

# AJ STEPHENS AND ASSOCIATES, INC.

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A CERTIFIED FORENSIC LOAN AUDITING FIRM

43 Sky line Drive Suite 3001 Lake Mary, FL. 32746

Ph: 407-369-6671; [Joseph@HomeSafeLoanAudits.com](mailto:Joseph@HomeSafeLoanAudits.com)

[www.HomeSafeLoanAudits.com](http://www.HomeSafeLoanAudits.com)



## Forensic Audit Report

Prepared for:

Law Office of

Borrower(s): ROXANA BOHANA

Property: 1382 Humdinger Drive, Orlando, FL 32808

December 5, 2011

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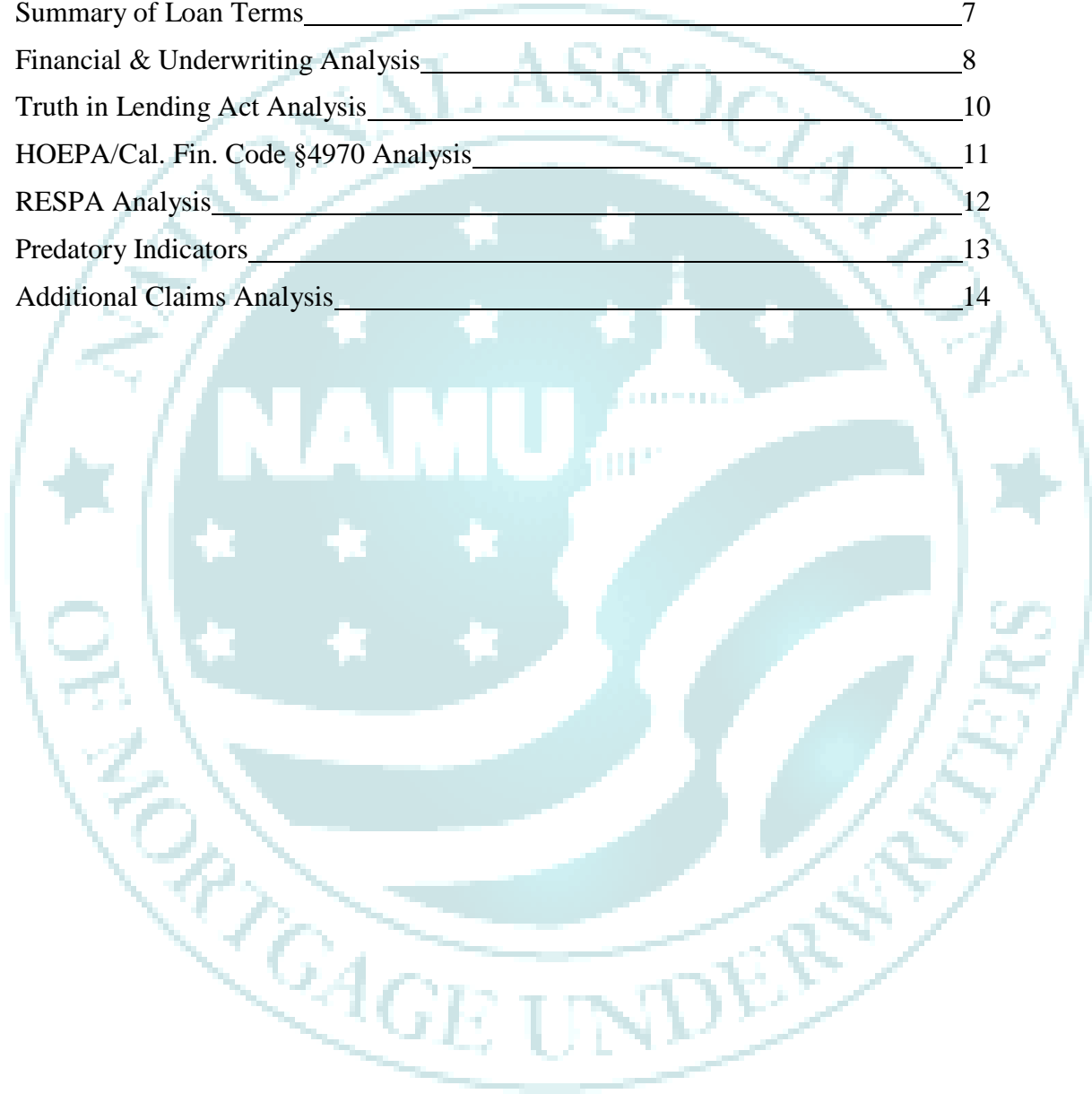
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12/05/2011

