

Forensic Mortgage Loan Audit

Mortgage Loan Audit Advantage Co.
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Forensic Audit Report

Prepared For: Julie Sample

Borrower(s) Names: Julie Sample

Property Address: 1111 Main St.
Plymouth, MI 48170

Prepared By: David Smith, Auditor

Date: 11/2/2010

Forensic Mortgage Audit Report

Borrowers: Julie Sample

Date Prepared: 11/2/2010

Property Address: 1111 Main St., Plymouth, MI 48170

Originating Loan Officer: John Loanofficer
Quicker Loans Inc.
3252 University Dr.
Anywhere, MI 48326

Original Lender: Quicker Loans Inc.
3252 University Dr.
Anywhere, MI 48326

Loan Account Number: 1234567

Current Servicer: America's Servicing Company aka ASC,
a Division of Wells Fargo Home Mortgage
1 Home Campus
Des Moines, IA 50328-0001

This report summarizes the findings of the Forensic Mortgage Audit which has been prepared on behalf of Julie Sample (hereinafter "Borrower"). All of the documents and information reviewed has been provided to us directly by the Borrower.

It is our opinion that there is substantial evidence of Fraud for Profit, Predatory Lending Practices, and other violations in connection with the origination of this mortgage loan.

Background

Borrower has stated she has obtained at least 5 mortgages from the same Loan Officer at Quicker Loan Company. The Loan Officer's name is John Loanofficer. The most recent loan, which closed on 5/8/2007, is the subject of this report. The Borrower further has stated that she "trusted" Mr. Loanofficer since he had been her loan officer for such a long time. Mr. Loanofficer betrayed her trust. Our review of the mortgage documents has identified numerous violations which will be identified in the pages that follow. We will also provide evidence to support our findings.

Fraud for Profit

The purpose of the subject loan was to refinance an existing predatory mortgage loan which was originated by the same loan officer just 14 months earlier. That loan was also a refinance of a prior loan which was also originated by John Loanofficer of Quicker Loans. The loan closed on 3/14/2006 was an Adjustable Rate Loan which had a "teaser rate" of only 1.99% for the FIRST SIX MONTHS ONLY. **See Exhibit A.** When the first rate adjustment occurred on 10/1/2006, both the interest rate and monthly payment increased substantially. The loan officer clearly did not have the Borrower's long-term interests in mind when he arranged that loan. He purposely set her up for this predatory loan so that he would have yet another opportunity to earn another commission by refinancing the loan again as he had done before. He knew, or should have known, that she would not be able to afford the higher payments. There are names for this Predatory Lending Practice. It is referred to as "churning" or "flipping" which means that a Borrower is intentionally put into a predatory loan product with an increasing payment so that he could do yet another refinance in the not-to-distant future. And that is exactly what happened.

Mr. Loanofficer enticed the Borrower into refinancing into the subject loan by offering her a “no closing cost” loan which really meant that she did not have to pay anything “out of pocket”. He also arranged for her to get \$10,890.89 “cash-out” which was also tempting. The closing costs and cash out were both added to the new loan amount. The new loan has a ten year “interest-only” amortization which means that her balance did go not down.

Every \$2,117.50 payment she made went entirely to interest. There was no escrow for taxes or insurance which amounted to \$454.37 per month according to the Mortgage Loan application. This means that the Borrower had to pay them separately out of pocket which increased her effective monthly housing cost to \$2,571.87, none of which reduced her balance.

When the subject loan was being processed, the Borrower’s total monthly debt obligations totaled approximately \$5,120 according to the Uniform Residential Loan Application, Fannie Mae Form 1003. **See Exhibit B, bottom of page 2 labeled “Total Monthly Payments of \$4,737” plus the \$383.00 monthly payment for the existing second mortgage as shown near the bottom of Page 4 which should have been included in the “Total Monthly Payment” calculation, but was omitted by the lender in error.** As mentioned earlier, this did not include taxes or insurance which averaged \$454.37 for the subject loan. This increased her total debt payments to approximately \$5,574 monthly. This does not count any other monthly expenses such as food, utilities, clothing, health care, gasoline, car insurance, etc.

This presented a problem for the lender. She did not earn nearly enough income to qualify for the refinance. The Borrower’s income from her 22 year job was approximately \$6,357 Gross Pay per month. This represents a 2 year average of her income for 2005 and 2006. Borrower’s Adjusted Gross Income for 2005 was \$77,909 as stated on Line 38 of her 2005 Federal Income Tax Return, Form 1040. **See Exhibit C which is Borrower’s 2005 Federal Income Tax Return Exhibit**

Borrower's Gross Taxable Wages for 2006 were \$74,661.49 as stated on her 2006 W-2 statement. [See Exhibit D which is her W-2 Wage and Tax Statement for 2006.](#) To determine the Borrower's qualifying monthly income, lenders typically take a 2 year average. If you add the \$77,909 earned in 2005 to the \$74,661 earned in 2006, the total equals \$152,570. This total is then divided by 24 months to produce the \$6,357 monthly average income.

