

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

J. Martin Harvey, Special Referee

Case No. 2015-CP-06-00070  
Appellate Case No. 2016-001214

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SC Court of Appeals

Quicken Loans, Inc., .....

Appellant,

v.

Wayne D. Wilson; Calvin O. Wilson, III; Any other Heirs-at-law or Devises of Ezekiel (Ellen) T. Wilson, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interests in the real estate described herein; also any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe; Park Sterling Bank.....

Respondents.

RECORD ON APPEAL

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*Attorneys for Respondents*



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Certificate of Counsel

STATE OF SOUTH CAROLINA )  
COUNTY OF BARNWELL )  
QUICKEN LOANS, INC., )  
Plaintiff, )  
vs. )  
EZEKIEL T. WILSON )  
a/k/a EZEKIEL (ELLEN) T. WILSON, )  
et al., )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Civil Action 2015-CP-06

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

FILED FOR RECORD  
2016 MAY 13 AM 10:13  
RHODES, M. GLENN  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

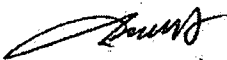
This is an action to foreclose a mortgage of real estate. The parties have filed competing motions for summary judgment. Defendant moves for partial summary judgment for violation of South Carolina's Attorney Preference Statute found at SC Code Ann. §37-10-102. Defendant contends that the manner by which Quicken utilized the attorney preference form in the subject transaction is in and of itself unconscionable under SC Code Ann. §37-10-105(c). In its competing motion for summary judgment, Plaintiff denies that Defendant is entitled to relief under the cited statutes. Plaintiff also asserts that, even if the statutes were applicable, no attorney preference violation occurred nor was Quicken's use of the form unconscionable. I deny Plaintiff's motion and grant Defendant's motion.

Plaintiff presented and argued two other motions. My findings on both are discussed below. Plaintiff's motion to transfer to the jury roster is denied. Plaintiff's motion to amend complaint is granted in part and denied in part.

#### SUMMARY JUDGMENT CROSS-MOTIONS

##### **BACKGROUND**

On December 14, 2011, Defendant Mrs. Ezekiel Wilson (hereafter referred to as "Wilson") entered into a mortgage transaction with Plaintiff Quicken Loans Inc. (hereafter referred to



as "Quicken") secured by her residence. On November 7, 2011, Wilson signed a form entitled "attorney/insurance preference check list." The form appears to be identical to the attorney preference form promulgated by the Department of Consumer Affairs, except that it is pre-populated with responses. For reference, a copy of the form is attached hereto as Exhibit A.

Under Part 1, the form correctly states: "I (We) have been informed by the lender that I (We) have a right to select legal counsel to represent me (us) in all matters related to the closing of the loan." However, under Part 1(a), the form was pre-populated to read: "I/ We will not use the services of legal counsel." Under Part 1 (b) - which allows the consumer to select an attorney from a list of acceptable attorneys if they have no preference as to a particular attorney - the form is pre-populated to read: "Not applicable". In contrast, under Part 2 of the form - advising the borrower of their right to select their insurance agent - the Quicken representative taking the loan application was able to populate the form with the Wilson's selected insurance company, State Farm.

Defendant offered the testimony of Jeffery Campbell, Jennifer Randall and Brian Hughes, who were witnesses in *Boone v. Quicken Loans, Appellate Case No. 2013-002288*. Their testimony consisted of 30(b)(6) deposition testimony which was read into the record as well as live testimony.<sup>1</sup>

According to Mr. Campbell, at the time of application Quicken's operating system prompts Quicken's banker to ask the borrower the following question: "Will the borrower select legal counsel to represent them in this transaction?" If the borrower responds "no", the attorney preference form is pre-populated to read: "I/We will not use the services of legal counsel." Con-

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<sup>1</sup> Defendants identified Jeffrey Campbell as senior corporate counsel at Quicken Loans, Jennifer Randall as divisional vice president at Quicken Loans, and Brian Hughes as Chief Operating Officer at Title Source.



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versely, if the borrower responds "yes", Quicken does not follow up with any inquiry to ascertain who the preferred attorney is. Instead, Quicken's system automatically populates the form to read: "Please contact lender with preference". The form is then forwarded to the borrower for his/her signature.

Quicken's operating system only allows the attorney portion of the preference form to be pre-populated with one of those two Quicken-selected phrases. At no time is the borrower allowed to indicate her choice for an attorney on the form or to the Quicken representative taking the application.

In instances where the form is pre-populated with "I/we will not use the services of legal counsel," the loan is forwarded to Quicken's affiliate company, Title Source, Inc., which acts as the settlement agent in the transaction. Quicken contracts with Title Source to provide "settlement services" in South Carolina. Settlement services include, among other things, title search, title abstract and exam, document preparation, attorney signings, recording and disbursement. In furtherance of its agreement with Quicken, Title Source subcontracts with and supervises attorneys to perform the settlement services, including those that South Carolina requires to be performed by a South Carolina attorney.

