

**Forster Realty Advisors
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April 29, 2008

John Higley, Esq.
Gunther Mellon LLP

Stephen S. Alvarez, Esq.
Crum & Fender, LLP

Re: Ormond State Bank v. GrandView Land Title Insurance Company et al.

Gentlemen:

Enclosed is the report summarizing my review of the escrow practices and procedures of Acme Title Company in the above-captioned case. This is a very narrow aspect of the case, and it specifically excludes activities by the seller and other participants in the fraud.

The report offers my opinion regarding the complicity of the closing agent, Fern Lloyd, and her colleagues at Acme Title Company, in the events described in the litigation. I have not attempted to assign motives to Ms. Lloyd, but instead focused on the absence of (or non-adherence to) fraud-detection & prevention procedures in the escrow workflow.

Very truly yours,

Eric Forster

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SCOPE:

The Plaintiff, Ormond State Bank (hereafter referred to as 'OSB') has asked me to review and comment on the escrow procedures in place, at the time condominium units in View Flats (located at 204 Main Street, Metropolis) were sold with financing provided by OSB. The sales closed between January – March 2006, and the closing agent was Acme Title Company (ATC), a subsidiary of GrandView Land Title Insurance Company.

Subsequently, almost all loans financed by OSB defaulted and were foreclosed upon. This report focuses on activities by ATC personnel and their complicity in fraudulent activities undertaken by the promoters of the View Flats project.

Expert's Qualifications

I have 32 years of experience in the real estate industry as a realtor, developer, condominium converter, mortgage originator and underwriter. As a real estate broker, I am licensed by the State of California to be the closing agent on my own transactions.

Over the years I have participated in thousands of escrow transactions either as a principal, realtor or lender.

I have been writing real estate columns for the past 19 years, and am the author of "The Mortgage Applicant's Bible." I hold advanced degrees in Business Administration and Ethics.

Methodology

OSB financed 171 loans secured by condominium units in the View Flats project, which closed in 3 waves during the period in question. I chose to audit 2 sales in each wave, for a total of six sales. To assure transparency of the process, the 6 sales were chosen using a random number generator (AbleBits/Excel). The sales thus selected were units 306, 504, 601, 901, 902 and 907. All aspects of the sales were reviewed, but of particular interest were the escrow workflow, the 'evolution' and other changes to the closing statements (Form HUD-1), as well as unauthorized and post-closing disbursements. Following the review of the 6 sales I traveled to the offices of Crum & Fender LLP in Albuquerque to review the remaining sales files.

In addition, I have reviewed depositions given by Fern Lloyd, vice president of Acme Title Company and the escrow officer/closing agent of the transactions in question; Kristen Soldat, an assistant to Fern Lloyd who was tasked with "front-end" work - opening new orders; Flo Tendy and Jennifer Stookey, both escrow assistants to Ms. Lloyd; Morton Selwin, who at the time was the president of Acme Title Company; Charles Hernandez, the mortgage broker who arranged the financing for the transactions in question through Ormond State Bank, and Joseph Edwards, who recruited some of the View Flats condominium buyers.

Background

In the context of a real estate sales transaction, the Closing is held sacrosanct and inviolable. The Closing represents an exchange: The lender provides the funds and receives the Note and Deed of Trust in return; the seller deeds the property over to the buyer and receives the proceeds of the sale. The escrow officer orchestrates the closing as the agent for the parties in the transaction. A complete overview of the Escrow Officer's checklist for efficient processing of the sales transaction is provided in Appendix 'C'.

The escrow agent must obtain the lender's approval of the Estimated Closing Statement (known also as "Estimated HUD-1"). Acme Financial Group's Code of Business Conduct and Ethics (Exhibit 159) warns escrow officers that it is a violation of Company policy to

"fail to disclose on the HUD-1 settlement statement payments and services that are charged" (Page 5); and "... fail to accurately complete the HUD-1 settlement statement, with a record of receipts and disbursements made at closing, consistent with those instructions and facts known to us at the time. You should refuse any request, regardless of who is making such request, to make changes to information contained on a HUD-1 that are not factual representations of the actual transaction. Contact your manager immediately if you are asked to make false or inaccurate representations on a HUD-1 because such actions could cost you your job and result in criminal prosecution; or:

"knowingly present a false claim, statement or record, or fail to disclose all closing items or closing actions inconsistent with the settlement statement or facts" (Page 6).

