

REALTORS® ASSOCIATION OF NEW MEXICO

Legal Update

Presented By: Ashley Strauss-Martin, Esq.
January, 2014



TOPICS COVERED TODAY

THEY HAVE BEEN VERY
BUSY IN WASHINGTON



TOPICS COVERED TODAY

- FEDERAL REGULATIONS/POLICIES
 - CFPB AND QM AND ABILITY-TO-REPAY – FINAL RULE AND HUD QM RULE – BOTH EFFECTIVE JAN. 10, 2014
 - FHA 2014 LOAN LIMITS
 - NEW FHA HANDBOOK
 - SHORT SALE PRE FORECLOSURE POLICY UPDATE



TOPICS COVERED TODAY

- FEDERAL REGULATIONS/POLICIES
 - ROBOCALL RULES
 - FLOOD INSURANCE UPDATE
 - RESPA/TILA MORTGAGE
SERVICING RULES
 - FINAL INTEGRATED MORTGAGE
DISCLOSURES
 - MORTGAGE CANCELLATION TAX RELIEF
 - FHA SHORT SALE POLICY UPDATE



TOPICS COVERED TODAY

- NEW MEXICO – PENDING LEGISLATION
 - COMMERCIAL FOREIGN BROKER AMENDMENT
 - COMMERCIAL BROKER LIEN ACT
 - HOME OWNER'S ASSOCIATION ACT AMENDMENT – NOTE: ABOUT HOA FORMS
 - HOME INSPECTOR'S LICENSING ACT
 - PROPERTY TAXES
 - TAX LIGHTENING – ASSESSOR'S BILL
 - DISCLOSURE TO ASSESSOR ON NON-RESIDENTIAL
 - SENATE MEMORIAL 40 UPDATE (REAL ESTATE CONTRACTS)



TOPICS COVERED TODAY

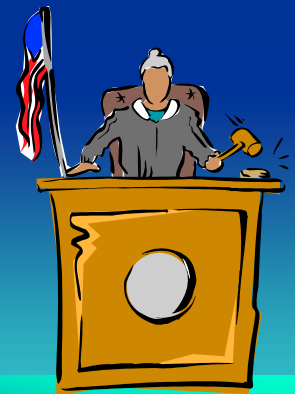
- CODE OF ETHICS
CHANGES
FOR 2014
HIGHLIGHTS



TOPICS COVERED TODAY

- *YOU BE THE JUDGE*

- *Monell v. Boston Pads, LLC* - (Mass. Superior Ct.) - Was salesperson Independent Contractor?
- *DeWolfe v. Hingham Ctr., Ltd.* - (Mass.) - Was real estate broker responsible when owner provided inaccurate information about property's zoning?
- *Douglas v. Visser* - (Wash. Ct. App.) – Were sellers liable for failure to disclose?
- *Miami Valley Fair Housing Ctr. v. Connor Group* (6th Cir.) – Can you say: “Great Bachelor Pad”?



TOPICS COVERED TODAY

- *YOU BE THE JUDGE*

- *Knuston v. Dion* - (Vt.) – Did State Assoc.’s Form violate consumer fraud laws?
- *Geller v. Kinney* (Ind. Ct. App) – Was property manager liable to owner for failing to disclose information about tenant?
- *Auer v. Paliath* - (Ohio Ct. App.) – Was QB liable for salesperson’s fraud?
- *Sabo Assoc. v. Amer. Assoc. Inc.* (Mich. Ct. App.) – Challenge to Arbitration Award



TOPICS COVERED TODAY

- NEW/REVISED FORMS – LATTER 2013
 - SELLER FINANCING UNDER TILA INFORMATION SHEET (NEW) AND AMENDMENTS TO REC AND REC ADDENDUM
 - SUBSTANTIAL AMENDMENTS TO SEPTIC INFORMATION SHEET AND MINOR MODIFICATIONS TO SEPTIC ADDENDUM
 - NEW NON-DISCLOSURE/CONFIDENTIALITY AGREEMENT



HOLD ON....



OFF WE GO!

FEDERAL REGS/POLICIES

- QM AND ABILITY-TO-REPAY – FINAL RULE - EFFECTIVE JAN. 10, 2014
 - Dodd-Frank required lenders to make good faith determination of borrower's ability to repay residential mortgage loan
 - Rule sets forth minimum requirements for ability-to-repay determinations
 - Presumption of compliance with A-to-R for QM
 - QM does not pertain to seller financing unless seller does more than 5 a year



CFPB QM AND ABILITY-TO-REPAY

- FOR ABILITY-TO-REPAY, LENDER MUST CONSIDER ITEMS BELOW & VERIFY THROUGH RELIABLE 3RD PARTIES
 - Current or reasonably expected income or assets
 - Current employment status
 - Monthly payments on covered transaction, simultaneous loans and mortgage-related obligations
 - Current obligations, alimony and child support
 - Monthly debt-to income ratio or residual income
 - Credit history



CFPB QM AND ABILITY-TO-REPAY

- QM entitled to presumption that lender satisfied Ability-to-Repay Standards
- QMs prohibit
 - Negative amortization
 - Interest-only and Balloon Payments
 - Terms exceeding 30 years
 - “No-Doc” Loans
 - Generally, prepayment penalties except in certain circumstances



CFPB QM AND ABILITY-TO-REPAY

- FOR QM
 - Debt-to-Income ratio not to exceed 43%
 - Points and Fees not to exceed 3% (except for smaller loans)



CFPB QM AND ABILITY-TO-REPAY

- **ADDITIONAL ISSUES**

- Creditors must retain records that evidence compliance with the ability-to-repay and prepayment penalty provisions for 3 years
- Prohibits evasion of the rule by structuring a closed-end extension of credit that does not meet the definition of open-end credit as an open-end plan



CFPB QM AND ABILITY-TO-REPAY

- Balloon Payment Loans can qualify as QMs if made by small creditors in rural or underserved areas if
 - Term of at least 5 years
 - Fixed rate
 - Meets basic underwriting criteria
 - Debt to income ratios are considered, but not subject to 43% general requirement



CFPB QM AND ABILITY-TO-REPAY

- CFPB STILL SEEKING COMMENT ON WHETHER
 - to exempt designated non-profit lenders, homeownership stabilization programs, and certain federal agency and GSE refinancing programs from the ability-to-repay requirements b/c they are subject to their own specialized underwriting criteria



CFPB STILL SEEKING COMMENT

- to create a new category of QMs for loans w/o balloon-payment features that are originated and held on portfolio by small creditors
- This new category would not be limited to lenders that operate in rural or underserved areas, but would use same general size thresholds and criteria as rural balloon-payment rules



CFPB Still Seeking Comment

- to increase the threshold separating safe harbor and rebuttable presumption QMs for both rural balloon-payment QMs and the new small portfolio QMs, in light of the fact that small creditors often have higher costs of funds than larger creditors. Specifically, the Bureau is proposing a threshold of 3.5 percentage points above APOR for first-lien loans.
- <http://www.consumerfinance.gov/notice-and-comment/>



FEDERAL REGS/POLICIES

- HUD'S QM – FINAL RULE – ALSO EFFECTIVE JAN. 10, 2014
 - applies only to loans insured, guaranteed, or administered by HUD/FHA
 - Requires periodic payments without risky features
 - Terms not to exceed 30 years
 - Fees and points not to exceed 3% of the mortgage value (adjustments for smaller loans under \$100,000)



HUD'S QM

- Rebuttable Presumption QMs
 - APR greater than Avg. Prime Offer Rate + 115 basis points + Ongoing Insurance Premium rate
 - Presumed lender determined that the borrower met Ability-to-Repay standard
 - Consumer can challenge presumption by proving that they did not have sufficient income to pay mortgage & living expenses



HUD'S QM

- Safe Harbor QM
 - Loans with APRs equal to or less than Avg. Prime Offer Rate + 115 basis points + on-going Mortgage Ins. Premium
 - Greatest legal certainty lender is complying with Ability-to-Repay
 - Borrower can challenge lender if they believe loan doesn't meet the definition of Safe Harbor



QM AND ABILITY-TO-REPAY

- Safe Harbor QMs regardless of upfront fees/points and APR to APOR ratio
 - Title I and II Manufactured Housing
 - Property Improvement Loans
 - Section 184 Indian Home Loan Guarantee Program mortgages
 - Native Hawaiian Housing Loan Guarantee Program mortgages



FEDERAL REGS/POLICIES

- 2014 FHFA LOAN LIMITS
 - Fannie Mae and Freddie Mac are restricted by law from purchasing single-family mortgages with origination balances above a specific amount, “conforming loan limit.”
 - GOOD NEWS: FHFA announced that loan limits for Freddie and Fannie would not decrease in 2014 - Loans >\$417,000 OR >\$625,000 in high-cost areas



