaintiff Ida Mae Whitley's income, employment and property value to TB&W's underwriters.

60. Prior to approving the loan, TB&W performed its own, independent verification of Mrs. Whitley's income, employment and property, as well as its own underwriting analysis, and approved the loans. TB&W knew or should have known and discovered that the income, employment and home appraisal submitted for plaintiffs was fraudulent and inflated.

61. Alternatively, TB&W was negligent in failing to discover that the information was fraudulent.

62. TB&W had a non-delegable duty to verify plaintiffs' income, employment and property value. In fact, on information and belief, TB&W performed a verification of employment and an independent inquiry of the value of the property.

63. Further, on information and belief, TB&W required and obtained, prior to closing, a photocopy of plaintiffs' photo identification. From this, it was or should have been apparent that plaintiffs were not "white."

64. On information and belief, TB&W also had other information from Advanced Lending and/or plaintiffs from which it knew or should have known of or discovered fraud.

65. Further, following closing TB&W performed another analysis, an internal audit, on plaintiffs' loan file to check to ensure that the income, employment and/or appraised value were accurate and/or had been verified by TB&W staff. Once again, TB&W passed the loan when any reasonable inquiry would or should have revealed fraud by TB&W and/or its loan officer, Anita Logan, or its mortgage broker, Advanced Lending.

66. In fact, plaintiffs could not afford the payments on the loans. By basing the loans on an inflated home value, falsely inflated income figures, supported by a false employment and educational information for Mrs. Whitley, defendants fraudulently or negligently represented to plaintiffs that they could afford the home. Defendants knew or should have known that plaintiffs could not afford to make the payments based on this information.

67. But defendants faced an enticing commission structure. They falsely inflated Mrs. Whitley's income and appraised value to induce her to take out the purchase money loans, which in turn increased the amount of TB&W's, Logan's, Advanced Lending's, Ospina's and Cardenas' percentage-based, closings fees and commissions, as well as TB&W's future

interest-income and profits derived from the loans. TB&W also paid a handsome yield spread premium payments to Advanced Lending in connection with each loan. Most of these profits were realized immediately, upon disbursement of the loans.

68. In addition, on information and belief, Cardenas received an illegal kickback payment in exchange for steering plaintiffs' financing business to Advanced Lending, Ospina or Ochoa.

69. On information and belief, Cardenas and other defendants have a pattern and practice of committing the same types of fraud and fraudulent or negligent misrepresentation against consumers in other mortgage transactions.

70. Plaintiffs have tried three times to refinance out of defendants' loans. However, due to defendants' initial fraud of concealing that they were giving loans based on inflated property and income values, plaintiffs are "upside down"; their mortgage indebtedness is greater than the actual property value and income support. Consequently, plaintiffs' applications for refinancing have been rejected.

71. Plaintiffs have repeatedly requested loan modifications from TB&W and Citimortgage, Inc., the current servicer of the second-lien loan, but their requests have been denied – for the same reasons.

72. In January, 2008, TB&W initiated a foreclosure action against plaintiffs Ida Mae Whitley and Clyde Whitley in the Circuit Court of Cook County, 08 CH 07849. Plaintiffs are now faced with the prospect of losing their home at the dawn of their retirement.

73. Defendants knew or could easily foresee that foreclosure would be the inevitable result of their actions of putting plaintiffs in a home and in loans that plaintiffs could not afford.

FACTS RELATING TO AGENCY

74. The loan application (Exhibit H) for the second-lien loan indicates that Anita Logan interviewed plaintiff Ida Mae Whitley in person to take the information for this application. (Id.).

75. Anita Logan was and is an employee and agent of TB&W, even though the application creates the impression that she was an agent of Advanced Lending. (Exhibit H, page 4). She took and accepted the application on behalf of TB&W.

76. In the alternative, TB&W is vicariously liable for Logan's acts of fraud and/or negligence. Those acts were committed within the scope of employment. Logan's acts were encouraged by TB&W's compensation policies and furthered the business of TB&W.

77. On information and belief, Logan filled out the computer-generated, final loan applications for both loans and signed them on behalf of TB&W.

78. On information and belief, Logan received additional, discretionary compensation from TB&W for her role in processing and/or originating plaintiffs' loans.

79. In the alternative and for the reasons set forth below, at all times Advanced Lending was an agent of TB&W. Johnfrey Ospina was an agent of Advanced Lending or of Osmond Ochoa and, therefore, a subagent of TB&W. Logan was an agent of TB&W. Cardenas and Blue Horizon were agents of Ospina and/or Advanced Lending and were agents or subagents of TB&W. Cardenas was an agent of Blue Horizon. Ochoa was an agent of Advanced Lending.

80. Cardenas represented to plaintiffs that he had authority from TB&W and Advanced Lending to arrange or grant mortgage financing, as well as the terms of that financing.

81. Advanced Lending, Ospina and Cardenas conducted most of the meetings and discussions with plaintiffs and made most of the material representations to her concerning the financing and the loans' terms.

82. On information and belief, following closing Cardenas received compensation from Advanced Lending, Ospina and/or TB&W in exchange for his role in steering plaintiffs' mortgage financing business to them.

83. Moreover, on information and belief, Ospina was at that time an agent of Advanced Lending and/or of Ochoah by virtue of a financial arrangement he had with one or both of them in which he received compensation for arranging and/or processing mortgage loans through Advanced Lending. Ospina was also an employee of LaSalle Bank at that time.

84. Mr. and Mrs. Whitley gave the supporting documents (described below) for their loan applications to Ospina or to Cardenas and Ospina together when the two men met with plaintiffs in their home. These documents were later given to TB&W.

85. In connection with plaintiffs' loans, TB&W paid Advanced Lending a total of \$6,134.02 for the latter's role in arranging the loans to plaintiff (Exhibit D, page 2, line 808; Exhibit G, page 2, lines 808). TB&W paid the two "par premiums" or "yield spread premiums" ("YSP") primarily in exchange for Advanced Lending's agreement to increase plaintiff Ida Mae Whitely's interest rate above the "par" rate that she qualified for.

86. To this end, TB&W provided Advanced Lending with information about TB&W's broker-compensation policies and formulae. These policies gave Advanced Lending the incentive to arrange plaintiff's loans and to increase plaintiff's interest rates.

87. In this manner, TB&W authorized Advanced Lending and gave it discretion to increase the interest rates on plaintiffs' TB&W loans.

88. Because of Advanced Lending's interest rate mark-up, TB&W received additional income and profit from plaintiffs' loans.

89. On information and belief, Advanced Lending directed some or all of the YSP payments to Ospina and/or Cardenas as additional compensation.

90. TB&W's policies also authorized Advanced Lending to charge certain amounts to plaintiffs in borrower-paid broker fees to Advanced Lending, such as loan origination and processing fees. Advanced Lending received \$5,003 in such fees directly from plaintiffs (Exhibits F and G).

91. In addition, on information and belief, TB&W and Advanced Lending had a written agreement to do business with each other. TB&W contracted with Advanced Lending in order to find prospective borrowers.

92. Pursuant to that agreement, TB&W authorized Advanced Lending to broker or arrange mortgage loans on TB&W's behalf.

93. Pursuant to that agreement, a significant number of loans brokered by Advanced Lending were placed with TB&W.

94. Pursuant to that agreement, TB&W authorized Advanced Lending to accept applications on its behalf, to quote financing rates and terms, to inform credit applicants of their financing options and to originate finance transactions, all by using TB&W's website, computer software and its forms.

95. Pursuant to the agreement, plaintiffs' loans were arranged by Advanced Lending in reliance on TB&W's credit-granting policies.

96. In particular, as one example, Advanced Lending consulted and followed TB&W's "rate sheets" and/or "product sheets" in setting the terms of plaintiffs' loans. This

information was available to Advanced Lending (and other TB&W-authorized mortgage brokers) on TB&W's website, and, on information and belief, Advanced Lending utilized TB&W's software to price plaintiffs' loans.

97. On information and belief, TB&W also made its closing documents available to Advanced Lending on TB&W's website, as well as TB&W's training and instructions for filling out such documents, and Advanced Lending utilized those documents and instructions to arrange plaintiffs' loans.

98. On information and belief, Advanced Lending prepared the documents necessary for plaintiff's loans from TB&W.

99. On information and belief, Advanced Lending and/or Ospina and/or Cardenas arranged for the closing of plaintiff's loans from TB&W.

COUNT I – CREDIT REPAIR ORGANIZATIONS ACT [dismissed as to TB&W]

100. Plaintiffs incorporate paragraphs 1-99. This claim is against all defendants.

101. Defendants violated the Credit Repair Organizations Act ("CROA"), 15 U.S.C. Sect. 1679b, by fraudulently inflating and falsifying plaintiff Ida Mae Whitley's income, employment and other pertinent information on her loan applications and by fraudulently overstating the value of the property plaintiffs sought to purchase.

WHEREFORE, plaintiffs request that the Court enter judgment in favor of plaintiffs and against defendants for: compensatory, punitive and other appropriate damages; equitable relief; attorney's fees, litigation costs; and such other or further relief as the Court deems appropriate.

COUNT II – RESPA

102. Plaintiff Ida Mae Whitley incorporates paragraphs 1-99. She brings this count against all defendants.

103. Plaintiff's loans from TB&W were federally-related mortgage loans, within the meaning of the Real Estate Settlement Procedures Act ("RESPA").

104. On information and belief, TB&W paid Advanced Lending the YSP primarily in exchange for increasing plaintiff's interest rate and/or for steering or referring mortgage business to TB&W, not for other goods and services actually rendered. The YSP was an illegal kickback or unearned fee.

105. Alternatively, the YSP payment did not bear a reasonable relationship to the market value of any goods or services actually provided by Advanced Lending.

106. On information and belief, TB&W and Advanced Lending illegally split with each other the additional compensation earned from the transaction as a result of the imposition of the YSP.

107. Advanced received its compensation up front in the form of the YSP, while TB&W received its compensation over time in the form of the enhanced interest income flowing from the higher interest rate.

108. Taylor Bean never disclosed the real purpose and effect of the YSP to plaintiffs, as set forth above.

109. Moreover, on information and belief, Cardenas and Blue Horizon received payments and kickbacks from Advanced Lending, Ospina, Ochoa and third parties whose identities plaintiffs do not presently know in exchange for steering mortgage business to them.

110. On information and belief, Advanced Lending, Ospina and/or Ochoa compensated Cardenas and/or Blue Horizon for steering mortgage financing business to them by splitting the fees they earned from the transaction with Cardenas and/or Blue Horizon.

111. For instance, on information and belief, Advanced and Ochoa split with Ospina the YSP payment that Advanced received from Taylor Bean.

112. On information and belief, Ospina then gave a cut of his share of the YSP payment to Cardenas and/or Blue Horizon.

113. None of these steering or referral arrangements, including the real purpose and effect of the YSP, were ever disclosed to Ms. Whitley or her family, and no plaintiff was provided with any written estimate of these charges of the defendant(s) to which/whom Ida Mae Whitley's mortgage business was referred.

114. On the contrary, as set forth below, these agreements were actively concealed from Ms. Whitley and her family.

115. Defendants agreements to engage in this conduct were, at all times, implicit and oral or, if written, totally concealed from plaintiffs.

116. Defendants' conduct violated 12 U.S.C. Sect. 2607(a) and/or (b) and 24 C.F.R. 3500.14(b) ("Regulation X").

117. Ms. Whitley is entitled to the statutory and treble damages provided for by 12 U.S.C. Sect. 2607(d).

Tolling of Statute of Limitations

118. RESPA's one-year statute of limitations was tolled by defendants' fraudulent concealment of these referral agreements and fee-splitting secret transactions.

119. Additionally, the statute of limitations was tolled by the discovery rule.

120. Plaintiffs, despite the exercise of reasonable diligence, did not discover and could not have discovered these agreements and transactions within one year of closing. Plaintiffs did not begin to discover them until they met with current counsel in early 2008.

121. Defendants took active, affirmative steps to conceal the agreements and fee splitting payments from plaintiffs and from the rest of the world.

122. None of the loan documents inform plaintiffs of the existence of these agreements and arrangements.

123. Further, no defendant disclosed these agreements and transactions or provided any explanation of them before or after closing.

124. Further, defendants' agreements to engage in these transactions were exclusively oral and implicit or, if written, were not disclosed to plaintiffs and were known only to themselves.

125. Consequently, defendants effectively deprived plaintiffs of the vital information necessary to discover that RESPA had been violated.

126. In 2007, Cardenas invited Ida Mae Whitley and Kenna Whitley to the grand opening reception for Blue Horizon. Ida Whitley and Kenna Whitley attended the evening event on North Lincoln Avenue in June, 2007, and spoke with Cardenas.

127. Additionally, in April or May, 2007, Ida Mae Whitely and Kena Whitley contacted Ospina at LaSalle Bank and had discussions with him over the phone about their prospects for refinancing in order to avoid foreclosure.

128. In these conversations, Cardenas and Ospina again concealed and did not disclose to plaintiffs or Kenna Whitley the fact that they had had referral and/or fee-splitting

arrangements with Advanced, Ochoa and each other -- under which Ospina had received payment from Advanced and Ochoa and had, in turn, paid Cardenas and Blue Horizon.

129. In early 2008, plaintiffs also had communications with various TB&W representatives concerning a possible loan modification and problems with the affordability of their loans. During these phone and facsimile communications, no TB&W representative disclosed a referral agreement or fee-splitting arrangement with any other defendant.

130. Further, in March, 2008, Defendants Advanced and Ochoa concealed the Whitley loan transactions in their entirety from the public, including the Whitleys, by omitting all record of the transactions from Advanced's 2006 loan log that it produced to its state regulator, the Division of Banking of the Illinois Department of Financial and Professional Regulation ("DOB" and "IDFPR," respectively).

131. As a result, Advanced and Ochoa effectively made it made it impossible for DOB, in connection with its triennial regulatory examination in 2008, to select the Whitley loan files for review as part of its compliance audit (which includes an audit for compliance with RESPA's prohibitions on fee-splitting).

132. Further, on or about March 26, 2008, during DOB's exam, Defendants Advanced and Ochoa concealed their splitting of fees from the public, including the Whitleys, by intentionally not reporting to DOB on the forms it provided for this purpose that Ochoa had played a role in soliciting, originating and/or processing loans for Advanced and Ochoa, including but not limited to the Whitley loans.

133. DOB gave Advanced and Ochoa the opportunity to make this disclosure, and they were required by state law to make an accurate disclosure.

134. These and other steps affirmative steps taken by defendants served to prevent plaintiffs from discovering their RESPA claims in time to file suit within one year.

135. Further, given the inherently secretive nature of these transactions, plaintiffs, despite all reasonable diligence, did not and could not have discovered the referral and fee-splitting arrangements sooner.

136. Plaintiffs have extremely limited education. Although they began to review their closing documents more closely in 2007, after they had been turned down for refinancing, they did not see any evidence or likelihood of referral agreements or fee-splitting arrangements.

137. Further, plaintiffs have never worked in the mortgage loan industry and did not know anyone who could have reviewed their loan documents and made them aware of the meaning of the YSP and the likely existence of referral and fee-splitting arrangements.

138. Plaintiffs first discovered the existence of these transactions over a series of meetings with current counsel in the period of March – August, 2008. Consequently, this is period is the date of accrual for RESPA statute of limitations purposes.

WHEREFORE, plaintiff requests that the Court enter judgment in their favor and against defendants for:

- a. Statutory damages;
- b. Attorney's fees, litigation expenses and costs of suit; and
- c. Such other or further relief as the Court deems proper.

COUNT III – COMMON LAW FRAUD

139. Plaintiffs incorporate paragraphs 1-99. This claim is against defendants Cardenas, Ospina, Advanced Lending and TB&W.

140. Defendants arranged for and/or approved the fraudulent appraisal of the property plaintiffs sought to purchase and approved and originated a loan to Mrs. Whitley, the principal amount of which was based on the artificially inflated value.

141. Defendants knew that the appraised value was inflated and false or were reckless with respect to its truth or falsity.

142. Defendants intended for plaintiffs to rely on the fraudulent appraised value in order to induce them to take out the loan.

143. The value of the property was a material term and predicate of the transaction with defendants.

144. Plaintiffs did, in fact, rely on defendants' fraudulent misrepresentation. Plaintiffs' reliance was justified.

145. Plaintiffs were injured thereby.

WHEREFORE, plaintiffs request that the Court enter judgment in their favor and against defendant for:

- a. Actual, compensatory and other appropriate damages;
- b. Punitive damages, equitable relief; and
- c. Such other relief as the Court deems appropriate.

COUNT IV -- CIVIL CONSPIRACY TO COMMIT FRAUD [dismissed]

146. Plaintiffs incorporate paragraphs 1-99. This claim is against defendants Cardenas, Ospina, Advanced Lending and TB&W.

147. Defendants combined and conspired with each other and/or with Sompolski to unlawfully arrange for and produce a fraudulent, appraised value for the property plaintiffs sought to purchase.

148. Defendants took concerted and overt actions in furtherance of the conspiracy to commit fraud. Defendants agreed upon a minimum value or range of value in advance of the appraisal being performed, and TB&W approved the loan knowing that the probable, actual value of the home was well below \$294,000.

149. Defendants conspired - out of excessive concern for their fees, commissions and profits - to misrepresent, conceal, overlook and suppress the actual market value of the property.

150. Plaintiffs were damaged as a result.

WHEREFORE, plaintiffs request that the Court enter judgment against defendant for:

- a. Actual, compensatory and other appropriate damages;
- b. Punitive damages, equitable relief; and
- c. Such other or further relief as this Court deems appropriate.

COUNT V - ILLINOIS CONSUMER FRAUD ACT

151. Plaintiffs incorporate paragraphs 1-99. This claim is against all defendants.

152. Defendants engaged in unfair and deceptive practices, in violation of §2 of the Illinois Consumer Fraud Act, 815 ILCS 505/2, by engaging in a combination of practices including but not limited to: baiting-and-switching plaintiffs on quoted loan terms that were affordable for them, misrepresenting the loan terms to plaintiffs, falsifying Mrs. Whitley's material information on the loan application, fraudulently inflating the appraised value of the property, approving a loan based on such information, disguising the fact that plaintiffs were receiving loans they could not afford, withholding and concealing disclosure documents from

plaintiffs, secretly assigning Mrs. Whitley a higher interest rate than she qualified for and not explaining her choices of interest rate; discriminating against plaintiffs on the basis of race; and knowingly engaging in improvident lending with respect to plaintiffs.

153. Defendants engaged in such conduct in the course of trade and commerce.

154. Defendants engaged in such conduct with the intent that plaintiffs rely on their deception.

155. Defendants engaged in such conduct with the intent to injure plaintiffs.

156. Plaintiffs were damaged as a result.

157. Defendants' conduct caused plaintiffs' injuries.

WHEREFORE, plaintiffs request that the Court enter judgment in favor of plaintiffs and against defendants for: compensatory, punitive and other appropriate damages; equitable relief; attorney's fees, litigation expenses and costs; and such other or further relief as the Court deems appropriate.

COUNT VI – NEGLIGENT MISREPRESENTATION [dismissed]

158. Plaintiffs incorporate paragraphs 1 – 99. This count is against all defendants.

159. Defendants negligently misrepresented the monthly payment amount, the “rebate” and other terms of the loans to plaintiffs.

160. Defendants negligently failed to provide plaintiffs with preliminary written disclosures and with written or oral notification of any change in loan terms.

161. Defendants were well-aware that plaintiffs are unsophisticated, first-time home buyers, with little knowledge or education concerning real estate and mortgage financing. Defendants knew that plaintiffs had limited income and would all be helping to make the

monthly payments on the mortgage. Yet defendants did not correctly or accurately represent or explain the terms of the purchase or the loans to plaintiffs.

162. Defendants made the misrepresentations detailed above in their business or professional capacities. All of the misrepresentations were made in a commercial setting and directly to plaintiffs.

163. In making the misrepresentations, defendants breached their duty to plaintiffs to accurately represent, describe and explain the terms of the loans, thereby taking precautions against creating an unreasonable risk of injury from foreseen and foreseeable events -- such as the prospect of plaintiffs' inability to make payments, the event of mortgage default, the destruction of plaintiffs' credit, the loss of the family's home in foreclosure, and other financial injuries to plaintiffs.

164. As a result of defendants' negligent misrepresentations, plaintiffs suffered damages and continue to suffer damages.

165. Defendants' negligent misrepresentations caused plaintiffs' injuries. Plaintiffs justifiably relied on defendants' misrepresentations. Defendants knew or could contemplate or foresee that plaintiffs would rely on their negligent misrepresentations.

166. Defendants conduct was wanton and willful, reckless and malicious.

WHEREFORE, plaintiffs pray for actual and compensatory damages, the reasonable cost of repair, punitive damages, equitable relief and any other or further relief that the Court deems just.

COUNT VII – NEGLIGENCE [dismissed]

167. Plaintiffs incorporate paragraphs 1 – 99. This count is against all defendants.

168. In the alternative, defendants, especially TB&W, was negligent in approving loans to plaintiffs that were based on falsified financial, employment and asset information.

169. Defendants had a general duty of care toward plaintiffs in arranging and brokering the purchase of their home and in arranging, brokering and originating mortgage financing for that purpose.