Attorney  
Law Firm  
Orlando, Florida

Re: Forensic Audit for Mrs. Roxana Bohana  
Loan #: 26040258

Dear Audit Recipient:

The loan transaction for the above-referenced borrower/property has been audited for violations of the Truth in Lending Act [16 U.S.C. §1601] (“TILA”), Home Ownership Equity Protection Act [12 C.F.R. 226.32 *et seq.*] (“HOEPA”), Florida Financial Code §[658.12 - 658.995](#) *et seq.*, the Real Estate Settlement Procedures Act [12 U.S.C. §2601] (“RESPA”), and to the extent applicable, violations of other state and federal laws discussed below.

This report was based exclusively on the documentation provided. It also required that we make reasonable assumptions respecting disclosures and certain loan terms that, if erroneous, may result in material differences between our findings and the loan’s actual compliance with applicable regulatory requirements. While we believe that our assumptions provide a reasonable basis for the review results, we make no representations or warranties respecting the appropriateness of our assumptions, the completeness of the information considered, or the accuracy of the findings.

The contents of this report are being provided with the understanding that we are not providing legal advice, nor do we have any relationship, contractual or otherwise, with anyone other than the recipient. We do not, in providing this report, accept or assume responsibility for any other purpose.

Sincerely,

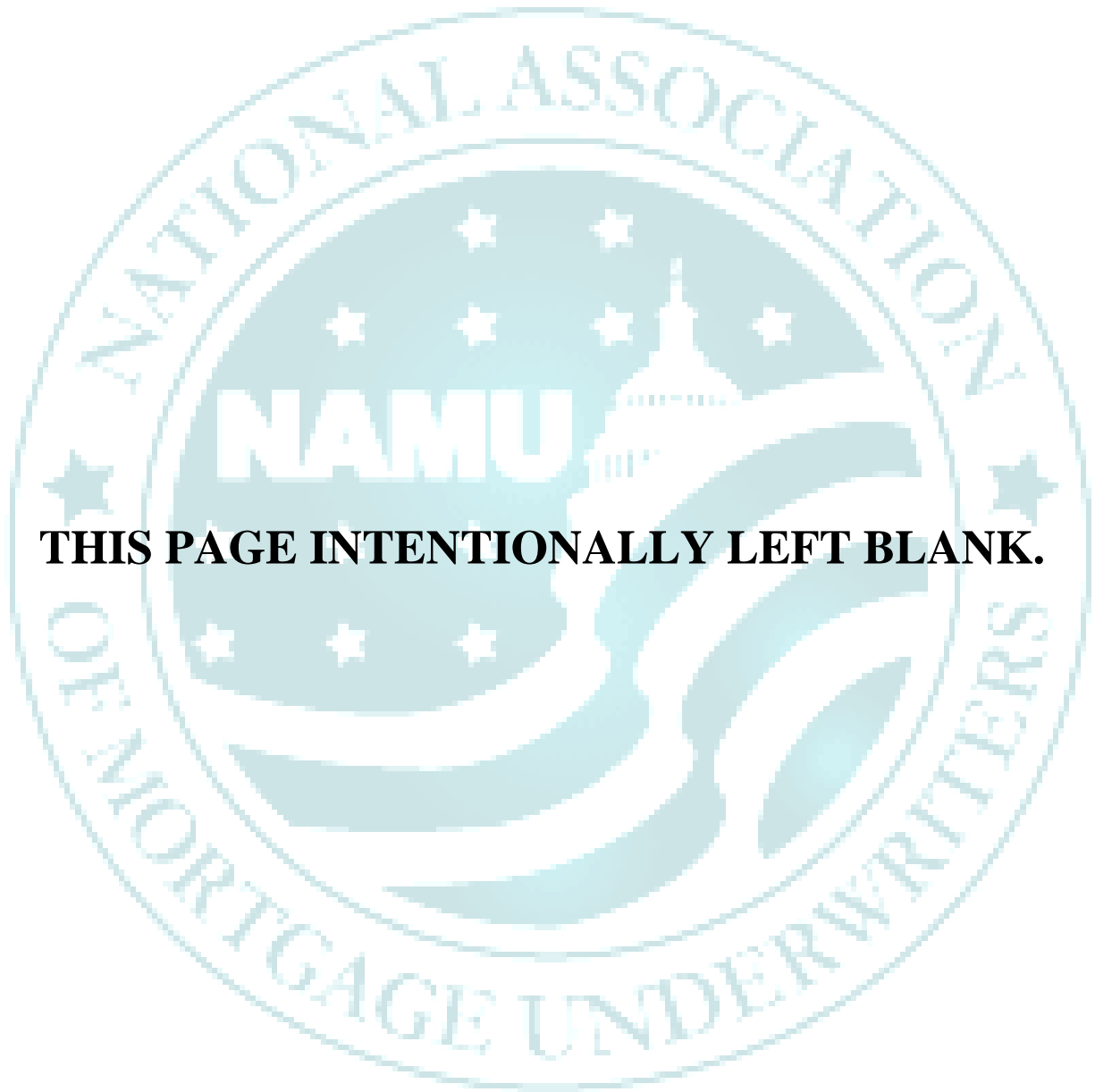


**Paula Mooshagian**  
**Senior Certified Forensic Loan Auditor**  
**AJ STEPHENS AND ASSOCIATES, INC.**

43 Sky line Drv. Suite 3001  
Lake Mary, FL. 32746  
407-369-6671

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<sup>1</sup> Please note that a complete mortgage servicing audit (i.e., audit for RESPA and/or breach of contract violations for the entire servicing history of the loan) is not included in this audit; QWR recommended before such audit can be accomplished.