2014 LOAN LIMITS

- **HOWEVER FHA LOAN LIMITS**
 - DECREASED FROM \$729,750 TO \$625,500
 - FORMULA CHANGED FROM 125% OF LOCAL AREA MEDIAN PRICE TO 115%
 - WILL RESULT IN 146 COUNTIES EXPERIENCING DECLINES OF MORE THAN 20% - NOT THAT HIGH IN NM
 - Santa Fe - \$427,500 to \$368,000 (-13.9%)
 - San Juan - \$281,250 to \$271,050 (-3.6%)



FEDERAL REGS/POLICIES

- NEW FHA HANDBOOK – NAR’S MAIN CONCERNS – LTR SENT DEC.13, 2013
 - BORROWERS MUST NOW INCLUDE ALL DEFERRED OBLIGATIONS IN CALCULATION OF BORROWER’S DEBT
 - GIFT FUNDS MAY NO LONGER BE ACCEPTED FROM “CLOSE FRIENDS”
 - HOURLY EMPLOYEES MUST AVERAGE INCOME OVER TWO PREVIOUS YEARS
 - IF BORROWER HASN’T FILED TAX RETURNS FOR PREVIOUS PERIOD, CAN’T GROSS-UP INCOME

FEDERAL REGS/POLICIES

- ROBOCALL RULES

- FCC refined rules for automated prerecorded telemarketing calls, or “robocalls.”- Effective on October 13, 2013.
- Only allows robocalls after the caller has first *obtained the express, written consent* of the recipient
- Formerly, rules required an *established business relationship* with recipient for all telemarketing robocalls made to residential numbers.



ROBOCALL RULES

- Requirements same for telemarketing text messages or robocalls calls made to wireless phone numbers. For text messages to wireless numbers, only express consent (not written) is required.
- Written Consent Must Show Consumer
 - Received “clear and conspicuous disclosure” of consequences of his/her agreement to receive calls.
 - Unambiguously agreed to receive these types of calls
 - Must be given voluntarily, not as a condition of purchasing goods or services. Consent can be obtained electronically from the consumer.



ROBOCALL RULES

- All prerecorded automated telemarketing calls must provide an automated or voice-activated opt-out mechanism so that consumers can opt out from call.
- Does not prevent companies from using robocalls for messages that are informational in nature, prerecorded calls from political organizations or charities to residential numbers.



FEDERAL REGS/POLICIES

- FLOOD INSURANCE UPDATE
 - JAN. 16, 2014 - OMNIBUS APPROPRIATIONS BILL PASSED
 - Funds gov't programs through 9/30/14
 - Prohibits FEMA from implementing future premium increases on “grandfathered properties” for 9 months
 - Does **NOT** limit premium increases triggered by sale



FLOOD UPDATE

- JAN. 17, 2014 - Homeowner Flood Ins. Affordability Act *Introduced*
 - 4-yr timeout on increase for new buyers (2nd homes and businesses, too) and owners of grandfathered properties
 - Established advocate in FEMA to investigate rate increases and assist property owners with multiple or miscalculated rates



FEDERAL REGS/POLICIES

- RESPA/TILA MORTGAGE SERVICING RULES
 - EFFECTIVE Jan. 10, 2014
 - Must give billing information in writing
 - Current Bill Due
 - Past Payments and Activities
 - Other Account Information
 - Delinquency Information
 - Must give at least 2 month's warning of a change in ARM that results in payment change

RESPA/TILA MORTGAGE SERVICING RULES

- Promptly Credit Payments
- Must respond within 7 business days to written request for payoff
- Can only charge fees permitted by state law for forced-placed insurance or that are reasonably related to the cost of providing force-placed ins.
- Quickly resolve complaints and share information
- Have and follow good customer service polices



RESPA/TILA MORTGAGE SERVICING RULES

- Contact and assist borrowers who are having trouble making payments
- Work with borrowers who apply for loan workout or alternative to foreclosure
- Give certain protections up to the last minute
- Must allow borrower to seek review of servicer's decision on loan workout request
- Borrower can send complaint of non-compliance to CFPB



FEDERAL REGS/POLICIES

- INTEGRATED MORTGAGE DISCLOSURES
 - Loan Estimate
 - Given 3 days after submission of loan application
 - Replaces TILA Statement and Good Faith Estimate
 - Provides Summary of Key Terms and Estimated Loan and Closing Costs
 - Easier Comparison Different Loan Programs
 - No Fees Charged until Loan Estimate given and Consumer wants to proceed (except credit reports)



INTEGRATED MORTGAGE DISCLOSURES

- CLOSING DISCLOSURE
 - Provided 3 days *before* closing, but changes in any below requires new disclosure and new 3-day period
 - APR above 1/8th percent
 - Changes in Loan Product
 - Addition of prepayment penalty
 - Replaces TILA Statement and HUD-1
 - Summarizes Final Loan Terms & Costs
 - Provides Detailed Accounting of Transaction
 - Lender responsible, but may use Settlement Agent

CLOSING DISCLOSURE

- LIMITS ON CLOSING COSTS INCREASES
 - CANNOT INCREASE
 - Creditor's or mortgage broker's charges for own services or for services provided by an affiliate of creditor or mortgage broker
 - Charges for services for which creditor/mortgage broker does not permit consumer to shop
 - OTHER CHARGES CAN INCREASE BUT GENERALLY NOT BY MORE THAN 10%



CLOSING DISCLOSURE

- EXCEPTIONS –CREDITOR MUST PROVIDE UPDATED LOAN ESTIMATE IN 3 BUSINESS DAYS
 - Consumer asks for change
 - Consumer chooses service provider that was not identified by creditor
 - Information provided at application was inaccurate or becomes inaccurate
 - Loan estimate expires



INTEGRATED MORTGAGE DISCLOSURES

- PROPOSALS NOT IN FINAL RULES
 - NO NEW CALCULATION OF APR
 - NO REQUIREMENT THAT CREDITORS KEEP FILES IN ELECTRONIC, MACHINE-READABLE FORMAT
 - NO REQUIREMENT TO DISCLOSE “THE APPROX. AMOUNT OF THE WHOLESALE RATE OF FUNDS IN CONNECTION WITH THE LOAN”



Loan Estimate

Loan Terms

Projected Payments

Costs at Closing

FICTUS BANK
4321 Random Boulevard • Somerville, ST 12340

See This Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED: 2/15/2011	LOAN TERM: 30 years
APPLICANTS: Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345	PURPOSE: Purchase
PROPERTY: 432 Somewhere Avenue Anytown, ST 12345	PRODUCT: Fixed Rate
SALE PRICE: \$180,000	LOAN TYPE: <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/>
	LOAN ID #: 123456789
	DATE LOCK: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, until 4/15/2011 at 3:00 p.m. EDT

Before closing, your interest rate, points, and lender credits can change without your bank's approval. All other information changes with us on 3/4/2011 at 3:00 p.m. EDT.

Loan Terms		Can this amount increase after closing?
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <small>See Projected Payments Schedule for your estimated total monthly payment.</small>	\$761.78	NO

Does the loan have these features?	
Prepayment Penalty	YES - As high as \$3,240 if you pay off the loan during the first 2 years.
Ballon Payment	NO

Projected Payments		
Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ \$1	+ ---
Estimated Escrow <small>(Amount can increase over time)</small>	+ 206	+ 206
Estimated Total Monthly Payment	\$1,050	\$968

Estimated Taxes, Insurance & Assessments <small>(Amount can increase over time)</small>	\$206 a month	This estimate includes: <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other: <small>See Section 6 on page 2 for estimated prepayment costs. You must pay these prepayment costs separately.</small>	Is escrow? YES YES
--	------------------	--	---------------------------------

Costs at Closing	
Estimated Closing Costs	\$8,054 <small>Includes \$3,872 in Loan Costs + \$4,182 in Other Costs - \$0 in Lender Credits. See page 2 for details.</small>
Estimated Cash to Close	\$16,054 <small>Includes Closing Costs. See Closing Cost at Close on page 2 for details.</small>

Visit www.consumerfinance.gov/mortgage-estimate for general information and tools.