170. Defendants had a duty to plaintiffs to take precautions against creating unreasonable risk of injury from foreseen and foreseeable events, such as plaintiffs' eventual inability to make payments, default on the mortgages, the destruction of plaintiffs' credit, and the loss of the family's home in foreclosure.

171. TB&W's duty of care to plaintiffs was non-delegable. It had a duty to ensure that its loans to plaintiffs were based upon accurate financial information and accurate qualifying ratios. It had a duty not to engage in improvident lending.

172. It was foreseeable that plaintiffs, who defendants knew had limited income and would all be pitching in to help make the payments, would not be able to afford the payments on the home based on the false information and the loan terms they received.

173. As professionals, defendants were also under a duty to use their professional judgment, skill and knowledge as practitioners in the real estate, mortgage brokerage and mortgage finance fields.

174. Defendants breached their duties to plaintiffs.

175. As a result, plaintiffs' property interests and financial security have been damaged. Specifically, TB&W has filed a foreclosure action against plaintiffs, plaintiffs are in

danger of losing their home, any equity in their home is in danger of being lost, and plaintiffs' credit has been severely damaged.

176. Defendants' breach of their duties to plaintiffs was the actual and proximate cause of plaintiffs' injuries.

177. Defendants' conduct was wanton and willful, reckless and malicious.

WHEREFORE, plaintiffs pray for actual and compensatory damages, the reasonable cost of repair, punitive damages, equitable relief, and any other or further relief that the Court deems just.

**COUNT VIII – INTENTIONAL/NEGLIGENT
INFLECTION OF EMOTIONAL DISTRESS [dismissed]**

178. Plaintiffs incorporate paragraphs 1-99. This count is against all defendants.

179. It was extreme and outrageous conduct on defendants' part to abuse their professional offices and the explicit trust that plaintiffs placed in them by leading plaintiffs, by means of deception and concealment, to purchase a home and take out loans that defendants knew plaintiffs could not afford. Defendants knew from the start that plaintiffs were unsophisticated, first-time home buyers. Defendants knew that the inevitable result of defendants' conduct would be foreclosure on plaintiffs' home.

180. Defendants intended to cause plaintiffs severe emotional distress or were reckless as to the effect of their conduct on plaintiffs. They acted in reckless disregard of a high probability that emotional distress to plaintiffs would result from their actions.

181. Defendants knew that plaintiffs had limited financial means and reserves, were financially vulnerable and, therefore, more susceptible to emotional distress than people who are financially better off.

182. Defendants' extreme and outrageous conduct caused plaintiffs' severe emotional distress.

183. Plaintiffs have been damaged in that they have suffered and continue to suffer actual, severe emotional distress. Plaintiffs live in fear of losing their home, in fear of financial insecurity in their retirement and in fear of the future.

184. Defendants' conduct shocks the conscience and transcends all bounds of decency.

WHEREFORE, plaintiffs pray for actual damages, punitive damages and any other or further relief that the Court deems just.

COUNT IX - BREACH OF FIDUCIARY DUTY

185. Plaintiffs incorporate paragraphs 1-99. This claim is against Cardenas, Blue Horizon, Advanced Lending, Ospina and Ochoa.

186. One who undertakes to find and arrange financing or broker the purchase of real estate for another becomes the latter's agent for that purpose and owes a fiduciary duty to act in the interest of the principal and make full disclosure of all material facts that might affect the principal's decision.

187. Cardenas and Blue Horizon undertook to serve as plaintiffs' real estate agent or broker. Cardenas, Blue Horizon, Advanced Lending Ospina and Ochoa undertook to serve as plaintiffs' mortgage broker.

188. As set forth above, plaintiffs entrusted matters to defendants to handle on their behalf and authorized them to act in their best interest and for their benefit.

189. Defendants voluntarily accepted that charge and undertook to manage plaintiffs' real estate and mortgage financing transactions.

190. Explicitly or implicitly, defendants represented to plaintiffs that they would find or arrange for plaintiffs the best deals on a home and financing.

191. In addition, on information and belief, both Cardenas' and Advanced Lending had written, agency agreements with plaintiffs that granted to them the exclusive right to serve as plaintiffs' agents for purposes of brokering the purchase of real estate and/or arranging mortgage financing.

192. Pursuant to these agreements, defendants had the authority to act and did act to affect the legal rights of plaintiffs.

193. Defendants breached their respective fiduciary duties to plaintiffs by: failing to disclose material information to plaintiffs; making affirmative misrepresentations to plaintiffs; overcharging plaintiffs; increasing their interest rate in exchange for YSPs from TB&W; arranging for the purchase of real estate and for loans plaintiffs could not afford; and by otherwise engaging in conduct that was fraudulent or negligent and directly adverse to the interests of plaintiffs.

194. Defendants intentionally or negligently disregarded the interests of plaintiffs and acted purely or primarily for their own financial benefit.

195. Plaintiffs were injured and damaged as a result.

196. Defendants' conduct was deliberately oppressive, corrupt and dishonest. Substantial punitive damages are warranted.

WHEREFORE, plaintiffs requests that the Court enter judgment in favor of plaintiffs and against defendants for: compensatory, punitive and other appropriate damages; equitable relief; costs; and such other or further relief as the Court deems appropriate.

COUNT X - INDUCEMENT OF BREACH OF FIDUCIARY DUTY

197. Plaintiffs incorporate paragraphs 1-99. This count is against defendant TB&W.

198. TB&W induced a breach of Advanced Lending's, Ochoa's, Ospina's and/or Cardenas' fiduciary duty to plaintiffs through its policy of paying YSPs to brokers in exchange for the broker's cooperation in unnecessarily inflating plaintiffs' interest rates.

199. TB&W intended for its authorized brokers, such as Advanced Lending, to raise the interest rates of its borrowers.

200. TB&W's promise of additional compensation for Advanced Lending was material inducement for Advanced Lending, Ochoa, Ospina and Cardenas to breach their fiduciary duty to plaintiffs.

201. Defendants did breach their fiduciary duty to plaintiffs, as alleged above. Defendants breached their fiduciary duty in exchange for the payment of from TB&W.

202. TB&W knew that this breach would be the direct or proximate result of its policy of paying YSPs and of paying the YSP to Advance Lending.

203. Plaintiffs were damaged as a result.

204. TBW's inducement of defendants to breach their fiduciary duty caused plaintiffs' damages.

WHEREFORE, plaintiffs request that the Court enter judgment in favor of plaintiff and against defendants for: compensatory, punitive and other appropriate damages; equitable relief; costs; and such other or further relief as the Court deems appropriate.

COUNT XI - CIVIL RIGHTS ACT

205. Plaintiffs incorporate ¶¶ 1-99. This claim is against all defendants.

206. Defendants intentionally discriminated against plaintiffs on the basis of race in arranging and brokering the purchase of the property and in arranging, brokering and originating loans for that purpose.

207. Plaintiffs were qualified to obtain financing to purchase a house, but they received terms and conditions less favorable than defendants' similarly qualified Caucasian borrowers, in violation of 42 U.S.C. § 1981.

208. Plaintiffs were steered by defendants, based on their race; alternatively, once plaintiffs submitted an application, they were singled out and exploited in both transactions because of their race.

WHEREFORE, plaintiffs request that the Court enter judgment in favor of plaintiffs and against defendants for: actual damages, punitive damages, equitable relief, attorney's fee and costs and any other or further relief that the Court deems just.

COUNT XII FAIR HOUSING ACT

209. Plaintiffs incorporate paragraphs 1-99. This count is against TB&W and Advanced Lending.

210. As noted, defendants' payment and receipt of YSPs meant plaintiffs received a higher interest rate than she otherwise would have. Plaintiffs were also charged excessive closing costs in connection with their loans.

211. On information and belief, defendants, on average, give higher interest rates more often to minority borrowers than to Caucasians, regardless of qualifications, and defendants charge more in closing fees (as a percentage of loan principal) more often to minority borrowers than they do to their white customers. Plaintiffs were overcharged in this manner.

212. Defendants' pricing practices disproportionately impact minority borrowers such as plaintiff. Plaintiffs and other minorities are, on average and more frequently, subject to higher interest rates and closing fees simply because of their race.

213. This result is known and intended by defendants.

214. This result is very lucrative for defendants. Loans with higher interest rates, and with higher closing fees that are financed, earn TB&W more in profits, whether it holds the loans in portfolio or sells them to investors on the secondary market.

215. As noted, TB&W's loan pricing policies delegate significant authority and discretion to individual mortgage brokers and loan officers to set interest rates and closing fees. This system gives and is intended to give such loan officers and brokers incentives to engage in the subjective mark-up of credit applicants' interest rates and closing fees, without regard to borrower qualifications or borrower risk. TB&W permits its otherwise neutral underwriting criteria to be overridden in this manner. One of the subjective criteria that enter into the loan officers' and mortgage brokers' equation is race.

216. TB&W is well aware that its pricing policies influence its loan officers' and mortgage brokers' sales behavior. This is the policy's intended effect.

217. On information and belief, TB&W's brokers and loan officers are compensated in significant part on the basis of the interest rate and/or fees associated with the

loans they originate or broker, which provides them with the incentive to increase minority borrowers' interest rates and closing costs, whenever possible.

218. TB&W's brokers are, on average, more effective in persuading its African-American and Latino credit applicants to accept higher interest rates and closing fees than its white customers.

219. In recent years, interest rate and closing fee disparities by race have been the subjects of numerous credible studies and discussion, including in trade journals and other industry publications. Defendants were on notice of the findings of these studies and related concerns but continued their lucrative practices anyway.

220. There is no legitimate business reason justifying the discriminatory effect of plaintiffs' and other minorities' assignment by defendants, regardless of qualifications, of higher interest rates and closing fees, on average, than defendants' white borrowers.

221. Alternative policies and practices exist that would not have had the same disparate impact on plaintiffs and other minority borrowers.

222. As a result of defendants' conduct, plaintiffs were induced to sign loan documents providing for a loan that was unnecessarily expensive and that was made on less favorable terms than loans defendants made to similarly-situated Caucasians.

223. Defendants' conduct violates the Fair Housing Act, 42 U.S.C. Sect. 3605. Defendants assigned plaintiffs and other minorities a higher interest rate, on average and more frequently, than it did to their Caucasian customers. Defendants charged higher broker fees, on average and more frequently, to plaintiffs and other minority customers.

224. Plaintiffs will prove their claims of discrimination, in part, through a statistical analysis of defendant's loan transactions.

WHEREFORE, plaintiffs requests that the Court enter judgment in favor of plaintiffs and against defendants for:

- a. Declaratory relief;
- b. Injunctive relief;
- c. Actual damages;
- d. Attorney's fees, litigation expenses and costs; and
- e. Such other or further relief as the Court deems appropriate.

COUNT XIII – EQUAL CREDIT OPPORTUNITY ACT

225. Plaintiffs incorporate all previous allegations. This claim is against TB&W and Advanced Lending.

226. Defendants violated 15 U.S.C. Sect. 1691 of the ECOA in the manner alleged above.

WHEREFORE, plaintiffs request that the Court enter judgment in favor of plaintiffs and against defendants for:

- a. Declaratory relief;
- b. Injunctive relief;
- c. Appropriate damages;
- d. Attorney's fees, litigation expenses and costs; and
- e. Such other or further relief as the Court deems appropriate.

Respectfully submitted,

s/Al Hofeld, Jr.
Al Hofeld, Jr.

Al Hofeld, Jr.
LAW OFFICES OF AL HOFELD, JR., LLC
and The Social Justice Project,
208 S. LaSalle Street, Suite #1650
Chicago, Illinois 60604
Phone - (312) 345-1004
Fax - (312) 346-3242
al@alhofeldlaw.com

JURY DEMAND

Plaintiffs demand trial by jury.

s/Al Hofeld, Jr.
Al Hofeld, Jr.

NOTICE OF LIEN

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards.

s/Al Hofeld, Jr.
Al Hofeld, Jr.

Al Hofeld, Jr.
LAW OFFICES OF AL HOFELD, JR., LLC
and The Project for Social Justice, Inc.
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Phone - (312) 345-1004
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al@alhofeldlaw.com

NOTICE OF FILING AND CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I, Al Hofeld, Jr., attorney for plaintiffs, hereby certify that on May 18, 2009, filing and service of the foregoing *Second Amended Complaint*, was accomplished pursuant to ECF as to Filing Users, and I shall comply with LR 5.5 as to any party who is not a Filing User or represented by a Filing User.

s/Al Hofeld, Jr.

Al Hofeld, Jr.

EXHIBIT A

NOTE

May 30, 2006
[Date]

Chicago
[City]

Illinois
[State]

8519 S. KENTON AVE
Chicago, IL 60652
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 235,200.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Taylor, Bean & Whitaker Mortgage Corp.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.5000%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on July 01, 2006

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on June 01, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at Taylor, Bean & Whitaker Mortgage Corp., 1417 North Magnolia Ave, Ocala, FL 34475

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$1,644.55

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3200 1/01

ITEM T1646L1 (0011)

(Page 1 of 3 pages)

GREATLAND
To Order Call: 1-800-530-8383 Fax: 616-791-1131



230301136397

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **Fifteen** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.0000%** of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in

this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

Borrower has executed and acknowledges receipt of pages 1 through 3 of this Note.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED

IDA WHITLEY (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

EXHIBIT B

Name:

Address:

Taylor, Bean & Whitaker Mortgage
Corp.
1417 North Magnolia Ave
Ocala, FL 34475

After Recording Return To:

TICOR TITLE
6250 W. 95 STREET
OAK LAWN, IL
60803

[Space Above This Line For Recording Data]

MORTGAGE

MIN: 100029500011363971 TICOR TITLE

587151

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **May 30, 2006**, together with all Riders to this document.

(B) "Borrower" is **CLYDE WHITLEY AND IDA WHITLEY**

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is **Taylor, Bean & Whitaker Mortgage Corp.**
Lender is a **Florida Corporation**
the laws of **FL**
1417 North Magnolia Ave, Ocala, FL 34475

organized and existing under
Lender's address is

(E) "Note" means the promissory note signed by Borrower and dated **May 30, 2006**. The Note states that Borrower owes Lender **Two Hundred Thirty Five Thousand Two Hundred and no/100** Dollars (U.S. \$ **235,200.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **June 01, 2036**

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

ILLINOIS—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ITEM T9808L1 (0011)—MERS

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GREATLAND ■

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(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the

County
[Type of Recording Jurisdiction]

of

Cook
[Name of Recording Jurisdiction]

See Attached Exhibit A.

which currently has the address of

8519 S. KENTON AVE.
[Street]

Chicago, Illinois
[City]

60652
[Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or

ILLINOIS—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ITEM T9808L3 (0011)—MERS

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GREATLAND ■

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partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly.

Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property, to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has—if any—with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan

charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged unless as otherwise provided under Applicable Law. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon

an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not

cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Waiver of Homestead.** In accordance with Illinois law, the Borrower hereby releases and waives all rights under and by virtue of the Illinois homestead exemption laws.

25. **Placement of Collateral Protection Insurance.** Unless Borrower provides Lender with evidence of the insurance coverage required by Borrower's agreement with Lender, Lender may purchase insurance at Borrower's expense to protect Lender's interests in Borrower's collateral. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the collateral. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by Borrower's and Lender's agreement. If Lender purchases insurance for the collateral, Borrower will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Borrower's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 12 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

IDA WHITLEY (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Witness:

Witness:

State of Illinois
County of

This instrument was acknowledged before me on

(date) by

(name[s] of person[s]).

Notary Public

EXHIBIT C

Taylor, Dean & Whitaker Mortgage Corp.
1417 North Magnolia Ave
Ocala, FL 34675

[illegible]

X. FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT - PART II - ITEMIZATION OF AMOUNT FINANCED

GOOD FAITH ESTIMATE OF SETTLEMENT CHARGES
 Listed below is the Good Faith Estimate of Settlement Charges made pursuant to the requirements of the Real Estate Settlement Procedures Act (RESPA). These figures are only estimates and the actual charges due at settlement may be different. This is not a commitment to make a loan.

TRULY, Susan A. Whitaker Mortgage Corp.
 1417 North Michigan Ave
 Chicago, IL 60644
RE: DA WHITLEY
 4927 W. LEONINGTON
 Chicago, IL 60644

DATE: 05/30/2006 **LOAN NUMBER:** 1118397

AMOUNTS PAID TO OTHERS ON YOUR BEHALF

Loan proceeds to:
 Recording/Filing Fee: 75.00
 Credit Report Fee to:
 Applicant Fee to: Advance Lending Group C: 250.00
 Title Insurance: 199.50

ITEMIZATION OF AMOUNT FINANCED

AMOUNT FINANCED \$ 226,007.24
PREPAID FINANCE CHARGE \$ 6,812.86

LOAN AMOUNT: \$ 236,200.00

Itemization of Prepaid Finance Charges:

Loan Origination Fee: 3,628.00
 Discount Points: 84.88
 Prepaid Interest (2 days): 180.00
 Initial PMI Premium: 71.00
 Attorney Fee: 816.00
 Tax Service Fee: 623.00
 Administration Fee: 726.00
 Settlement/Closing Fee: 726.00
 Processing Fee:

This form does not cover all items you will be required to pay in cash at settlement; deposits in escrow for real estate taxes and insurance may be different. You may wish to inquire as to the amounts of such other items. You may be required to pay other additional amounts at settlement.

TOTAL PREPAID FINANCE CHARGE \$ 6,812.86

Neither you nor the lender previously has become obligated to make or accept this loan, nor is any such obligation made by the delivery or signing of this disclosure. The undersigned acknowledge receiving and reading a completed copy of this disclosure.

Applicant _____ **Date** _____ **Applicant** _____ **Date** _____

Applicant _____ **Date** _____ **Applicant** _____ **Date** _____

EXHIBIT D

A. TICOR TITLE INSURANCE COMPANY		B. TYPE OF LOAN	
CLOSER: Janet L. Fettig		1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FmHA 3. <input type="checkbox"/> CONV. UNINS.	
DATE OF PRINTING: 05/30/06		4. <input type="checkbox"/> VA 5. <input checked="" type="checkbox"/> CONV. INS.	
TIME OF PRINTING: 11:51		6. File Number: 587151 JLP	
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		7. Loan Number 1136397	
		8. Mortgage Insurance Case Number 000587151-001 JLP OC	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
D. NAME OF BORROWER: IDA WHITLEY, SEE ATTACHED ADDRESS: 4927 W LEXINGTON CHICAGO ILLINOIS 60644			
E. NAME OF SELLER: MARGARET WILK ADDRESS: 8519 S. KENTON CHICAGO ILLINOIS 60644			
F. NAME OF LENDER: TAYLOR BEAN & WHITAKER MORTGAGE CORP ADDRESS: 1417 N. MAGNOLIA AVENUE Ocala FLORIDA 34475-9078			
G. PROPERTY LOCATION: 8519 S. KENTON CHICAGO ILLINOIS 60652			
H. SETTLEMENT AGENT: TICOR TITLE INSURANCE COMPANY ADDRESS: 6250 WEST 95th STREET OAK LAWN ILLINOIS 60453		I. SETTLEMENT DATE: May 30, 2006 10:30	
PLACE OF SETTLEMENT: 6250 WEST 95th STREET OAK LAWN ILLINOIS 60453		DISBURSEMENT DATE: May 30, 2006	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price 294,000.00		401. Contract sales price 294,000.00	
102. Personal Property		402. Personal Property	
103. Settlement charges to borrower (line 1400) 9,127.82		403. Settlement charges to seller (line 1400)	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMT DUE FROM BORROWER 303,127.82		420. GROSS AMT DUE TO SELLER 294,000.00	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money 1,000.00		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s) 235,200.00		502. Settlement charges to seller (line 1400) 15,459.31	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. PROCEEDS FROM 2ND MORTGAGE 57,219.30		504. Payoff of first mortgage loan CITIMORTGAGE 49,430.50	
205.		505. Payoff of second mortgage loan AMERICAN HOME MORTGAGE 108,519.41	
206.		506.	
207.		507.	
208.		508. DEPOSIT APPLIED TO BROKER'S COMMISSION 1,000.00	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes 07/01/05 to 12/31/05 1,348.55		511. County taxes 07/01/05 to 12/31/05 1,348.55	
212. Assessments to		512. Assessments to	
213. COUNTY TAXES 01/01/06 TO 05/30/06 1,016.03		513. COUNTY TAXES 01/01/06 TO 05/30/06 1,016.03	
214.		514.	
215.		515.	
216. CLOSING COST CREDIT PER CONTRACT 8,000.00		516. CLOSING COST CREDIT PER CONTRACT 8,000.00	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER 303,783.88		520. TOTAL REDUCTIONS AMT DUE SELLER 184,773.80	
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amt due from borrower (line 120) 303,127.82		601. Gross amt due to seller (line 420) 294,000.00	
302. Less amt paid by/for borrower (line 220) (303,783.88)		602. Less reductions in amt due seller (line 520) (184,773.80)	
303. CASH (<input type="checkbox"/> FROM) (<input checked="" type="checkbox"/> TO) BORROWER 656.06		603. CASH (<input checked="" type="checkbox"/> TO) (<input type="checkbox"/> FROM) SELLER 109,226.20	
I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.			
Borrower: IDA WHITLEY		Seller: MARGARET WILK	
To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.			
Settlement Agent: Janet Fettig		Date: 5-30-06	
WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.			

