

JnR Associates Forensic Loan Document Audit Manual

Introduction:

This Manual is designed to give you a basic understanding of a Forensic Loan Document Audit, and the basics of uncovering violations within a home owners mortgage loan documents.

What is a Forensic Loan Document Audit?

A Forensic Loan Document Audit is an audit performed on a set of mortgage loan documentations aimed at uncovering violations and errors made by the mortgage lenders during the loan process, and on the final loan documents. The Loan Document Audit is an extensive comprehensive review and investigation into the homeowners/borrowers existing loan.

The main types of violations are as follows.

1. Good Faith Estimate Guideline Violations
2. Home Owner Equity Protection Act (HOEPA) Violations
3. Truth In Lending Act (TILA) Violations
4. Real Estate Settlement procedures Act (RESPA) Violations
5. Misleading Disclosures
6. No Net Benefit to Borrower
7. Borrower approved for loan they are not able to repay
8. Overstated Home Values
9. Overstated Income In The Loan Application
- 10.Excessive ARM Adjustments
- 11.Excessive Points & Fees Section 32 Violations

If there is one of these types of violations in the loan audit, there is a very high chance a loan modification can go through and even result in the repayment of interest back to the borrower/homeowner. Below is a more detailed explanation of specific violations.

1. Truth-In-Lending Act (TILA) Violations

Inaccurate reporting of APR and finance charge calculations on borrower disclosures. Calculation errors which occur as a direct result of failing to include one or more prepaid finance charges in the calculations, incorrect disclosed funding dates, or last-minute changes made to loan by the settlement agent at the closing table. If it understated, the lender is in violation of the federal Truth-In-Lending Act as well as many state laws prohibiting such actions. Lender required to reimburse borrower for the difference, and may be subject to statutory damages, administrative sanctions, loan buy-backs, and lawsuits. In addition, the rescission period may reopen, creating additional risk for the lender.

2. Anti-Predatory Lending Violations

These are relating to Consumer Protection laws. Violations usually occur because of the misunderstanding of how they work. Examples of violations include failing to include fees such as yield spread premiums in the calculations or using an incorrect loan amount value to perform the calculation. Penalties Vary by each law. The usual costs include borrower reimbursements, statutory and punitive damages, attorneys' fees, administrative fines and penalties, loan buy-backs and reformation, and class-action lawsuits.

3. State Law Violations

Examples include illegal prepayment penalty clauses, rates that fall into Predatory Lending, or fees that are not allowed to be charged. Some penalties include actual damages and costs, attorney's fees, administrative fines and penalties, loan buy-backs, and class-action lawsuits.

4. Reverse Mortgage Violations

These violations include violations relating to reverse mortgage obtained. Some violations include failing to disclose the APR, and providing incomplete or improper disclosures.

5. Real Estate Settlement Procedures Act (RESPA) Violations

RESPA Places limits on a lender's and broker's ability to charge or pay fees that are hidden from the borrower. Violations include, accepting kickbacks or referral fees, up charging for services provided by 3rd parties, and charging for services not performed.

Penalties for the above mentioned violations include actual damages, administrative fines and class-action lawsuits.

In addition, other violations include lending without providing borrowers a reasonable, tangible net benefit, state-specific disclosure errors, servicing violations, and Fair Lending violations.

CONSTRUCTIVE FRAUD

Is and material facts relating to the loan, which include terms of the loan, prepayment penalty, or any information which a borrower must know before loan is accepted. Were these facts properly disclosed to the borrower or were they mentioned at all?

FRAUD AND NEGLIGENT MISREPRESENTATION

This is basically any statements, comments, and representations written or oral by the broker, loan officer, notary which in any way contradicted the terms of the loan documents.

NEGLIGENT MISREPRESENTATION

If a broker/loan officers which worked on the loan makes errors which result in misrepresentation, this is classified as negligent misrepresentation.

BREACH OF CONTRACT

Are any terms in the contract of the note the lender failed to follow, like the way the interest is calculated and the penalties disclosed on the Good Faith Estimate and the Truth and Lending..