Wilson's HUD-1 Settlement Statement reflects a closing on December 14, 2011 and lists Title Source as Settlement Agent and Williston, SC as the Place of Settlement. The HUD-1 Settlement Statement further shows that Wilson paid Title Source \$525.00 as a "Settlement or closing fee" (line 1102) and \$150.00 for an "Abstract or Title Search" (line 1109). No attorney is referenced on the settlement statement.

According to his affidavit, Carlton Robinson, an attorney, appeared at the closing. Mr. Robinson indicates he inquired of Wilson's attorney preference at the time of closing. Simulta-



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neous with the closing (December 14, 2011), a loan application was also signed indicating Mr. Robinson as Wilson's preferred attorney to close the loan.

#### STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate where there is no genuine issue of fact and it is clear that the moving party is entitled to judgment as a matter of law. Rule 56(c) SCRPC. The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E. 2d 433, 438 (2003). In determining whether any triable issues of fact exist, the Court must view the evidence and all inferences which can be drawn from the evidence in the light most favorable to the nonmoving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Where cross motions for summary judgment have been filed, the parties concede that the issues before the court should be decided as matter of law. Wiegand v. United States Automobile Association, 391 S.C. 159, 164, 705 S.E.2d 432, 434 (2011)

#### THE ATTORNEY PREFERENCE STATUTE

SC Code §37-10-102, commonly referred to as the "attorney preference statute," provides in pertinent part:

"Whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for a personal, family or household purpose:

- (a) The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction..."

The purpose of §37-10-102(a) is to protect consumers. Camp v. Springs Mortgage Corporation, 310 S.C. 514, 436 S.E. 2d 304 (1993). The provisions of §37-10-102 are to be liberally construed to achieve this purpose. Tilley v. Pacesetter, 333 S.C. 33, 508 S.E. 2d 16 (1998)(Tilley

  
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D) citing §37-10-102 (1976). Moreover, rights and benefits provided by §37-10-102(a) cannot be waived by the consumer. SC Code Ann. §37-1-107 (1976).

Section 37-10-102 gives two options to "ascertain the preference." The statute provides:

The creditor may comply with the section by:

- (1) including the preference information on or with the credit application so that this information is shall be provided on a form substantially similar to a form distributed by the administrator; or
- (2) providing written notice to the borrower of the preference information with the notice being delivered or mailed no later than three business days after the application is received or prepared. If a creditor uses a preference notice form substantially similar to a form distributed by the administrator, the form is in compliance with this section.

SC Code §37-10-102(a)

The form distributed by the administrator is set forth in an Administrative Interpretation issued the Department of Consumer Affairs in 1983, shortly after the enactment of SC Code §37-10-102. Administrative Interpretation No. 10.102(a)-8302 (the "AI"). This form – when properly used – provides a "safe harbor" for the lender endeavoring to comply with the attorney preference statute. SC Code §37-10-102(a) *supra*; see also §37-6-104(4).

In the A.I., the Administrator, after first noting "the provisions of § 37-1-102 and the Consumer Protection Code as a whole," found that:

"...in enacting §37-10-102(a), the General Assembly had two main objectives:  
(1) to provide the borrower with the right to legal counsel of his choosing...; and  
(2) to make these rights known to the borrower (applicant) by a conspicuous disclosure and have the borrower make his preference known before he is inundated with other documents related to the transaction."

The Administrator further stated:

"...by having the borrower affirmatively select an attorney or insurance agent, it becomes less likely that the borrower will ultimately acquiesce to the lender's choice of an attorney or insurance agent for whom the borrower would have to pay, even though that attorney or agent might actually represent the interests of the lender..."

  
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Administrator Interpretation 10.102(a)-8302 (italics in original)

The A.I. has been specifically addressed and cited with approval at least twice by the South Carolina Supreme Court. *Davis v NationsCredit Finance, Inc.*, 326 S.C. 83, 484 S.E. 2d 471 (1997), *King v American General*, 386 S.C. 82, 687 S.E. 2d 321 (2009). Further, the General Assembly implicitly adopted the A.I. when it amended §37-10-102(a) to specifically allow lenders to comply with §37-10-102(a) by using the preference form supplied by the Administrator. 1996 Act No. 355, §1.

Nothing in the 1996 amendment alters the Administrator's findings as to the purpose of the statute. It merely gives the lender more flexibility to comply with the statute in terms of timing. As noted by Kathleen Goodpasture Smith in her South Carolina Consumer Protection Code, 4<sup>th</sup> ed. SC Bar (2001):

In 1996, this subsection [37-10-102(a)] was modified to remove the requirement that the attorney preference information be on the first page of the application and replace it with a more flexible requirement that the preference information be (1) on or with the credit application or (2) mailed or delivered within three business days of receiving the application. Allowing three business days after application conforms to federal disclosure laws such as the Truth in Lending Act and Real Estate Settlement Procedures Act as well as recognizing realities of the marketplace with telephone and other non-traditional applications.  
Comment 2, Page 402.