ORD# / ABS# 587151 ESCH# 000587151		JLF JLF OC	L. SETTLEMENT CHARGES	TIME OF PRINTING: 11:51 DATE OF PRINTING: 05/30/06
700. TOTAL SALES/BROKER'S COMMISSION based on price \$ 294,000.00 @ 4.864 % = 14,300.00				
Division of Commission (line 700) as follows:				
701. LB: 2.466	\$ 6,250.00	to	REMAX	
702. SB: 2.398	\$ 7,050.00	to	FAYIAN GARDENAS	
703. Commission paid at Settlement (Money retained by broker applied to commission \$ 1,000.00)				13,300.00
704. Other sales agent charges:				
705. Additional commission: \$ to				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN				
801. Loan Origination Fee 1.500	% ADVANCE LENDING GROUP CORP		3,528.00	
802. Loan Discount				
803. Appraisal Fee to ADVANCE LENDING GROUP CORP			250.00	
804. Credit Report to				
805. Lender's Inspection Fee to				
806. Mortgage Insurance Application Fee to				
807. Assumption Fee to				
808. PAR PREMIUM TO ADVANCE LENDING GROUP \$4958.02 POC BY TBW				
809. PROCESSING FEE TO ADVANCE LENDING GROUP			725.00	
810. TAX SERVICE FEE TO TAYLOR BEAN & WHITAKER MORTGAGE CORP			73.00	
811. ADMIN FEE TO TAYLOR BEAN & WHITAKER MORTGAGE CORP			515.00	
812.				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901. Interest from 05/30/06 to 06/01/06 @ \$ 48,330.00 /day for 2 days			96.66	
902. Mortgage Insurance Premium for 0.00 months to				
903. Hazard Insurance Premium for 0.00 years to				
904.				
905.				
1000. RESERVES DEPOSITED WITH LENDER				
1001. Hazard Insurance 2.00 month @ \$ 73.42 per month			146.84	
1002. Mortgage Insurance 0.00 month @ \$ per month				
1003. City property taxes 0.00 month @ \$ per month				
1004. County property taxes 4.00 month @ \$ 187.25 per month			749.00	
1005. Annual assessments 0.00 month @ \$ per month				
1006. 0.00 month @ \$ per month				
1007. 0.00 month @ \$ per month				
1008. Aggregate Accounting Adjustment			293.68	0.00
1100. TITLE CHARGES				
1101. Settlement or Closing Fee to TICOR TITLE INSURANCE COMPANY			525.00	
1102. Abstract or title search to				
1103. Title examination to				
1104. Title Insurance binder to				
1105. Document preparation to				
1106. Notary fees to				
1107. Attorney's fee to SMIGIELSKI & MATORS				200.00
1108. Title Insurance to TICOR TITLE - ARKADJUSZ Z. SMIGIELSKI/ATTY			475.00	1,075.00
(includes above items numbers: DD ENV COMP				
1109. Lender's coverage \$ 235,200.00 \$ 475.00				
1110. Owner's coverage \$ 294,000.00 \$ 1,075.00				
1111. EMAIL PACKAGE FEE TO TICOR TITLE INSURANCE COMPANY			25.00	
1112. OVERNIGHT DELIVERY & HANDLING FEE TO TICOR TITLE				50.00
1113. WATER CERTIFICATION FEE TO TICOR TITLE				65.00
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording fees: Deed \$ 38.50 ; Mortgage \$ 66.50 ; Release \$			105.00	
1202. City/county tax/stamps: Deed \$; Mortgage \$			2,205.00	147.00
1203. State tax/stamps: Deed \$; Mortgage \$				294.00
1204.				
1205. STATE OF ILLINOIS REGISTRATION FEE			3.00	3.00
1300. ADDITIONAL SETTLEMENT CHARGES				
1301. Survey to PREFERRED SURVEY				300.00
1302. Pest Inspection to				
1303. FINAL WATER BILL TO CITY OF CHICAGO DEPT OF WATER				25.31
1304.				
1305.				
1306.				
1307.				
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)				9,127.82 15,459.31

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower
IDA WHITLEY

Seller
MARGARET MILK

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause funds to be disbursed in accordance with this statement.

Settlement Agent

Date

WARNING: It is a crime to knowingly make false statements on the United States or on any other similar form. Penalties upon conviction can include a fine and imprisonment. For more information, see Title 18 U.S. Code Section 1001 and Section 1010.

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ORD# / ABS# ESC#	587151 000587151	JLF JLF OC	SUPPLEMENTAL PAGE	TIME OF PRINTING: 11:51 DATE OF PRINTING: 05/30/06
D. NAME OF BORROWER: IDA WHITLEY ADDRESS: 4927 W. LEXINGTON CHICAGO ILLINOIS 60644 NAME OF BORROWER:				
E. NAME OF SELLER: MARGARET WILK ADDRESS: 8519 S. KENTON CHICAGO ILLINOIS 60644				
F. NAME OF LENDER: TAYLOR BEAN & WHITAKER MORTGAGE CORP ADDRESS: 1417 N. MAGNOLIA AVENUE OCALA FLORIDA 34475-9078				

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

IDA WHITLEY
IDA WHITLEY

MARGARET WILK
MARGARET WILK

EXHIBIT E

This instrument was prepared by:

Name:

Address:

Taylor, Bean & Whitaker Mortgage Corp.
1417 North Magnolia Ave
Ocala, FL 34475

After Recording Return To:

TICOR TITLE
6250 W. 95 STREET
OAK LAWN, IL
60803

[Space Above This Line For Recording Data]

MORTGAGE (Secondary Lien)

MIN: 100029500011712241

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 10, 12, 17, 19, and 20. Certain rules regarding the usage of words used in this document are also provided in Section 15.

(A) "Security Instrument" means this document, which is dated **May 30, 2006**, together with all Riders to this document.

(B) "Borrower" is **IDA WHITLEY**

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is **Taylor, Bean & Whitaker Mortgage Corp.**
Lender is a **Florida Corporation**
the laws of **FL**
1417 North Magnolia Ave, Ocala, FL 34475

organized and existing under
Lender's address is

(E) "Note" means the promissory note signed by Borrower and dated **May 30, 2006**. The Note states that Borrower owes Lender **Fifty Eight Thousand Eight Hundred and no/100** Dollars (U.S. **\$58,800.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **June 01, 2036**

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

ILLINOIS MORTGAGE—Single Family—Secondary Lien
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ITEM T8678L1 (0304)—MERS

(Page 1 of 10 pages)

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(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, if allowed under Applicable Law, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Home Improvement Rider | <input type="checkbox"/> Revocable Trust Rider | |
| <input type="checkbox"/> Other(s) [specify] | | |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 *et seq.*) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, warrant, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

County
[Type of Recording Jurisdiction]

of

Cook
[Name of Recording Jurisdiction]

See Attached Exhibit A.

which currently has the address of

8519 S KENTON
[Street]

CHICAGO
[City]

, Illinois

60652
[Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest and Other Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and if allowable under Applicable Law, any prepayment charges and late charges due under the Note. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

2. **Application of Payments or Proceeds.** Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 14 or in such manner or location as required under Applicable Law. Except as otherwise described in this Section 2, and as permitted under Applicable Law, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall

ILLINOIS MORTGAGE—Single Family—Secondary Lien
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be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. To the extent permitted by Applicable Law, voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Subject to Applicable Law, Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 8. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 8 and pay such amount and Borrower shall then be obligated under Section 8 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 14 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender. If under Section 21 the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Security Instrument.

4. Charges; Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust, or other security agreement with a lien which has priority over this Security Instrument. Borrower shall pay when due, all taxes,

assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien other than a lien disclosed to Lender in Borrower's application or in any title report Lender obtained which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan if allowed under Applicable Law.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5, shall be added to the unpaid balance of the loan and interest shall accrue at the Note rate, from the time it was added to the unpaid balance until it is paid in full.

Subject to Applicable Law, all insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 21 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering

the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

7. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

8. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which has or may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has or may attain priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 8 shall become additional debt of Borrower secured by this Security Instrument if allowed under Applicable Law. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

9. Mortgage Insurance. Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect.

10. Assignment of Miscellaneous Proceeds; Forfeiture. The Miscellaneous Proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Security Instrument.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be

applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

11. Borrower Not Released; Forbearance By Lender Not a Walver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

12. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 17, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 19) and benefit the successors and assigns of Lender.

13. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, as allowed under Applicable Law. The absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment.

14. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to

Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

15. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

16. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

17. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 17, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 14 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, as allowed under Applicable Law; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged unless as otherwise provided under Applicable Law. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 17.

19. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, if required under Applicable Law, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 14) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed

to be reasonable for purposes of this section. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 21 and the notice of acceleration given to Borrower pursuant to Section 17 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 19.

20. Hazardous Substances. As used in this Section 20: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spill, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 17 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

23. Waiver of Homestead. In accordance with Illinois law, Borrower hereby releases and waives all rights under and by virtue of the Illinois homestead exemption laws.

24. Placement of Collateral Protection Insurance. Unless Borrower provides Lender with evidence of the insurance coverage required by Borrower's agreement with Lender, Lender may purchase insurance at Borrower's expense to protect Lender's interests in Borrower's Property. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by Borrower's and Lender's agreement. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Borrower's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST**

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Security Instrument to give notice to Lender, at Lender's address set forth on page one of this Security Instrument, of any default under the superior encumbrance and of any sale or other foreclosure action.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 10 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

IDA WHITLEY (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Witness:

Witness:

State of Illinois
County of

This instrument was acknowledged before me on

(date) by

(name[s] of person[s]).

Notary Public

EXHIBIT F

NAMES (ADDRESS(ES) OF BORROWER(S) ("Borrower, you or your") IDA WHITLEY 4827 W LEXINGTON CHICAGO, IL 60644		NAME (ADDRESS OF LENDER (BANK) ("Lender, you or your") Taylor, Bean & Whitaker Mortgage Corp. 1417 North Magnolia Ave Ocala, FL 34475	
PROPERTY ADDRESS 8519 S KENTON, CHICAGO, IL 60652 Cook			
1171224		08/30/2008	
<input type="checkbox"/> Preliminary		<input checked="" type="checkbox"/> Final	
Words, numbers or phrases preceded by a are applicable only if the is marked. "x" means estimate.			
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.		FINANCE CHARGE The dollar amount the credit will cost you.	
8.9625%		\$100,844.23	
AMOUNT FINANCED The amount of credit provided to you or on your's behalf.		TOTAL OF PAYMENTS The amount you will have paid after you have made all payments as scheduled.	
\$67,683.81		\$166,528.04	
359 482.68 7/1/2008			
PAYMENT SCHEDULE			
VARIABLE RATE <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> Not applicable			
The annual percentage rate may increase during the term of this transaction if the increases. Please refer to the Adjustable Rate Mortgage Documents for specific information concerning the variable rate provisions of this transaction. The rate may not increase more often than and may not increase more than % per adjustment. Any increase will take the form of . For example			
<input type="checkbox"/> This transaction is subject to a variable rate feature and is secured by your principal dwelling. Variable rate disclosures have been provided at an earlier time.			
PAYABLE ON DEMAND: <input type="checkbox"/> This obligation is payable on demand. <input type="checkbox"/> The disclosures are based on an assumed maturity of one year.			
Filing / Recording Fee \$105.00			
You may obtain property insurance from anyone acceptable to the lender.			
SECURED BY: <input type="checkbox"/> Goods being purchased. <input checked="" type="checkbox"/> Funds on deposit with the lender.			
X Other (Specify) 8519 S KENTON, CHICAGO, IL 60652 Cook Collateral securing other loans with us may also secure this loan.			
LATE CHARGE: If you are more than Fifteen days late in making any payment, in addition to your payment, you will pay a late charge of:			
<input type="checkbox"/> the lesser of <input type="checkbox"/> the greater of <input checked="" type="checkbox"/> an amount equal to <input type="checkbox"/> \$ or <input checked="" type="checkbox"/> 8.00 % of the payment in default.			
PREPAYMENT: If you pay off early, you <input type="checkbox"/> may <input checked="" type="checkbox"/> will not have to pay a penalty.			
<input type="checkbox"/> may <input checked="" type="checkbox"/> will not be entitled to a refund of part of the finance charge.			
ASSUMPTION: If this loan is to purchase and is secured by your principal dwelling, and if checked here, <input checked="" type="checkbox"/> someone buying your dwelling cannot assume the remainder of this purchase money mortgage loan on the original terms.			
If this loan is to purchase and is secured by your principal dwelling, and if checked here, <input type="checkbox"/> someone buying your dwelling may, subject to conditions, be allowed to assume the remainder of this purchase money mortgage loan.			
SIGNATURES: Please refer to the "Good Faith Estimate" for a breakdown of fees, charges and amount financed. <input checked="" type="checkbox"/> Please refer to the Itemization of Amount Financed Statement.			
By signing you acknowledge receipt of a completed copy of this disclosure. You understand that this is not a contract and does not reflect all of the terms and conditions of this mortgage transaction to which the disclosures reflected on this form relate.			
X IDA WHITLEY		X	
X		X	



0850081171224

X FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT - PART II "ITEMIZATION OF AMOUNT FINANCED"

GOOD FAITH ESTIMATE OF SETTLEMENT CHARGES

Listed below is the Good Faith Estimate of Settlement Charges made pursuant to the requirements of the Real Estate Settlement Procedures Act (RESPA). These figures are only estimates and the actual charges due at settlement may be different. This is not a commitment to make a loan.

Taylor, Bean & Whitaker Mortgage Corp.
1417 North Magnolia Ave
CREDITOR: Ocala, FL 34475

IDA WHITLEY
4927 W LEXINGTON
RE: CHICAGO, IL 60644

DATE: 05/30/2006

LOAN NUMBER:

1171224

ITEMIZATION OF AMOUNT FINANCED

AMOUNTS PAID TO OTHERS ON YOUR BEHALF:

Loan proceeds to:	
Recording/Filing Fees	105.00
Credit Report Fees to: Advance Lending Group C	
Appraisal Fees to: Advance Lending Group C	
Title Insurance:	
Recording Fees	105.00

AMOUNT FINANCED	\$	57,683.80
PREPAID FINANCE CHARGE	\$	1,116.20

Itemization of Prepaid Finance Charge:

Loan Origination Fee	500.00
Discount Points	
Prepaid Interest (2 days)	28.20
Initial PMI Premium	
Administration Fee	516.00
Tax Service Fee	73.00

LOAN AMOUNT: \$	58,800.00
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This form does not cover all items you will be required to pay in cash at settlement; deposits in escrow for real estate taxes and insurance may be different. You may wish to inquire as to the amounts of such other items. You may be required to pay other additional amounts at settlement.

TOTAL PREPAID FINANCE CHARGE	\$	1,116.20
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Neither you nor the lender previously has become obligated to make or accept this loan, nor is any such obligation made by the delivery or signing of this disclosure. The Undersigned acknowledge receiving and reading a completed copy of this disclosure.

Applicant _____ Date _____

Applicant _____ Date _____

Applicant _____ Date _____

Applicant _____ Date _____

C0335L0

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EXHIBIT G

TICOR TITLE INSURANCE COMPANY CLOSER: Janet L. Pettig DATE OF PRINTING: 05/30/06 TIME OF PRINTING: 09:42		B. TYPE OF LOAN 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FmHA 3. <input type="checkbox"/> CONV. UNINS. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. File Number: 587151A 7. Loan Number 1171224 8. Mortgage Insurance Case Number	
SETTLEMENT STATEMENT U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			
5. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
3. NAME OF BORROWER: IDA WHITLEY ADDRESS: 8519 S. KENTON CHICAGO ILLINOIS 60652			
4. NAME OF SELLER: ADDRESS:			
5. NAME OF LENDER: TAYLOR, BEAN & WHITAKER MORTGAGE CORP ADDRESS: 1417 N MAGNOLIA AVE OCALA FLORIDA 34475			
3. PROPERTY LOCATION: 8519 S. KENTON CHICAGO ILLINOIS 60652			
4. SETTLEMENT AGENT: TICOR TITLE INSURANCE COMPANY ADDRESS: 6250 WEST 95th STREET OAK LAWN ILLINOIS 60453 PLACE OF SETTLEMENT: 6250 WEST 95th STREET ADDRESS: OAK LAWN ILLINOIS 60453		1. SETTLEMENT DATE: May 30, 2006 DISBURSEMENT DATE: May 30, 2006	
J. SUMMARY OF BORROWER'S TRANSACTION 100. GROSS AMOUNT DUE FROM BORROWER:		K. SUMMARY OF SELLER'S TRANSACTION 400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price 102. Personal Property 103. Settlement charges to borrower (line 1400) 1,580.70 104. PROCEEDS TO 1ST MORTGAGE 57,219.30 105. Adjustments for items paid by seller in advance 106. City/town taxes to 107. County taxes to 108. Assessments to 109. 110. 111. 112. 120. GROSS AMT DUE FROM BORROWER 58,800.00 200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER 201. Deposit or earnest money 202. Principal amount of new loan(s) 58,800.00 203. Existing loan(s) taken subject to 204. 205. 206. 207. 208. 209. Adjustments for items unpaid by seller 210. City/town taxes to 211. County taxes to 212. Assessments to 213. 214. 215. 216. 217. 218. 219. 220. TOTAL PAID BY/FOR BORROWER 58,800.00 300. CASH AT SETTLEMENT FROM/TO BORROWER 301. Gross amt due from borrower (line 120) 58,800.00 302. Less amts paid by/for borrower (line 220) (58,800.00) 303. CASH (<input type="checkbox"/> FROM) (<input checked="" type="checkbox"/> TO) BORROWER 0.00		401. Contract sales price 402. Personal Property 403. Settlement charges to seller (line 1400) 404. 405. Adjustments for items paid by seller in advance 406. City/town taxes to 407. County taxes to 408. Assessments to 409. 410. 411. 412. 420. GROSS AMT DUE TO SELLER 500. REDUCTIONS IN AMOUNT DUE TO SELLER 501. Excess deposit (see instructions) 502. Settlement charges to seller (line 1400) 503. Existing loan(s) taken subject to 504. Payoff of first mortgage loan 505. Payoff of second mortgage loan 506. 507. 508. 509. Adjustments for items unpaid by seller 510. City/town taxes to 511. County taxes to 512. Assessments to 513. 514. 515. 516. 517. 518. 519. 520. TOTAL REDUCTIONS AMT DUE SELLER 600. CASH AT SETTLEMENT TO/FROM SELLER 601. Gross amt due to seller (line 420) 602. Less reductions in amt due seller (line 520) (0.00) 603. CASH (<input type="checkbox"/> TO) (<input checked="" type="checkbox"/> FROM) SELLER 0.00	
I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.			
Borrower: <u>IDA WHITLEY</u>		Seller: _____	
To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.			
Settlement Agent: <u>Janet L. Pettig</u>		Date: <u>5.30.06</u>	
WARNING: It is a crime to knowingly make false statements on this or any other similar form. Penalties upon conviction can include fines and imprisonment.			

ORD# / ABS# 587151A ESC# 587151A		JLF OC		L. SETTLEMENT CHARGES		TIME OF PRINTING: 09:42 DATE OF PRINTING: 05/30/06	
700. TOTAL SALES/BROKER'S COMMISSION based on price				PAID FROM BORROWER'S FUNDS AT SETTLEMENT		PAID FROM SELLER'S FUNDS AT SETTLEMENT	
Division of Commission (line 700) as follows:							
701. LB:	\$	to					
702. SB:	\$	to					
703. Commission paid at Settlement (Money retained by broker applied to commission \$)							
704. Other sales agent charges:							
705. Additional commission: \$ to							
800. ITEMS PAYABLE IN CONNECTION WITH LOAN							
801. Loan Origination Fee	0.850	%	ADVANCE LENDING GROUP CORP	500.00			
802. Loan Discount	%						
803. Appraisal Fee to							
804. Credit Report to							
805. Lender's Inspection Fee to							
806. Mortgage Insurance Application Fee to							
807. Assumption Fee to							
808. PAR PREMIUM TO ADVANCE LENDING GROUP	\$1176.00	POC BY TBW					
809. TAX SERVICE FEE TO TAYLOR, BEAN & WHITAKER MORTGAGE CORP				73.00			
810. ADMINISTRATION FEE TO TAYLOR, BEAN & WHITAKER MORTGAGE CORP				515.00			
811.							
812.							
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE							
901. Interest from	05/30/06	to	06/01/06	@	14.1000 /day for 2 days	28.20	
902. Mortgage Insurance Premium for	0.00	months to					
903. Hazard Insurance Premium for	0.00	years to					
904.							
905.							
1000. RESERVES DEPOSITED WITH LENDER							
1001. Hazard Insurance	0.00	month @	\$	per month			
1002. Mortgage insurance	0.00	month @	\$	per month			
1003. City property taxes	0.00	month @	\$	per month			
1004. County property taxes	0.00	month @	\$	per month			
1005. Annual assessments	0.00	month @	\$	per month			
1006.	0.00	month @	\$	per month			
1007.	0.00	month @	\$	per month			
1008. Aggregate Accounting Adjustment					0.00	0.00	
1100. TITLE CHARGES							
1101. Settlement or Closing Fee		to	TICOR TITLE INSURANCE COMPANY	150.00			
1102. Abstract or title search		to					
1103. Title examination		to					
1104. Title insurance binder		to					
1105. Document preparation		to					
1106. Notary fees		to					
1107. Attorney's fee		to					
1108. Title Insurance		to	TICOR TITLE -	220.00			
(includes above items numbers:)							
1109. Lender's coverage	\$58,800.00	\$	220.00				
1110. Owner's coverage	\$0.00	\$					
1111. EMAIL PACKAGE FEE TO TICOR TITLE INSURANCE COMPANY				25.00			
1112.							
1113.							
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES							
1201. Recording fees: Deed \$		Mortgage \$	66.50	Release \$		66.50	
1202. City/county tax/stamps:	Deed \$	Mortgage \$					
1203. State tax/stamps:	Deed \$	Mortgage \$					
1204.							
1205. STATE OF ILLINOIS REGISTRATION FEE				3.00			
1300. ADDITIONAL SETTLEMENT CHARGES							
1301. Survey	to						
1302. Pest inspection	to						
1303.							
1304.							
1305.							
1306.							
1307.							
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)				1,580.70			
I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.							
Borrower: <u>IDA WHITLEY</u>				Seller: _____			
The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause funds to be disbursed in accordance with this statement.							
Settlement Agent: <u>[Signature]</u>				Date: <u>5-30-06</u>			
WARNING: It is a crime to knowingly make false statement to the lender. Penalties upon conviction can include imprisonment and fines. Title 18 U.S. Code Section 1001 and Section 1003.							