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**INTRODUCTION**

**Interested Parties:**

<b>ORIGINAL MORTGAGE LENDER/TABLE FUNDER:</b>	<b>ESCROW/TITLE:</b>	<b>MORTGAGE NOMINEE/BENEFICIARY:</b>
Pinnacle Direct Funding Corporation 1500 Lee Road Orlando, FL 32810	Sonoma Title of Florida, LLC. 290 Waymont Circle Suite 120 Lake Mary, FL 32746	MERS Mortgage Electronic Registration Systems, Inc. P.O. Box 2026 Flint, MI 48051
<b>MORTGAGE BROKER:</b>	<b>MORTGAGE TRUSTEE:</b>	<b>SECURITIZATION:</b>
Spectrum Global Finance 645 N. Garland Avenue Suite 210 Orlando, FL 32501	N/A	Likely. See discussion below.

**Documents Provided for Review:**

1 <sup>st</sup>	2 <sup>nd</sup>	
X		Loan Application (Form 1003)
		Loan Commitment Letter <b>MISSING</b>
		Good Faith Estimate <b>MISSING</b>
X		Truth in Lending Disclosure Statement
N/A		(3-Day) Notice of Right to Cancel (may not find with purchase money loans)
X		HUD-1 (or HUD-1A) Settlement Statement
X		Note (with riders or attachments)
X		Mortgage
		Underwriting and Transmittal Summary (Form 1008) <b>MISSING</b>
		Appraisal Report <b>MISSING</b>
X		RESPA servicing disclosure
		Hazard Insurance disclosure <b>MISSING</b>
		Credit score disclosure <b>MISSING</b>
		Lender's Closing Instructions <b>MISSING</b>
		Affiliated Business Arrangement Disclosure <b>MISSING</b>
		I/O and/or Neg-Am disclosure <b>MISSING</b>
N/A		ARM disclosure

## REPORT SUMMARY

Total Potential TILA Violations (see p. 10):	<b>6</b>
Total Potential HOEPA Violations (see p. 11):	<b>0</b>
Total Potential RESPA Violations (see p. 12):	<b>4</b>
Total Predatory Lending Violations: (see p. 13):	<b>7</b>
<b>Total Possible Lending Violations (this page)</b>	<b>17</b>

CLAIM	CONCLUSION	DETAILS
Underwriting	<b>FAIL</b>	See p. 8.
TILA APR Tolerance Test	<b>PASS</b>	See pp. 10.
TILA Finance Charge Test	<b>FAIL</b>	See pp. 10.
TILA Right of Rescission	<b>N/A</b>	See pp. 10.
HOEPA	<b>PASS</b>	See p. 11.
RESPA	<b>FAIL</b>	See p. 12.
Predatory Indicators	<b>FAIL</b>	See p. 13.