#### DISCUSSION

Both parties rely on the November 7, 2011 preference form attached to this Order. Neither party disputes that this form was signed by Wilson on November 7, 2011. Wilson does argue that this form was not timely signed. The issue is whether the Quicken pre-populated form properly ascertains Wilson's preference as to the attorney to represent her in all matters related to this transaction pursuant to §37-10-102.

Quicken argues that the preference form complies with §37-10-102(a) and disclosed to Wilson her right to select legal counsel to represent her in all matters related to the transaction.



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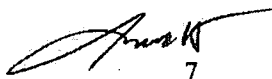


In fact, the form - without the blanks filled in - is identical to the preference form promulgated by the Administrator. Wilson argues that pre-populating the form by Quicken renders any disclosure made by Quicken meaningless. Further, §37-10-102 requires more than disclosure: the statute requires the lender to actually ascertain the preference of the borrower as to the attorney to represent them in all aspects of the transaction. The lender must do more than disclose to the borrower; the lender must elicit certain specific information from the borrower.

#### **The Pre-Populated Form**

Determining whether the pre-populated form complies with §37-10-102 is a question of law for this court. *Wiegand, supra*. The printed form is identical to the form promulgated by the Administrator. However, when Quicken pre-populates the form, it takes away the borrower's choice, the borrower's right to make a selection on the form - the very purpose for which the form was designed and the statute exists. This occurs even if Quicken is told by the borrower that she will select an attorney to close the loan, since Quicken does not follow up and ask the identity of the preferred attorney.

When the lender completes the form with "I/We will not use the services of legal counsel," that action operates as an attempt to obtain a waiver of rights that are expressly cannot be waived under the South Carolina Consumer Protection Code. This is expressly prohibited under S.C. Code Ann. § 37-1-107 (1976). Moreover, when the lender completes the form with "I/We will not use the services of legal counsel," the lender is also suggesting that the loan may be closed without an attorney. Such a suggestion runs afoul of the *Buyers Services* decision of the South Carolina Supreme Court. 292 S.C. 426, 357 S.E.2d 15 (1987). South Carolina law requires that a lawyer must close the loan, and South Carolina law does not allow a borrower to waive that requirement.



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After the pre-populated form is signed, the loan is then assigned to Quicken's affiliate, Title Source. Title Source, an out-of-state corporation, is not a law firm. Title Source is listed as the settlement agent on Wilson's HUD-1 and is paid the settlement or closing fee as well as an abstracting fee.

If the borrower truly has no preference as to a particular individual attorney to close the loan, the Administrator's preference form affirmatively requires the borrower under Part 1(b) to select an attorney from a list of attorneys acceptable to the lender. Quicken chose to use this form but provided no list of acceptable attorneys so that the borrower could make an informed choice. Instead Quicken chose to pre-populate this portion of the form with "Not Applicable". Neither the language of the pre-1996 version or current version of §37-10-102 referenced "a list of acceptable attorneys" if the borrower had no preference. However, the Legislature implicitly adopted the Administrator's 1983 findings when it set forth the methods lenders could comply with the preference requirement in §37-10-102(a). The Administrator reasoned that affirmatively requiring the borrower to make a choice would ensure the independence of the attorney selected to close the loan. Quicken thwarted the purpose of this section of the form by not providing a list of acceptable attorneys and by pre-populating the form.

I therefore conclude as a matter of law that Quicken, in pre-populating the form, eviscerates the very purpose of §37-10-102 and renders it meaningless. Thus, Quicken fails to ascertain the borrower's attorney preference under the statute. Quicken's action also constitutes an attempt to elicit a waiver, which is expressly not permissible under the code

**Ascertaining the Attorney Preference at Closing**

Quicken also asserts that: (1) it gave the preference orally to Wilson on the date of closing; and (2) Wilson signed an application on the date of closing designating Carleton Robinson



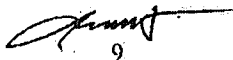
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as her attorney of choice. These arguments fail for several reasons. First, it is the responsibility of the lender, not of the closing attorney, to ascertain the attorney preference. See Sneed v. Homebridge Mortgage Bankers Corp. 2010 WL 4053605 (USDC SC 2010). Second, the suggestion that the attorney hired by Title Source to appear at closing can also ascertain the attorney preference at the closing, calls into question the independence of the attorney. In re Breckenridge, \_\_ S.C. \_\_, \_\_ S.E.2d \_\_, 2016 WL 1583998 (2016). Third and most importantly, our Supreme Court has already held the suggestion that the attorney preference can be ascertained at the closing table "borders on frivolity." *King v. American General Finance, Inc.*, 386 S.C. 82-91, 687 S.E. 321-325 (2009).