ORD# / ABS# 587151A
ESC# 587151A

JLF OC

SUPPLEMENTAL PAGE

TIME OF PRINTING: 09:42
DATE OF PRINTING: 05/30/06

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction, I further certify that I have received a copy of the HUD-1 Settlement Statement.

Ida Whitley
IDA WHITLEY

EXHIBIT H

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower," as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the Borrower (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse or other person who has community property rights pursuant to state law will not be used as a basis for loan qualification, but his or her liabilities must be considered because the spouse or other person has community property rights pursuant to applicable law and Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply for joint credit (sign below):

Borrower IDA WHITLEY

Co-Borrower

Mortgage Applied for:		VA <input type="checkbox"/>	Conventional <input type="checkbox"/>	Other (explain):	Agency Case Number	Lender Case Number
		FHA <input type="checkbox"/>	USDA/Rural Housing Service <input type="checkbox"/>			1171224
Amount	Interest Rate	No. of Months	Amortization Type:	<input checked="" type="checkbox"/> Fixed Rate	Other (explain):	
\$58,800.00	8.7800%	360		GPM	ARM (type):	

Subject Property Address (street, city, state & ZIP)		No. of Units
8519 S KENTON, CHICAGO, IL 60652		1
Legal Description of Subject Property (attach description if necessary)		Year Built
See Attached Exhibit A.		1958

Purpose of Loan	<input checked="" type="checkbox"/> Purchase	<input type="checkbox"/> Construction	Other (explain):	Property will be:
	Refinance	Construction-Permanent		<input checked="" type="checkbox"/> Primary Residence <input type="checkbox"/> Secondary Residence <input type="checkbox"/> Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	\$	\$	\$	\$	\$0.00

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements	<input type="checkbox"/> made <input type="checkbox"/> to be made
	\$	\$		Cost: \$	

Title will be held in what Name(s) IDA WHITLEY	Manner in which Title will be held	Estate will be held in:
IDA WHITLEY	IDA WHITLEY	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (show expiration date)

Source of Down Payment, Settlement Charges, and/or Subordinate Financing (explain)

Borrower's Name (include Jr. or Sr. if applicable)				Co-Borrower's Name (include Jr. or Sr. if applicable)			
IDA WHITLEY							

Social Security Number	Home Phone (incl. area code)	DOB (mm/dd/yyyy)	Yrs. School	Social Security Number	Home Phone (incl. area code)	DOB (mm/dd/yyyy)	Yrs. School
1859	(773) 287-8213	1950	18.0				
<input checked="" type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed)	Dependents (not listed by Co-Borrower)			<input type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed)	Dependents (not listed by Borrower)		
<input type="checkbox"/> Separated	no. _____ ages _____			<input type="checkbox"/> Separated	no. _____ ages _____		

Present Address (street, city, state, ZIP)	<input type="checkbox"/> Own <input checked="" type="checkbox"/> Rent	10.0 No. Yrs.	Present Address (street, city, state, ZIP)	<input type="checkbox"/> Own <input type="checkbox"/> Rent	No. Yrs.
4927 W LEXINGTON CHICAGO, IL 60644					

Mailing Address, if different from Present Address	Mailing Address, if different from Present Address

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP)	<input type="checkbox"/> Own <input type="checkbox"/> Rent	No. Yrs.	Former Address (street, city, state, ZIP)	<input type="checkbox"/> Own <input type="checkbox"/> Rent	No. Yrs.

Borrower's Employment Information		Co-Borrower's Employment Information	
-----------------------------------	--	--------------------------------------	--

Name & Address of Employer	<input type="checkbox"/> Self Employed	Yrs. on this job	Name & Address of Employer	<input type="checkbox"/> Self Employed	Yrs. on this job
CITY OF CHICAGO 1885 N THROOP CHICAGO, IL 60644		10.0			
		Yrs. employed in this line of work/profession			Yrs. employed in this line of work/profession
		10.0			

Position/Title/Type of Business	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)
MECHANIC	(312) 744-3900		

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Borrower (A)		Co-Borrower (B)		Borrower (C)		Co-Borrower (D)	
Name & Address of Employer	<input type="checkbox"/> Self Employed	Dates (from - to)	Monthly Income	Name & Address of Employer	<input type="checkbox"/> Self Employed	Dates (from - to)	Monthly Income
			\$				\$
Position/Title/Type of Business	Business Phone (incl. area code)			Position/Title/Type of Business	Business Phone (incl. area code)		
Name & Address of Employer	<input type="checkbox"/> Self Employed	Dates (from - to)	Monthly Income	Name & Address of Employer	<input type="checkbox"/> Self Employed	Dates (from - to)	Monthly Income
			\$				\$
Position/Title/Type of Business	Business Phone (incl. area code)			Position/Title/Type of Business	Business Phone (incl. area code)		

MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION						
Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	\$ 6,800.00		\$ 6,800.00	Rent	\$ 1,100.00	
Overtime			0.00	First Mortgage (P&I)		\$ 482.58
Bonuses			0.00	Other Financing (P&I)		462.58
Commissions			0.00	Hazard Insurance		82.00
Dividends/Interest			0.00	Real Estate Taxes		187.25
Net Rental Income			0.00	Mortgage Insurance		
Other (before completing, see the notice in describe other income," below)			0.00	Homeowner Assn. Dues		
			0.00	Other:		
Total	\$ 6,800.00		\$ 6,800.00	Total	\$ 1,100.00	\$ 1,194.41

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income

Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.

B/C	Monthly Amount
	\$

ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a non-applicant spouse or other person, this Statement and supporting schedules must be completed about that spouse or other person also.

Completed ☐ Jointly ☐ Not Jointly

ASSETS		Cash or Market Value	LIABILITIES		Monthly Payment & Months Left to Pay	Unpaid Balance
Description			Liabilities and Pledged Assets. List the creditor's name, address, and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities, which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.			
Cash deposit toward purchase held by:	\$					
List checking and savings accounts below						
Name and address of Bank, S&L, or Credit Union			Name and address of Company simultaneous		\$ Payment/Months 1,644.55 144	\$ 235,200.00
Acct. no.	\$		Acct. no. 1136387			
Name and address of Bank, S&L, or Credit Union			Name and address of Company GMAC		\$ Payment/Months 647.00 38	\$ 24,801.00
Acct. no.	\$		Acct. no.			
Name and address of Bank, S&L, or Credit Union			Name and address of Company UNITED CREDIT UNION		\$ Payment/Months 182.00 5	\$ 872.00
Acct. no.	\$		Acct. no.			

Freddie Mac Form 65 7/05

ITEM 7300L2 (0508)

(Page 2 of 5 pages)

Fannie Mae Form 1003 7/05

GreatDeals™ To Order Call: 1-800-969-5775

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FINANCIAL TRANSACTION (cont.)		HYPOTHETICAL QUESTIONS (cont.)					
j. Subordinate financing	235,200.00	If you answer "Yes" to any questions a through i, please use continuation sheet for explanation. f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question. g. Are you obligated to pay alimony, child support, or separate maintenance? h. Is any part of the down payment borrowed? i. Are you a co-maker or endorser on a note?		Borrower		Co-Borrower	
k. Borrower's closing costs paid by Seller				Yes	No	Yes	No
l. Other Credits (explain)	2,176.00			<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Loan amount (exclude PMI, MIP, Funding Fee financed)				<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	58,800.00			<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n. PMI, MIP, Funding Fee financed		j. Are you a U.S. citizen? k. Are you a permanent resident alien? l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below. m. Have you had an ownership interest in a property in the last three years? (1) What type of property did you own—principal residence (PR), second home (SH), or investment property (IP)? (2) How did you hold title to the home—solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	58,800.00			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o. Loan amount (add m & n)				<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	58,800.00						
p. Cash from/to Borrower (subtract j, k, l & o from i)							

ACKNOWLEDGEMENT AND GRIEVANCE

Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that: (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described in this application; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated in this application; (6) the Lender, its servicers, successors or assigns may retain the original and/or an electronic record of this application, whether or not the Loan is approved; (7) the Lender and its agents, brokers, insurers, servicers, successors, and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the Lender, its servicers, successors or assigns may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither Lender nor its agents, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, to me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a facsimile of my signature, shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.

Acknowledgement. Each of the undersigned hereby acknowledges that any owner of the Loan, its servicers, successors and assigns, may verify or reverify any information contained in this application or obtain any information or data relating to the Loan, for any legitimate business purpose through any source, including a source named in this application or a consumer reporting agency.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X IDA WHITLEY		X	

ELECTRONIC RECORD FOR MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation and surname if you have made this application in person. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER				CO-BORROWER			
I do not wish to furnish this information				I do not wish to furnish this information			
Ethnicity:	Hispanic or Latino	<input checked="" type="checkbox"/> Not Hispanic or Latino		Ethnicity:	Hispanic or Latino	<input type="checkbox"/> Not Hispanic or Latino	
Race:	<input type="checkbox"/> American Indian or Alaska Native	<input type="checkbox"/> Asian	<input type="checkbox"/> Black or African American	Race:	<input type="checkbox"/> American Indian or Alaska Native	<input type="checkbox"/> Asian	<input type="checkbox"/> Black or African American
	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander	<input checked="" type="checkbox"/> White			<input type="checkbox"/> Native Hawaiian or Other Pacific Islander	<input type="checkbox"/> White	
Sex:	<input checked="" type="checkbox"/> Female	<input type="checkbox"/> Male		Sex:	<input type="checkbox"/> Female	<input type="checkbox"/> Male	
To be Completed by Interviewer				Name and Address of Interviewer's Employer			
This application was taken by:				Advance Lending Group Corp.			
<input checked="" type="checkbox"/> Face-to-face interview				4457 W. Fullerton Chicago			
<input type="checkbox"/> Mail				Chicago, IL 60639			
<input type="checkbox"/> Telephone							
<input type="checkbox"/> Internet							
Interviewer's Name (print or type)				Interviewer's Signature			
Anita Logan				Date			
Interviewer's Phone Number (incl. area code)				(352) 369-6200			

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.

Borrower:	Agency Case Number:
IDA WHITLEY	
Co-Borrower:	Lender Case Number:
	1171224

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X IDA WHITLEY		X	

EXHIBIT B

607 F.Supp.2d 885
(Cite as: 607 F.Supp.2d 885)

C

United States District Court,
N.D. Illinois,
Eastern Division.

Ida Mae **WHITLEY**, Clyde **Whitley** and Kenna
Whitley, Plaintiffs,

v.

**TAYLOR BEAN & WHITACKER MORTGAGE
CORP.**, Advance Lending Group, Corp., Oswald
Ochoa, John Frey Ospina, Anita Logan, Favian Car-
denas, Blue Horizon Real Estate Corp., and Does
1-10, Defendants.
No. 08 C 3114.

April 20, 2009.

Background: Real estate purchaser, and purchaser's husband and daughter brought action against real estate broker, real estate brokerage firm, mortgage broker, and lender, alleging violations of Credit Repair Organizations Act, Real Estate Settlement Procedures Act (RESPA), Fair Housing Act (FHA), Equal Credit Opportunity Act (ECOA), Civil Rights Act, and Illinois Consumer Fraud Act, and fraud, negligent misrepresentation, negligence, intentional/negligent infliction of emotional distress and breach and inducement of breach of fiduciary duty in violation of Illinois law. Defendants moved to dismiss.

Holdings: The District Court, Ruben Castillo, J., held that:

- (1) purchaser's husband had standing to bring claims against defendants;
- (2) purchaser's daughter did not have standing to bring claims against defendants;
- (3) allegations were sufficient to plead agency relationship between lender and real estate broker;
- (4) allegations were sufficient to plead fraud with particularity;
- (5) allegations failed to state claim against lender under Credit Repair Organizations Act; and
- (6) tolling of statute of limitations for Real Estate Settlement Procedures Act (RESPA) claim was not warranted.

Motions granted in part and denied in part.

West Headnotes

[1] Federal Civil Procedure 170A ⚡ 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

Claims that are premised upon a course of fraudulent conduct are subject to a heightened pleading standard. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[2] Federal Civil Procedure 170A ⚡ 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

For purposes of heightened pleading standard, the circumstances of fraud or mistake include the identity of the person who made the misrepresentation, the time, place and content of the misrepresentation, and the method by which the misrepresentation was communicated to the plaintiff. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[3] Federal Civil Procedure 170A ⚡ 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

In a case involving multiple defendants, the complaint should inform each defendant of the nature of their alleged participation in the fraud, to satisfy heightened pleading standard. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

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(Cite as: 607 F.Supp.2d 885)

[4] Federal Civil Procedure 170A ⚡103.2

170A Federal Civil Procedure

170AII Parties

170AII(A) In General

170Ak103.1 Standing

170Ak103.2 k. In General; Injury or Interest. Most Cited Cases

Federal Civil Procedure 170A ⚡103.3

170A Federal Civil Procedure

170AII Parties

170AII(A) In General

170Ak103.1 Standing

170Ak103.3 k. Causation; Redressability. Most Cited Cases

A plaintiff must meet three requirements to establish Article III standing: (1) demonstrate an injury in fact, (2) establish a connection between the alleged injury in fact and the alleged conduct of the defendant, and (3) demonstrate that requested relief will remedy the alleged injury in fact. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[5] Federal Civil Procedure 170A ⚡103.2

170A Federal Civil Procedure

170AII Parties

170AII(A) In General

170Ak103.1 Standing

170Ak103.2 k. In General; Injury or Interest. Most Cited Cases

Prudential standing stems not from the Constitution, but from prudent judicial administration; in other words, although the Constitution permits federal court adjudication, a court may decide that in certain instances policy mitigates against judicial review. Fed.Rules Civ.Proc.Rule 17(a), 28 U.S.C.A.

[6] Civil Rights 78 ⚡1331(3)

78 Civil Rights

78III Federal Remedies in General

78k1328 Persons Protected and Entitled to Sue

78k1331 Persons Aggrieved, and Standing in General

78k1331(3) k. Property and Housing.

Most Cited Cases

Real estate purchaser's husband had prudential and constitutional standing to bring claims against real

estate brokers and lenders, alleging violations of Real Estate Settlement Procedures Act (RESPA), Fair Housing Act (FHA), Equal Credit Opportunity Act (ECOA), Civil Rights Act, and Illinois Consumer Fraud Act, and violation of Illinois law, although husband was not cosigner on mortgage documents; husband participated in mortgage loan application and transactions, signed mortgage instruments recorded with county, held title with wife as tenant by entirety, was listed as defendant in foreclosure action, and was in jeopardy of losing his home. Real Estate Settlement Procedures Act of 1974, § 2, 12 U.S.C.A. § 2601; Civil Rights Act of 1968, § 805, 42 U.S.C.A. § 3605; Equal Credit Opportunity Act, § 701, 15 U.S.C.A. § 1691; 42 U.S.C.A. § 1981; S.H.A. 815 ILCS 505/2.

[7] Civil Rights 78 ⚡1332(3)

78 Civil Rights

78III Federal Remedies in General

78k1328 Persons Protected and Entitled to Sue

78k1332 Third Party Rights; Decedents

78k1332(3) k. Property and Housing.

Most Cited Cases

Real estate purchaser's daughter did not have prudential standing to bring claims against real estate brokers and lenders, alleging violations of Real Estate Settlement Procedures Act (RESPA), Fair Housing Act (FHA), Equal Credit Opportunity Act (ECOA), Civil Rights Act, and Illinois Consumer Fraud Act, and violation of Illinois law, although complaint alleged daughter was living with parents and contributed to mortgage payments; there was no indication that she was involved in loan and mortgage process other than initially contacting real estate broker to help her parents. Real Estate Settlement Procedures Act of 1974, § 2, 12 U.S.C.A. § 2601; Civil Rights Act of 1968, § 805, 42 U.S.C.A. § 3605; Equal Credit Opportunity Act, § 701, 15 U.S.C.A. § 1691; 42 U.S.C.A. § 1981; S.H.A. 815 ILCS 505/2.

[8] Principal and Agent 308 ⚡14(3)

308 Principal and Agent

308I The Relation

308I(A) Creation and Existence

308k14 Implied Agency

308k14(3) k. Transactions Relating to Loans and Negotiable Instruments. Most Cited Cases
Real estate purchasers' allegations that there was written contract between lender and mortgage broker,

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(Cite as: 607 F.Supp.2d 885)

under which broker arranged significant number of loans for lender, that lender utilized broker's credit granting policies, rate sheets, product sheets, loan pricing software, closing documents and training materials to process purchasers' loans, that lender paid broker to increase interest rate on loan and that both lender and broker shared benefit of yield spread premiums based on above "par" interest rate, that individuals employed by broker and lender made material misrepresentations about loan terms to purchasers and portion of yield spread premium payments were directed toward them as additional compensation, and that one individual received illegal "kickback" payments, were sufficient to plead inference of agency relationship between lender and real estate broker.

[9] Principal and Agent 308 ⚡48

308 Principal and Agent

308I Mutual Rights, Duties, and Liabilities

308I(A) Execution of Agency

308k48 k. Nature of Agent's Obligation.

Most Cited Cases

Agency is a fiduciary relationship in which the agent has the power to act on the principal's behalf.

[10] Principal and Agent 308 ⚡1

308 Principal and Agent

308I The Relation

308I(A) Creation and Existence

308k1 k. Nature of the Relation in General.

Most Cited Cases

The test for agency is whether the alleged principal has the right to control the manner and method in which work is carried out by the alleged agent and whether the alleged agent can affect the legal relationships of the principal.

[11] Principal and Agent 308 ⚡1

308 Principal and Agent

308I The Relation

308I(A) Creation and Existence

308k1 k. Nature of the Relation in General.

Most Cited Cases

Principal and Agent 308 ⚡9

308 Principal and Agent

308I The Relation

308I(A) Creation and Existence

308k7 Appointment of Agent

308k9 k. Agreements for Appointment.

Most Cited Cases

Principal and Agent 308 ⚡14(2)

308 Principal and Agent

308I The Relation

308I(A) Creation and Existence

308k14 Implied Agency

308k14(2) k. Conduct of Parties in General. Most Cited Cases
The parties must consent to a principal-agent relationship, which may be created by conduct or contract.

[12] Principal and Agent 308 ⚡14(3)

308 Principal and Agent

308I The Relation

308I(A) Creation and Existence

308k14 Implied Agency

308k14(3) k. Transactions Relating to Loans and Negotiable Instruments. Most Cited Cases
In the broker-lender context, if the evidence indicates that the broker had a close relationship or far more authority than that of simply bringing the borrower and lender together, then the court may deem the broker to be an agent of the lender.

[13] Principal and Agent 308 ⚡24

308 Principal and Agent

308I The Relation

308I(A) Creation and Existence

308k24 k. Questions for Jury. Most Cited Cases
The existence and scope of an agency relationship are questions of fact.

[14] Principal and Agent 308 ⚡189(1)

308 Principal and Agent

308III Rights and Liabilities as to Third Persons

308III(F) Actions

308k189 Pleading

308k189(1) k. Complaint. Most Cited Cases
To plead the existence of an agency relationship, a

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(Cite as: 607 F.Supp.2d 885)

plaintiff must allege a factual predicate to create the inference of agency.

[15] Federal Civil Procedure 170A 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

Attributing allegations to defendants as a single group is generally insufficient to meet the heightened pleading standard for fraud allegations. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[16] Federal Civil Procedure 170A 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

Real estate purchasers' allegations that they provided accurate employment and personal information and supporting documentation to lender and mortgage broker, and that instead of using this information, lender and broker inserted false information into loan applications, pled with particularity circumstances constituting fraud, as required for claims under Credit Repair Organizations Act, Illinois Consumer Fraud Act, and breach of fiduciary duty under Illinois law. Consumer Credit Protection Act, § 404, 15 U.S.C.A. § 1679b; Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.; S.H.A. 815 ILCS 505/2.