\*(Probability of Violations Ratings: No Evidence or Possible)

### Auditor's Summary:

This is a purchase money transaction in the amount of \$278,000.00. The loan is a 30 year fixed rate mortgage with the first 10 years being Interest Only. The interest rate that the borrower received was 8.125% with a corresponding initial Interest Only payment of \$1,882.29. After paying this amount for 120 months, the 121<sup>st</sup> month converts to a principal and interest payment of \$2,346.98.

The interest rate that the borrower received was higher than the national average rate at this time. For the week ending 3/31/2006 which is approximately 30 days prior to this loan's closing date, a timeframe typically used by lenders to lock in rates, the national average rate was 6.35%. At this rate the principal and interest payment would be \$1,729.82 which is \$152.47 less than even the Interest Only payment the borrower received. However the real difference between these two loan programs can be seen with the interest paid over the life of the loan. **With the loan program/interest rate the borrower received the interest paid would be approximately \$511,148.28 whereas with the 30 year FRM, no Interest Only and the national average rate of 6.35% the interest paid would be approximately \$344,730.25 or a difference of \$166,418.03**

The purchase price of the subject property is listed as \$278,000.00, the exact loan amount. This makes this a **100% loan to value** transaction where the borrower is highly leveraged from the very start with no equity at all. The lender has created a situation whereby even the slightest depreciation would leave the borrower with a financial obligation far greater than it's worth. Not only is the borrower highly leveraged but they are obligated to pay private

mortgage insurance in order to protect investors in case of default. The borrower is to pay \$361.40 for the first 120 months and then \$46.33 until the loan to value reaches around 80% (9/1/2023).

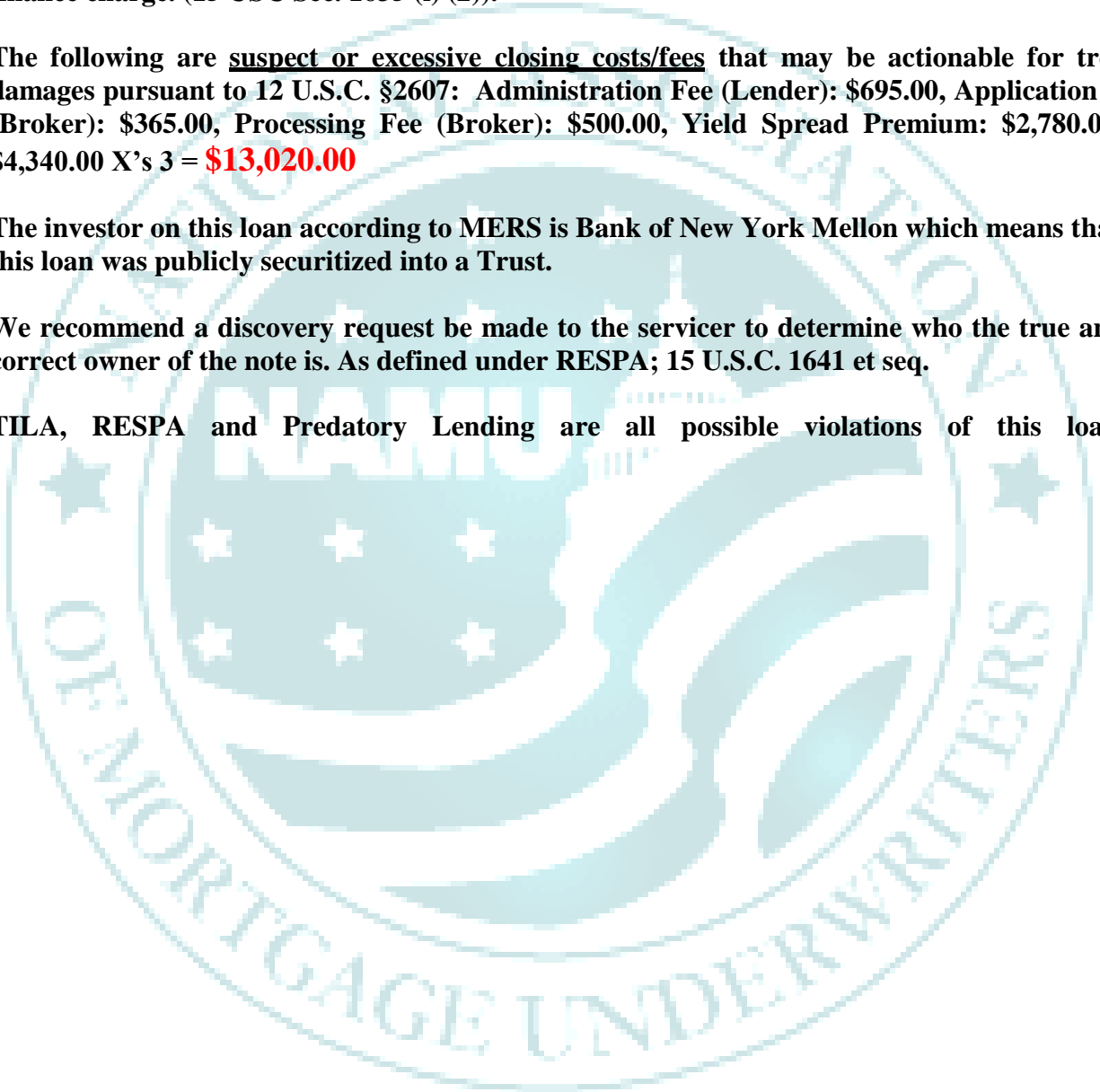
The disclosed finance charge (\$563,559.28) is lower than the actual finance charge (\$563,934.28) by **(\$375.00)**. For rescission after initiation of foreclosure, the Truth in Lending Act considers the disclosed finance charge inaccurate if it is more than \$35 below the actual finance charge. (15 USC Sec. 1635 (i) (2)).