Quicken argues that *King* is inapplicable, since it concerns the pre-1996 version of §37-10-102. The pre-1996 version required the lender to ascertain the preference of the borrower at the time of application. The 1996 amended version of §37-10-102(a) requires the preference to be ascertained prior to closing. However, the 1996 amended version clarifies precisely when prior to closing. The lender is given the option of: "(1) including the preference form information on or with the application...; or 2) providing written notice to the borrower of the preference with the notice being mailed no later than three business days after the application is received...."

In discussing the post-1996 version of §37-10-102, the Court in *King* stated in footnote 1 of the opinion:

Effective May 30, 1996, the Legislature amended Section 37-10-102(a)... Following this amendment, a lender was required to notify the borrower prior to closing of the borrower's attorney preference rights by either: (1) including the information on or with the credit application, or (2) providing the borrower written notice of the preference information that is delivered or mailed no later than three business days after the application is received or prepared. (citations omitted)



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In footnote 3 of the opinion the Court re-iterates that the lender can comply with the requirements of §37-10-102(a) by one of the above-listed methods. Therefore, King, at the very least, interprets §37-10-102(a) to require the lender to mail the attorney preference notice in a form substantially similar to the form distributed by the Administrator no later than three business days after receiving the completed application with no pre-populated entries by Quicken.

Even if King did not reach this conclusion, I would find that interpreting the present version of §37-10-102(a) to allow the attorney preference to be ascertained at closing leads to an absurd result. The statute requires a lender to comply "prior to closing." The statute requires the lender to ascertain the preference of the attorney to represent the borrower in all matters related to the transaction. This necessarily includes the title search and preparation of documents or direct supervision of the same. These tasks cannot be performed at the closing table. For the statute to have any meaning, the preference must be ascertained in sufficient time for the attorney selected by the borrower to perform these tasks. Requiring the lender to ascertain the borrower's preference by mailing the borrower a form substantially similar to the form distributed by the Administrator within three days of the application, accomplishes this result.

#### Statute of limitations

Next, Quicken asserts that the three year statute of limitation for bringing an attorney preference action has expired. Section 37-10-105 provides:

No debtor may bring a cause of action for violation of this chapter more than three years after the violation occurred, except as set forth in subsection (c).....**This subsection does not bar a debtor from asserting a violation of this chapter in an action to collect a debt which was brought more than three years from the occurrence of the violation as a matter of defense by recoupment or set-off in such action. (emphasis added)**

Since the attorney preference claim in this case is asserted as a defense/counterclaim, the three-year statute of limitations is inapplicable. Further, the literal reading of the statute provides

  
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the statute of limitations for violating §37-10-102 to be three years, "except as set forth in subsection (c)." Subsection c relates to unconscionability. Therefore, the three-year statute of limitations would not apply to situations where unconscionability is found.

#### **Timeliness of Motion**

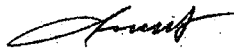
Finally, Quicken argues that Wilson's motion should not be heard until the final hearing, since it involves a defense of setoff. This argument ignores the practical problem that a violation of the preference statute must first be determined before the issue of unconscionability can be reached. Further, Wilson does not seek a determination of the amount of penalty or actual damages at this juncture. This argument is without merit.

#### **UNCONSCIONABILITY**

SC Code Ann. §37-10-105(c) provides:

If the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to Section 37-5-108 at the time it was made or was induced by unconscionable conduct, the court may, in an action other than a class action:

- (1) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unconscionable at the time it was made;
- (2) enforce the remainder of the agreement without the unconscionable term or part, or limit the application of the unconscionable term or part to avoid an unconscionable result;
- (3) rewrite or modify the agreement to eliminate an unconscionable term, part, or result and enforce the new agreement; or
- (4) award:
  - (a) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge;
  - (b) not more than double the amount of the excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party; and
  - (c) attorney's fees and costs.

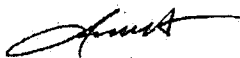


Applicability of §37-10-105(c) to §37-10-102 Violations

Quicken argues that §37-10-105(c) does not apply to attorney preference violations. (Quicken does not assert that §37-10-105(a) does not apply.) In *Tilley I*, the Supreme Court found that the remedies contained in §37-10-105 to be available for attorney preference violations. Under the old version of §37-10-105, the remedy provided was the old usury remedy. §37-10-105 was amended in 1997 to reduce the statutory penalty from the old usury penalty to a range of \$1,500 to \$7,500 per debtor. However, the old usury penalty is still available in cases where the Court finds unconscionable conduct under §37-10-105(c). Kathleen Goodpasture Smith, *The South Carolina Consumer Protection Code*, 4<sup>th</sup> ed. SC Bar 2001, comment 2, page 409. Provisions of the Consumer Protection Code are to be liberally construed to achieve its purposes and the purpose of the attorney preference statute is to protect consumers. There is nothing in the amended statute that suggests subsection (c) does not apply to attorney preference causes of action. Had the legislature, in amending the statute, intended §37-10-105(c) not to apply to attorney preference actions, it would have said so. *Tilley I* at 333 S.C. 40, 508 S.E. 2d 20 (1998).