Borrower has stated that her income remained relatively constant for many years. The loan that she applied for was a "Conventional" loan which means that it conforms to the underwriting standards set forth by Fannie Mae. Conventional Loans require that the Borrower's income be verified via Paystubs, W-2 Forms, Federal Income Tax Returns, or a combination of these. [See Exhibit E – Page 3, of the Fannie Mae Underwriting Guidelines.](#)

The only way that Quicker Loans would be able to approve this loan would be to fraudulently inflate the Borrower's income so she could qualify. And that is what they did. Their motivation was financial gain. This is known as "Fraud for Profit".

Borrower has also stated that she did provide the required written proof of income. She has never earned anywhere near the \$15,250.00 that was fraudulently typed onto the Loan Application. Furthermore, she was never provided with a copy of the Loan Application until the closing took place. While it is true that she signed the application at closing, she is adamant that she never saw the \$15,250 income figure. That is understandable in our opinion since there are so many documents that require a Borrower's signature. The income amount is typically only listed once in all of the documents. It appears only on page 2 of the Loan Application which does not require a signature. It is unreasonable to expect a Borrower to spot this one amount considering the volume of documents that are involved at a mortgage closing. This loan should never have been approved.

Violations on the Settlement Statement (HUD-1)

The HUD-1 Settlement Statement provides a detailed itemization of the loan costs. [See Exhibit F](#). The new loan amount was \$363,000. The proceeds were used to pay off 2 existing mortgages which totaled \$346,156.01. (See lines 1501, 1502, and 1520 of Exhibit F). An additional \$10,890.89 was the cash-out given to the Borrower (see Line 1604 of Exhibit F). That leaves \$5953.10 which was kept by Quicker Loans to pay for closing costs (which was actually financed into the new mortgage). The Total Settlement Charges were \$9613.10 (See Line 1400 of Exhibit F), but a “credit” of \$3,660.00 was deducted as shown on Line 1601 of Exhibit F. The difference between Line 1400 and 1601 is \$5953.10.

The largest closing cost was \$6,352.50 for a “Loan Discount” which appears on Line 802 of Exhibit F. By definition, a “Loan Discount” is a reduction of the interest rate in exchange for paying a fee known as “points”. [See Exhibit G – Article by Bankrate.com which defines how Discount Points work.](#)

One “point” equals one percent of the mortgage amount. We found no evidence that the interest rate of the subject loan was reduced. The interest rate for the subject loan is 7.00% Fixed for a term of 30 years. We researched the historic interest rates in effect for the period from 3/3/06 through 6/30/06. [\(See Exhibit H\)](#) As you will see, the rate in effect as of 5/5/06 was 6.59%. Therefore, it appears that the Borrower was actually given a **Higher Rate**, even though she was charged \$6,352.50 for a Loan Discount. **This is additional evidence of Fraud for Profit in our opinion. It also may be a violation of UDAP Law. (Unfair and Deceptive Acts and Practices) as well as Unjust Enrichment.**

Required Disclosures

The next section of this Audit is an examination of the Required Disclosures that must be provided within 3 days of the Loan Application. We are not certain what the exact “application date” was because the Borrower was not given any of the required disclosures. The only “clue” we were able to find is an invoice dated 4/11/2006 from Title Inc. for the Title Insurance Policy. That is evidence that the “application” had begun as of that date. These disclosures are required by the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), the Equal Credit Opportunity Act (ECOA - Regulation B), and others. These laws were enacted to provide Consumers with protection against unfair lending practices. They are also intended to give the prospective Borrower a clear understanding of the loan terms and costs. Forms such as the "Good Faith Estimate" and the "Truth in Lending Disclosure" are further intended to help consumers shop and compare to find the best mortgage options available to them.

The Borrower told us that she was not given copies of the required disclosures within 3 days as required by Federal regulations. Our review of the documents that were provided to the Borrower at closing leads us to believe that the disclosures were in fact prepared shortly before closing. We base this opinion on the fact that disclosures allegedly made at application were undated and they had a loan number typed on them. The loan number does not typically get assigned until later in the origination process.

Furthermore, if the Lender had provided the Borrower with a copy of the Uniform Residential Loan Application within 3 days as they should have, she may have discovered that her income was being inflated illegally from \$6,357 to \$15,250.00. The lenders failure to provide these copies within 3 days of application is further evidence of their intent to commit fraud for profit in our opinion.