FORM 1042-EST
PAGE 1 OF 2 - 10/2010 © 2010 FICTUS BANK

Loan Estimate

- Loan Costs
 - Originating
 - “Shop” Services
 - “No-Shop” Services
- Other Costs
- Total Costs
- Calculating Cash to Close

Closing Cost Details	
Loan Costs	
A. Origination Charges	\$1,802
.25 % of Loan Amount (Points)	\$405
Application Fee	\$300
Underwriting Fee	\$1,097
Other Costs	
E. Taxes and Other Government Fees	\$85
Recording Fees and Other Taxes	\$85
Transfer Taxes	
F. Prepays	\$867
Homeowner's Insurance Premium (6 months)	\$605
Mortgage Insurance Premium (months)	
Prepaid Interest (\$17.44 per day for 15 days @ 3.875%)	\$262
Property Taxes (months)	
G. Initial Escrow Payment at Closing	\$413
Homeowner's Insurance \$100.83 per month for 2 mo.	\$202
Mortgage Insurance per month for mo.	
Property Taxes \$105.30 per month for 2 mo.	\$211
H. Other	\$1,017
Title – Owner's Title Policy (optional)	\$1,017
I. TOTAL OTHER COSTS (E + F + G + H)	\$2,382
J. TOTAL CLOSING COSTS	\$8,054
D + I	\$8,054
Lender Credits	
Calculating Cash to Close	
Total Closing Costs (J)	\$8,054
Closing Costs Financed (Paid from your Loan Amount)	\$0
Down Payment/Funds from Borrower	\$18,000
Deposit	– \$10,000
Funds for Borrower	\$0
Seller Credits	\$0
Adjustments and Other Credits	\$0
Estimated Cash to Close	\$16,054
D. TOTAL LOAN COSTS (A + B + C)	\$5,672

Loan Estimate

- Lender/MLO Information
- Comparisons
- Other Considerations
- Receipt Confirmation

Additional Information About This Loan

LENDER Ficus Bank
NMLS/_ LICENSE ID
LOAN OFFICER Joe Smith
NMLS/_ LICENSE ID 12345
EMAIL joesmith@ficusbank.com
PHONE 123-456-7890

MORTGAGE BROKER
NMLS/_ LICENSE ID
LOAN OFFICER
NMLS/_ LICENSE ID
EMAIL
PHONE

Comparisons

Use these measures to compare this loan with other loans.

In 5 Years	\$56,582 \$15,773	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	4.274%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	69.45%	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal

We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

Assumption

If you sell or transfer this property to another person, we
 will allow, under certain conditions, this person to assume this loan on the original terms.
 will not allow assumption of this loan on the original terms.

Homeowner's Insurance

This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment

If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.

Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing

We intend
 to service your loan. If so, you will make your payments to us.
 to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

LOAN ESTIMATE

PAGE 3 OF 3 • LOAN ID #123456789

Closing Disclosure

- Closing Info
- Transaction Info
- Loan Info
- Loan Terms
- Projected Payments
- Costs at Closing

Closing Disclosure *This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.*

Closing Information		Transaction Information		Loan Information	
Date Issued	4/15/2013	Borrower	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345	Loan Term	30 years
Closing Date	4/15/2013	Seller	Steve Cole and Amy Doe 321 Somewhere Drive Anytown, ST 12345	Purpose	Purchase
Disbursement Date	4/15/2013	Lender	Ficus Bank	Product	Fixed Rate
Settlement Agent	Epsilon Title Co. 12-3456			Loan Type	<input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/>
File #	12-3456			Loan ID #	123456789
Property	456 Somewhere Ave Anytown, ST 12345			MIC #	000654321
Sale Price	\$180,000				

Loan Terms	Can this amount increase after closing?	
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$761.78	NO
Prepayment Penalty	YES • As high as \$3,240 if you pay off the loan during the first 2 years	
Balloon Payment	NO	

Projected Payments			
Payment Calculation	Years 1-7		Years 8-30
Principal & Interest	\$761.78		\$761.78
Mortgage Insurance	+	82.35	+ —
Estimated Escrow <i>Amount can increase over time</i>	+	206.13	+ 206.13
Estimated Total Monthly Payment	\$1,050.26		\$967.91

Estimated Taxes, Insurance & Assessments <i>Amount can increase over time. See page 4 for details</i>	\$356.13 a month	This estimate includes <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association Dues <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>	In escrow? YES YES NO
--	------------------	---	---------------------------------------

Costs at Closing	
Closing Costs	\$9,712.10 Includes \$4,694.05 in Loan Costs + \$5,018.05 in Other Costs – \$0 in Lender Credits. See page 2 for details.
Cash to Close	\$14,147.26 Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

CLOSING DISCLOSURE PAGE 1 OF 5 - LOAN ID # 123456789

Closing Disclosure

- LOAN COSTS
 - Origination
 - “Shop” Services
 - “No-Shop” Services
 - Total Loan Costs
- OTHER COSTS
 - Taxes/Fees
 - Pre-Paid
 - Escrow at Closing
 - Total Closing Costs

		Borrower-Paid		Seller-Paid		Paid by Others
		At Closing	Before Closing	At Closing	Before Closing	
Loan Costs						
A. Origination Charges		\$1,802.00				
01	0.25 % of Loan Amount (Points)	\$405.00				
02	Application Fee	\$300.00				
03	Underwriting Fee	\$1,097.00				
04						
05						
06						
07						
08						
B. Services Borrower Did Not Shop For		\$236.55				
01	Appraisal Fee to John Smith Appraisers Inc.					\$405.00
02	Credit Report Fee to Info. Inc.		\$29.80			
03	Flood Determination Fee to Info Co.	\$20.00				
09	Flood Monitoring Fee to Info Co.	\$31.75				
05	Tax Monitoring Fee to Info Co.	\$75.00				
06	Tax Status Research Fee to Info Co.	\$80.00				
07						
08						
09						
10						
C. Services Borrower Did Shop For		\$2,655.50				
01	Pest Inspection Fee to Pests Co.	\$120.50				
02	Survey Fee to Surveys Co.	\$85.00				
03	Title – Insurance Binder to Epsilon Title Co.	\$650.00				
04	Title – Lender's Title Insurance to Epsilon Title Co.	\$500.00				
15	Title – Settlement Agent Fee to Epsilon Title Co.	\$500.00				
06	Title – Title Search to Epsilon Title Co.	\$800.00				
07						
08						
D. TOTAL LOAN COSTS (Borrower-Paid)		\$4,694.05				
Loan Costs Subtotals (A + B + C)		\$4,664.25	\$29.80			
Other Costs						
E. Taxes and Other Government Fees		\$85.00				
01	Recording Fees Deed: \$40.00 Mortgage: \$45.00	\$85.00				
02	Transfer Tax to Any State			\$950.00		
F. Prepays		\$2,120.80				
01	Homeowner's Insurance Premium (12 mo.) to Insurance Co.	\$1,209.96				
02	Mortgage Insurance Premium (mo.)					
03	Prepaid Interest (\$17.44 per day from 4/15/13 to 5/1/13)	\$279.04				
08	Property Taxes (6 mo.) to Any County USA	\$631.80				
05						
G. Initial Escrow Payment at Closing		\$412.25				
01	Homeowner's Insurance \$100.83 per month for 2 mo.	\$201.66				
12	Mortgage Insurance per month for mo.					
03	Property Taxes \$105.30 per month for 2 mo.	\$210.60				
14						
05						
06						
07						
08	Aggregate Adjustment	-0.01				
H. Other		\$2,400.00				
01	HOA Capital Contribution to HOA Acre Inc.	\$500.00				
02	HOA Processing Fee to HOA Acre Inc.	\$150.00				
03	Home Inspection Fee to Engineers Inc.	\$750.00				
04	Home Warranty Fee to XYZ Warranty Inc.			\$450.00	\$750.00	
05	Real Estate Commission to Alpha Real Estate Broker			\$5,700.00		
06	Real Estate Commission to Omega Real Estate Broker			\$5,700.00		
07	Title – Owner's Title Insurance (optional) to Epsilon Title Co.	\$1,000.00				
08						
I. TOTAL OTHER COSTS (Borrower-Paid)		\$5,018.05				
Other Costs Subtotals (E + F + G + H)		\$5,018.05				
J. TOTAL CLOSING COSTS (Borrower-Paid)		\$9,712.10				
Closing Costs Subtotals (D + I)		\$9,682.30	\$29.80	\$12,800.00	\$750.00	\$405.00
Lender Credits						

Closing Disclosure

- Calculating Cash to Close
- Summaries of Transactions
 - Buyer/Seller
- Cash to Close
 - Buyer/Seller