I find all of the remedies in §37-10-105, including subsection (c) apply clearly and unambiguously to attorney preference violations. There is further support for this conclusion. To the extent that §37-10-105(c) could contain any ambiguity as to whether it is applicable to an attorney preference violation, the court may consider a statute's title in aid of construction. *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 489 S.E. 2d 647, 650 (Ct. App. 1997) citing *Morton Builders, Inc. v. von Beuding en.*, 316 S.C. 388, 402, 450 S.E. 2d 87, 95 (Ct. Appl 1994).

When §37-10-105 was amended by the Legislature in 1997 Act 99, the title provided the following:



AN ACT TO AMEND SECTION 37-10-105... RELATING TO PENALTIES  
FOR THE VIOLATION OF THE ATTORNEY'S (sic) PREFERENCE LOAN  
PROVISION UNDER THE CONSUMER PROTECTION CODE....

Be it enacted by the General Assembly of the State of South Carolina:  
**Provides for certain actions against lenders violation attorney's (sic) preference option**

(the body of the statute follows)

The title does not differentiate in relief available under §37-10-105 that it is available for attorney preference violation. This includes §37-10-105(c).<sup>2</sup>

I conclude that §37-10-105(c) is applicable to attorney preference violations.

**Unconscionability under the Consumer Protection Code**

Section 37-5-108(4)(a)(iv) provides:

in "determining whether an agreement or transaction is unconscionable at the time it is made or induced by unconscionable conduct, ... **consideration must be given to applicable factors, such as, but without limitation.... the fact that the... lender knowingly has taken advantage of the inability of the ... debtor to reasonably to protect his interests** by reason of physical or mental infirmities, ignorance, inability to understand the language of the agreement or such other factors." (emphasis added)

"Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them."

Fanning v. Fritz Pontiac-Cadillac-Buick, Inc. 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996).

<sup>2</sup> Moreover, in Greentree Financial Corporation v. Fleming, 95-CP-40-4282, (order filed February 10, 2002), Circuit Judge Clifton Newman found the provisions of §37-10-105(C) applicable to attorney preference violations. Judge Newman found that Greentree's knowing failure to provide the attorney preference form to be unconscionable. Citing 37-5-108(4)(a)(iv) and Buyers Service 292 S.C. 426, 357 S.E. 2d 15 (1987) the Court found Greentree's failure to provide the form took advantage of the borrower's ability to protect his/her interest in the transaction and amended relief under §37-10-105(c).

While the preference form is not a contract, it is a legally required part of the lending transaction, without which the mortgage transaction should not occur.

Essentially, the definition of unconscionability under the Consumer Protection Code is the same as its definition under principles of contract law. Therefore, the question is whether there was an absence of choice and oppressive and one-sided terms in Quicken's use of the pre-populated form. In making this determination, the Court should consider all applicable factors including, but not limited to, those factors set forth in §37-5-108(4)(a).

#### **Absence of Meaningful Choice**

Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007). Clearly, Quicken is in a superior bargaining position and possesses greater knowledge and understanding of the mortgage loan process. Moreover, Wilson would not have been a substantial business concern to Quicken. Quicken's pre-populating the form can also be compared to a contract of adhesion, since it gives the borrower no option to actually choose an attorney.

In contrast, the form promulgated by the Administrator conspicuously and clearly advises the borrower in writing of his/her right to select the attorney to close the loan. It is designed to allow the borrower to affirmatively fill in the name of the attorney so that there is no doubt as to who made the selection. When the form is pre-populated, the right to choose is taken away and waived. The borrower has no choice as to the attorney to close the loan.

At no time does the borrower have the ability to make his preference known on the form. Quicken's argument that it ascertained the preference at closing (after it has knowingly pre-





populated the form to preclude the borrower from selecting an attorney) highlights the lack of meaningful choice.

### **Oppressive and One-Sided Terms**

In determining whether an arbitration clause was oppressive and one-sided, the Supreme Court in Simpson considered whether the clause violated public policy, statutory law or provisions of the Constitution. *id.*, at 373 S.C. 29, 644 S.E.2d 671, *internal citation omitted*. The pre-populated Quicken preference form violates the statutory law and public policy of this state in three respects: (1) It operates as a waiver of rights under the Consumer Protection Code in violation of §37-1-107; (2) It allows Quicken to refer the closing to its affiliate, Title Source, a non-lawyer corporation in violation of §40-5-320; and (3) It provides an option of not using "legal services" to a close a loan and encourages the unauthorized practice of law in violation of State v. Buyer's Service, 292 S.C. 426, 357 S.E.2d 15 (1987).

### **Waiver**

SC Code Ann. §37-1-107 provides "a... debtor may not waive or agree to forego rights or benefits under this title." This includes the right to select the attorney to represent them relating to a mortgage loan closing.