The following are suspect or excessive closing costs/fees that may be actionable for treble damages pursuant to 12 U.S.C. §2607: Administration Fee (Lender): \$695.00, Application Fee (Broker): \$365.00, Processing Fee (Broker): \$500.00, Yield Spread Premium: \$2,780.00 = \$4,340.00 X's 3 = **\$13,020.00**

The investor on this loan according to MERS is Bank of New York Mellon which means that this loan was publicly securitized into a Trust.

We recommend a discovery request be made to the servicer to determine who the true and correct owner of the note is. As defined under RESPA; 15 U.S.C. 1641 et seq.

**TILA, RESPA and Predatory Lending are all possible violations of this loan.**



**SUMMARY OF LOAN TERMS**

The **essential loan terms** were found to be as follows:

Type of Loan:	Purchase
Loan Origination Date:	4/28/2006
Amount of Loans:	\$278,000.00
Originating Lender:	Pinnacle Direct Funding Corporation
Loan Broker:	Spectrum Global Finance
Current Servicer:	Bank of America, N.A.
Current Note Holder:	Like Securitized
1st Note (ARM) Terms:	
Initial Fixed Rate:	8.125%
Term of Initial Rate:	30 Years
Initial Payment:	\$1,882.29
Payment Feature:	30 year Fixed Rate Mortgage with 10 Years Interest Only
Index Measure:	N/A
Index Rate:	N/A
Margin:	N/A
Fully Indexed Rate:	N/A
Min/Max Rate:	N/A
TILA disclosed APR:	9.449%
Total Closing Costs:	\$11,261.65
Total "Points and Fees" %:	4.05%
Prepayment Penalty:	Yes – 36 Months
Unsecured Debt Paid off by Refinance:	\$0
Loan Origination Fees:	\$2,780.00 – 1.00% (Paid to Broker)
Loan Discount Fees:	\$0
Total Broker Fees:	\$6,425.00 – 2.3% (Including \$2,780.00 YSP)

## FINANCIAL & UNDERWRITING ANALYSIS

### Underwriting Standards

The purpose of an underwriter is to determine whether the borrowers can qualify for a loan and if the borrowers have the ability to repay the loan. This determination of the ability to repay a loan is based upon employment and income in large measure, which is proved by getting pay stubs, 1040's, W-2's and a Verification of Employment and Income on the borrowers.

If an underwriter has evaluated the loan properly, then there should be no question of the ability of the borrower to repay the loan. Debt ratios will have been evaluated, credit reviewed and a proper determination of risk made in relation to the loan amount. Approvals and denials would be made based upon a realistic likelihood of repayment.