The same points are further spelled out and discussed in Acme's New Employee Training Guide (Exhibit 126). Fern Lloyd, who claimed that she was not aware of the existence of

the Code of Business Conduct and Ethics (Lloyd, P. 44) violated that code in each and every escrow transaction I reviewed.

Facts of Concern

The depositions and the ATC files for the View Flats project showed numerous areas of concern. They included:

1. **Escrows were opened without a signed purchase contract and an earnest money deposit. (Lloyd p. 110; Soldat pp. 29, 225).** This undermines the basic premise of a sales escrow: A valid contract between a willing seller and a buyer who is ready to buy.
2. **Copies of the escrow and title papers were not mailed to the buyers. (Soldat p. 229).** Thus, the terms of the transaction were not disclosed to the buyers.
3. **Sales contracts were not executed until the closing. (Lloyd p. 110; Soldat p. 170).** This should have served as a prominent red flag: It seemed that in the eyes of the seller and the buyers, the sales contract was an afterthought.
4. **The Mortgage Broker on this transaction was recognized by Fern Lloyd and her staff as the lender, although they knew that he was table-funding the loans and that the actual lender was OSB.** They were thus complicit with him in circumventing the normal firewalls that were put in place to protect the lender from falling victim to a scam.
5. **No understanding of the closing agent's fiduciary duties. (Lloyd pp. 54, 59, 65; Stookey p. 130; Soldat p. 249).** An escrow officer or an assistant cannot perform

his/her duties not understanding the fiduciary duties owed to the principals and to the lender, or the neutrality expected of them.

6. **One unit (504) had 4 different buyers in a matter of 3 days (Exhibit 123, Soldat p. 180).** The ability of the seller (or the entities used to recruit buyers) to replace buyers with such obvious ease should have been treated as another red flag, as they never happen in above-board escrow transactions.
7. **Sales proceeds were wired to the same bank (Tudor State Bank) that issued the buyers' down payment checks. (Soldat p. 41).** This should have alerted the escrow officer that a scam was underway.
8. **Wide-spread practice of cutting and pasting the HUD-1 signature block after the buyer had signed it. (Lloyd pp. 192, 170; Stookey p. 182, 190; Tandy p. 78).** The closing statement is sacrosanct. Even if the Lender's permission was granted and a change was required, the buyer should have been made to re-sign the modified HUD-1, and a copy of it given to him. It is inconsistent with the law to tamper with the signatures, as the legend above the HUD-1 signature block makes perfectly clear.
9. **The Closer did not question unusually high disbursements for "performance bonus", "services rendered" and "consulting fee" (hereafter referred to as "Unauthorized fees").** Unauthorized high fees change the dynamic of a transaction as well as its risk assessment, and unless adequately explained and documented are indicative of fraud.
10. **The Closer allowed changes to unauthorized fees after the closing, and did not get the parties to re-sign the HUD-1 and obtain a copy of the changed form.**

(Lloyd p. 263; Stookey pp. 143, 152, 182). It seems that in many cases it took the perpetrators of the scam days, and even weeks, to agree on how to distribute the unauthorized fees.

11. **The Closer allowed non-parties to the transaction to review closing statements and dictate changes. (Soldat p. 97).** Only the parties to the transaction can authorize changes, and such changes are subject to the lender's approval.
12. **The Closer closed & requested that the lender fund transactions even when the buyer's down payment was not in, and delayed disbursements until the down payment was brought to escrow. (Soldat pp. 190, 259).** Since the escrow officer had to certify to the lender, prior to funding, that the buyer's funds were in, it necessitated defrauding the lender (OSB).
13. **Payees on the closing statements were not always the ones shown in the disbursement journal. (Stookey pp. 230-240).** Fern Lloyd was authorized to disburse funds only to payees whose names were on the final HUD-1.
14. **"Very unusual transactions" (Stookey p. 16; Soldat pp. 29-41; Lloyd p. 110)** It is these transactions that good escrow closers are very careful with, since the red flags are all over the place.
15. **File review of six of the sales (see Appendix 'A') added these areas of concern:**
 - 15.1 The Closer did not follow all of the lender's closing instructions. This resulted in post-closing changes to disbursements, unknown to OSB.