In this case, the pre-populated form operates as a waiver of the borrower's statutory right to select the attorney of his/her choice to represent them in all matters related to the mortgage transaction. Section 37-1-107 must be interpreted liberally to achieve the purpose of the Code -- protecting consumers. Quicken, by having the borrower sign a preference form that states "I/We will not use the services of legal counsel" causes them to agree not to select an attorney to represent them in the transaction. I deem the result is a waiver by the borrower to forego rights afforded under the Code. I conclude it violates §37-1-107.



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**§40-5-320**

Section 40-5-320 provides:

It is unlawful for a corporation or voluntary association to:

...  
(3) hold itself out to the public as being entitled to practice law, render or furnish legal services, advise or to furnish attorneys or counsel, or render legal services in actions or proceedings; (emphasis added)

The phrase "I/We will not use the services of legal counsel" together with the settlement statement listing Title Source as the settlement agent is troubling. It suggests the closing process can occur without attorney supervision. Quicken contracted with Title Source to perform "settlement services" – a term that includes certain functions that are required to be performed by an attorney in South Carolina. The agreement requires Title Source to furnish and supervise attorneys needed for the closing process. The HUD-1 reflects closing fees and title abstract fees to be paid to Title Source, an out-of-state corporation and a non-lawyer. Section 40-5-320 prohibits corporations from engaging in the unauthorized practice of law and from furnishing attorneys to practice law.

The question of whether Quicken or Title source engaged in the unauthorized practice of law (UPL) rests exclusively with the Supreme Court, and I make no finding of UPL. Regardless of whether either company engaged in UPL, they cannot furnish attorneys without violating §40-5-320. Quicken in pre-populating the form and directing closings to Title Source, its affiliate, knowingly participates in this violation and causes the borrower, albeit unwittingly, to participate in the violation.

**Buyer's Service**

Buyer's Service was a non-lawyer title company which performed real estate closings in South Carolina. Though the company hired attorneys to perform certain tasks in the closing pro-

  
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cess, the Court found this did not save the company from UPL. The Court also noted the practice violated §40-5-320. Title Source is a non-lawyer title company attempting to do exactly the same thing Buyer's Service, in part, was prohibited from doing almost 30 years ago. The pre-populated preference form violates the long-standing policy of Buyer's Service in that it contemplates and encourages the unauthorized practice of law. It further violates the public policy of this state set forth under Buyer's Service since closing a loan without direct attorney supervision is not a lawful option.

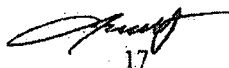
For these reasons, the pre-populated form violates the statutory law and public policies of this state designed for the protection of the consumer and is oppressive and one-sided. Quicken's conduct violates §37-5-108(4)(a) in that it knowingly takes advantage of the borrower's inability to protect his interest.

#### **Survival of Unconscionability Claims at the Death of the Borrower**

Quicken also asserts that a cause of action for unconscionability under §37-10-105(c) does not survive the death of Mrs. Wilson<sup>3</sup>. It compares a cause of action for unconscionability to an action for fraud and deceit which does not survive the death of the claimant. In *Tilley v. Pacesetter*, 355 S.C. 361, 585 S.E. 2d 292 (2003) (*Tilley II*) the lender argued an attorney preference action under §37-10-105 did not survive the death of the borrower because the violation involved fraud and deceit. The Supreme Court found that the cause of action for an attorney preference violation survived the borrower's death, since it did not involve fraud. *Tilley id* 355 S.C. 378.

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<sup>3</sup> This action on behalf of Defendant is being maintained by Wayne D. Wilson as Personal Representative of the Estate of Ezekiel Wilson.



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Just as the attorney preference violation is not based upon fraud, an action for unconscionability under §37-10-105(c) is not based upon fraud. As stated above, unconscionability involves an absence of meaningful choice together with oppressive and one-sided terms. It does not require the elements of fraud to be proven. I conclude it survives the borrower's death.

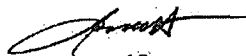
**The application of §37-5-108(3)**

Finally, Quicken argues that §37-5-108(3) requires this court to hold an evidentiary hearing prior to making a determination of unconscionability under the statute. I find this provision does not preclude either party from filing a motion for summary judgment, especially since both parties have filed cross-motions for summary judgment. However, I do find an evidentiary hearing is needed to determine the appropriate relief under §37-10-105.

**MOTION TO TRANSFER (JURY TRIAL)**

After Wilson filed its Partial Summary Judgment Motion, Quicken moved to transfer this case to the general docket for a jury trial on issues presented in Wilson's counterclaim. The only pending counterclaims at that time were Wilson's cause of action for attorney preference violations under §37-10-105(a) and §37-10-105(c). Since summary judgment has been granted herein on Wilson's counterclaims, I find the request to be moot. Moreover, both parties filed cross-motions for summary judgment, thereby conceding the issues before the court should be decided as a matter of law. *Weigand, supra.*

Even if summary judgment had not been granted, I would find that Quicken waived its rights to a jury trial in this matter. Quicken filed its foreclosure complaint on March 3, 2015. In its initial complaint, Quicken asserted its right to a deficiency judgment. The Wilson Estate answered on May 21. On May 29, 2015, Quicken filed an amended complaint naming the Estate, as well as the heirs of the estate, and waiving deficiency judgment. On June 19, 2015, Wilson

  
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filed an amended answer to the amended complaint and asserted its counter-claims. Quicken filed its reply on August 20, 2015 and did not demand a jury trial.