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (1)	\$8,244.00	\$9,712.00	YES - See Total Loan Costs (2) and Total Other Costs (3)
Closing Costs Paid from Closing	\$0	\$24.00	YES - Did you pay these Closing Costs before closing?
Closing Costs Financed	\$0	\$0	NO
Paid from your Loan Amount	\$0	\$0	NO
Draw Payment From Borrower	\$10,000.00	\$10,000.00	NO
Deposit	-\$10,000.00	-\$10,000.00	NO
Funds for Borrower	\$0	\$0	NO
Seller Credits	\$0	-\$2,000.00	YES - See Seller Credits in Section 2.
Adjustments and Other Credits	\$0	-\$2,000.00	YES - See Items in Sections 5 and 1.
Cash to Close	\$18,044.00	\$14,147.20	

Summary of Transactions		Use this table to see a summary of your transactions.	
BORROWER'S TRANSACTION		SELLER'S TRANSACTION	
B. Due from Borrower at Closing	\$289,762.00	M. Due to Seller at Closing	\$180,000.00
<input type="checkbox"/> Sale Price of Property <input type="checkbox"/> Sale Price of Any Personal Property Included in Sale <input type="checkbox"/> Closing Costs Paid at Closing (2)	\$280,000.00 \$0 \$9,762.00	<input type="checkbox"/> Sale Price of Property <input type="checkbox"/> Sale Price of Any Personal Property Included in Sale	\$180,000.00 \$0
Adjustments		Adjustments for Items Paid by Seller in Advance	
<input type="checkbox"/> City/Town Taxes <input type="checkbox"/> County Taxes <input type="checkbox"/> Assessments <input type="checkbox"/> HOA Dues: 4/15/13 to 4/30/13	\$0 \$0 \$0 \$80.00	<input type="checkbox"/> City/Town Taxes <input type="checkbox"/> County Taxes <input type="checkbox"/> Assessments <input type="checkbox"/> HOA Dues: 4/15/13 to 4/30/13	\$0 \$0 \$0 \$0.00
L. Paid Already by or on Behalf of Borrower at Closing	\$175,615.00	N. Due from Seller at Closing	\$175,682.00
<input type="checkbox"/> Deposit <input type="checkbox"/> Loan Amount <input type="checkbox"/> Existing Loans/Assessments on Taken Subject to <input type="checkbox"/> Seller Credits <input type="checkbox"/> Other Credits: Refund from EquiNet Title Co.	\$10,000.00 \$163,000.00 \$0 \$2,580.00 \$100.00	<input type="checkbox"/> Gross Deposit <input type="checkbox"/> Closing Costs Paid at Closing (2) <input type="checkbox"/> Existing Loans/Assessments on Taken Subject to <input type="checkbox"/> Payoff of First Mortgage Loan <input type="checkbox"/> Payoff of Second Mortgage Loan <input type="checkbox"/> Seller Credits	\$10,000.00 \$172,800.00 \$0 \$100,000.00 \$0 \$2,082.00
Other Credits		Adjustments for Items Owed by Seller	
<input type="checkbox"/> Refund from EquiNet Title Co.	\$100.00	<input type="checkbox"/> City/Town Taxes <input type="checkbox"/> County Taxes <input type="checkbox"/> Assessments	\$0 \$0 \$0
Adjustments		Adjustments for Items Owed by Buyer	
<input type="checkbox"/> City/Town Taxes <input type="checkbox"/> County Taxes <input type="checkbox"/> Assessments	\$0 \$0 \$0	<input type="checkbox"/> City/Town Taxes <input type="checkbox"/> County Taxes <input type="checkbox"/> Assessments	\$0 \$0 \$0
CALCULATION		CALCULATION	
Total Due from Borrower at Closing (B)	\$289,762.00	Total Due to Seller at Closing (M)	\$180,000.00
Total Paid Already by or on Behalf of Borrower at Closing (L) - \$175,615.00		Total Due from Seller at Closing (N) - \$175,682.00	
Cash to Close <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower	\$14,147.20	Cash <input type="checkbox"/> From <input checked="" type="checkbox"/> To Seller	\$94,414.99

CLOSING DISCLOSURE PAGE 1 OF 5 - L504N (2) 8 (12/04/10)

Closing Disclosure

- Loan Disclosure
 - Assumption
 - Demand Feature
 - Late Payment
 - Negative Amortization
 - Partial Payments
 - Security Interest
 - Escrow Amount

Additional Information About This Loan

Loan Disclosures

Assumption

If you sell or transfer this property to another person, your lender

will allow, under certain conditions, this person to assume this loan on the original terms.

will not allow assumption of this loan on the original terms.

Demand Feature

Your loan

has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.

does not have a demand feature.

Late Payment

If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)

Under your loan terms, you

are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.

may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.

do not have a negative amortization feature.

Partial Payments

Your lender

may accept payments that are less than the full amount due (partial payments) and apply them to your loan.

may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.

does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

Security Interest

You are granting a security interest in

456 Somewhere Ave., Anytown, ST 12345

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account

For now, your loan

will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow

Escrowed Property Costs over Year 1	\$2,473.56	Estimated total amount over year 1 for your escrowed property costs: Homeowner's Insurance Property Taxes
Non-Escrowed Property Costs over Year 1	\$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: Homeowner's Association Dues You may have other property costs.
Initial Escrow Payment	\$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment	\$206.13	The amount included in your total monthly payment.

will not have an escrow account because you declined it your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow

Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Closing Disclosure

- Loan Calculations
- Other Disclosures
- Contact Info
 - Lender
 - Mortg. Broker
 - R.E. Broker
 - Settlement Agent
- “Confirm” Receipt

Loan Calculations	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	\$295,803.36
Finance Charge. The dollar amount the loan will cost you.	\$118,830.27
Amount Financed. The loan amount available after paying your upfront finance charge.	\$162,000.00
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.734%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing

Contact Information					
	Lender	Mortgage Broker	Real Estate Broker (R)	Real Estate Broker (B)	Settlement Agent
Name	Finn Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Equity Title Co.
Address	433 E. Ransom Blvd. Somerset, VT 05700		780 Canal Lane Somerset, VT 05705	807 South St. Somerset, VT 05706	133 Commerce Pl. Somerset, VT 05706
NMLS ID					
ST License ID			256816	263456	263610
Contact	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
Contact NMLS ID	12345				
Contact ST License ID			P10415	P51401	P71234
Email	joesmith@finnbank.com		consumeragent@oeb.com	alpha@alpha.com	equity@equity.com
Phone	555-456-7890		555-555-1212	555-555-1111	555-555-4321

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this form because you have signed or received this form.

Applicant Signature	Date	Co-Applicant Signature	Date
CLOSING/CLOSURE			PAGE 2 OF 3 (FORM 8) 12/15/2015

INTEGRATED MORTGAGE DISCLOSURES

- SPANISH LANGUAGE VERSIONS AVAILABLE
- EFFECTIVE FOR APPLICATIONS RECEIVED ON OR AFTER AUGUST 1, 2015



FEDERAL REGS/POLICIES

- MORTGAGE CANCELLATION TAX RELIEF ACT
 - Provided relief from payment of income taxes on amount forgiven in short sales or foreclosures
 - Expired Dec. 31, 2013
 - NAR optimistic it will be extended in 1014 with a retroactive date of Jan.1, 2014



FEDERAL LAW/POLICIES

- FHA SHORT SALE POLICY UPDATE
 - HUD WANTED TO PROHIBIT DUAL AGENCY AGREEMENTS IN SHORT SALE TRANSACTIONS BEGINNING OCT. 1, 2013 B/C PRE-FORECLOSURE SALES ARE NOT MEETING NET SALE PROCEEDS REQUIREMENTS
 - B/C OF NAR'S LETTER, HUD WILL DELAY PROPOSAL TO PREVENT DUAL AGENCY AGREEMENTS IN FHA PRE-FORECLOSURE TRANSACTIONS



FANNIE MAE SHORT SALE/HAFA II POLICY

- **MLS requirements for short sale/HAFA II**
 - August 1, 2013, all properties must be listed with an active status on a MLS for a minimum of 5 consecutive calendar days, including one weekend (i.e., Saturday and Sunday), prior to the servicer submitting the standard short sale/HAFA II recommendation to Fannie Mae for review, or approving the standard short sale/HAFA II



MLS REQUIREMENTS FOR SHORT SALE/HAFA II

- The property must be listed on the applicable MLS which covers the geographic area in which the property is located and a printed copy of the property's MLS listing must be kept on file.
- If a property is located in an area that is not covered by an MLS, the property must be advertised in a manner customary for that real estate market for at least five consecutive calendar days, including one weekend.