### Automated Underwriting Systems

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

The real issue with the automated systems is that they were not designed to be the "final word" in approval. The system approval was designed to be a guide, a preliminary approval and nothing more. After approval was received, the underwriter would then be expected to extensively review the file, closely examining the documents for final approval.

**DISCUSSION:** Borrower's financial status at the time of the loan is taken from the loan application. An analysis of borrower's financial status at the time of the loan reveals the following: **The following figures are based on the information from the Loan Application and have not been verified.**

Gross Monthly Income	Mortgage Payment (PITI)	Other Monthly Debt	Total Monthly Debt	Debt-to-income ratio
N/A	\$2,647.69 (I/O)	\$769.00	\$3,416.69	TBD
N/A	\$3,112.38 (P&I)	\$769.00	\$3,881.38	TBD

**CONCLUSION:** Normal underwriting practices include analysis for a 28/36% debt-to-income ratio. During 2003 to 2006, subprime lending involved higher DTI ratios, from 33/38% to 38/50%. **There was no gross monthly income listed on the application which means that the lender/broker used a No Income/No Assets Verification underwriting process. Given this the lender/broker has no way of knowing if in fact the borrower will be able to afford the mortgage payment. They have a fiduciary responsibility to ensure that the borrower is not in harm's way however this type of underwriting process does in fact place the borrower in a precarious financial situation to where the ability to repay this loan could be very low. W-2's or tax returns would be necessary in order to perform additional analysis around the borrower's debt to income ratios.**



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## TRUTH IN LENDING ACT ANALYSIS

**APPLICATION:** The TILA applies because the transaction involves the extension of credit to a consumer for personal, family or household purposes that is subject to a finance charge and/or payable by written agreement in more than four installments. 15 U.S.C. §§ 1601-1666.

Pass	Fail			
N/A		Notice of Right to Cancel (2 copies per borrower; filled out completely). 12 C.F.R. § 226.23(b).		
X		TIL Disclosure Statement provided. 12 C.F.R. §§ 226.17, 226.18.		
X		Payment Schedule correctly identified on TIL. 12 C.F.R. §§ 226.18(g), (h).		
	X	Interest rate consistent and properly disclosed: Loan app-GFE-Commitment-TIL; variable rate. 12 CFR § 226.17-18. <b>MISSING GFE &amp; COMMITMENT</b>		
	X	Delivered good faith estimates of disclosures (preliminary TILDS) within 3 days of loan application. 12 C.F.R. §§ 226.19(a). <b>NO EVIDENCE IN FILE</b>		
N/A		"Consumer Handbook on Adjustable Rate Mortgages" (CHARM) provided within 3 days of application. [Or equivalent disclosure - see 12 CFR § 226.19(b)].		
	X	Interest-only payment feature adequately disclosed. 15 U.S.C. §§ 1638, 12 C.F.R. § 226.17-18. <b>NO EVIDENCE IN FILE</b>		
N/A		Negative-amortization payment feature adequately disclosed. 15 U.S.C. §§ 1638, 12 C.F.R. § 226.17-18.		
X		Itemization of amount financed. 12 C.F.R. § 226.18(c).[RESPA-GFE may be substituted]		
	X	Property/Hazard Insurance disclosure provided (choice by consumer). 12 C.F.R. § 226.4(d)(2). <b>NO EVIDENCE IN FILE</b>		
X		Prepayment Penalty disclosed. 12 C.F.R. § 226.18(k).		
X		<b>APR Calculation</b>  See Note 1 below for further discussion.	1 <sup>ST</sup> Lien Result Disclosed: 9.449% vs. Actual: 9.4730% Difference = <0.024%>	2 <sup>ND</sup> Lien Result Disclosed: vs. Actual: Difference = <. >
	X	<b>Finance Charge Calculation</b>  See Note 2 below for further discussion.	1 <sup>ST</sup> Lien Result Disclosed: \$563,559.28 vs. Actual: \$563,934.28 Difference = <\$375.00>	2 <sup>ND</sup> Lien Result Disclosed: vs. Actual: Difference = <\$>
	X	All disclosures accurately reflect the legal obligation between the parties; 15 U.S.C. §§ 1638, 12 C.F.R. § 226.17(c).		