On September 1, 2015, Quicken filed a motion requesting that the undersigned be appointed as Special Referee in this case. Quicken also prepared an order for the court to appoint the undersigned. The order was signed the same day. The order specifically grants the Special Referee the authority to hear and determine all matters, and to retain jurisdiction to carry out any final order as well as to hear any action contesting the validity of the action or motions contesting the action's validity.

On October 22, 2015, Wilson filed a second amended complaint. Quicken filed its second reply on November 10, 2015. Again, Quicken did not demand a jury trial. Only after Wilson filed her summary judgment motion on January 19, 2016 did Quicken file its jury trial demand (January 25, 2016), six days after Wilson filed her summary judgment motion. SCRCP 38(d) provides:

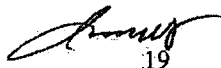
The failure of a party to serve a demand as required by this rule and to file it as required by this Rule 5(d) constitutes a waiver by him of trial by jury.

.....

SCRCP 39(b) provides:

(b) Issues of law and issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court or may be referred to a master as provided in Rule 53; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.

A party consenting to a reference to a master in equity or special referee waives his right to a jury trial. Richland County v. Lowman, 307 S.C. 422, 415 S.E. 2d 433 (1992). Quicken in this case did more than consent to the reference, it actually filed a motion requesting the reference and prepared the Order to grant the special referee his authority. I find Quicken has



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waived its right to a jury trial. Moreover, even if Quicken had not waived its right to a jury trial, I would decline to exercise a discretionary grant of its motion for a jury trial, since (1) the request comes almost one year after the filing of the complaint and long after Quicken was made aware of the counterclaims in this action and (2) since Quicken was aware of the counterclaims prior to seeking referral of this action.

### **MOTION TO AMEND PLEADINGS**

Quicken has also moved to amend its pleadings to assert four new causes of action. Ezekiel Wilson died November 17, 2014. Her estate was filed April 15, 2015. Notice to Creditors was first published on May 13, 2015. No claim has been filed against the estate by Quicken with the Barnwell County Probate Court. In fact, upon discovering Mrs. Wilson's death, Quicken amended its Complaint to waive deficiency judgment. Quicken filed its Motion to Amend on March 11, 2016.

S.C. Code Ann. 62-3-803(1976) provides:

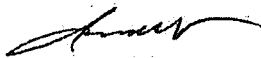
(a) All claims against a decedent's estate which arose before the death of the decedent, including any claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; are barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent; unless presented within the earlier of the following:

- (1) one year after the decedent's death; or
- (2) the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication.

\* \* \*

(d) Nothing in this section shall be construed as placing a limitation on the time for:

- (1) commencing a proceeding to enforce a mortgage, pledge, lien, or other security interest upon property of the estate;



Section 62-3-803 is a nonclaim statute. "A nonclaim statute is a self contained statute which absolutely prohibits the initiation of litigation based on it after a prescribed period." In Re Hover, 407 S.C. 194, 206, 754 S.E.2d 875, 881(2014).

Ezekiel Wilson died more than one year ago, and Quicken did not file a claim with the Probate Court. Quicken's second and fifth proposed amended causes of action are for breach of contract. Because these causes of action are barred by § 62-3-803, I deny Quicken's Motion to Amend with respect to these causes of action.

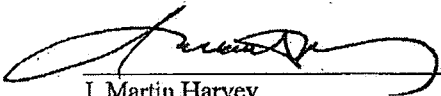
Quicken's third and fourth proposed amended causes of action are related to enforcement of a security interest. Quicken's Motion to Amend is therefore granted to the extent these causes of action seek to enforce a security interest in property mortgaged to Quicken. However, under Hover, Quicken may not seek a deficiency under these causes of action.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. Defendant's Motion for Partial Summary Judgment is **Granted**;
2. Plaintiff's Motion for Summary Judgment as to Defendant's counterclaims is **Denied**;
3. Plaintiff's Motion to Transfer to General Docket for a Jury Trial is **Denied**;
4. Plaintiff's Motion to Amend is **Granted in part and Denied in part**;
5. This Court shall retain jurisdiction to hear all matters, per the Order of Reference;
6. The parties shall confer within ten days and advise when they are available for a final hearing.

AND IT IS SO ORDERED!