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15.2 There were unidentified payees on the closing statements. Again, this was part of a pattern of carelessness and inattentiveness to details that helped the perpetrators of the fraud.

COMPENSATION

For this report I have been paid at my standard rate of \$275.00 per hour.

*****END OF SECTION *****

OPINION

Established escrow procedures are among the lender's last lines of defense against fraudulent loan transactions, and OSB relied on ATC's escrow department to follow established guidelines and procedures – as well as observing the Lender's Closing Instructions - to protect its interests. The opposite can be said of the perpetrators of the View Flats scam, who required the cooperation of an inattentive closer for their plan to succeed. It is my opinion that it was such inattention to details and the failure to adhere and follow anti-fraud guidelines that made Fern Lloyd and her crew complicit in this fraud. Considering Ms. Lloyd's long tenure as a closing agent and as Vice President of Acme Title Company, it is inconceivable that she did not know, or was unaware of, that Ormond State Bank was being victimized with her and her assistants' help.

Respectfully,

Eric Forster, Principal

Forster Realty Advisors
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Los Angeles, CA. 90064

APPENDIX A: Review of Six Sales

**FILE REVIEW - PURCHASE
Borrower: Paris #504**

Review Completed On: **04/07/08**

Print Date: **04/29/08 10:36 AM**

| | FIRST MORTGAGE | SECOND MORTGAGE | PROPERTY | |
|-------------------------|---------------------|-----------------|--------------------------|----------------------|
| Lender: | OSB | OSB | Appraised Value: | 619,000.00 |
| Loan No.: | 3512210 | 3512283 | Sales Price: | 619,000.00 |
| Loan Amount: | 417,000.00 | 140,100.00 | LTV: | 92.37% |
| Loan Type: | 30/30 Fixed | 30/15 | CLTV: | 90.00% |
| Interest Rate: | 6.875% | 9.50% | | |
| Payment: | 2,739.40 | 1,178.04 | | |
| | | | | |
| Closing Date: | 03/30/06 | 03/30/06 | Occupancy: | 2 nd Home |
| Escrow No.: | 992-FL | | Mortgage Broker: | Best Mortgage |
| Escrow: | Acme | | Prop Address: | 204 Main 504 |
| Title Order No.: | 992 | | Prop City: | Metropolis |
| Title: | GrandView Land | | Prop State, Zip: | AN 92104 |
| Points to broker | 4,170 (b) 4,170 (s) | | | |
| YSP to broker | 11,755.11 | | Performance Bonus | 103,585.26 |
| Admin to broker | 4,170.00 | | Services rendered | 42,158.25 |
| | | | Consulting fee | 5,571.00 |
| | | | R.E. Commissions | 27,855.00 |

| Red-Flag Activity | Date | Comments |
|-------------------------------------------|----------------------|---------------------------------------------------------------------------------------------|
| Order opened | 01/09/06 | Buyer's earnest money deposit of \$1,000 02/24/06 |
| Shuffling Borrowers | yes | Felton Crane Jr. (Notice similarity to Pelton Crane Jr.); also Elmer Duff and finally Paris |
| Followed all lender's instructions | No | |
| Funds to/from Tudor State Bank | 02/23/06 03/29/06 | Elmer Duff's earnest money deposit of \$1,000 Paris's DP: \$72,383.40 |
| Unidentified Payees in HUD-1 | Yes | |
| HUD-1 changes post-closing | 04/06/06 | Changes to unauthorized disbursements |
| Cut & paste signatures – HUD-1 | 03/30/06 | |
| Last escrow disbursement | 04/21/06 | Account balance \$6,000 |