[17] Federal Civil Procedure 170A 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

A plaintiff who provides a general outline of the fraud scheme sufficient to reasonably notify the defendants

of their purported role in the fraud satisfies requirement of pleading fraud with particularity. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[18] Federal Civil Procedure 170A 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

Although individualized information about the role of each defendant in the fraud is generally required, the particularity requirement of pleading fraud cases must be relaxed where the plaintiff lacks access to all facts necessary to detail his claim. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[19] Federal Civil Procedure 170A 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

Where matters are within the unique knowledge of defendants, rule governing pleading fraud with particularity does not preclude allegations based on information and belief, provided the complaint includes the specific facts on which the belief is based. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[20] Federal Civil Procedure 170A 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

Real estate purchasers' allegations that appraiser was agent of lender and mortgage broker, that lender and brokers conspired with agent to include inflated property value in appraisal report in order to support loan amounts that they wanted to give purchasers, that

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significant amount of appraiser's business came from broker, and that appraiser obliged their request to arrange fraudulently inflated appraisal of market value of property in order to continue to receive business from broker were sufficiently particular to state fraud claims against broker and lender under Illinois law. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[21] Conspiracy 91 ⚡2

91 Conspiracy

91I Civil Liability

91I(A) Acts Constituting Conspiracy and Liability Therefor

91k1 Nature and Elements in General

91k2 k. Combination. Most Cited Cases

Appraiser was acting as agent for lender and mortgage broker when performing appraisal, as required to deem appraiser's actions acts of lender and broker under Illinois intracorporate conspiracy doctrine, and thus there was no civil conspiracy between lender and broker and appraiser under Illinois law.

[22] Conspiracy 91 ⚡2

91 Conspiracy

91I Civil Liability

91I(A) Acts Constituting Conspiracy and Liability Therefor

91k1 Nature and Elements in General

91k2 k. Combination. Most Cited Cases

Under Illinois' intracorporate conspiracy doctrine there can be no civil conspiracy between a corporation's own officers or employees nor between a corporation and its agents.

[23] Federal Civil Procedure 170A ⚡636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

Principal and Agent 308 ⚡158

308 Principal and Agent

308III Rights and Liabilities as to Third Persons

308III(C) Unauthorized and Wrongful Acts

308k158 k. Fraud of Agent. Most Cited

Cases

Agency relationship between mortgage broker and lender was not dependent on allegations of fraud, and thus heightened theory of agency was not required for real estate purchasers' allegations of fraud against lender. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[24] Federal Civil Procedure 170A ⚡636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

The requirement of a heightened pleading of agency in fraud cases is dependent on whether the same circumstances are used to establish the alleged fraud and the agency relationship; if the same circumstances are used to plead both fraud and agency, then the particularized pleading requirements apply with equal force to the issue of agency and to the underlying fraud claim. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[25] Antitrust and Trade Regulation 29T ⚡358

29T Antitrust and Trade Regulation

29TIII Statutory Unfair Trade Practices and Consumer Protection

29TIII(E) Enforcement and Remedies

29TIII(E)5 Actions

29Tk356 Pleading

29Tk358 k. Particular Cases. Most Cited Cases

Real property purchasers were not required to allege that real estate broker and brokerage firm were "credit repair organizations" in order to state claim against broker and firm under Credit Repair Organizations Act. Consumer Credit Protection Act, § 404, 15 U.S.C.A. § 1679b.

[26] Antitrust and Trade Regulation 29T ⚡218

29T Antitrust and Trade Regulation

29TIII Statutory Unfair Trade Practices and Consumer Protection

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29TIII(C) Particular Subjects and Regulations
29Tk218 k. Credit Repair and Counseling.

Most Cited Cases

Real estate purchasers' allegations that lender made untrue or misleading statements in loan application and gave those statements to itself to process loan, and falsely represented to purchasers that they could afford to repay loans, failed to state claim against lender under Credit Repair Organizations Act. Consumer Credit Protection Act, § 404(a), 15 U.S.C.A. § 1679b(a).

[27] Limitation of Actions 241 ⚡ 104(2)

241 Limitation of Actions

241II Computation of Period of Limitation

241II(F) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action

241k104 Concealment of Cause of Action

241k104(2) k. What Constitutes Concealment. Most Cited Cases
For purposes of tolling statute of limitations on Real Estate Settlement Procedures Act (RESPA) claims, fraudulent concealment denotes efforts by the defendant, above and beyond the wrongdoing upon which the plaintiff's claim is founded, to prevent the plaintiff from suing in time. Real Estate Settlement Procedures Act of 1974, § 16, 12 U.S.C.A. § 2614.

[28] Federal Civil Procedure 170A ⚡ 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases
A plaintiff must plead with particularity the specific conduct of the defendant that entitles the plaintiff to toll the limitations period under Real Estate Settlement Procedures Act (RESPA) for fraudulent concealment. Real Estate Settlement Procedures Act of 1974, § 16, 12 U.S.C.A. § 2614, 12 U.S.C.A. § 2614; Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[29] Federal Civil Procedure 170A ⚡ 636

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(A) Pleadings in General

170Ak633 Certainty, Definiteness and Particularity

170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases
Allegations that real estate broker, brokerage firm, lender and mortgage broker concealed "secret transactions" and took active, affirmative steps to conceal payments and fee splits failed to plead fraudulent concealment with particularity, as required to toll one year statute of limitations for Real Estate Settlement Procedures Act (RESPA) claim. Real Estate Settlement Procedures Act of 1974, §§ 8, 16, 12 U.S.C.A. §§ 2607, 2614; Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[30] Civil Rights 78 ⚡ 1076

78 Civil Rights

78I Rights Protected and Discrimination Prohibited in General

78k1074 Housing

78k1076 k. Sale; Vendor and Purchaser. Most Cited Cases

Civil Rights 78 ⚡ 1079

78 Civil Rights

78I Rights Protected and Discrimination Prohibited in General

78k1074 Housing

78k1079 k. Loans and Financing. Most Cited Cases

Consumer Credit 92B ⚡ 31

92B Consumer Credit

92BII Federal Regulation

92BII(A) In General

92Bk31 k. Equal Credit Opportunity. Most Cited Cases

African-American real estate purchasers' allegations that they were singled out and exploited because of their race stated discrimination claims against real estate broker, real estate brokerage firm, mortgage broker, and lender under Civil Rights Act, Fair Housing Act and Equal Credit Opportunity Act (ECOA). 42 U.S.C.A. § 1981; Civil Rights Act of 1968, § 805, 42 U.S.C.A. § 3605; Equal Credit Opportunity Act, § 701, 15 U.S.C.A. § 1691.

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[31] Civil Rights 78 ⚡ 1395(3)

78 Civil Rights

78III Federal Remedies in General

78k1392 Pleading

78k1395 Particular Causes of Action

78k1395(3) k. Property and Housing.

Most Cited Cases

African-American real estate purchasers' allegations that lender's employee filled out loan application with false information and was compensated for assigning purchasers, as African-Americans, interest rate higher than what they qualified for, sufficient to apprise lender's employee of purchasers' claim and the ground upon which it rested, and thus stated discrimination claim against lender's employee under Civil Rights Act. 42 U.S.C.A. § 1981.

[32] Civil Rights 78 ⚡ 1394

78 Civil Rights

78III Federal Remedies in General

78k1392 Pleading

78k1394 k. Complaint in General. Most

Cited Cases

A plaintiff alleging discrimination is not required to plead specific facts; the complaint only requires a short and plain statement of the claim showing that the pleader is entitled to relief. 42 U.S.C.A. § 1981.

[33] Civil Rights 78 ⚡ 1394

78 Civil Rights

78III Federal Remedies in General

78k1392 Pleading

78k1394 k. Complaint in General. Most

Cited Cases

In the context of a discrimination claim, a plaintiff is not required to plead facts that establish all elements of the prima facie case. 42 U.S.C.A. § 1981.

[34] Consumer Credit 92B ⚡ 33.1

92B Consumer Credit

92BII Federal Regulation

92BII(A) In General

92Bk33 Persons, Businesses, and Transactions Subject to Regulations

92Bk33.1 k. In General. Most Cited

Cases

Mortgage broker arranged for extension of credit, and thus was "creditor" under Equal Credit Opportunity Act (ECOA), as required for real estate purchasers' discrimination claim against broker. Consumer Credit Protection Act, § 702(e), 15 U.S.C.A. § 1691a(e).

[35] Mortgages 266 ⚡ 216

266 Mortgages

266IV Rights and Liabilities of Parties

266k215 Actions for Damages

266k216 k. Between Parties to Mortgage or Their Privies. Most Cited Cases

Mortgage lender did not owe duty of care to real estate purchasers under Illinois law, as required for purchasers' negligence and negligent misrepresentation claim.

[36] Torts 379 ⚡ 118

379 Torts

379I In General

379k116 Injury or Damage from Act

379k118 k. Economic Loss Doctrine. Most

Cited Cases

Under Illinois law, the economic loss doctrine bars recovery in tort for purely economic losses.

[37] Banks and Banking 52 ⚡ 100

52 Banks and Banking

52III Functions and Dealings

52III(A) Banking Franchises and Powers, and Their Exercise in General

52k100 k. Torts. Most Cited Cases

Banks and Banking 52 ⚡ 176

52 Banks and Banking

52III Functions and Dealings

52III(E) Loans and Discounts

52k176 k. Power to Make Loans in General.

Most Cited Cases

Under Illinois law, a lender has no duty to refrain from making a loan if the lender knows or should know that the borrower cannot repay the loan.

[38] Damages 115 ⚡ 57.21

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115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)2 Mental Suffering and Emotional Distress

115k57.19 Intentional or Reckless Infliction of Emotional Distress; Outrage

115k57.21 k. Elements in General.

Most Cited Cases

Under Illinois law, a plaintiff must allege three elements to bring a claim for intentional infliction of emotional distress: (1) the defendant's conduct was extreme and outrageous, (2) the defendant intended that his conduct inflict severe emotional distress, or knew that there was at least a high probability that his conduct would cause severe emotional distress, and (3) the conduct actually caused severe emotional distress.

[39] Damages 115 ↪ 57.22

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)2 Mental Suffering and Emotional Distress

115k57.19 Intentional or Reckless Infliction of Emotional Distress; Outrage

115k57.22 k. Nature of Conduct.

Most Cited Cases

In order to be considered extreme and outrageous, for purposes of intentional infliction of emotional distress claim under Illinois law, a defendant's conduct must go beyond all possible bounds of decency and must be regarded as intolerable in a civilized community.

[40] Damages 115 ↪ 57.39

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)2 Mental Suffering and Emotional Distress

115k57.36 Injury to Property or Prop-

erty Rights

115k57.39 k. Other Particular Cases.

Most Cited Cases

Allegations that real estate purchasers lived in fear of losing their home, in fear of financial insecurity in their retirement and in fear of the future were insufficient to demonstrate level of emotional distress necessary to support an intentional infliction of emotional distress claim against real estate brokers and lenders under Illinois law.

[41] Torts 379 ↪ 204

379 Torts

379III Tortious Interference

379III(A) In General

379k204 k. Interference with Fiduciary Relationships or Duties, in General. Most Cited Cases
To state a claim for inducement of breach of fiduciary duty under Illinois law, a complaint must allege that a third party: (1) colluded with the fiduciary in committing a breach of duty, (2) induced or participated in such breach, and (3) obtained the benefits resulting from the breach of duty.

[42] Torts 379 ↪ 204

379 Torts

379III Tortious Interference

379III(A) In General

379k204 k. Interference with Fiduciary Relationships or Duties, in General. Most Cited Cases
Real estate purchasers' allegations that they engaged mortgage brokers for mortgage brokerage services, and that lender induced breach of mortgage brokers' fiduciary duty to purchasers through its policy of paying yield spread premiums to brokers in exchange for broker's cooperation in unnecessarily inflating purchasers' interest rates, sufficiently stated claim for inducement of breach of fiduciary against lender under Illinois law.

[43] Principal and Agent 308 ↪ 14(3)

308 Principal and Agent

308I The Relation

308I(A) Creation and Existence

308k14 Implied Agency

308k14(3) k. Transactions Relating to Loans and Negotiable Instruments. Most Cited Cases

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Principal and Agent 308 ↩48

308 Principal and Agent

308II Mutual Rights, Duties, and Liabilities

308II(A) Execution of Agency

308k48 k. Nature of Agent's Obligation.

Most Cited Cases

In Illinois, when one party undertakes to find financing on behalf of another, a principal and agent relationship is created; an agent owes fiduciary duties to his principal as a matter of law.

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Thomas Justin Cunningham, Nathan W. Lamb, Simon A. Fleischmann, Locke Lord Bissell & Liddell LLP, Chicago, IL, for Taylor Bean & Whitaker Mortgage Corp.

Nancy Anne Temple, Joshua Richard Diller, Katten & Temple, LLP, Chicago, IL, for Advance Lending Group Corp, Oswaldo Ochoa, and Jhonfrey Ospina.

Sidney Abelski, Abelski & Associates, Ltd., Chicago, IL, for Favian Cardenas and Blue Horizon Real Estate Corp.

MEMORANDUM OPINION AND ORDER

RUBEN CASTILLO, District Judge.

Ida Mae Whitley ("Mrs. Whitley"), Clyde Whitley ("Mr. Whitley"), and their adult daughter Kenna Whitley ("Kenna") (collectively "Plaintiffs") bring this action against Taylor, Bean & Whitacker Mortgage Corp. ("TB & W"), Advance Lending Group, Corp. ("Advance Lending"), Blue Horizon Real Estate Corp. ("Blue Horizon"), Oswaldo Ochoa ("Ochoa"), John Frey Ospina ("Ospina"), Anita Logan ("Logan") and Favian Cardenas ("Cardenas") (collectively "Defendants") alleging violations of the Credit Repair Organizations Act, 15 U.S.C. § 1679b ("CROA"), the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq* ("RESPA"), the Fair Housing Act, 42 U.S.C. § 3605 ("FHA"), the Equal Credit Opportunity Act, 15 U.S.C. § 1691 ("ECOA"), and the Civil Rights Act, 42 U.S.C. § 1981, along with various state law violations. (R. 19, Am.Compl.) Currently before the Court are four motions to dismiss filed by Logan (R.

35), TB & W (R. 38), Advance Lending, Ochoa, and Ospina ("Advance Lending Defendants") (R. 42), and Blue Horizon and Cardenas (R. 46). For the reasons stated below, the motions to dismiss are denied in part and granted in part.

*891RELEVANT FACTS

In January 2006, Plaintiffs contacted Cardenas, an Illinois licensed real estate broker, through Blue Horizon, Cardenas' brokerage firm, for assistance with purchasing their first home. (R. 19, Am.Compl. ¶¶ 9, 16.) Kenna asked Cardenas to "do for [her parents] what you would do for your own parents." (*Id.* ¶ 16.) Plaintiffs allege that instead Cardenas took advantage of the fact that they were unsophisticated, first-time home buyers and showed them homes that he knew they could not afford. (*Id.* ¶¶ 17, 18.) In April 2006, Plaintiffs decided they wanted to purchase a home that Cardenas showed them at 8519 S. Kenton in Chicago. (*Id.* ¶ 19.) Plaintiffs allege that Cardenas did not advise them on how to make an informed offer or how to negotiate the purchase price or other terms of the contract. (*Id.*) After Plaintiffs' offer of \$294,000, the asking price of the house, was accepted, Cardenas arranged many aspects of the transaction including the appraisal, the closing attorney, the home owner's insurance policy and financing. (*Id.* ¶¶ 20, 53.)

TB & W was utilized as the lender and Advance Lending and its president, Ochoa, as the mortgage broker to finance Plaintiffs' home purchase. (*Id.* ¶¶ 7, 8, 20.) Ochoa worked with Ospina, an employee of LaSalle Bank, to process the loan for Plaintiffs. (*Id.* ¶ 10.) Daniel Sompolski ("Sompolski"), an Illinois licensed appraiser and real estate broker, conducted an appraisal of the property. (*Id.* ¶ 50.) In his report, Sompolski appraised the property for \$295,000. (*Id.* ¶¶ 50, 55.) Plaintiffs allege that this value had been agreed upon in advance of the appraisal inspection and was "significantly and artificially inflated relative to comparable homes in the area." (*Id.* ¶¶ 53, 55.) Plaintiffs further allege that a significant amount of Sompolski's business came from Advance Lending and that he obliged their request to arrange a "fraudulently inflated appraisal of the market value of the property" in order to continue to receive business from the company. (*Id.* ¶¶ 52, 54.)

To process their loan application, Mr. and Mrs. Whitley provided Defendants with three years of their

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personal tax returns, Mrs. **Whitley's** paycheck stubs for six months, and bank statements and rent receipts for twelve months. (*Id.* ¶¶ 37, 38.) Instead of using the information provided, however, Plaintiffs allege that Defendants “fabricated an entire socio-economic profile” of Mrs. **Whitley** and utilized this “made-up financial and other information” in the application for financing. (*Id.* ¶ 39.) Specifically, the loan application completed by Logan, an employee of TB & W, stated that Mrs. **Whitley** is a white female with a college degree, employed by the City of Chicago as a mechanic making \$6,800 per month in gross income or \$81,600 annually. (*Id.* ¶ 40.) In reality, Mrs. **Whitley** is African-American and has a seventh grade education. (*Id.* ¶¶ 5, 42.) Although she is employed by the City of Chicago, she works as a garage assistant responsible for checking the fluid levels on trucks, not a mechanic, and makes \$16.50 per hour which translates to \$2,840 in gross income per month and \$34,000 annually. (*Id.* ¶¶ 43, 44.) In addition, Plaintiffs were paying \$925 per month in rent, not \$1,100 as stated in the loan application. (*Id.* ¶ 45.) Although Mr. **Whitley** receives Social Security benefits as income, Defendants decided not to use Mr. **Whitley** as a co-borrower; Mrs. **Whitley** was listed as the sole borrower on the loan. (*Id.* ¶¶ 46, 47.)

On or about May 30, 2006, Plaintiffs closed on the house. (*Id.* ¶ 28.) Cardenas was not present, and Plaintiffs allege that the “signing was rushed.” (*Id.* ¶¶ 28, 29.) Plaintiffs claim that they did not receive any explanation about the contents of the documents they signed or the terms of *892 their financing and were not given copies of all the documents to take home with them. (*Id.* ¶¶ 29, 31.) The property was financed for 100% of its value through an “80/20” loan financing arrangement, under which the mortgage obligation would be split into two loans. (*Id.* ¶ 32.) Plaintiffs, however, did not discover that they had been given two loans until two months following closing, when after making the first payment in the amount of \$2,077.34 to TB & W they received a phone call from Citimorgage, Inc. (“Citi”) claiming that \$462.58 for their second loan was overdue. (*Id.*)

Plaintiffs claim that they were never properly informed that their mortgage payment would be \$2,539.92 per month. (*Id.* ¶ 33.) Plaintiffs allege that Cardenas assured them that their payment would not be more than \$1,800 including principal, interest, and escrow amounts for taxes and insurance, that after six

months they could refinance with him for a lower interest rate and payment, and that they would receive a \$8,000 rebate on the purchase of the home after closing. (*Id.* ¶ 22, 23, 24.) Plaintiffs allege that they never received any written, preliminary disclosures of loan terms such as a good faith estimate of settlement charges or a preliminary Truth-In-Lending disclosure statement from mortgage lender TB & W or broker Advance Lending. (*Id.* ¶¶ 6, 7, 26.) Nor did they receive any written or oral notification of change in the payment amount or loan terms that were quoted by Cardenas. (*Id.* ¶ 34.)

Plaintiffs further allege that Defendants “knew or should have known that [Plaintiffs] could not afford to make the payments” and “fraudulently or negligently represented to [Plaintiffs] that they could afford the home.” (*Id.* ¶ 66.) Plaintiffs allege that Defendants used an inflated home value and false employment and educational information for Mrs. **Whitley** to increase their commissions and that TB & W assigned Mrs. **Whitley** an interest rate higher than what she qualified for. (*Id.* ¶¶ 66, 67.) By inducing Mrs. **Whitley** into the financing arrangement, Plaintiffs allege that TB & W, Logan, Advance Lending, Ospina and Cardenas, all benefitted with higher percentage-based, closing fees and commissions. (*Id.* ¶ 67.) Plaintiffs also allege that TB & W, who received interest-income and profits from the loans, paid “handsome yield spread premium payments” to Advance Lending in connection with the financing deal and that Cardenas received a “kick-back” payment from the arrangement. (*Id.* ¶¶ 67, 69, 105.)

Plaintiffs could not afford the payments on the loans. (*Id.* ¶ 66.) In January 2008, TB & W initiated a foreclosure action against Mr. & Mrs. **Whitley** in the Circuit Court of Cook County. (*Id.* ¶ 72.) Although both Mr. **Whitley** and Kenna contributed to the mortgage obligation, the family has fallen behind in the payments on the larger, first-lien loan. (*Id.* ¶ 48, 66.) They have continued to make payments and are current on the second loan. (*Id.* ¶ 48.) Plaintiffs have tried three times to refinance the loans, but allege that because the mortgage indebtedness is greater than the actual value of the property and income support, their applications for refinancing have been rejected. (*Id.* ¶ 70.) Plaintiffs have also repeatedly requested that TB & W and Citi modify their loan arrangements, but these requests have also been denied. (*Id.* ¶ 71.)