Federal Disclosures Required within 3 Days of Application

<u>Compliance Disclosure</u>	<u>Regulation</u>	<u>Disclosure Provided</u>
1. Good Faith Estimate	RESPA	No - Violation
2. Truth in Lending Statement	TILA	No - Violation
3. Affiliated Business Disclosure	RESPA	No - Violation
4. Adjustable Rate Disclosure	TILA	N/A – Fixed Rate
5. Consumer Handbook- ARMs	TILA	N/A – Fixed Rate
6. Customer ID Notice	Patriot Act	No - Violation
7. Privacy Disclosure	G-L-B Act	No - Violation
8. Required Use Disclosure	RESPA	No - Violation
9. Transfer of Servicing Disclosure	RESPA	No - Violation
10. Appraisal Disclosure	ECOA	No - Violation
11. PMI Disclosure	HOEPA	N/A (No PMI)

Legend:

- RESPA:** Real Estate Settlement Procedures Act – Regulation X
TILA: Truth in Lending Act – Regulation Z
FDPA: Flood Disaster Protection Act
FACTA: Fair and Accurate Credit Transactions Act
HOEPA: Homeowners Equity Protection Act
G-L-B: Graham Leach Bliley Act

Disclosure Summary

No evidence was supplied that the required disclosures listed above as violations were provided within 3 days as required by Federal regulations.

The Truth in Lending Disclosure (TIL) is one of the single-most important disclosures required within 3 days of application by the TILA. The main reason that this law was enacted is so that the Borrower can see the "True Cost" of the loan and its key terms. We found no evidence that the lender provided the Borrower an initial copy of this critical disclosure. This form discloses key information such as:

1. **Annual Percentage Rate** (APR) which factors all of the "pre-paid finance charges" into its calculation. The intent of the TILA requirement is to allow consumers a uniform method of shopping and comparing various loan options. By withholding this important document, the Lender effectively restricted the Borrowers ability to understand and find the best loan product.
2. **Finance Charge** – the dollar amount that the credit will cost the Borrower over the life of the loan
3. **Amount Financed** – The amount of credit provided to you or on your behalf
4. **Total of Payments** – The amount you will have paid after you have made all payments as scheduled
5. **Payment Schedule** - Lists the number of payments, amount of monthly payment, and the due date for the payments. **(See Exhibit I)**

Additional Observations

While reviewing the Uniform Residential Loan Application, Fannie Mae Form 1003 (Exhibit B), we noticed that there is a “Credit or Application Deposit” in the amount of \$500.00. This can be seen on page 2, Section VI ASSETS AND LIABILITIES. It is on the left side of the page under “ASSETS”. The \$500.00 “Application Deposit” is also seen on Page 3 of the Loan Application under Section VII which is titled “Details of Transaction, Line L.

This \$500.00 deposit should have been reflected on the HUD-1 Settlement Statement (Exhibit F) as a credit to the Borrower. Since it was not credited, it appears that Quicker Loans owes the Borrower this \$500.00. This is yet another example of Unjust Enrichment and Fraud for Profit.

Finally, our review of the “Mortgage Instrument”, Form 3023 1/01 clearly states that **MERS, (short for Mortgage Electronic Registration System) is “acting solely as a nominee for Lender and Lender’s Successors and assigns. MERS is the mortgagee under this Security Agreement.” (See Exhibit J, Page 2, Line C)** Currently there are many legal challenges to the “MERS System” which essentially say that MERS is fatally flawed and does not have proper standing to foreclose. This should be discussed with qualified legal counsel as it may provide a defense to any attempt to foreclose on the Mortgage.

Mortgage Loan Audit Advantage Disclaimer

This report is based exclusively on documentation and information provided to us by the Borrower. Our analysis required that we make reasonable assumptions regarding required disclosures and lending practices that, if erroneous or incomplete, may result in material differences between our findings and the loan's actual compliance with applicable Federal and State Laws. While we believe that our assumptions provide a reasonable basis for our findings and opinions, we make no representations or warranties regarding the completeness of the information reviewed or the accuracy of our findings.

We are not attorneys and we are not practicing law. We do not have any relationship, contractual or otherwise, with anyone other than the Borrower that ordered this report. We do not accept or assume responsibility for any other purpose. We recommend that the Borrower consult a qualified attorney for legal advice concerning our findings and any possible remedies for violations or other concerns that have been identified.

Report completed by: David Smith, Auditor
Mortgage Loan Audit Advantage

David Smith

NOTE: This is an actual audit that we recently completed. The Full Report included exhibits and copies of loan documents to support our findings. They are not included here to protect the privacy of the client. All names and addresses in this report have been changed to fictitious names.

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