FILE REVIEW - PURCHASE

Borrower: Arrow #306

Review Completed On: 04/04/08

Print Date: 04/29/08 10:36 AM

| | FIRST MORTGAGE | SECOND MORTGAGE | PROPERTY | |
|-------------------------|-----------------------|------------------------|--------------------------|---------------|
| Lender: | <u>OSB</u> | | Appraised Value: | 424,000.00 |
| Loan No.: | 3593334 | 3593382 | Sales Price: | 424,000.00 |
| Loan Amount: | 339,200.00 | 42,400.00 | LTV: | 80 |
| Loan Type: | 30/30 Fixed | 30/15 | CLTV: | 90 |
| Interest Rate: | 6.75% | 8.125% | | |
| Payment: | 2,200.04 | 314.82 | | |
| | | | | |
| Closing Date: | 01/25/06 | | Occupancy: | O/O |
| Escrow No.: | 980-FL | | Mortgage Broker: | Best Mortgage |
| Escrow: | Acme | | Ind. contractor? | Yes |
| Title Order No.: | 980 | | Prop Address: | 204 Main 306 |
| Title: | GrandView Land | | Prop City: | Metropolis |
| Points to broker | 3,392 (b) + 5,088 (s) | | Prop State, Zip: | AN 92104 |
| YSP to broker | 8,480.00 | 424.00 | Performance Bonus | 21,430.98 |
| Admin to broker | | | Services rendered | 43,783.30 |
| | | | Consulting fee | 3,816.00 |
| | | | R.E. Commissions | 9,540.00 |

| Red-Flag Activity | Date | Comments |
|-------------------------------------------|-------------|------------------------------------------------------------|
| Order opened | 01/09/06 | No contract, no deposit. Pelton Crane buying same unit. |
| Shuffling Borrowers | 01/23/06 | Another HUD-1 in file shows Pelton Crane Jr. as the buyer. |
| Followed all lender's instructions | No | |
| Unscheduled closing | 01/25/06 | |
| Funds to/from Tudor State Bank | 01/27/06 | Borrower's DP: \$49,566.47 |
| Unidentified Payees in HUD-1 | Yes | |
| HUD-1 changes post-closing | 01/25/06 | Yes – unauthorized disbursements |
| Closed w/o Buyer's funds | 01/25/06 | Borrower's funds brought in on 01/27/06 |
| Cut & paste signatures – HUD-1 | 01/25/06 | |
| Last escrow disbursement | 02/14/06 | Three weeks to disburse funds post-closing |

FILE REVIEW - PURCHASE

Borrower: GROVER #902

Review Completed On: **04/02/08**

Print Date: **04/29/08 10:36 AM**

| | FIRST MORTGAGE | SECOND MORTGAGE | PROPERTY | |
|-------------------------|---------------------|-----------------|--------------------------|----------------------|
| Lender: | OSB | | Appraised Value: | 544,000.00 |
| Loan No.: | 9297574 | | Sales Price: | 540,000.00 |
| Loan Amount: | 417,000.00 | 69,000.00 | LTV: | 77.22 |
| Loan Type: | 30YF | 30/15 | CLTV: | 90.00 |
| Interest Rate: | 6.75 | 8.875 | | |
| Payment: | 2,704.66 | 548.99 | | |
| | | | | |
| Closing Date: | 03/22/06 | | Occupancy: | 2 nd home |
| Escrow No.: | 945-FL | | Mortgage Broker: | Best Mortgage |
| Escrow: | Acme | | Prop Address: | 204 Main 902 |
| Title Order No.: | 945 | | Prop City: | Metropolis |
| Title: | GrandView Land | | Prop State, Zip: | AN 92104 |
| Points to broker | 4,170 (b) 4,170 (s) | | | |
| YSP to broker | 11,115.00 | | Performance Bonus | 92,524.48 |
| Admin to broker | 4,170.00 | | Services rendered | 40,500.00 |
| | | | Consulting fee | 4,860.00 |
| | | | R.E. Commissions | 24,300.00 |

| Red-Flag Activity | Date | Comments |
|------------------------------------------------------------------------------|----------------------|-----------------------------------------------------------------|
| <i>Order opened</i> | 12/30/05 | Opened with a \$1,000 earnest money deposit |
| Shuffling Borrowers | yes | Clint Draper is shown as the buyer on 01/20/06 |
| Followed all lender's instructions Funds to/from Tudor State Bank | No 03/22/06 | Borrower's funds: WSB cashier's check. \$65,613.46 |
| Unidentified Payees in HUD-1 HUD-1 changes post-closing | Yes 03/22/06 | Yes – unauthorized disbursements |
| Cut & paste signatures – HUD-1 Last escrow disbursement | 03/22/06 04/28/06 | Yes But most disbursed by 03/29/06. Acct balance \$1,000. |