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PROCEDURAL HISTORY

On May 30, 2008, Plaintiffs filed their initial complaint which was amended on August 11, 2008. (R. 1, Compl.; R. 19, Am. Compl.) The amended complaint contains thirteen counts including violations of the CROA (Count I), RESPA (Count II), *893 FHA (Count XII), ECOA (Count XIII) and the Civil Rights Act (Count XI). (R. 19, Am. Compl.) In addition, the amended complaint alleges a violation of the Illinois Consumer Fraud Act, 815 ILCS 505/2 ("ICFA") (Count V) as well as state law claims for fraud (Count III and IV), negligent misrepresentation (Count VI), negligence (Count VII), intentional/negligent infliction of emotional distress (Count VIII) and breach and inducement of breach of fiduciary duty (Counts IX and X). (*Id.*) On September 22, 2008, pursuant to Federal Rules of Civil Procedure 12(b)(6), four motions to dismiss were filed by Logan (R. 35), TB & W (R. 38), Advance Lending Defendants (R. 42), and Blue Horizon and Cardenas (R. 46).^{FN1}

FN1. Additionally, pursuant to Rule 12(f), Cardenas and Blue Horizon move to strike various allegations in the complaint as "gratuitous, argumentative, and prejudicial." (R. 46, Cardenas & Blue Horizon's Mot. to Dismiss at 10.) The Court finds that striking these portions of the complaint will not expedite this matter and denies this motion without further analysis. See *Heller Fin., Inc. v. Midwhay Powder Co.*, 883 F.2d 1286, 1294 (7th Cir.1989) (finding that motions to strike are generally disfavored because they "potentially serve only to delay"); see also *LaSalle Bank Nat'l Assoc. v. Paramount Props.*, 588 F.Supp.2d 840, 860 (N.D.Ill.2008) (same).

LEGAL STANDARDS

In determining whether to grant a motion to dismiss under Rule 12(b)(6), the Court assumes all well-pleaded allegations in the complaint to be true and draws all inferences in the light most favorable to the plaintiff. *Killingsworth v. HSBC Bank*, 507 F.3d 614, 618 (7th Cir.2007) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). To survive a motion to dismiss, the complaint must overcome "two clear, easy hurdles": (1) "the complaint must describe the claim in suffi-

cient detail to give the defendant fair notice of what the claim is and the grounds on which it rests;" and (2) "its allegations must actually *suggest* that the plaintiff has a right to relief, by providing allegations that raise a right to relief above the 'speculative level.'" *Tamayo v. Blagojevich*, 526 F.3d 1074, 1084 (7th Cir.2008) (emphasis in original).

[1][2][3] Plaintiffs claims that are "premised upon a course of fraudulent conduct," are subject to the heightened pleading standard of Rule 9(b). *Borsellino v. Goldman Sachs Group, Inc.*, 477 F.3d 502, 507 (7th Cir.2007). Rule 9(b) requires the plaintiff to "state with particularity the circumstances constituting fraud or mistake." Fed.R.Civ.P. 9(b). The circumstances of fraud or mistake include the "identity of the person who made the misrepresentation, the time, place and content of the misrepresentation, and the method by which the misrepresentation was communicated to the plaintiff." *Windy City Metal Fabricators & Supply, Inc. v. CIT Tech. Fin. Servs.*, 536 F.3d 663, 668 (7th Cir.2008); see also *Uni*Quality, Inc. v. Inforonx, Inc.*, 974 F.2d 918, 923 (7th Cir.1992) (describing Rule 9(b) particularity as the "who, what, where, when and how" of the alleged fraud). In a case involving multiple defendants, the complaint should inform each defendant of the nature of their alleged participation in the fraud. *Vicom, Inc. v. Harbridge Merchant Servs.*, 20 F.3d 771, 778 (7th Cir.1994); *Shair v. Qatar Islamic Bank*, No. 08 C 1060, 2009 WL 691249, at *1, 2009 U.S. Dist. LEXIS 20572, at *3 (N.D.Ill. Mar. 16, 2009).

ANALYSIS

A. Standing of Mr. Whitley and Kenna

The first issue the Court must address is whether Mr. Whitley and Kenna have *894 standing in the present action. Although it is undisputed that Mrs. Whitley was the sole borrower on the mortgage loans at issue, both Mr. Whitley and Kenna are party plaintiffs in all counts except the RESPA violation of Count II. (R. 19, Am. Compl. ¶¶ 47, 101.) TB & W and Advance Lending Defendants argue that because neither Mr. Whitley nor Kenna appear on the loan application or documents, they do not have standing to assert their claims. (R. 39, TB & W's Mem. at 21; R. 44, Advance Lending Defs.' Mem. at 5.)

[4] Federal courts apply two distinct standing analysis-

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es: constitutional and prudential. Rawoof v. Texor Petroleum Co., Inc., 521 F.3d 750, 756 (7th Cir.2008). TB & W argues that Mr. Whitley and Kenna lack constitutional standing, while Advance Lending Defendants' argument is based on lack of prudential standing. (See R. 39, TB & W's Mem. at 21; R. 44, Advance Lending Defs.' Mem. at 5.) Constitutional standing is jurisdictional, arising from the case or controversy requirement of Article III. Rawoof, 521 F.3d at 756. A plaintiff must meet three requirements to establish Article III standing: (1) demonstrate an injury in fact; (2) establish a connection between the alleged injury in fact and the alleged conduct of the defendant; and (3) demonstrate that requested relief will remedy the alleged injury in fact. Vermont Agency of Natural Res. v. U.S., 529 U.S. 765, 771, 120 S.Ct. 1858, 146 L.Ed.2d 836 (2000).

[5] Prudential standing stems not from the Constitution, but from prudent judicial administration. Swea-lingen-El v. Cook County Sheriff's Dept., 456 F.Supp.2d 986, 990 (N.D.Ill.2006). "In other words, although the Constitution permits federal court adjudication, a court may decide that in certain instances policy mitigates against judicial review...." Id. To promote prudent judicial administration, Federal Rule 17(a) provides that "every action shall be prosecuted in the name of the real party in interest." Fed.R.Civ.P. 17(a). A real party in interest is defined by the Seventh Circuit as "a party that has a legally protectable interest in the outcome of the suit." Old Ben Coal Co. v. OWCP, 476 F.3d 418, 420 (7th Cir.2007). A party that "has no stake in [the] litigation" and "is a party in name only," is not a real party in interest. Id.

[6] Advance Lending Defendants argue that Mr. Whitley and Kenna lack prudential standing because they are not real parties in interest. (R. 44, Advance Lending Defs.' Mem. at 6.) Mr. Whitley, however, did participate in the mortgage loan application and transactions. The complaint alleges that Defendants took income information from both Mr. and Mrs. Whitley during the loan application process, but decided not to use Mr. Whitley as a co-borrower on the loan. (Id. ¶¶ 46, 47.) Nevertheless, the mortgage instruments recorded with the Cook County Recorder of Deeds identify and are signed by both Mr. and Mrs. Whitley.^{FN2} (R. 19, Pls.' Consolidated Resp. to Defs.' Mot. to Dismiss ("Pls.' Resp."), Ex. A & B.) In addition, the title to the property is held by both Mr. and Mrs. Whitley as tenants by the entirety. (Id. Ex. D.)

Consistent with both Mr. and Mrs. Whitley being mortgagors, TB & W has listed both parties as named defendants in the state court foreclosure action. (Id. Ex. C; R. 19, Am. Compl. ¶ 72.) Furthermore, Mr. Whitley has demonstrated that he was injured by Defendants' actions. He is in jeopardy of losing his home *895 and has been unable to refinance out of the loans arranged by Defendants. (Id. ¶¶ 70, 72.) Accordingly, Mr. Whitley has both constitutional and prudential standing in this action.

FN2. These additional documents may be considered by the Court in ruling on the motion to dismiss. See McCreedy v. eBay, 453 F.3d 882, 891 (7th Cir.2006) ("documents attached to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to his claim." (citation omitted)).

[7] The Court finds, however, that Kenna Whitley does not have prudential standing to assert the purported claims. Although the complaint alleges that Kenna was living with her parents and contributed to the mortgage payment (Id. ¶ 48), there is no indication that she was involved in the loan and mortgage process other than asking Cardenas to "do for [her parents] what you would do for your own parents." (Id. ¶ 16.) Kenna does not have a legally protectable interest in the outcome of this suit, and therefore the claims brought by her must be dismissed. See Old Ben Coal Co., 476 F.3d at 420.

B. Agency Liability Upon TB & W

[8] Plaintiffs allege that TB & W is directly liable for "putting false information in Mrs. Whitley's loan application and/or in fraudulently or negligently qualifying and underwriting loans to [Plaintiffs]." (R. 19, Pls.' Resp. at 12.) In the alternative, Plaintiffs allege that Advance Lending was TB & W's agent and that TB & W authorized Advance Lending to find and arrange mortgage loans on its behalf. (R. 19, Am.Compl. ¶¶ 79, 92.) Plaintiffs further allege that Cardenas, Blue Horizon, Ospina and Ochoa operated as agents of Advanced Lending and subagents of TB & W. (Id. ¶ 79.) TB & W argues that Plaintiffs have failed to plead sufficient facts to support this theory of agency. (R. 39, TB & W's Mem. at 5.)

[9][10][11][12][13] "Agency is a fiduciary relation-

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ship in which the agent has the power to act on the principal's behalf." *Sphere Drake Ins. Ltd. v. Am. Gen. Life Ins. Co.*, 376 F.3d 664, 672 (7th Cir.2004). The test for agency is "whether the alleged principal has the right to control the manner and method in which work is carried out by the alleged agent and whether the alleged agent can affect the legal relationships of the principal." *Chemtool, Inc., v. Lubrication Techs.*, 148 F.3d 742, 745 (7th Cir.1998); *Tribett v. BNC Mortgage Inc.*, No. 07 C 2809, 2008 WL 162755, *4, 2008 U.S. Dist. LEXIS 3573, at *12 (N.D.Ill. Feb. 17, 2009). The parties must consent to a principal-agent relationship, which may be created by conduct or contract. *Chemtool, Inc.*, 148 F.3d at 745. In the broker-lender context, if the evidence indicates that "the broker had a close relationship or far more authority than that of simply bringing the borrower and lender together," then the Court "may deem the broker to be an agent of the lender." *Taylor, Bean & Whitacker Mortgage Co. v. Cebulak*, No. 03 C 7425, 2004 WL 2106605, *12, 2004 U.S. Dist. 18803, at *37-38 (N.D.Ill. Sept. 20, 2004). The existence and scope of an agency relationship are questions of fact. *Tribett*, 2008 WL 162755 at *4, 2008 U.S. Dist. LEXIS 3573 at *13.

[14] To plead the existence of an agency relationship, a plaintiff must allege a factual predicate to create the inference of agency. *Id.* In support of their theory of agency, Plaintiffs allege that there was a written contract between TB & W and Advance Lending, under which Advance Lending arranged a significant number of loans for the company. (R. 19, Am.Compl. ¶¶ 91-93.) Plaintiffs allege that Advance Lending utilized TB & W's credit granting policies, rate sheets, product sheets, loan pricing software, closing documents and training materials to process Plaintiffs' loans. (*Id.* ¶¶ 93-99.) Plaintiffs further allege that TB & W paid Advance Lending to increase the interest rate on Mrs. Whitley's loan and that both TB & W and Advance Lending shared the benefit of yield spread premiums ("YSP's") based *896 on the above "par" interest rate. (R. 19, Am.Compl. ¶¶ 85-88.) With regard to Cardenas, Ospina and Ochoa, Plaintiffs allege that these individuals made material misrepresentations about the loan terms to Plaintiffs and that a portion of the YSP payments were directed toward them as additional compensation and that Cardenas received illegal "kickback" payments. (*Id.*, ¶¶ 68, 80-83, 89, 105.)

The Court finds that the above allegations, taken as

true, indicate that the relationship between Advance Lending and TB & W was more involved than simply bringing the borrower and lender together. Plaintiffs have therefore sufficiently pleaded an inference of an agency relationship for purposes of a motion to dismiss. *Taylor, Bean & Whitacker Mortgage Co.*, 2004 WL 2106605, at *12, 2004 U.S. Dist. LEXIS 18803, at *38 ("Because the presence or absence of an agency relationship ... is a question of fact better left for determination at summary judgment ... [plaintiff] has sufficiently pled an agency relationship...."). Accordingly, the motion to dismiss on this ground is denied.^{FN3}

FN3. TB & W's argument that even if agency has been sufficiently pleaded, the alleged conduct was beyond the scope of the agency, requires a factual determination inappropriate at this stage. *Taylor, Bean & Whitacker Mortgage Co.*, 2004 WL 2106605 at *12, 2004 U.S. Dist. LEXIS 18803 at *38.

C. Allegations of Fraud

[15] Counts I, III-V, and IX are all premised on Defendants' alleged fraudulent conduct. (R. 19, Am.Compl.) TB & W, Advance Lending Defendants, Cardenas and Blue Horizon argue that Plaintiffs have failed to plead with particularity the circumstances constituting fraud as required by Rule 9(b). (R. 39, TB & W's Mem. at 13; R. 44, Advance Lending Defs.' Mem. at 7; R. 46, Cardenas & Blue Horizon's Mem. at 9-10.) The Seventh Circuit has explained that "Rule 9(b) ensures that a plaintiff [has] some basis for his accusations of fraud before making those accusations and thus discourages people from including such accusations in complaints simply to gain leverage for settlement or for other ulterior purposes." *Uni*Quality, Inc.*, 974 F.2d at 924. Under Rule 9(b), Plaintiffs must allege the "who, what, where, when and how" of the alleged fraud for each defendant. *Id.* at 923; *Vicom, Inc.*, 20 F.3d at 778. Attributing allegations to defendants as a single group is generally insufficient to meet the heightened pleading standard of Rule 9(b). *In re Spiegel, Inc.*, 382 F.Supp.2d 989, 1017 (N.D.Ill.2004) (citing *Sears v. Likens*, 912 F.2d 889, 893 (7th Cir.1990)).

1. Allegations Premised on the Alleged False Loan Application

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[16] Counts I, V, and IX are premised in part on Plaintiffs' allegation that Defendants fraudulently falsified Mrs. Whitley's material information on the loan application.^{FN4} (See R. 19, Am. Compl. ¶¶ 101, 131, 172.) Advance Lending Defendants argue that because the complaint does not specify "the specific defendant that purportedly told her to use false financial and other information" or "to sign the final loan applications with falsified information," the allegations are insufficient to withstand a motion to dismiss. (R. 44, Advance Lending Defs.' Mem. at 8; see also R. 46, Cardenas & Blue Horizon's Mem. at 10.) Defendants, however, mischaracterize Plaintiffs' allegation. Plaintiffs allege that they provided accurate employment and personal information and supporting documentation to Defendants, and that instead *897 of using this information, Defendants inserted false information into the loan applications. (R. 19, Am.Compl.¶¶ 40, 56-59.)

FN4. Plaintiffs have pleaded in the alternative that it was Logan, Advance Lending, or all Defendants that inserted the false information. (R. 19, Am.Compl.¶¶ 40, 56-59.)

[17][18][19] In the Seventh Circuit, a plaintiff who provides a "general outline of the fraud scheme" sufficient to "reasonably notify the defendants of their purported role" in the fraud satisfies Rule 9(b). *Midwest Grinding Co., Inc. v. Spitz*, 976 F.2d 1016, 1020 (7th Cir.1992). Although individualized information about the role of each defendant in the fraud is generally required, "the particularity requirement of Rule 9(b) must be relaxed where the plaintiff lacks access to all facts necessary to detail his claim." *Corley v. Rosewood Care Ctr.*, 142 F.3d 1041, 1051 (7th Cir.1998); *Jepson, Inc. v. Makita Corp.*, 34 F.3d 1321, 1328 (7th Cir.1994) (finding that when details of the fraud "are within the defendant's exclusive knowledge, specificity requirements are less stringent"). Where matters are within the unique knowledge of defendants, Rule 9(b) does not preclude allegations based on information and belief, provided the complaint includes the specific facts on which the belief is based. *W. United Life Assur. Co. v. Fifth Third Bank*, No. 02 C 7315, 2003 WL 444417, at *3, 2003 U.S. Dist. LEXIS 2531, at *9 (N.D.Ill. Feb. 19, 2003).

The Court finds that Plaintiffs have sufficiently pleaded claims based on the alleged fraud in the loan application. Although they are without knowledge of

who specifically inserted the false information, Plaintiffs have provided a general outline of the fraud scheme sufficient to give Defendants notice of their purported roles. The motions to dismiss these claims are therefore denied.

2. Allegations Premised on the Inflated Home Appraisal

[20] Counts III and IV, and parts of Count I and V, are based on Plaintiffs' allegation that Defendants fraudulently inflated the appraisal value of the property. (R. 19, Am.Compl.¶¶ 101, 119-124, 126-28, 131.) The complaint alleges that Sompolski was an agent of Cardenas, Ospina and/or Advance Lending and that Defendants conspired with Sompolski to include an inflated property value in his appraisal report in order to support the loan amounts that they wanted to give Plaintiffs. (*Id.* ¶¶ 51-55.) Plaintiffs further allege that a significant amount of Sompolski's business came from Advance Lending and that he obliged their request to arrange a "fraudulently inflated appraisal of the market value of the property" in order to continue to receive business from the company. (*Id.* ¶¶ 52, 54.)

[21][22] TB & W and Advance Defendants argue that Count IV, Plaintiffs' civil conspiracy claim is a "legal impossibility." (R. 44, Advance Defs.' Mem. at 11; see also R. 39, TB & W's Mem. at 15.) Plaintiffs allege that Sompolski was the agent of Cardenas, Ospina and/or Advance Lending for the purpose of performing the appraisal. (R. 19, Am.Compl.¶ 51.) Under Illinois' intracorporate conspiracy doctrine, however, there can be no civil conspiracy between a corporation's own officers or employees nor between a corporation and its agents. *Buckner v. Atl. Plant Maint.*, 182 Ill.2d 12, 24, 230 Ill.Dec. 596, 694 N.E.2d 565 (1998) (a conspiracy cannot exist between a principal and an agent because the acts of the agent are deemed to be the acts of the principal).^{FN5} Sompolski's actions are *898 deemed the acts of Cardenas, Ospina and/or Advance Lending making the civil conspiracy claim legally insufficient. *Martinez*, 527 F.Supp.2d at 839 ("When a body and its limbs agree to act, it does not create an actionable conspiracy."). Count IV is therefore dismissed.

FN5. Courts have recognized two exceptions to the Illinois intracorporate conspiracy doctrine: (1) a conspirator acts out of self-interest rather than in the interest of the

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principal; and (2) when the scope of the conspirators act beyond the scope of their official duties. *Georgeson*, 2005 U.S. Dist. LEXIS 14901 at *8-9. The Court finds that neither of these exceptions are applicable, Sompolski's actions were within his official duties as an appraiser and although Sompolski received some benefit, in the form of additional business, the "fraudulently inflated appraisal" was for the benefit of Cardenas, Ospina and/or Advance Lending.

The Court finds that Plaintiffs have sufficiently pleaded the other claims of fraud related to the appraisal.^{FN6} The complaint, however, does not justify raising these allegations against all Defendants. Attributing allegations to defendants as a single group is generally insufficient to meet the heightened pleading standard of Rule 9(b). *In re Spiegel, Inc.*, 382 F.Supp.2d at 1017. The complaint only alleges that "Cardenas, Ospina, and/or Advance Lending" "ordered and arranged for an appraisal of the property." (R. 19, Am.Compl.¶¶ 49, 51-52.) Accordingly Counts I, III, and V related to the fraudulently inflated appraisal are limited to Cardenas, Ospina, Advance Lending and based on the agency theory, as explained below, TB & W.

FN6. TB & W's argument that Plaintiffs have failed to sufficiently allege that the value of the property was inflated is unpersuasive. (See R. 39, TB & W's Mem. at 13.) Plaintiffs have alleged that the appraisal value of \$295,000 was "inflated relative to comparable homes in the area," and that their "mortgage indebtedness is greater than the actual property value." (R. 19, Am.Compl.¶¶ 55-56, 70.) At this stage, the Court must assume these allegations to be true. *Killingsworth v. HSBC Bank*, 507 F.3d 614, 618 (7th Cir.2007).

[23][24] TB & W argues that Plaintiffs allegations do not contain the requisite particularity to satisfy Rule 9(b) to impose liability upon the company under a theory of agency. (R. 39, TB & W's Mem. at 8.) The requirement of a heightened pleading of agency in fraud cases is dependent on whether the "same circumstances" are used to establish the alleged fraud and the agency relationship. See *Lachmund v. ADM Investor Servs. Inc.*, 191 F.3d 777, 783 (7th Cir.1999);

Guar. Residential Lending Inc. v. Int'l Mortg. Ctr. Inc., 305 F.Supp.2d 846, 854 (N.D.Ill.2004). If the same circumstances are used to plead both fraud and agency, then the particularized pleading requirements of Rule 9(b) "apply with equal force to the issue of agency and to the underlying fraud claim." *Lachmund*, 191 F.3d at 783. In this case, the Court finds that the agency relationship between Advance Lending and TB & W is not dependent on the allegations of fraud. As previously discussed, Plaintiffs have adequately pleaded a theory of agency for purposes of a motion to dismiss based upon the intricacies of the relationship between Advance Lending and TB & W. This theory of agency is independent of the claims of fraud. Accordingly, a heightened theory of agency is not required for Plaintiffs' allegations of fraud. *Sequel Capital, LLC v. Rothman*, No. 03 C 0678, 2003 WL 22757758, *13, 2003 U.S. Dist. LEXIS 20967, *40 (N.D.Ill. Nov. 24, 2003) (finding that agency allegation was separate from the circumstances alleging fraud and not subject to the heightened pleading standard of Rule 9(b)). TB & W is therefore an appropriate defendant in Counts I, III, and V and the motion to dismiss on this ground is denied.