STATE LAW

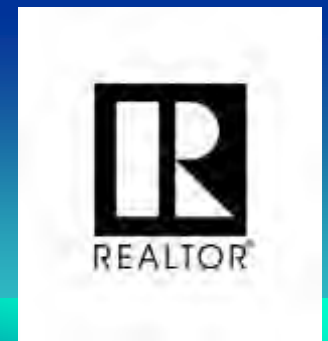
- COMMERCIAL FOREIGN BROKER AMENDMENT
- COMMERCIAL BROKER LIEN ACT
- HOME OWNER'S ASSOCIATION ACT AMENDMENT –
NOTE: ABOUT HOA FORMS
- HOME INSPECTOR'S LICENSING ACT
- PROPERTY TAXES
 - TAX LIGHTENING
 - DISCLOSURE TO ASSESSOR ON NON-RESIDENTIAL
- SENATE MEMORIAL 40 UPDATE (REAL ESTATE CONTRACTS)



CODE OF ETHICS

Standard of Practice 3-2 revised:

To be effective, any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. *After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. (Amended 1/14)*



CODE OF ETHICS

- Standard of Practice 10-3 revised:
- REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, or sexual orientation, *or gender identity. (Amended 1/14)*

CODE OF ETHICS

- Standard of Practice 11-1 revised:

When REALTORS® prepare opinions of real property value or price, *they must*:

- *1) be knowledgeable about the type of property being valued,*
- *2) have access to the information and resources necessary to formulate an accurate opinion, and*
- *3) be familiar with the area where the subject property is located unless lack of any of these is disclosed to the party requesting the opinion in advance.*



CODE OF ETHICS

- *When an opinion of value or price is prepared* other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such the opinions shall include the following unless the party requesting the opinion requires a specific type of report or different data set:
 - 1) identification of the subject property
 - 2) date prepared
 - 3) defined value or price
 - 4) limiting conditions, including statements of purpose(s) and intended user(s)

CODE OF ETHICS

- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- 6) basis for the opinion, including applicable market data
- 7) if the opinion is not an appraisal, a statement to that effect



CODE OF ETHICS

- *8) disclosure of whether and when a physical inspection of the property's exterior was conducted*
- *9) disclosure of whether and when a physical inspection of the property's interior was conducted*
- *10) disclosure of whether the REALTOR® has any conflicts of interest (Amended 1/14)*



CODE OF ETHICS

- *Still another common question is whether a REALTOR® (often a cooperating broker with an arguably-arbitrable claim) can thwart the process by remaining silent for one hundred eighty (180) days and then bringing a lawsuit against another REALTOR® (often the listing broker). As noted previously, arbitration requests must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.*



CODE OF ETHICS

- *REALTORS® cannot reasonably be expected to request arbitration in circumstances where they have no reason to know that a dispute with another broker or firm even exists. Under these circumstances, a listing broker with no prior knowledge of a dispute would have one hundred eighty (180) days from receipt of notice of a lawsuit to invoke arbitration with the other broker. (Adopted 11/13)*



YOU BE THE JUDGE

- *MONELL V. BOSTON PADS, LLC* - (MASS. SUPERIOR CT.) - WAS SALESPERSON INDEPENDENT CONTRACTOR (IC)?
 - SALESPEOPLE CLAIMED THEY WERE EMPLOYEES, NOT ICs
 - CLAIMED BROKER WAS IN VIOLATION OF WAGE LAWS, INCL. MIN. WAGE, OVERTIME, WORKERS COMP.
 - IF SO, CIVIL AND CRIMINAL PENALTIES AGAINST BROKER



MONELL V. BOSTON PADS, LLC

- Salespeople involved in selling and leasing apts.
- Paid commissions
- Paid brokerage monthly desk fee
- Had to spend certain amount of time in office
- Required to undergo training
- Required to adhere to dress code
- Subject to discipline if didn't meet productivity quota



MONELL V. BOSTON PADS, LLC

- IC LAW SAID PERSON PRESUMED TO BE EMPLOYEE UNLESS:
 - FREE FROM CONTROL AND DIRECTION
 - SERVICE IS OUTSIDE NORMAL COURSE OF BUSINESS FOR ENTITY
 - INDIVIDUAL IS INDEPENDENTLY ENGAGED IN THE TRADE OR PROFESSION FOR SERVICE PROVIDED



MONELL V. BOSTON PADS, LLC

- REAL ESTATE LAW PROVIDES
 - SALESPEOPLE HAVE TO WORK UNDER BROKERS
 - ONLY BROKER RECEIVE COMMISSIONS FROM CUSTOMER
 - BROKER MUST SUPERVISE SALESPERSON

WHAT DO YOU THINK?



MONELL V. BOSTON PADS, LLC

- COURT FOUND
 - IC LAW AND REAL ESTATE LAW IN CONFLICT
 - BUT IC LAW WAS GENERAL AND REAL ESTATE LAW WAS SPECIFIC
 - AND SINCE REAL ESTATE LAW SAID SALESPERSON COULD BE EITHER IC OR EMPLOYEE
 - ***COURT FOUND SALES PERSON WAS IC***



YOU BE THE JUDGE

- *DEWOLFE V. HINGHAM CTR., LTD.* - (MASS.)
 - WAS BROKER RESPONSIBLE WHEN OWNER PROVIDED INACCURATE INFORMATION ABOUT PROPERTY'S ZONING?
 - Seller told Listing Broker that their home was zoned either “Residential Business B” (a non-existent zoning category) or “Business B”
 - Broker advertised as “Business B” even though there were only residences on same side of street as Seller’s property



DEWOLFE V. HINGHAM CTR.

- Buyer was hairdresser
- Came to Broker's open house where Broker had flyer of "Business B" ordinance and hairdresser was listed as acceptable use of property
- Seller and Buyer signed a contract



DEWOLFE V. HINGHAM CTR.

- Contract provided clause:

*“The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or **previously made in writing**, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s): NONE.”*



DEWOLFE V. HINGHAM CTR.

- Following closing Buyer learned property was zoned “Residential B”
- Buyer sued Broker for misrepresentation
 - Broker: “I had no duty to confirm zoning”
 - “And language in contract exonerates me”
- Broker prevailed, Buyer appealed
- Buyer prevailed, Broker appealed

WHAT DO YOU THINK?



DEWOLFE V. HINGHAM CTR.

- MASS SUPREME COURT HELD
 - Brokers can be liable for negligent misrepresentation if they fail to exercise reasonable care
 - Can usually rely on seller's info, but this doesn't insulate broker from claims
 - Question is: did broker use reasonable care in making statements in question
 - If is unreasonable for broker to rely on seller info, then broker has duty to further investigate



DEWOLFE V. HINGHAM CTR.

- Jury could find that it was unreasonable for Broker to rely upon zoning information received from Seller b/c home wasn't being used as business and no neighboring buildings being used as a businesses - Found for Buyer
- Did language protect Broker? Buyer said language said "*or previously made in writing*" such as advertisements/flyer prepared by Broker – Court agreed- Found for Buyer



YOU BE THE JUDGE

- ***DOUGLAS V. VISSER*** - (WASH. CT. APP.)
 - WERE SELLERS LIABLE FOR FAILURE TO DISCLOSE?
 - Sellers bought property as “Fixer-Upper” and renovated & repaired, but needed more than they thought, so put it back on the market & contracted to sell to Buyers. One Seller was a broker.
 - Sellers provide disclosure statement, but answered “don’t know” to many things.
 - Buyers asked for clarification and inspection report from when Sellers bought property

DOUGLAS V. VISSER

- Sellers replied to follow-up questions, but never gave report
- New Inspections revealed small areas of rot in house and multiple repairs made adjacent to rot
- After getting this report, Buyers did not discuss rot with sellers or inspector
- Buyer purchased



DOUGLAS V. VISSER

- Then Buyers noticed lots of rot and pest problems
- Subsequent inspections uncovered so much damage the property was uninhabitable
- Inspections revealed rot damage was intentionally concealed
- Buyers sued Seller
- Trial Court found for Buyers, Seller appealed

What do you think?



DOUGLAS V. VISSER

- Appeals Court Reversed on all counts!
 - Seller's actions were “reprehensible”, but Buyer's inspection report indicated rot, so Buyer had notice.

BUYER BEWARE!!