**FILE REVIEW - PURCHASE
Borrower: Slaughter #901**

Review Completed On: 04/17/08

Print Date: 04/29/08 10:36 AM

| | FIRST MORTGAGE | SECOND MORTGAGE | PROPERTY | |
|-------------------------|----------------------------|-----------------|--------------------------|---------------|
| Lender: | OSB | | Appraised Value: | |
| Loan No.: | 9224418 | | Sales Price: | 190,000.00 |
| Loan Amount: | 190,000.00 | | LTV: | 100% |
| Loan Type: | FLEX 30/30 | | CLTV: | 100% |
| Interest Rate: | 8.00% | | | |
| Payment: | 1,394.16 | | | |
| Closing Date: | 03/13/06 | | Occupancy: | O/O |
| Escrow No.: | 974-FL | | Mortgage Broker: | Best Mortgage |
| Escrow: | Acme | | Prop Address: | 204 Main 901 |
| Title Order No.: | 974 | | Prop City: | Metropolis |
| Title: | GrandView Land | | Prop State, Zip: | AN 92104 |
| Points to broker | (B)1,900.00 (S)1,900.00 | | | |
| YSP to broker | 4,637.90 | | Performance Bonus | 15,860.54 |
| Admin to broker | | | Services rendered | 30,020.74 |
| | | | Consulting fee | 1,711.58 |
| | | | R.E. Commissions | 8,557.92 |

| Red-flag Activity | Date | Comments |
|------------------------------------|----------|----------------------------------------|
| Order opened | 01/08/06 | No contract or earnest money deposit |
| Followed all lender's instructions | No | |
| Unscheduled closing | 03/13/06 | |
| Funds to/from Tudor State Bank | 03/13/06 | Borrower's funds: \$6,285.26c |
| Unidentified Payees in HUD-1 | Yes | |
| HUD-1 changes post-closing | 03/13/06 | Changes to unauthorized disbursements |
| Closed w/o Buyer's funds | 03/13/06 | Buyer's funds brought in on 03/14/06 |
| Cut & paste signatures – HUD-1 | 03/13/06 | Yes |
| Last escrow disbursement | 03/22/06 | Remaining funds in account: \$1,792.79 |

FILE REVIEW - PURCHASE

Borrower: Bagel #907

Review Completed On: 4/14/08

Print Date: 04/29/08 10:36 AM

| | FIRST MORTGAGE | SECOND MORTGAGE | PROPERTY | |
|-------------------------|-----------------------|------------------------|--------------------------|---------------|
| Lender: | <u>OSB</u> | | Appraised Value: | 530,000.00 |
| Loan No.: | 9260941 | 9260968 | Sales Price: | 525,300.00 |
| Loan Amount: | 392,710.00 | 105,060.00 | LTV: | 70% |
| Loan Type: | 3/27 | 30/15 | CLTV: | 90% |
| Interest Rate: | 7.75% | 12.375% | | |
| Payment: | 2,634.32 | | | |
| Closing Date: | 03/16/06 | | Occupancy | O/O |
| Escrow No.: | 970-FL | | Mortgage Broker: | Best Mortgage |
| Escrow: | Acme | | Prop Address: | 204 Main 907 |
| Title Order No.: | 970 | | Prop City: | Metropolis |
| Title: | GrandView Land | | Prop State, Zip: | AN 92104 |
| Points to broker | 3,927 (b) 3,927 (s) | | | |
| YSP to broker | 7,254.92 | | Performance Bonus | 86,705.10 |
| Admin to broker | | | Services rendered | 40,031.10 |
| | | | Consulting fee | |
| | | | R.E. Commissions | 23,639.00 |

| Red-Flag Activity | Date | Comments |
|-------------------------------------------|-------------|---------------------------------------|
| Order opened | 01/08/06 | No contract nor earnest money deposit |
| Shuffling Borrowers | Yes | Prior to Bagel: Ward and Robins |
| Unidentified Payees in HUD-1 | Yes | |
| Followed lender's instructions | No. | |
| Funds to/from Tudor State Bank | 03/16/06 | Borrower's DP: \$60,250.90 |
| HUD-1 changes post-closing | Yes | Changes to unauthorized disbursements |
| Cut & paste signatures – HUD-1 | Yes | |
| Last escrow disbursement | 04/13/06 | Account balance \$13,530.37 |