D. Federal Claims

I. CROA

Defendants argue that Count I, the CROA claim, should be dismissed. (R. 46, Cardenas & Blue Horizon's Mem. at 3; R. 39, TB & W's Mem. at 10.) The CROA prohibits false statements to consumer reporting agencies or persons providing credit. See 15 U.S.C. § 1679b. Plaintiffs allege that Defendants violated *899section 1679b of the CROA "by fraudulently inflating and falsifying" information on Mrs. Whitley's loan application and "fraudulently overstating the value of the property." (R. 19, Am.Compl.¶ 101.)

[25] First, Cardenas and Blue Horizon argue that they cannot be sued under the CROA because they are not credit repair organizations as defined by the statute. (R. 46, Cardenas & Blue Horizon's Mem. at 3.) Section 1679b, however, does not limit liability exclusively to credit repair organizations, and instead provides that "[N]o person may ... make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading ... with respect to any consumer's credit worthiness, credit standing, or

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credit capacity...." 15 U.S.C. § 1679b(a). "Case law in this district teaches that, even where a plaintiff cannot prove that the defendant is a credit repair organization within the meaning of section 1679a(3)(A) of the CROA, the plaintiff potentially can nevertheless state a claim ... under section 1679b of the CROA." Costa v. Mauro Chevrolet, Inc., 390 F.Supp.2d 720, 727 (N.D.Ill.2005).

Plattner v. Edge Solutions, Inc., 422 F.Supp.2d 969 (N.D.Ill.2006), the case cited by Cardenas and Blue Horizon in support of their position, is distinguishable from the instant action. In Plattner, plaintiffs pleaded violations of other sections of the CROA, not § 1679b. Id. at 973 n. 2. Plattner did not reject the holding in Costa with regard to § 1679b, but held that these other sections of the CROA expressly limit prohibitions and requirements to credit repair organizations. Id. Accordingly, the Court finds that Plaintiffs need not allege that Cardenas and Blue Horizon are credit repair organizations, and Cardenas and Blue Horizon's motion to dismiss is denied.

[26] Next, TB & W argues that the CROA claim against it must be dismissed because "it is inconsistent with a logical reading of the statute" that a person can be guilty of violating the statute for making a false representation to itself. (R. 39, TB & W's Mem. at 10.) In other words, Plaintiffs allege that TB & W violated the CROA because it made untrue or misleading statements in Mrs. Whitley's loan application, and then gave those statements to itself to process the loan. (See R. 19, Am. Compl. ¶ 101.) The plain language of the statute prohibits a person from making false representations to another about a consumer's credit-worthiness or capacity. See 15 U.S.C. § 1679b(a). Plaintiffs have not provided case law to support their position that a person can be liable under the CROA for making a false statement to itself, and this Court is unwilling to establish such a novel precedent.

Furthermore, Plaintiffs argument that TB & W "could be liable for falsely representing to [Plaintiffs] that ... they could afford to repay the loans," also fails. (See R. 71, Pls.' Resp. at 31.) The CROA only prohibits false statements to consumer reporting agencies or persons providing credit. See 15 U.S.C. § 1679b. TB & W's alleged false statement to Plaintiffs is not actionable under the CROA because Plaintiffs did not provide credit in this case. Rather, Plaintiffs were the ones who obtained credit. Plaintiffs have not stated an

actionable claim against TB & W under the CROA, and therefore TB & W's motion to dismiss Count I is granted.

2. RESPA

Defendants next argue that Count II, Plaintiffs' RESPA claim should be dismissed. (R. 36, Logan's Mem. at 4; R. 39, TB & W's Mem. at 11; R. 44, Advance Lending Defs.' Mem. at 10; R. 46, Cardenas & Blue Horizon's Mem. at 10.) RESPA prohibits the payment or receipt of compensation in connection with a federally related mortgage loan merely for the referral of business and also prohibits the *900 splitting of any charges for settlement services other than for services actually performed. 12 U.S.C. § 2607. The RESPA claims alleged by Plaintiffs are subject to a one-year statute of limitations that begins running on the mortgage loan closing date. See 12 U.S.C. § 2614; Thomas v. Ocwen Fed. Bank FSB, No. 01 C 4249, 2002 WL 99737, at *2, 2002 U.S. Dist. LEXIS 1231, at *7 (N.D.Ill. Jan. 25, 2002). The mortgage loan in this case closed on or about May 30, 2006. (R. 19, Am. Compl. ¶ 28.) However, Plaintiffs did not file this action until two years later on May 30, 2008. (R. 1, Compl.) Defendants argue that the claim is barred by the statute of limitations.^{FN7} (R. 44, Advance Lending Defs.' Mem. at 10.)

FN7. In their response, Plaintiffs do not address any of Defendants' arguments to dismiss the RESPA claim and merely reassert that they "have stated claims for violations of RESPA against all defendants ... under the applicable Sections of RESPA and the case law." (R. 71, Pls.' Resp. at 40.)

[27][28] Plaintiffs allege that the statute of limitations should be tolled by Defendants' "fraudulent concealment" of "secret transactions," regarding unearned and illegal fees derived from the loans. (R. 19, Am. Compl. ¶ ¶ 102-107, 111.) Fraudulent concealment "denotes efforts by the defendant-above and beyond the wrongdoing upon which the plaintiff's claim is founded-to prevent the plaintiff from suing in time." Cada v. Baxter Healthcare Corp., 920 F.2d 446, 451 (7th Cir.1990); Greer v. Bank One, No. 01 C 7352, 2002 WL 1732366, at *2-3, 2002 U.S. Dist. LEXIS 13715, at *7-8 (N.D.Ill.2002). A plaintiff must plead with Rule 9(b) particularity the specific conduct of the defendant that entitles the plaintiff to toll the

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limitations period for fraudulent concealment. *Id.*

[29] In this case, Plaintiffs generally allege that Defendants concealed “secret transactions” and include the conclusory statement that “Defendants took active, affirmative steps to conceal” the payments and fee splits. (R. 19, Am.Compl.¶ 111-112.) These general allegations referencing Defendants as a single group do not satisfy the particularity required under Rule 9(b). See *In re Spiegel, Inc.*, 382 F.Supp.2d at 1001 (attributing allegations to defendants as a single group is generally insufficient to meet the heightened pleading standard of Rule 9(b)); *Uni*Quality, Inc.*, 974 F.2d at 923 (under Rule 9(b), Plaintiffs must allege the “who, what, where, when and how” of the alleged fraud for each defendant). Moreover, this conclusory allegation of fraudulent concealment does not warrant the Court relaxing the Rule 9(b) requirements. See *Gavin v. AT&T Corp.*, 543 F.Supp.2d 885 (N.D.Ill.2008) (refusing to relax Rule 9(b) particularity based on “expansive, undefined fraud claims”). Plaintiffs have failed to allege particular facts which establish that Defendants’ fraudulent concealment prevented them from suing in a timely fashion. See *Greer*, 2002 WL 1732366, at *2-3, 2002 U.S. Dist. LEXIS 13715, at *7-8 (“The alleged acts of concealment must amount to active steps beyond a mere non-disclosure or failure to disclose the alleged initial fraudulent conduct.”). Accordingly, Plaintiffs have not pleaded fraudulent concealment as a basis to toll the statute of limitations. However, the Court will give Plaintiffs the opportunity to replead and cure this defect. Plaintiffs’ RESPA claim is therefore dismissed without prejudice.

3. Discrimination Claims

In Counts XI-XIII, Plaintiffs allege a Section 1981 Civil Rights Act claim against all Defendants and FHA and ECOA claims against TB & W and Advance Lending. (R. 19, Am.Compl.¶¶ 184, 188, 204.) The FHA prohibits discrimination in real estate-related transactions and the ECOA prohibits discrimination in credit transactions.*901See42 U.S.C. § 3605; 15 U.S.C. § 1691. TB & W argues that all three discrimination claims should be dismissed because Plaintiffs’ legal conclusion “that she was discriminated against as a minority,” is defeated by Plaintiffs’ factual assertion “that her loan application identified her as a Caucasian.” (R. 39, TB & W’s Mem. at 20.) Plaintiffs contend, however, that it is TB & W and Advance

Lending’s actual knowledge of Plaintiffs’ race, not the false information inserted in the loan application, that is the basis for their discrimination claims. (R. 71, Pls.’ Resp. at 33.) Plaintiffs allege that the loan terms they received were the result of (1) intentional discrimination (Count XI), and (2) the disparate impact of Defendants’ pricing policies for interest rates and closing fees (Counts XII, XIII). (R. 19, Am.Compl.¶¶ 185-187, 189-192, 205.)

[30] The Court finds that Plaintiffs have adequately stated discrimination claims under the three statutes. In Count XI, Plaintiffs allege that “they were singled out and exploited ... because of their race.” (*Id.* ¶ 187.) Under this theory, racial discrimination served as Defendants’ intent or motive, and fraud and misrepresentation were the particular means of the exploitation. Counts XII and XIII focus on TB & W and Advance Lending’s practice of paying and accepting higher YSP’s in their mortgage loans to minorities. (*Id.* ¶¶ 189-192, 205.) Taking the allegations as true at this time, TB & W and Advance Lending may have fraudulently misrepresented Plaintiffs’ income, property value and loan terms, and also imposed higher YSP’s because Plaintiffs are African-American. See *Martinez v. Freedom Mortgage Team, Inc.*, 527 F.Supp.2d 827 (N.D.Ill.2007) (where in addition to fraud claims based on Defendants’ fraudulent inflation of Plaintiff’s income, the court found that Plaintiffs also stated FHA and ECOA discrimination based on allegations of targeting racial minorities for higher-cost loans). TB & W’s motion to dismiss the discrimination claims is therefore denied.

[31][32][33] Next, Logan argues that the Section 1981 claim against her should be dismissed because Plaintiffs fail to allege discriminatory intent on her part. (R. 36, Logan’s Mem. at 5.) A plaintiff, however, is not required to plead specific facts; the complaint only requires a short and plain statement of the claim showing that the pleader is entitled to relief. *Erickson v. Pardus*, 551 U.S. 89, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007). In the context of a discrimination claim, a plaintiff is not required to plead facts that establish all elements of the prima facie case. *Lindsay v. Yates*, 498 F.3d 434, 440 (6th Cir.2007) (“the prima facie case relates to the employee’s burden of presenting evidence”) (citation omitted). Here, Plaintiffs allege that Logan filled out Plaintiffs’ loan application with false information and was compensated for assigning Plaintiffs, as African-Americans, a interest rate higher

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then what they qualified for. (R. 19, Am.Compl. ¶¶ 74-78, 194-196.) These allegations are sufficient to apprise Logan of Plaintiffs' claim and the ground upon which it rests. Logan's motion is therefore denied.

[34] Finally, Advance Lending argues that the ECOA claim should be dismissed because the company is not a "creditor" as defined by the statute. (R. 44, Advance Lending Defs.' Mem. at 12.) The statute, however, does not limit liability only to entities with the ability to extend credit. Treadway v. Gateway Chevrolet Oldsmobile Inc., 362 F.3d 971, 976 (7th Cir.2004). Instead, the ECOA defines a creditor as "any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew or *902 continue credit." 15 U.S.C. § 1691a(e). Mortgage brokers like Advance Lending "arrange for the extension of credit and thus fall under the purview of the statute." See, e.g., Ware v. IndyMac Bank, 534 F.Supp.2d 835, 840 (N.D.Ill.2008); Martinez, 527 F.Supp.2d at 834. Moreover, Advance Lending does not escape liability, as it contends, because it did not make the final credit decision. See Id. at n. 9 ("mortgage brokers ... that do not participate in credit decisions are still regarded as 'creditors' for the purposes of the [ECOA]'s prohibition against discrimination"). Accordingly, Advance Lending's motion is denied.

E. Tort Claims

1. Negligence Claims

[35][36] The complaint also alleges state law claims of negligent misrepresentation (Count VI), and negligence (Count VII). (R. 19, Am.Compl. ¶¶ 137-156.) TB & W argues that these negligence claims are barred by the economic loss doctrine as outlined in Moorman Mfg. Co. v. National Tank Co., 91 Ill.2d 69, 61 Ill.Dec. 746, 435 N.E.2d 443 (1982). (R. 39, TB & W's Mem. at 15.) The economic loss doctrine bars recovery for purely economic losses. Id. There are, however, exceptions to this doctrine. The Seventh Circuit explained that "a claim for economic loss may be pursued in tort as well as contract where ... the claim is founded on a duty of care that the law imposed on the defendant irrespective of the terms of the contract." Mut. Serv. Cas. Ins. Co. v. Elizabeth State Bank, 265 F.3d 601, 617 (7th Cir.2001); see also

Congregation of the Passion v. Touche Ross & Co., 159 Ill.2d 137, 201 Ill.Dec. 71, 636 N.E.2d 503, 514 (1994) ("Where a duty arises outside of the contract, the economic loss doctrine does not prohibit recovery in tort for the negligent breach of that duty.")

[37] Plaintiffs allege that Defendants had a duty to take "precautions against creating unreasonable risk of injury from foreseen and foreseeable events" such as Plaintiffs' "eventual inability to make payments, default on the mortgages, the destruction of plaintiffs' credit, and the loss of the family's home in foreclosure." (R. 19, Am.Compl. ¶¶ 142, 149.) "Where the law does not impose a duty, one will not generally be created by a defendant's rules or internal guidelines. Rather, it is the law which, in the end, must say what is legally required." Shank v. Fields, 373 Ill.App.3d 290, 311 Ill.Dec. 587, 869 N.E.2d 261, 269 (2007). Under Illinois law, a lender "has no duty to refrain from making a loan if the lender knows or should know that the borrower cannot repay the loan." N. Trust Co. v. VIII S. Michigan Associates, 276 Ill.App.3d 355, 212 Ill.Dec. 750, 657 N.E.2d 1095, 1102 (); see also Pommier v. Peoples Bank Marycrest, 967 F.2d 1115, 1119 (7th Cir.1992) (lenders do not owe fiduciary duties to borrowers unless the borrower relies on a special relationship of trust and confidence with the lender). In LaSalle Bank Nat'l Assoc. v. Paramount Props., 588 F.Supp.2d 840 (N.D.Ill.2008), the court rejected the very argument that Plaintiffs make here. The court found that "Illinois does not, and would not, recognize a general duty of care owed by lenders to borrowers, especially not one that would create tort liability based on internal lending guidelines." Id. at 853. Defendants owed no duty of care to Plaintiffs under Illinois law, and therefore Counts VI and VII are dismissed.

2. Intentional Infliction of Emotional Distress

[38][39] In Count VIII, Plaintiffs raise a claim for intentional infliction of emotional distress ("IIED") against Defendants. ^{FN8}*903 (R. 19, Am.Compl. ¶¶ 157-163.) Under Illinois law, a plaintiff must allege three elements to bring a claim for IIED: (1) the defendant's conduct was extreme and outrageous; (2) the defendant intended that his conduct inflict severe emotional distress, or knew that there was at least a high probability that his conduct would cause severe emotional distress; and (3) the conduct actually caused severe emotional distress. Feltmeier v. Feltmeier, 798

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(Cite as: 607 F.Supp.2d 885)

N.E.2d 75, 80 (Ill.2003). In order to be considered extreme and outrageous, a defendant's conduct must "go beyond all possible bounds of decency" and must be "regarded as intolerable in a civilized community." Id. at 80-81.

FN8. The complaint also alleges a claim for negligent infliction of emotional distress (Count VIII). (Id. ¶¶ 157-163.) Plaintiffs, however, concede that they are unable to allege "a contemporaneous physical harm or impact" as required for this claim. (R. 71, Pls.' Resp. at 49.) Accordingly, Count VIII is dismissed.

[40] TB & W argues that this claim should be dismissed because "allegations of fear of financial security are not sufficient to support a claim for IIED." (R. 39, TB & W's Mem. at 19.) Courts have consistently held that "[a]lthough fright, horror, grief, shame and humiliation, etc. may fall within the ambit of the term 'emotional distress,' these mental conditions alone are not actionable." Sornberger v. City of Knoxville, 434 F.3d 1006, 1030 (7th Cir.2006). Here, the complaint alleges that "Plaintiffs live in fear of losing their home, in fear of financial insecurity in their retirement and in fear of the future." (R. 19, Am.Compl.¶ 162.) This allegation is insufficient to demonstrate the level of emotional distress necessary to support an IIED claim. See Johnson v. K mart Corp., 311 Ill.App.3d 573, 243 Ill.Dec. 591, 723 N.E.2d 1192, 1198 (2000) (feelings of stress and fear insufficient to support IIED claim). Plaintiffs make "no allegations of the type of severe emotional suffering, physical ramifications, medical treatment, or other factors that would point to severe emotional distress." Redd v. Dougherty, 578 F.Supp.2d 1042, 1058 (N.D.Ill.2008). Plaintiffs' IIED claim therefore fails, and Count VIII is therefore dismissed.

3. Inducement of Breach of Fiduciary Duty

[41] In Count X, Plaintiffs allege a claim for inducement of breach of fiduciary duty. (R. 19, Am.Compl.¶¶ 176-183.) To state a claim for inducement of breach of fiduciary duty under Illinois law, a complaint must allege that a third party: "(1) colluded with the fiduciary in committing a breach of duty; (2) induced or participated in such breach; and (3) obtained the benefits resulting from the breach of duty." Ottawa Sav. Bank v. JDI Loans, Inc., 374 Ill.App.3d

394, 312 Ill.Dec. 836, 871 N.E.2d 236, 241-42 (2007). TB & W argues that "Plaintiffs have not alleged any facts from which the Court could conclude that a fiduciary duty existed between them and any other Defendant that TB & W could have induced to breach such a fiduciary duty." (R. 39, TB & W's Mem. at 19.)

[42][43] "In Illinois, when one party undertakes to find financing on behalf of another, a principal and agent relationship is created.... An agent owes fiduciary duties to his principal as a matter of law." DeLeon v. Beneficial Constr. Co., 55 F.Supp.2d 819, 827 (N.D.Ill.1999); Taylor, Bean & Whitacker Mortgage Co., 2004 WL 2106605, at *12, 2004 U.S. Dist. 18803, at *37-38. Plaintiffs allege that they engaged Advanced Lending, Ochoa, Ospina and/or Cardenas for mortgage brokerage services. (Am.Compl.¶¶ 7, 16, 10, 20, 21.) Taken as true, this allegation creates a fiduciary duty. See DeLeon, 55 F.Supp.2d at 828 ("It is undisputed that plaintiffs engaged the defendants to conduct mortgage*904 services and a fiduciary duty was thereby created.").

Plaintiffs have further alleged that "TB & W induced a breach of Advanced Lending's, Ochoa's, Ospina's and/or Cardenas' fiduciary duty to plaintiffs through its policy of paying YSPs to brokers in exchange for the broker's cooperation in unnecessarily inflating plaintiffs' interest rates." (R. 19, Am.Compl.¶ 177.) This allegation sufficiently pleads a claim for inducement of breach of fiduciary against TB & W. See Cunningham v. EquiCredit Corp. of Ill., 256 F.Supp.2d 785, 796 (N.D.Ill.2003) (finding that plaintiffs adequately pleaded that the mortgage company induced a breach of fiduciary duty by alleging that the company provided the broker with referral fees and kickbacks); Jenkins v. Mercantile Mortg. Co., 231 F.Supp.2d 737, 750 (N.D.Ill.2002) (finding adequate inducement of breach of fiduciary claim when mortgage brokers received an illegal YSP). Accordingly, TB & W's motion is denied.^{FN9}

FN9. Finally, Cardenas and Blue Horizon's argument that the tort claims are barred by the statute of limitations fails. (See R. 46, Cardenas & Blue Horizon's Mot. to Dismiss at 9-10.) Plaintiffs' complaint was filed on May 30, 2008, the last day before the expiration of any two-year statute of limitations. The additional claims added to the amended complaint relate back to the original com-

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(Cite as: 607 F.Supp.2d 885)

plaint and are therefore timely as well. See Jackson v. Kotter, 541 F.3d 688, 696 (7th Cir.2008) (negligence claim added to amended complaint after statute of limitations expired related back to timely filed, original complaint).

CONCLUSION

For the reasons stated above, the motions to dismiss (R. 35, R. 38, R. 42, R. 46), are GRANTED in part and DENIED in part. The motions to dismiss Counts II, IV, VI, VII, and VIII are GRANTED. Counts IV, VI, VII, and VIII are dismissed with prejudice. Count II is dismissed without prejudice and Plaintiffs are given 21 days to file an amended complaint to replead their RESPA claim. The motion to dismiss Count I is GRANTED as to TB & W but DENIED as to the remaining Defendants. The motion to dismiss are DENIED in all other respects.