**Total Potential TILA C.F.R. § 226.17 Violations: 6**

**HOEPA AND FLORIDA FINANCIAL CODE §658.12 - 658.995 et seq. ANALYSIS**

**APPLICATION:** Neither statute like applies as the estimated APR [~xx] would not exceed 8% over the comparable yield on Treasury securities [~10], nor do the “total points and fees” exceed 8% or 6%, respectively, of the loan amount.

<b>Pass</b>	<b>Fail</b>	
N/A		APR disclosed. 12 CFR 226.32(c)(2)
		3 days prior to closing, the APR and disclosure statement similar to the following: "You are not required to complete..." (HOEPA).
		3 days prior to closing, disclosure: " <i>CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE...</i> " (§4970).
		disclosed the amount of the borrower’s regular monthly payment. 12 CFR 226.32(c)(3).
		If variable, includes a statement that the interest rate and monthly payment may increase and the maximum payment that could be reached. 12 CFR 226.32(c)(4).
		No balloon payments prior to ten years. 12 CFR 226.32(d)(1)(i)-(iii).
		Disclosed amount of any balloon payment. 12 CFR 226.32(c)(3).
		No prepayment penalty after first 5 years, source of funds is not refinance by creditor, and consumers total monthly is no more than 50% of DTI. 12 CFR 226.32(d)(7).
		No increase in the interest rate in the event of default. 12 CFR 226.32(d)(4).
		No negative amortization. 12 CFR 226.32(d)(2).
		No refinance within one year. 12 CFR 226.34.
		No prepaid payments. 12 CFR 226.32(d)(3).
		Engaging in a pattern or practice of extending such credit to a borrower based on the borrower's collateral rather than considering the borrower's current and expected income, current obligations, and employment status to determine whether the borrower is able to make the scheduled payments to repay the obligation, is in violation of Section 129(h) of TILA, 15 U.S.C. § 1639(h), and see also, Regulation Z, 12 C.F.R. § 226.32.
		If refinance transaction, disclosed total amount borrowed and if the loan amount includes premiums or other charges for optional credit insurance or debt cancellation coverage, that fact shall be stated. 12 CFR 226.32 (c)(5).

***Total Potential HOEPA/§4970 Violations: 0***

**POTENTIAL REMEDIES FOR VIOLATIONS:** All TILA remedies, plus all finance charges and fees if “material” violation, pursuant to 15 U.S.C. §1640(a)(4).

## **REAL ESTATE SETTLEMENT PROCEDURES ACT ANALYSIS**

**APPLICATION:** The RESPA applies because lender regularly extends federally related mortgage loans aggregating more than \$1 million per year, and intended for the purchase of a one- to four-family residential property. 12 U.S.C. §§ 2601-2617.

<b>Pass</b>	<b>Fail</b>	
<b>X</b>		Informed borrower of intention to transfer the servicing of the loan and/or failed to inform the borrower of the actual transfer within fifteen (15) days before the effective date of the transfer. 24 C.F.R. § 3500.21.
<b>X</b>		Did not require deposit of funds in escrow in excess of the statutorily permitted amounts. 24 C.F.R. § 3500.17.
	<b>X</b>	Purchase Money: Provided the Special Information Booklet explaining the settlement costs within three (3) business days after consumer submitted loan application. 24 C.F.R. § 3500.6. <b>NO EVIDENCE IN FILE</b>
<b>X</b>		No fees charged for preparation of the settlement statement, escrow account statement, and/or the TILA disclosure statement. 24 C.F.R. § 3500.12.
	<b>X</b>	Disclosed all affiliated business arrangements. 24 C.F.R. § 3500.15. <b>NO EVIDENCE IN FILE</b>
	<b>X</b>	Did not give, provide or receive a hidden fee or thing of value for the referral of settlement business, including but not limited to, kickbacks, hidden referral fees, and/or yield spread premiums. 24 C.F.R. § 3500.14. <b>YSP \$2,780.00</b>
<b>TBD</b>		Properly and timely paid for property taxes, insurance and other charges for which Defendants are collecting within an escrow impound account; or other servicing violations. 24 C.F.R. § 3500.17.
<b>X</b>		HUD-1 provided at closing (or 1 day before if requested) and accurate. 24 C.F.R. § 3500.8(b).
	<b>X</b>	No fees charged in excess of the reasonable value of goods provided and/or services rendered. <b>NO EVIDENCE IN FILE</b>
<b>TBD</b>		Purchase Money: Seller did not impose use of particular service provider. 24 C.F.R. § 3500.16.