FILE REVIEW - PURCHASE

Borrower: Maddow #601

Review Completed On: 04/11/08

Print Date: 04/29/08 10:36 AM

| | FIRST MORTGAGE | SECOND MORTGAGE | PROPERTY | |
|-------------------------|------------------------|-----------------|--------------------------|---------------|
| Lender: | OSB | | Appraised Value: | 185,500.00 |
| Loan No.: | 6293257 | | Sales Price: | 185,200.00 |
| Loan Amount: | 166,680.00 | | LTV: | 90% |
| Loan Type: | 3/27 | | CLTV: | 90% |
| Interest Rate: | 8.25% | | | |
| Payment: | 1,252.21 | | | |
| Closing Date: | 01/30/06 | | Occupancy: | O/O |
| Escrow No.: | 994-FL | | Mortgage Broker: | Best Mortgage |
| Escrow: | Acme | | Prop Address: | 204 Main 601 |
| Title Order No.: | 994 | | Prop City: | Metropolis |
| Title: | GrandView Land | | Prop State, Zip: | AN 92104 |
| Points to broker | 1.666.80 (b) 2,500 (s) | | | |
| YSP to broker | 2,648.55 | | Performance Bonus | 9,575.28 |
| Admin to broker | 0.00 | | Services rendered | 11,082.00 |
| | | | Consulting fee | 1,910.00 |
| | | | R.E. Commissions | 4,192.00 |

| Red-Flag Activity | Date | Comments |
|------------------------------------------------------------------------------|-----------------|---------------------------------------|
| Order opened | 01/10/06 | No contract nor earnest money deposit |
| Unidentified Payees in HUD-1 | Yes | |
| Funds to/from Tudor State Bank All lender's instructions followed | 01/31/06 No. | Borrower's DP: \$23,540.40 |
| Cut & paste signatures – HUD-1 | Yes | |
| Last escrow disbursement | 02/23/06 | Account balance 0.00 |

APPENDIX B: Curriculum Vitae

ERIC FORSTER

11400 W. Olympic Blvd., Suite 200 Los Angeles, CA 90064 310-474-6265
Eric.forster@american.LA
Website: www.LoanExpertWitness.com

EXPERIENCE

1997-PRESENT

Forster Realty Advisors (Principal) Los Angeles, CA

Litigation consulting concerning:
Mortgages and real estate finance.
Real Estate industry standards and practices.
Lenders/Borrowers standards and practices.
Plaintiff and Defense strategies concerning breach of contract and/or fraud.
Mortgage fraud litigation.
Credit underwriting (commercial & residential loans)
Brokers' malpractice issues; conflicts of interest
Commission compensation issues
Fannie Mae/Freddie Mac credit score & automated underwriting issues.

1993-present

Eric Forster Inc. (Principal) Los Angeles, CA.

Great Western Bank (Loan Officer) 1990-1993

Home Savings of America (Loan Officer) 1986-1990

Bankers Group (Partner) 1983-1986

Production, processing and underwriting mortgage loans for residential, commercial and industrial properties. Ensuring compliance with investor guidelines (FNMA, FHLMC, portfolio). Instituting Quality Assurance procedures and full compliance with HUD and DRE regulations. Training and supervising loan officers.

1981-1982

J.D. Kelleher Realty (Branch Manager) Pacific Beach, CA.

Managing and supervising realty sales staff. Training agents in standards, procedures and compliance with regulations.