The parties are directed to reevaluate their settlement positions in light of this opinion and to fully exhaust all remaining efforts to settle this case. The parties shall appear for a status on May 12, 2009 at 9:45 a.m. to set a litigation schedule for this dispute including a firm trial date.

N.D.Ill.,2009.
Whitley v. Taylor Bean & Whitacker Mortg. Corp.
607 F.Supp.2d 885

END OF DOCUMENT

EXHIBIT C

SETTLEMENT CHECKLIST/TERM SHEET

CASE NAME: Whitley vs. Taylor Bean, et. al.

CASE NO. 08 CV 3119 DATE: July 23, 2009

A. PAYMENT OF MONEY TO see specific provisions ① - ⑤ below FROM: ①

1. Total amount to be paid: \$ ① Plaintiffs to pay Taylor Bean payoff out of

2. When: ① \$175,000 in full and complete satisfaction of all amounts

3. Payment terms: due on the first mortgage loan, payoff to be made
upon closing on refinance loan and to come
directly from loan proceeds and disclosed on HUD-1

4. Does payment include attorney's fees? Yes or No ② Advance & Ochar to pay
\$5,000 to plaintiffs

5. Any third party liens to be paid from proceeds? Yes or No ② Upon signing of
closing of the refinance

a. If yes, to whom:

6. Tax Treatment: Taylor Bean will issue 1099 in connection w/ payment of
plaintiffs' attorney's fees; Advance & Ochar to do the same

7. Other ~~payment~~ terms: Taylor Bean to delete all adverse credit reporting with
report to the first-lien loan as soon as reasonably
possible.

8. CONFIRMING AND DOCUMENTING SETTLEMENT:

a. Settlement terms to be incorporated in a typed written agreement? ② Yes or No

b. Typed agreement to be prepared by: ① Plaintiff or Defendant

Sent to other parties on or before July 30th, 2009

d. Other parties to respond with changes, if any, by August 6th, 2009

e. Typed settlement agreement to be executed on or before: August 12, 2009

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③ Taylor Bean to pay (plaintiffs) attorney's fees and costs in the amount of \$32,000 within 10 days of closing the refinance loan.

④ Parties to sign and date the typed agreement on or before Aug. 14, 2009; however, if the mat of refinancing is not at qualifying for closing, closing will be postponed to 24, 2009 latest. If the parties are unable to sign by 2009, then any party may declare a default and sue for all damages.

B. RELEASE OR COVENANT NOT TO SUE (Circle One):

1. a. ~~One Way From Plaintiff(s) to Defendant(s),~~
or b. Mutual Release

2. Scope of Release:

a. General:

1) All claims raised in the litigation, or

2) All claims, whether or not raised in the litigation.

b. Limited: _____

C. CONFIDENTIALITY: Yes or No MUTUAL: Yes or No

1. What can be said about litigation?

a. Dispute amicably resolved, or

b. Nothing, or

c. Other: _____

2. Exceptions to confidentiality?

a. Attorneys

b. Tax advisors

c. Immediate family

d. As otherwise required by law

e. Other: _____

3. Liquidated damages in event of breach: Yes or No

Amount: (Not too large to avoid being a penalty) \$ _____

D. OTHER SETTLEMENT TERMS:

Admission of liability: Yes or No

~~E. EMPLOYMENT CASES:~~

~~1. Ability to reapply: Yes or No~~

~~2. Type of reference: _____~~

F. EFFECTIVE DATE:

1. A binding agreement today; or
2. No binding agreement until the typed settlement agreement is signed.

G. DISMISSAL OF LITIGATION AND ENFORCEMENT OF AGREEMENT (Circle one):

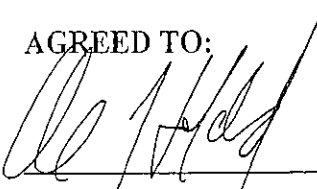
1. Immediate dismissal with prejudice; Court cannot enforce agreement.
2. Dismissal with prejudice to be entered on within seven days following all payment obligations; Court cannot enforce agreement after that date. (Choose date that allows sufficient time to execute written agreement and fulfill obligations.) includes Taylor Bea's counterclaim and the foregoing complaint.
3. Immediate dismissal without prejudice that automatically converts to with prejudice on _____; Court cannot enforce agreement after that date.
4. Consent decree that expressly includes settlement terms; Court retains jurisdiction to enforce decree. (Best for long-term obligations where confidentiality is not desired.)

H. DO PARTIES CONSENT TO MAGISTRATE JUDGE JURISDICTION? Yes or No

(If so, a signed consent form must be executed)

J. DO PARTY REPRESENTATIVES HAVE FULL AUTHORITY TO ENTER INTO SETTLEMENT AGREEMENT? Yes or No

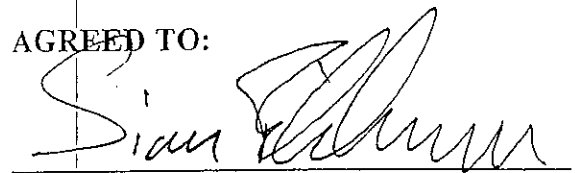
AGREED TO:



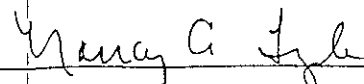
For Plaintiff

For Third Party

AGREED TO:



For Defendants Taylor, Ben and Whitaker Mortgage Corp. and Anita Logan.



For Defendants Advance Lending Group Corp., Oswaldo Ochoa & John Osprey

EXHIBIT D

Al Hofeld Jr.

From: usdc_ecf_ilnd@ilnd.uscourts.gov
Sent: Friday, July 24, 2009 5:21 PM
To: ecfmail_ilnd@ilnd.uscourts.gov
Subject: Activity in Case 1:08-cv-03114 Whitley v. Taylor, Bean & Whitaker Mortgage Corp. et al
settlement conference

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Northern District of Illinois - CM/ECF LIVE, Ver 3.2.2

Notice of Electronic Filing

The following transaction was entered on 7/24/2009 at 5:20 PM CDT and filed on 7/23/2009

Case Name: Whitley v. Taylor, Bean & Whitaker Mortgage Corp. et al

Case Number: 1:08-cv-3114

Filer:

Document Number: 132

Docket Text:

MINUTE entry before the Honorable Maria Valdez: Settlement conference held on 7/23/2009. Parties agree to the terms of settlement. All matters relating to the referral of this action having been resolved, the case is returned to the assigned judge. Judge Honorable Maria Valdez no longer referred to the case. Mailed notice (yp,)

1:08-cv-3114 Notice has been electronically mailed to:

Thomas Justin Cunningham
tcunningham@lockelord.com, docket@lockelord.com, kmorehouse@lockelord.com, ttill@lockelord.com

Nancy Anne Temple ntemple@kattentemplelaw.com

Yolanda L Ricks yricks@atg.state.il.us, kdonoghue@atg.state.il.us, mcapra@atg.state.il.us

Al Hofeld al@alhofeldlaw.com, kita@alhofeldlaw.com, eileen@alhofeldlaw.com

Simon A. Fleischmann
sfleischmann@lockelord.com, ttill@lockelord.com, kmorehouse@lockelord.com, docket@lockelord.com

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Nathan W Lamb nwlamb@lockelord.com, docket@lockelord.com, dharrison@lockelord.com

Joshua Richard Diller jdiller@kattentemplelaw.com, joshuadiller@hotmail.com

1:08-cv-3114 Notice has been delivered by other means to:

Sidney Abelski
Abelski & Associates, Ltd.
180 North Michigan Avenue
Suite 1800
Chicago IL 60601

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Version: 9.0.819 / Virus Database: 271.1.1/2885 - Release Date: 05/20/10 01:26:00

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EXHIBIT E

SETTLEMENT AND GENERAL RELEASE AGREEMENT

A. Parties

This Settlement and General Release Agreement (this "Agreement") is made and entered into as of July 23, 2009 ("Effective Date"), by and between Ida Mae Whitley and Clyde Whitley (collectively the "Plaintiffs") and Taylor, Bean & Whitaker Mortgage Corporation ("TB&W"), Advanced Lending Group Corp. ("Advance"), Oswaldo Ochoa ("Ochoa"), John Ospina ("Ospina"), and Anita Logan ("Logan") (collectively the "Settling Defendants") for the purpose of resolving all claims, controversies and alleged liabilities as set forth below. Plaintiffs and the Settling Defendants are each a "Party" to this Agreement and sometimes referred to as the "Parties."

B. Recitals

This Agreement is entered into with reference to the following facts:

1. On May 30, 2006, Plaintiffs executed a promissory note in the amount of \$235,000 (the "First Note") in favor of the TB&W and secured by a mortgage (the "First Mortgage" and collectively the "First Mortgage Loan") encumbering Plaintiffs' real property commonly known as 8519 S. Kenton Ave. Chicago, Illinois 60652 (the "Property"). Plaintiffs also executed a promissory note in the amount of \$57,683.81 (the "Second Note") and secured by a mortgage (the "Second Mortgage" and collectively the "Second Mortgage Loan") encumbering the Property. (The First Note, Second Note, First Mortgage, Second Mortgage and associated origination documents memorialize the "Loans" and are collectively referred to herein as the "Loan Documents").

2. On February 28, 2008, TB&W commenced a mortgage foreclosure action in the Circuit Court of Cook County, Illinois, styled *Taylor, Bean & Whitaker Mortgage Corp. v. Clyde Whitley, et al.*, Case No. 08 CH 7849 (the "Foreclosure Action").

3. On May 30, 2008, Ida Mae Whitley commenced a lawsuit in the United States District Court for the Northern District of Illinois styled *Ida Mae Whitley v. Taylor, Bean & Whitaker Mortgage Corp. et al.*; Case Number 1-08-cv-03114 (the "Federal Action"). On August 11, 2008, a First Amended Complaint was filed naming Clyde Whitley and Kenna Whitley as additional plaintiffs. Following the Court's Memorandum Opinion and Order dated April 20, 2009 regarding the defendants' motions to dismiss, Plaintiffs filed a Second Amended Complaint on May 18, 2009. Plaintiffs filed their Third Amended Complaint On June 25, 2009. Each of the aforementioned complaints purports to assert claims against the Settling Defendants, among others, for alleged conduct in connection with the origination of the Loans.

4. On June 2, 2006 TB&W filed a Counterclaim against Ida Mae Whitley in the Federal Action (the "Counterclaim").

5. Each Party denies all allegations, claims and defenses asserted by the other Parties in the Foreclosure Action, Federal Action, and the Counterclaim.

6. Plaintiffs have obtained a commitment for refinancing of the Loans (the "Refinance Loan") through Neighborhood Lending Services, Inc., with its principal place of business located at 1279 N. Milwaukee Avenue, 5th Floor, Chicago, IL 60642 ("NLS"), and they have requested that TB&W accept \$175,000 in satisfaction of the amounts due under the First Lien. As of July 21, 2009, the present balance due under the First Mortgage Loan was \$270,470.83.

7. Notwithstanding the above, solely in order to avoid the cost and uncertainty of further litigation, the Parties desire to compromise and settle the Foreclosure Action, the Federal Action, and the Counterclaim.

C. Agreements, Releases and Promises.

THEREFORE, in consideration of the facts and mutual general releases and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties promise and agree as follows:

1. Settlement. To settle the Foreclosure Action, the Federal Action, and the Counterclaim, the Parties agree as follows:

a. TB&W will receive \$175,000 directly from the proceeds of the Refinance Loan in full satisfaction of the First Mortgage Loan. TB&W shall be disclosed on the Refinance Loan HUD-1 Settlement Statement issued in connection with the Refinance Loan. The closing of the Refinance Loan shall occur on or before August 14, 2009. The closing of the Refinance Loan may be delayed for unforeseen or purely logistical reasons—excluding the Plaintiffs' ability to qualify for the Refinance Loan—up to and including September 14, 2009 at the latest. If the parties are unable to close on or before September 14, 2009, then any Party shall have the option to declare this Agreement null and void with respect to all Parties or fewer than all Parties. Time is of the essence for purposes of this provision of the Agreement.

b. Advance and Ochoa shall pay \$5,000 to Plaintiffs upon closing of the Refinance Loan.

c. TB&W shall pay Plaintiffs attorneys' fees and costs in the amount of \$32,000 within 10 days following the closing of the Refinance Loan.

d. TB&W shall submit requests to all credit reporting agencies to which it submitted information regarding the Plaintiffs,

seeking the deletion of any and all derogatory information that TB&W reported regarding the First Mortgage Loan.

2. Dismissal of the Action, Counterclaim and Foreclosure Complaint. Plaintiffs agree to dismiss the Federal Action with prejudice and shall waive all fees, attorneys' fees, and costs except as provided in paragraph C.1(c) of this Agreement. TB&W agrees to dismiss the Foreclosure Action and Counterclaim with prejudice and shall waive all fees, attorneys' fees, and costs. Within seven (7) days of the satisfaction of the Parties' respective payment obligations defined in Section C.1 of this Agreement: (a) the Parties shall cause to be filed a stipulation and proposed order seeking the dismissal of the Federal Action and Counterclaim with prejudice pursuant to this Agreement; and (b) TB&W shall take such action as necessary to obtain an Order dismissing the Foreclosure Action with prejudice, and with each party to bear its own costs, pursuant to this Agreement.

3. Mutual Release. Plaintiffs, for and on behalf of themselves and their present and future spouse(s) (and common law spouse), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, executors, administrators, and/or estate, or any and all other persons who could claim through them hereby unconditionally and irrevocably remise, release, forever discharge and covenant not to sue the Settling Defendants, and all entities and persons related to the Settling Defendants, and each of the Settling Defendants' related entities' past, present and future directors, officers (whether acting in such capacity or individually), shareholders, owners, partners, joint venturers, principals, trustees, creditors, attorneys, representatives, employees, members, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors and assigns, or any agent acting or purporting to act for them or on their behalf, from any and all claims, counterclaims, actions, causes of action, suits, set-offs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties, agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character, direct or indirect, whether known or unknown or capable of being known up until the Effective Date, arising at law or in equity, by right of action or otherwise, including but not limited to those arising out of or relating to the Loan Documents, whether or not they could have been asserted in the Foreclosure Action or the Federal Action, which the Plaintiffs may have against the Settling Defendants up until the Effective Date, including, without express or implied limitation: (a) any violation of the Credit Repair Organization Act; (b) any violation of RESPA; (c) any action for common law fraud; (d) any violation of the Illinois Consumer Fraud Act; (e) any claim for breach of fiduciary duty; (f) any claim for inducement of breach of fiduciary duty; (g) any violation of the Civil Rights Act; (h) any violation of the Fair Housing Act; (i) any violation of the Equal credit Opportunity Act. (j) any and all claims for attorneys' fees and costs of any kind or nature, by statute or otherwise other than referenced in Section C.1(c) of this Agreement; (k) any and all claims that were or that could have been asserted in the Foreclosure Action or the Federal Action; and (l) any and all claims that relate to or concern in any way First Note, Second Note, First Mortgage, Second Mortgage, or the Loan Documents, the servicing of either Loan, the administration of

either Loan, collection, foreclosure or credit reporting. It is the intention and effect of this release to discharge any and all claims that the Plaintiffs have against the Settling Defendants until and including the Effective Date.

The Settling Defendants and all of their related entities' past, present and future directors, officers (whether acting in such capacity or individually), shareholders, owners, partners, joint venturers, principals, trustees, creditors, attorneys, representatives, employees, members, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors and assigns, any agent acting or purporting to act for them or on their behalf, any present and future spouse(s) (and common law spouse), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, executors, administrators, and/or estate, or any and all other persons who could claim through them hereby unconditionally and irrevocably remise, release, forever discharge and covenant not to sue Plaintiffs and all of Plaintiffs present and future spouse(s) (and common law spouse), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, executors, administrators, and/or estate from any and all claims, counterclaims, actions, causes of action, suits, set-offs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties, agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character, direct or indirect, whether known or unknown or capable of being known up until the Effective Date, arising at law or in equity, by right of action or otherwise, including but not limited to those arising out of or relating to the Loan Documents, whether or not they could have been asserted in the Foreclosure Action, the Federal Action or the Counterclaim, which Settling Defendants may have against Plaintiffs until the Effective Date, including, without express or implied limitation: (a) any claim for fraud; (b) any and all claims for attorneys' fees and costs of any kind or nature, by statute or otherwise; (c) any and all claims that were or that could have been asserted in the Action or as a Counterclaim; (d) any and all claims that relate to or concern in any way the First Note, Second Note, First Mortgage, Second Mortgage and the Loan Documents; and (e) the Foreclosure Action. It is the intention and effect of this release to discharge any and all claims that the Settling Defendants have against the Plaintiffs until and including the Effective Date.

4. Release, Limitations. This Agreement does not release: (1) claims arising out of the failure of either Party to perform in conformity with the terms of this Agreement.

5. Confidentiality. The Parties and their attorneys represent, warrant and agree that the terms and contents of this Agreement and all information and evidence elicited or exchanged during the Federal Action and in negotiating this Agreement are and shall be treated as confidential and shall not be disclosed or in any way used, described or characterized to any other person or entity except as follows: (a) the Parties may only disclose the contents or terms of the Agreement to their accountants and other tax preparers, to the Internal Revenue Service, to their attorneys, or if otherwise compelled by a court of law; (b) Plaintiffs may disclose the contents or terms of the Agreement to their immediate family members, and (c) TB&W may disclose the contents

or terms of the Agreement to governmental entities to which TB&W reports, or as otherwise required in the normal course of its business. This confidentiality provision and agreement is a material term of this Agreement, breach of which the Parties hereby agree will cause them irreparable harm.

6. No Admission of Liability. The Parties understand and agree that the terms set forth in this Agreement reflect the settlement of disputed debts and legal claims. This Agreement is entered into by the Parties for the purpose of compromising and settling the disputes between them. This Agreement does not constitute, and shall not be construed as, an admission by any Party of the truth or validity of any claims asserted, defenses asserted or contentions advanced by any Party.

7. Choice of Law. This Agreement is entered into in the State of Illinois, and the Agreement and any rights, remedies, or obligations provided for in this Agreement shall be construed and enforced in accordance with the laws of that state.

8. Construction of Agreement. This Agreement shall be construed as if all Parties jointly prepared it, and any uncertainty or ambiguity in the Agreement shall not be interpreted against any Party.

9. Severability. The provisions of this Agreement are severable. If any portion, provision or part of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions or parts.

10. No Oral Modification. This Agreement shall not be altered, amended or modified by oral representation made before or after the execution of this Agreement. All modifications must be in writing and duly executed by all Parties.

11. Knowing and Voluntary Assent. The Parties acknowledge that this Agreement is executed voluntarily by each of them, without any duress or undue influence on the part of, or on behalf of, any of them. The Parties further acknowledge that they have had the opportunity for representation in the negotiations for, and in the performance of, this Agreement by counsel of their choice, that they have read this Agreement and/or have had it fully explained to them by their counsel and that they are fully aware of the contents of this Agreement and its legal effect.

12. Tax Consequences. This Agreement is enforceable regardless of its tax consequences. The Parties understand and agree that the payments set forth in this Agreement reflect the settlement of disputed legal claims and that the Parties make no representations regarding the Agreement's tax consequences. Advance and Ochoa will issue an IRS Form 1099-MISC in connection with the payment to Plaintiffs referenced in Section C.1(b). TB&W will issue an IRS Form 1099-MISC in connection with the payment of Plaintiffs' attorneys' fees referenced in Section C.1(c).

13. Attorneys' Fees and Costs. Other than discussed in Section C.1(c), each Party shall bear his/her/its own costs in connection with the Action, Counterclaim, Foreclosure Action and this Agreement, and the Parties waive and release any claims they otherwise may have had to such costs and attorneys' fees. In further consideration of the payments set forth in this Agreement, counsel for Plaintiffs and his firm release all claims for attorneys' fees or other liens against the Settling Defendants and their counsel in connection with the settlement of the Foreclosure Action, Federal Action, and Counterclaim. In executing this Agreement, Plaintiffs' counsel represents and certifies that no other person is entitled to any sum for attorneys' fees in connection with this settlement of the Foreclosure Action, Federal Action, and Counterclaim and agrees to defend, indemnify and hold the Settling Defendants harmless if any person or firm asserts any claim for attorneys' fees in connection with the matters released herein.

15. Final and Binding Agreement. The Parties acknowledge that this Agreement is a full and final accord and satisfaction and shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, agents, representatives, successors and assigns.

16. Complete Agreement. This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms of the Agreement are contractual and not merely recitals. No other agreement, written or oral, expressed or implied, exists between the Parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

17. Counterparts and Facsimile Signatures. This Agreement may be executed in any number of counterparts and facsimile signatures and all such counterparts shall be construed together and constitute a single form of this Agreement.

18. Headings and Captions. The headings and captions inserted into this Agreement are for convenience and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provisions hereof, or in any way affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this document to be executed as of the last day set forth below:

Date:

Ida Mae Whitley

Date:

Clyde Whitley

Date:

Taylor, Bean & Whitaker Mortgage Corporation

By: _____

Its: _____

Date:

Advance Lending Group

By: _____

Its: _____

Date:

Oswaldo Ochoa

Date:

John Ospina

Date:

Anita Logan