YOU BE THE JUDGE

- ***KNUSTON V. DION*** - (VT.) - DID STATE ASSOC.'S FORM VIOLATE CONSUMER FRAUD LAWS?
 - Buyer purchased home. Some flooding issues disclosed, but buyer claimed not all were disclosed
 - Sued seller, brokers, state association
 - Alleged against state association that model PA violated state consumer fraud laws, specifically the pre-suit mediation clause and the limitation on liability clause

KNUSTON V. DION

- STATE ASSOC. ARGUED
 - WE HAD NOTHING TO DO WITH THE TRANSACTION
 - NEITHER PROVISION WAS DECEPTIVE OR UNFAIR
 - COURT RULED IN FAVOR OF ASSOC., BUYER APPEALED



KNUSTON V. DION

- I HAVE GOOD NEWS AND BAD NEWS:
 - FIRST THE GOOD NEWS: SUPREME COURT OF VERMONT HELD:
 - NO DIRECT PARTICIPATION BY ASSOC., SO NO LIABILITY



KNUSTON V. DION

- AND NOW THE BAD NEWS
 - COURT SAID, BUT BUYER COULD BRING SUIT AGAINST THE REAL ESTATE PROFESSIONAL WHO RECOMMENDED THE PURCHASE CONTRACT TO HER



YOU BE THE JUDGE

- ***GELLER V. KINNEY*** (IND. CT. APP) - WAS PM LIABLE TO OWNER FOR FAILING TO DISCLOSE INFORMATION ABOUT TENANT?
 - Owners had to relocate due to a new job opportunity
 - Owners listed the house for sale, but when it did not sell, they decided to rent out
 - Owners contacted with PM
 - Neither party signed PM Agreement, but both parties acknowledged that they had accepted its terms.

GELLER V. KINNEY

- PM located prospective tenants: “Family”
- Family submitted an application to rent the house, and PM discussed application and credit report with the Owners
- PM told Owners that Family’s employment and residential information “checked out.”
- PM noted that credit report showed that Family had filed for bankruptcy several years before, but said they were “clean” since the bankruptcy filing.



GELLER V. KINNEY

- Family entered into a 3-year lease
- Everything fine for the first few months
- Then Family stopped paying the rent and had to be evicted from the property
- Owners learned that Family's credit report contained a "High Risk Fraud Alert" on it, and the credit report had noted that the Family had \$30,000 in outstanding debts
- Owners filed a lawsuit seeking the unpaid lease amounts and the remainder of the rent payments from the Family



GELLER V. KINNEY

- Owners also claimed
 - PM breach agreement by failing to investigate the credit-worthiness of the Family, and
 - failed to exercise due diligence when recommending the Family to the Owner,
 - that they would not have entered into the lease with the Family if PM had accurately disclosed the contents of the credit report, and
 - that Indiana law requires licensees to disclose known adverse material facts to their clients.

GELLER V. KINNEY

- BUT.....THERE WAS AN EXCULPATORY CLAUSE IN AGREEMENT THAT STATED THAT PM

“SHALL NOT BE LIABLE TO OWNER FOR ANY ERROR IN JUDGMENT, NOR FOR ANY GOOD FAITH ACT OR OMISSION IN ITS PERFORMANCE OR ATTEMPTED PERFORMANCE OF ITS DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT.”



GELLER V. KINNEY

- Court ruled for PM
- Owner appealed.



GELLER V. KINNEY

- On appeal Owners argued the clause was contrary to public policy, since the exculpatory clause altered PM's statutory disclosure responsibilities

What do you think???



GELLER V. KINNEY

- Court held that b/c statute did not prohibit such clauses and the fact that the Owners were sophisticated in financial matters, public policy did not bar the enforcement of the Agreement's exculpatory clause
- Based on testimony from Owners and PM Court said that PM acted in good faith
- Since the parties had allocated their risks via contract and PM met the terms of the clause, the court ruled that the exculpatory clause protected PM
- Court affirmed the ruling by the trial court in favor of PM



YOU BE THE JUDGE

- *AUER V. PALIATH* - (OHIO CT. APP.) - WAS QB LIABLE FOR SALESPERSON'S FRAUD?
 - Buyer Torri hired Broker Jamie, an AB with KW Home Town Realty, to find her investment property and told AB Jamie she planned to use the rent payments as an income stream



AUER V. PALIATH

- ICA STATED....
 - AB Jamie was an independent contractor
 - AB Jamie responsible for paying her own costs/ recruiting clients
 - How commissions would be divided



AUER V. PALIATH

- AB Jamie took Buyer Torri to “the” property, as well as other properties.
- Buyer saw part of one interior of the units, but didn’t go inside the other units.
- AB Jamie told Buyer that extensive work had been done to the interiors of all units.
- Buyer purchased a total of 27 units through AB Jamie, based on alleged representations that the properties were undervalued or rented out.



AUER V. PALIATH

- One of the properties had been purchased by a company created by AB Jamie shortly before she sold it to Buyer for 4 times what AB Jamie's company had paid for the property.
- Buyer also contracted with a PM company created by AB Jamie and into an agreement with a construction company created by AB Jamie to perform work on some of the units.
- Brokerage received commissions on each sale.



AUER V. PALIATH

- After purchasing, Buyer received no income from the properties, and only one unit was rented
- Buyer discovered that all of the properties needed extensive work
- Buyer filed a lawsuit against AB Jamie and Brokerage alleging fraud in the inducement in the sale of the properties.



AUER V. PALIATH

- During the trial, Brokerage argued that it did not breach its fiduciary duty to the Buyer and it had adequately supervised AB Jamie.
- Jury found for Buyer and against AB Jamie and the Brokerage, awarding Buyer \$135,200.
- AB Jamie and the Brokerage appealed.
- AND THE APPELLATE COURT HELD.....

WHAT DO YOU THINK?



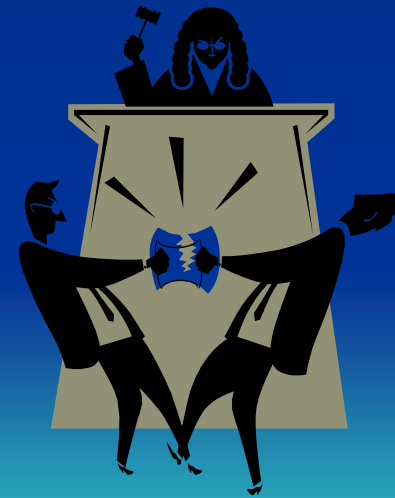
AUER V. PALIATH

- The court first considered whether the court had properly instructed the jury on the Brokerage's liability for the actions of AB Jamie
- The trial court had instructed the jury that if AB Jamie had committed fraud, then the Brokerage was vicariously liable for the actions AB Jamie.



AUER V. PALIATH

- Brokerage argued that the trial court should have instructed the jury that “AB Jamie was required to work within the scope of her relationship with the Brokerage”.



AUER V. PALIATH

- Based on.....
 - Brokerage's name on the Buyer's purchase contracts and the agency disclosure forms;
 - Brokerage received the commissions from the Salesperson's transactions; and
 - Law said that an AB is required to work under the supervision of a licensed broker in all of his/her real estate transactions



AUER V. PALIATH



- Court ruled that...
 - While AB can be an independent contractor in its relationship with a brokerage firm and can be treated as such in disputes between the firm and the licensee, the court found that there is a principal/agent relationship in place when the licensee is working with third parties, and

AUER V. PALIATH

- that brokers are vicariously liable for intentional torts such as fraud committed by its licensees while they are performing their duties as an AB, and
- that the trial court had properly instructed the jury.



AUER V. PALIATH

- Brokerage argued that damage award was not supported by the evidence b/c Buyer had failed to establish the value of the properties at the time Buyer purchased them.
- Court agreed there was no evidence establishing the value of one property at the time of purchase.
- Court reversed the \$15,000 award for that transaction, but upheld the remainder of the awards against the AB and the Brokerage.



OTHER CASE LAW

- *SABO AND ASSOC. INC. V. AMERICAN ASSOC. INC.* (MICH. CT. APP.)
 - CHALLENGE TO LOCAL ASSOCIATION ARBITRATION AWARD
 - NUMBER OF BUYER'S BROKERS REPRESENTED BUYER
 - LISTING BROKER TOOK CO-OP COMMISSION ISSUE TO ARBITRATION PANEL
 - ONE BUYER'S BROKER WON AND LISTING BROKER CHALLENGED AWARD
 - TRIAL COURT UPHELD AWARD AND LISTING BROKER APPEALED

SABO AND ASSOC. INC. V. AMERICAN ASSOC. INC.

- APPELLATE COURT HELD:
 - Broker was challenging facts – not a basis
Court's review limited to:
 - Award procured by fraud
 - Partiality of arbitrator, either through corruption or through misconduct
 - Arbitrator exceeded his/her powers
 - Arbitrator refused to hear evidence, postponed hearing or otherwise conducted the hearing in a way detrimental to one of the parties

SABO AND ASSOC. INC. V. AMERICAN ASSOC. INC.