EDUCATION

D. Med *GTF (UCLA residency): Doctorate in Mediation Ethics*
MBA *Pepperdine University: Finance.*
T.Dipl *Albert List College/Columbia University: History*

HONORS (For excellence in community mediation)

California State Senate (2008)
Los Angeles City Attorney (2008)

MEMBER

American Bar Association (Litigation Section)
American Real Estate and Urban Economic Association
Southern California Mortgage Bankers Association
California Association of Realtors
Beverly Hills/Los Angeles Association of Realtors
Financial Industry Regulatory Authority Board of Arbitrators
Southern California Mediation Association

CA DRE Broker License No. 827388

Pro Bono

Los Angeles City Attorney Dispute Resolution Program (Mediator)
First AME Church/UCLA legal clinic

MEDIA

Interviews on CNN, FOX, AP and various newspapers.

Sample Cases handled:

Standards and Practices (for Defendant): A large Malibu estate is used by the lessee as a celebrity rehab facility. Lessee claimed that Owner owed him a Warranty of Habitability. The judge agreed with us that such warranty did not exist due to the commercial use of the residence.

Standards of Care (for Plaintiff): Plaintiff-Borrower sued both lender and mortgage broker for approving a loan for which Plaintiff was clearly not qualified and which ended in default.

Fraud (for Plaintiff): Plaintiff lent money to a friend for a down payment on a home purchase, to be repaid in 3 years. The lender required it to be a gift and not a loan, and Plaintiff agreed to sign a bank form to that effect. Defendant relied on that form in refusing to pay back the loan.

Fraud (for Defendant): Lenders evaluation of income shown on loan application in stated income loans, where income documentation is not required. Is the income shown on the application the projected income for the coming year, or must it reflect last years income?

Standards of care (for Plaintiff): Plaintiff purchased a home using the services of a realtor, who referred Plaintiff to a mortgage broker to arrange for a mortgage. After the closing, Plaintiff discovered that the terms of the loan had been misrepresented, and that mortgage broker and realtor failed to disclose that mortgage broker was an employee of the realtor.

Standards of care/Fraud (for Defendant): Defendant (mortgage broker) used the same appraiser for many of his loans. Plaintiff (lender) claimed that it was the Defendants duty to personally inspect the comps used by the appraiser in arriving at his valuations, and confirm their validity.

Standards of care (for Plaintiff): Plaintiff purchased a home with a 30-year fixed rate mortgage. Five years later, Defendant (lender) notified Plaintiff that her loan would revert to an adjustable loan since the fixed period was for five years only. Lender could not document the reasons for using the wrong trust deed forms.

Standards of care (for Plaintiff): Defendant (owner/agent) accepted Plaintiff's offer to purchase Defendant's home, as part of a multiple-offer situation. He then changed his mind, and signed a second acceptance on another offer. Plaintiff sued the seller and the national realty firm for which he worked.

Publications by Eric Forster

Editor:

Mortgage Litigation and Forensics (www.mortgageforensics.wordpress.com)

Mortgage issues in courts of law - fraudulent application, loan origination and underwriting.

Books

The Mortgage Applicants Bible (2000 edition. ISBN 0-595-02041-7)

Articles

Israel Shelanu/Shalom L.A. *Real Estate advice column* 1988-2007. Approx. 650 articles.

For **Real Estate Today** (National Association of Realtors publication):

Are ARM Borrowers Overpaying? Real Estate Today 9/92

Chart a Course to Smart Real Estate Investing Real Estate Today 9/93

For **AOL O'Reilly Publishing** Personal Finance Center Buying a Home series:

Buying a Home: *Buy v. Rent Considerations* 5/95

Buying a Home: *Meet Your Realtor* 5/95

Buying a Home: *Financing Available* 6/95

Buying a Home: *Who Are The Lenders?* 7/95

Buying a Home: *Qualifying for the Loan* 7/95

Buying a Home: *Your Credit* 8/95

Buying a Home: *Appraisal Considerations* 9/95

Shopping for Rates in a Fixed Market 1/96

For **AllExperts.com** (A New York Times Company):

Real Estate / Finance Q&A Articles 2004-Present. Approx. 200 articles.