***Total Potential RESPA Violations: 4***

**FURTHER RECOMMENDATIONS:** QWR/discovery re mortgage servicing for potential servicing violations or breach of contract.

**POTENTIAL REMEDIES FOR VIOLATIONS:** Actual damages, statutory (up to \$1000 if show pattern and practice), and treble damages for excessive portion of fees (below), plus attorney's fees and costs for violations noted.

The following are **suspect or excessive closing costs/fees** that may be actionable for treble damages pursuant to 12 U.S.C. §2607: **Administration Fee (Lender): \$695.00, Application Fee (Broker): \$365.00, Processing Fee (Broker): \$500.00, Yield Spread Premium: \$2,780.00 = \$4,340.00 X's 3 = \$13,020.00**

## **PREDATORY LOAN INDICATORS**

“Predatory lending” is a general term used to describe unfair, deceptive, or fraudulent practices of lenders during the loan origination process. Predatory lending is often a combination of several factors that can only be evaluated in the context of the overall lending transaction. Typically, no single factor can be relied upon to consider it a predatory loan.

A large number of agencies and consumer organizations recognize predatory lending, including, for example, the Department of Housing and Urban Development, Federal Deposit Insurance Corporation, National Consumer Law Center, California Department of Real Estate, Fannie Mae, National Association of Consumer Advocates, Association of Community Organizations for Reform Now, National Home Equity Mortgage Association, and Center for Responsible Lending.

The predatory lending factors present in the subject transaction were found to be as follows:

<b>Pass</b>	<b>Fail</b>	
N/A		Solicitation for refinance.
	<b>X</b>	Mortgage broker and corresponding lender involved. <b>YSP &amp; OTHER BROKER FEES</b>
<b>TBD</b>		Borrower was a minority and/or the transaction was conducted in a foreign language.
	<b>X</b>	Loan-to-value ratio above 80%. <b>100% LTV</b>
<b>TBD</b>		Debt-to-income ratio above 28/36%.
<b>X</b>		Teaser rate involved.
<b>X</b>		Interest rate on 1 <sup>st</sup> was more than 2 points above: 6.08% (2.77 margin) [average US 5/1 ARM rate] or 6.4% [average 30-year fixed]. (source: Freddie Mac 1/2003-12/2006)
	<b>X</b>	Excessive Closing Costs/Fees. <b>SEE RESPA FOR FEE BREAKDOWN</b>
	<b>X</b>	Prepayment Penalty. <b>36 MONTHS</b>
	<b>X</b>	Interest-Only Payments. <b>10 YEARS</b>
N/A		Negative Amortization Payments.
	<b>X</b>	Broker Compensation >2% (including yield spread premium). <b>2.3%</b>
N/A		Loan Flipping – refinance within 3 years of previous loan.
N/A		Balloon Payments.
<b>TBD</b>		Unsecured Debt Shifted to Secured (i.e., credit cards).
<b>TBD</b>		Unnecessary insurance and other products offered in closing.
<b>X</b>		Mandatory arbitration clause in Note.
<b>TBD</b>		Bait & Switch – e.g., borrower initially offered lower rate than final Note.
	<b>X</b>	Other unfair, deceptive, or fraudulent practices in transaction.

***Total Predatory Indicators: 7***

The disclosed finance charge (\$563,559.28) is lower than the actual finance charge (\$563,934.28) by **(\$375.00)**. For rescission after initiation of foreclosure, the Truth in Lending Act considers the disclosed finance charge inaccurate if it is more than \$35 below the actual finance charge. (15 USC Sec. 1635 (i) (2)).

15 U.S.C. §1635(a) provides Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this title, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

15 U.S.C. §1635(e) states that This section does not apply to-- (1) a residential mortgage transaction as defined in section 103(w); (2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property; (3) a transaction in which an agency of a State is the creditor; . . . .

15 U.S.C. §1635(i) provides RESCISSION RIGHTS IN FORECLOSURE.--(2) TOLERANCE FOR DISCLOSURES.--Notwithstanding section 106(f), and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this title.