- BROKER CLAIMED PANEL DID NOT FOLLOW EXISTING LAW
- CT. HELD THERE WAS NO “MANIFEST DISREGARD FOR THE LAW” – ERRORS OF LAW ARE NOT SUFFICIENT TO OVER TURN PANEL



NEW/REVISED FORMS

- SELLER FINANCING UNDER TILA INFORMATION SHEET RANM Form 2405 (NEW)



REALTORS® ASSOCIATION OF NEW MEXICO
INFORMATION SHEET
SELLER FINANCING UNDER THE TRUTH IN LENDING ACT - 2014

APPLICABILITY OF SELLER FINANCING RESTRICTIONS UNDER TILA
Regulation Z was issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending Act (TILA). Regulation Z applies to consumer credit transactions secured by a dwelling. A "dwelling" is defined as residential structures that contain one to four units, whether or not that structure is attached to real property. The term includes manufactured homes, mobile homes, and trailers, if it is used as a residence. Under TILA, a "seller financier" is defined as a person who extends credit through his/her own resources. The term "consumer credit transaction" does not include the purchase of properties acquired directly by business purposes, such as investment properties that will NOT be used as a residence, even if such properties include a dwelling. A home purchased for use as a second or vacation home IS considered a consumer credit transaction. A "seller financier" is defined as a person who extends credit through his/her own resources.

DEFINITION OF LOAN ORIGINATOR UNDER TILA
The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) was signed into law on July 21, 2010. The Act amended TILA by adding provisions that define and govern loan originators. The term "loan originator" is defined as a person who, for or on behalf of himself or himself or indirect compensation or other monetary gain performs any of the following activities related to a residential mortgage: takes an application, offers, arranges, solicits a commitment or attempts to apply to obtain, negotiate, or otherwise obtain or make an extension of consumer credit for another person, or through advertising or other means of consumer solicitation to the public that such person can be well position any of these activities. The term does not include other financial institutions offering seller financing on less than three dwellings in a 12-month period provided that certain criteria are met. The set of criteria that applies depends on the number of dwellings for which the seller is providing seller financing in a 12-month period. There are specific exemptions for a seller providing seller financing for no more than one dwelling in a 12-month period (1-to-12 Exemption) and additional exemptions for those sellers providing seller financing for two or three dwellings in a 12-month period (2-to-12 Exemption). These new provisions are effective as of January 1, 2014.

The exclusion provisions further delineated apply equally to all types of seller financing: 1) real estate contracts in which equitable title is transferred at the time of sale and legal title is transferred at some later date when the buyer has satisfied all conditions of the real estate contract, and 2) mortgages and deeds of trust in which both equitable and legal title is transferred at the time of sale and the buyer's agreement to pay the seller is set forth in a promissory note secured by a lien on the real property.

1-TO-12 EXEMPTION
The 1-to-12 Exemption is only available to natural persons, estates and trusts. Corporations, including limited liability corporations, may not utilize the 1-to-12 Exemption. Under the 1-to-12 Exemption, the following criteria apply: 1) the person providing the seller financing must not have constructed or acted as a contractor for the construction of the dwelling in the ordinary course of business of the person; 2) the payment schedule must not result in negative amortization; however, balloon payments (defined below) ARE permitted under the 1-to-12 exemption; and 3) the interest rate may be a fixed or adjustable rate, but if the rate adjusts, it must not adjust any greater than five percent, must be determined by the addition of a margin to a market rate that is widely available, such as prime rate.

NEW/REVISED FORMS

- SELLER FINANCING UNDER TILA INFORMATION SHEET RANM FORM 2405 (NEW)

REALTORS® ASSOCIATION OF NEW MEXICO
INFORMATION SHEET
SELLER FINANCING UNDER THE TRUTH IN LENDING ACT - 2014

U.S. Treasury securities or the London Interbank Offered Rate (LIBOR) and must be subject to reasonable adjustment limitations. Safe harbors under TILA allow an annual rate increase of up to two percentage points with a lifetime limitation of an increase of six percentage points, subject to a maximum floor of the Seller's choosing and a maximum ceiling that does not exceed the easy limit applicable to the transaction. A balloon payment is defined as a payment that is more than two times a regular periodic payment.

3. EN-12 EXCLUSION

The 3-en-12 Exclusion is available to natural persons, estates, trust and corporations. It has the same restrictions as the 1-en-12 Exclusion as set forth above with two additional criteria. Under the 3-en-12 Exclusion, there can be no balloon payments. A balloon payment is defined as a payment that is more than two times a regular periodic payment. In addition, the seller must make a good faith determination of the buyer's ability to make the required payments. A Seller may opt to generally review the buyer's current or expected income from employment, government benefits and entitlements and incoming earning assets and the buyer's monthly financial obligations OR may utilize the specific ability-to-repay criteria set forth in Regulation Z of TILA which includes the following criteria:

1. The buyer's current or reasonably expected income or assets, other than the value of the dwelling that secures the loan;
2. The buyer's current employment status;
3. The new monthly loan payment;
4. The monthly payment on any simultaneous loan;
5. The buyer's monthly payment for loan-related obligations;
6. The buyer's current debt obligations;
7. The buyer's monthly debt-to-income ratio, or residual income; and
8. The buyer's credit history.

Under the new regulations, sellers are **NOT** required to retain evidence that they conducted an ability-to-repay analysis, however, it is highly recommended that they do so.

FEDERAL AND STATE LAW GOVERNING LOAN ORIGINATORS

Mortgage Loan Originator Licensing: Mortgage Loan Originators in New Mexico are licensed through the New Mexico Regulation and Licensing Department's Financial Institutions Division. For more information, visit http://www.dl.state.nm.us/financialinstitutions/Mortgage_Industry.asp.

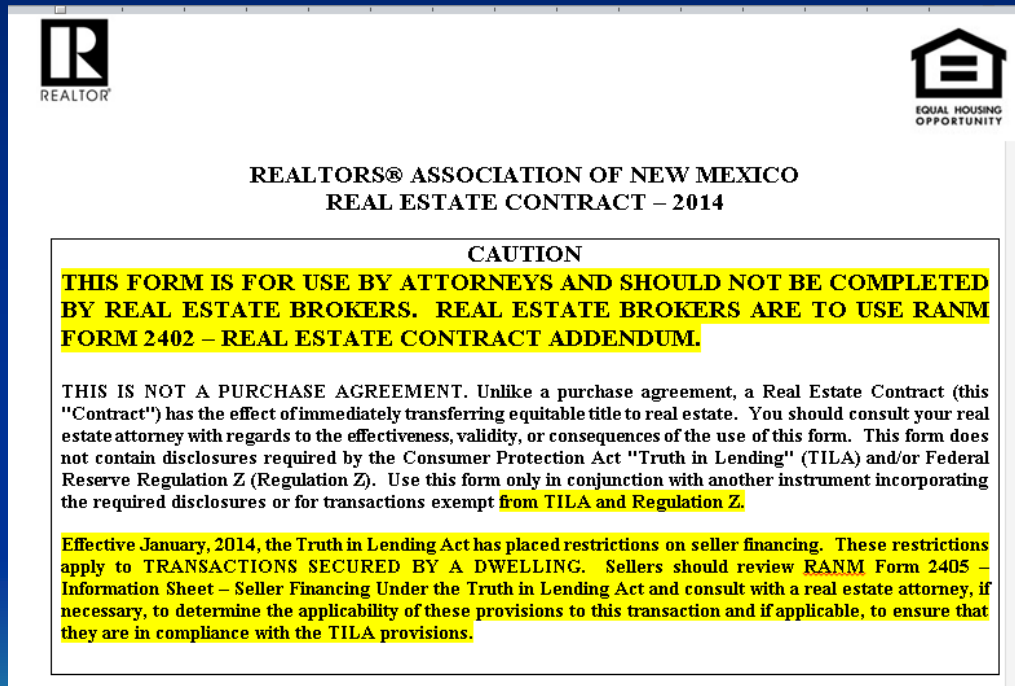
Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z): The Consumer Financial Protection Bureau administers and enforces the Truth in Lending Act. For more information, visit <http://www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act/>.

CONSULT A REAL ESTATE ATTORNEY


For additional information regarding these requirements and/or the applicability to a given transaction, sellers and buyers should consult a licensed New Mexico real estate attorney.


NEW/REVISED FORMS

- Real Estate Contract – RANM Form 2401



The image shows the top portion of a real estate contract form. It features the Realtor logo on the left and the Equal Housing Opportunity logo on the right. The title is 'REALTORS® ASSOCIATION OF NEW MEXICO REAL ESTATE CONTRACT – 2014'. A central box contains a 'CAUTION' section with yellow highlights. The highlighted text states that the form is for attorneys and not for brokers, and that it is not a purchase agreement. It also mentions restrictions on seller financing effective January 2014.