Continuing Education Courses and Seminars

| <u>DRE No.</u> | <u>Title</u> |
|----------------|----------------------------------------------------------------------------------|
| 1204-90 | Escrows |
| 240-78 | Legal Aspects of Real Estate |
| 1161-90 | Real Estate Finance |
| 237-78 | Real Estate Practices |
| 234-78 | Real Estate Appraisal |
| 323-1016 | Real Estate Agency Rules |
| 323-1014 | Contracts, Disclosures & Environmental Issues |
| 323-1012 | Ethics and Professional Conduct of R.E. Licensees |
| 323-1013 | Fair Housing |
| 323-1015 | Trust Funds |
| 743-85 | Real Estate Principles |
| 1281-08 | Ethics and Professional Conduct of R.E. Licensees II |
| 384-42 | Tax Planning for Real Estate |
| 591-05 | Consumer Protection in Real Estate Transactions |
| 103-118 | Proving Fraud Cases |
| 323-1041 | Disclosure Obligations in Real Estate Transactions |
| 323-1034 | Red Flags |
| 323-1035 | Survey of Real Estate Regulations |
| 323-1042 | The Listing Agreement and its Application to the Seller of Real Estate Property. |

APPENDIX C: Escrow Workflow and Procedures

While sales transactions can range from the simple to the highly complex, the task of the escrow officer is somewhat mechanical and follows a check list which is simple to follow, as shown below:

When an escrow file is opened, the matter proceeds on three separate levels.

Level 1 – The purchase contract and its contingencies

Review the contract and determine what must be done to fulfill its terms

Receive deposit of earnest money

Confirm financing contingency has been met

Confirm that house inspection contingency has been met

Confirm that termite inspection contingency has been met

Calculate the tax prorations

Confirm HOA assessments

Confirm title vesting for buyers

Order proper deed for sellers

Review deed for proper execution and vesting

Holds deed in trust for delivery to buyer

Holds funds in trust for buyer to deliver to seller

Determines how the funds will be disbursed in accordance with the contract and the various instructions

Disburses funds to current creditors

Delivers deed to buyer by recording it

Disburses funds to sellers in accordance with instructions

Level 2 - Title exam and clearing

Order title exam

Confirm ownership by sellers

Determine any title defects

Confirm real estate taxes and assessments

Issue or receive title insurance commitment

Determine current mortgages

Order payoffs of current mortgages

Determine validity of possible liens on property

Obtain lien payoffs if valid

Obtain evidence to clear title defects

Order and review survey

Confirm delivery and recording of deed, mortgage and other documents

Issuance title insurance policies to owner and lender

Level 3 - Loan document processing and clearing conditions

Provides lender with closing protection letter

Receives and reviews lender closing instructions

Issues and forwards title insurance commitment to lender

Obtains and reviews survey

Obtains credit information and clearing items for lender

Receives and or prepares lenders documents according to lender requirements

Determines that RESPA and TIL requirements are met

Obtains proper execution of lender documents

Obtains verification of identity of borrowers for lender

Obtains evidence of insurance as required by the lender

Holds loan funds in trust until delivery to parties

Records mortgage so lender has first and best lien

Issues title insurance policy to lender

Returns lender's documents

Closing the transactions:

1. Review instructions

- Seller's instructions

- Buyer's instructions

- Lender's instructions

2. Determine that all conditions have been met - As a fiduciary on behalf of each party, escrow agent must exercise extraordinary care to make sure that conditions have met

3. Record documents

4. Disburse funds

The Escrow Officer Duties

Serve as the communication link to all parties in the transaction.

Prepare escrow instructions.

Request a preliminary title search to determine the basis upon which a title insurance policy may be issued.

Request a pay-off statement relating to existing financing.

Comply with lender's requirements, specified in escrow agreement.

Receive purchase funds from the buyer.

Prepare or secure the deed or other documents related to escrow.

Prorate taxes, interest, insurance and rents according to instructions.

Secure releases of all contingencies or other conditions as imposed on any particular escrow.

Record deeds and any other documents as instructed.

Request issuance of the title insurance policy.

Close escrow when all of the instructions of buyer and seller have been carried out.

Disburse funds as authorized by instructions, including charges for title insurance, recording fees, real estate commissions and loan payoffs.

Prepare final statements for the parties accounting for the disposition of all funds deposited in escrow.

While the three processing levels described above occur almost simultaneously, the steps delineated within each level are sequential.

****** END OF REPORT ******