 REALTOR

 EQUAL HOUSING OPPORTUNITY

REALTORS® ASSOCIATION OF NEW MEXICO
REAL ESTATE CONTRACT – 2014

CAUTION

THIS FORM IS FOR USE BY ATTORNEYS AND SHOULD NOT BE COMPLETED BY REAL ESTATE BROKERS. REAL ESTATE BROKERS ARE TO USE RANM FORM 2402 – REAL ESTATE CONTRACT ADDENDUM.

THIS IS NOT A PURCHASE AGREEMENT. Unlike a purchase agreement, a Real Estate Contract (this "Contract") has the effect of immediately transferring equitable title to real estate. You should consult your real estate attorney with regards to the effectiveness, validity, or consequences of the use of this form. This form does not contain disclosures required by the Consumer Protection Act "Truth in Lending" (TILA) and/or Federal Reserve Regulation Z (Regulation Z). Use this form only in conjunction with another instrument incorporating the required disclosures or for transactions exempt from TILA and Regulation Z.

Effective January, 2014, the Truth in Lending Act has placed restrictions on seller financing. These restrictions apply to TRANSACTIONS SECURED BY A DWELLING. Sellers should review RANM Form 2405 – Information Sheet – Seller Financing Under the Truth in Lending Act and consult with a real estate attorney, if necessary, to determine the applicability of these provisions to this transaction and if applicable, to ensure that they are in compliance with the TILA provisions.

NEW/REVISED FORMS

- Real Estate Contract – RANM Form 2401

**REALTORS® ASSOCIATION OF NEW MEXICO
REAL ESTATE CONTRACT - 2014**

IMPORTANT NOTICE: SELLER AND BUYER DO HEREBY ACKNOWLEDGE THAT THE ABOVE REFERENCED LIEN(S) OR OBLIGATION(S) CONTAINS A "DUE ON SALE" PROVISION, WHICH GIVE THE MORTGAGE/DEED OF TRUST HOLDER THE OPTION TO REQUIRE IMMEDIATE AND FULL PAYMENT OF THE LOAN(S) IN THE EVENT OF SALE OR DISPOSITION OF THE PROPERTY. THE SELLER AND BUYER HEREBY AGREE THAT IF THE ABOVE-REFERENCED MORTGAGE/DEED OF TRUST HOLDER ELECTS TO ACCELERATE THE UNPAID BALANCE OF THE ABOVE-DESCRIBED LOAN(S), THE BUYER SHALL BE FULLY RESPONSIBLE FOR THE PAYMENT OF ALL SUMS REQUIRED ON SUCH LOAN(S) AND ALL AMOUNTS SO PAID SHALL BE CREDITED TO THE UNPAID PRINCIPAL BALANCE AND ACCRUED INTEREST ON THIS CONTRACT. SELLER SHALL NOTIFY BUYER IN WRITING OF ACCELERATION BY THE MORTGAGE/DEED OF TRUST HOLDER AND BUYER SHALL HAVE A PERIOD OF 30 DAYS AFTER MAILING OF SUCH NOTICE TO COMPLY. FAILURE OF BUYER TO COMPLY SHALL CONSTITUTE A DEFAULT UNDER THE TERMS OF THIS CONTRACT.

4. BUYER TO MAINTAIN PROPERTY; PAY INSURANCE, TAXES AND PAVING LIENS; AND SELLERS' RIGHTS.

A. MAINTENANCE. Buyer will maintain the Property in as good condition as on the Effective Date, excepting normal wear and tear. Buyer will obey all applicable laws governing the use of the Property, including but not limited to environmental laws.

B. INSURANCE. Buyer shall maintain the following insurance coverage with an insurance company satisfactory to Seller. Such insurance shall be maintained for the benefit of Buyer and Seller as their interests may appear. Buyer will furnish a copy of the insurance policy or certificate of the insurance policy to Seller annually before expiration of existing insurance, stating that coverage will not be cancelled or discontinued, without a minimum of 15 days prior written notice to Seller.

(1) Inurable improvements upon the Property shall be covered against the hazards covered by fire and extended coverage in the amount of (circle either Paragraph (a) OR (b) below):

(a) \$ _____ OR

(b) not less than the greater of the replacement cost of the improvements or the Balance Due Seller; and

(2) Public liability insurance in an amount not less than \$ _____ shall be maintained with Seller as additional named insured.

C. TAXES. The property taxes for the current year have been divided and prorated between Seller and Buyer as of

NEW/REVISED FORMS

- Real Estate Contract – RANM Form 2401

§ 2401. If the final day for curing the default falls on a non-business day of Escrow Agent, then the period for curing the default will extend to the close of business on the next business day of Escrow Agent.

NAME Form 2401 (2014) MAY Page 1 of 9 © 2014 REALTORS ASSOCIATION OF NEW MEXICO State: _____ Date: _____

REALTORS® ASSOCIATION OF NEW MEXICO

REAL ESTATE CONTRACT – 2014

(3) Acceptance by Escrow Agent of any payment tendered will not be deemed a waiver by Seller of Buyer's default or extension of the time for cure of any default under this Contract.

D. AFFIDAVIT OF UNCURED DEFAULT AND ELECTION OF TERMINATION. A recordable affidavit (the "Default Affidavit") made by Seller, Seller's agent, or Escrow Agent identifying the parties, stating the legal description of the Property or the recording date of this Contract, stating the date that Default Notice was given, stating that the specified default has not been cured within the time allowed and that Seller has elected to terminate Buyer's right in the Property, and delivered to Escrow Agent, will be conclusive proof of the uncured default and election of termination of Buyer's rights in the Property.

E. LEGAL RIGHT TO EVICT BUYER. Following Seller's termination of Buyer's right in the Property, Buyer is no longer entitled to possession of the Property and shall immediately surrender possession of the same to Seller. In the event Buyer fails to surrender possession of the Property to Seller as required herein, Seller may file any action permitted by law in the district court in the county in which the Property is located to obtain possession of the Property and to evict Buyer therefrom.

F. NOTICE TO ASSIGNEES. In addition to sending a Default Notice to Buyer, Seller will send all Eviction Notices to all Assignees who have given written notice of their name, address, and interest in the Property and who have provided a copy of the Transfer Document to Escrow Agent.

G. RIGHTS AND OBLIGATIONS SURVIVING TERMINATION. In the event the Property is rented upon termination of Buyer's rights in the Property, Buyer will provide an accounting to Seller of any prepaid rents and deposits received by Buyer from the Property, which obligation will survive termination. Notwithstanding the

NEW/REVISED FORMS

- REAL ESTATE CONTRACT ADDENDUM



REALTORS® ASSOCIATION OF NEW MEXICO
ADDENDUM TO PURCHASE AGREEMENT - REAL ESTATE CONTRACT - 2014
ADDENDUM NO. _____

This form is not a Real Estate Contract. It is an addendum to the RANM Purchase Agreement which allows the parties to select, at the time the Purchase Agreement is signed, certain variable provisions of the Real Estate Contract. The Real Estate Contract itself has many other provisions in addition to the ones set forth below. This addendum cannot be used as a substitute for the Real Estate Contract.



Effective January, 2014, the Truth in Lending Act has placed restrictions on seller financing. These restrictions apply to **TRANSACTIONS SECURED BY A DWELLING**. Sellers should review RANM Form 2405 – Information Sheet – Seller Financing Under the Truth in Lending Act and consult with a real estate attorney, if necessary, to determine the applicability of these provisions to this transaction and if applicable, to ensure that they are in compliance with the TILA provisions.

The paragraph numbers below correspond with the paragraph numbers in the Real Estate Contract, RANM Form 2401. Certain paragraph numbers have been intentionally omitted from this document so as to allow paragraphs in this document to correspond directly with paragraphs in the Real Estate Contract, RANM Form 2401. Capitalized terms not defined herein are defined in the Real Estate Contract.

The following agreement is an addendum to, and a part of, the Purchase Agreement dated _____ between _____ ("Buyer")

NEW/REVISED FORMS

- SUBSTANTIAL AMENDMENTS TO SEPTIC INFORMATION SHEET
- MINOR MODIFICATIONS TO SEPTIC ADDENDUM
- NEW NON-DISCLOSURE/CONFIDENTIALITY AGREEMENT
 - Use when sharing any confidential information in course of transaction



RANM LEGAL HOT LINE

1-877-699-7266

LEGALHOTLINE@NMREALTOR.COM

MONDAY – FRIDAY
9:00 TO 1:00 PM



REALTORS ASSOCIATION OF NEW MEXICO

LEGAL UPDATE
JANUARY, 2014

THANK YOU!