May 13, 2016  
Barnwell, South Carolina

  
J. Martin Harvey  
Special Referee

# EXHIBIT A

A handwritten signature in black ink, appearing to be 'O. M. A.' or similar, located below the main title.



| ATTORNEY IN TRANCE PREFERENCE CHECK LIST                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                      |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------|--|
| Borrower Name(s):<br>Calvin O. Wilson, Jr.<br>Ezekiel T. Wilson                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | Lender:<br>Quicken Loans Inc.<br>Company NMLS#: 3030 |  |
| Property Address:<br>12640 Main St<br>Williston, SC 29853                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | Date:<br>November 4, 2011                            |  |
| <p>1. I (We) have been informed by the lender that I (we) have a right to select legal counsel to represent me(us) in all matters of this transaction relating to the closing of the loan.</p> <p>(a) I select I/We will not use the services of legal counsel:</p> <p><u>C.O. Wilson</u> <u>11-7-11</u> <u>Ezekiel T. Wilson</u> <u>11-7-11</u></p> <p>Borrower: Calvin O. Wilson, Jr. Date: Borrower: Ezekiel T. Wilson Date:</p> <p>Borrower _____ Date _____ Borrower _____ Date _____</p> <p>(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of acceptable attorneys. From that list I select</p> <p>Not Applicable _____ Not Applicable _____</p> <p>Borrower _____ Date _____ Borrower _____ Date _____</p> <p>Not Applicable _____ Not Applicable _____</p> <p>Borrower _____ Date _____ Borrower _____ Date _____</p> <p>2. I (We) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required Homeowner's Insurance in connection with this mortgage transaction.</p> <p>(a) I select State Farm.</p> <p><u>C.O. Wilson</u> <u>11-7-11</u> <u>Ezekiel T. Wilson</u> <u>11-7-11</u></p> <p>Borrower: Calvin O. Wilson, Jr. Date: Borrower: Ezekiel T. Wilson Date:</p> <p>Borrower _____ Date _____ Borrower _____ Date _____</p> <p>(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of qualified agents. From that list I select</p> <p>Not Applicable _____ Not Applicable _____</p> <p>Borrower _____ Date _____ Borrower _____ Date _____</p> <p>Not Applicable _____ Not Applicable _____</p> <p>Borrower _____ Date _____ Borrower _____ Date _____</p> |  |                                                      |  |

1085(BC) (2009)

VMP MORTGAGE FORMS - (800)521-7251

8/06

2279146783



QL(Wilson)\_0057

ROA\_0023

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

Quicken Loans, Inc.,

Plaintiff,

v.

Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson;  
Park Sterling Bank;

Defendant(s).

(020139-00050)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2015-CP-06-070

SUMMONS  
(NON-JURY)

FORECLOSURE OF REAL ESTATE  
MORTGAGE

Deficiency Judgment Demanded

FILED FOR RECORD  
2015 MAR -3 PM 12:42  
RHONDA D. McELVEEN  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Quicken Loans, Inc..



Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)

Andrew A. Powell (SC Bar #100210)

John J. Hearn (SC Bar # 6635)

Nikole Haltiwanger (SC Bar # 70491)

Ashley M. Wheeling-Goodson (SC Bar # 101423)

Andrew W. Montgomery (SC Bar #79893)

H. Guyton Murrell (SC Bar # 064134)

Kevin T. Brown (SC Bar # 064236)

220 Executive Center Drive  
Columbia, SC 29210

Post Office Box 100200 (29202)  
(803) 744-4444

Columbia, South Carolina

~~February 27, 2015~~

March 1

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

Quicken Loans, Inc.,

Plaintiff,

v.

Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson;  
Park Sterling Bank;

Defendant(s).

(020139-00050)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2015-CP-06-070

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE  
MORTGAGE

Deficiency Judgment Demanded

FILED FOR RECORD  
2015 MAR -3 PM 12:42  
RHONDA D. McILVEEN  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Barnwell County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.
3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the loan did not originate before January 1, 2009
5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.
7. Heretofore, on or about December 14, 2011, Calvin O. Wilson, Jr. and Ezekiel T.

Wilson made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$126,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Calvin O. Wilson, Jr. and Ezekiel T. Wilson made, executed and delivered unto Mortgage Electronic Registration Systems, Inc. as nominee for Quicken Loan, Inc. its successors and assigns a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on the North side of the Southern Railway in the Williston School District, Town of Williston, County of Barnwell, State of South Carolina, containing Two (2) acres, more or less, and having the following boundaries and measurements, to wit: on the North by Dicks Street, and measuring thereon 150 feet, more or less, on the East by lot now or formerly of G. E. Crouch, Estate of T. M. Willis and Lot of Negro Lodge and measuring thereon 600 feet, more or less; on the South by East Main Street separating this lot from right-of-way of Southern Railway, and measuring thereon 150 feet, more or less; and on the West by Mansfield Drive, and measuring thereon 600 feet, more or less.

This being the same property conveyed to Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson, as joint tenants with the right of survivorship, by deed of C. O. Wilson dated September 29, 1992 and recorded on September 30, 1992 in Book 205 at Page 310; subsequently, Calvin O. Wilson, Jr. died September 20, 2013 as evidenced by Barnwell County Probate Case No. 2013-ES-06-214 leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson, remaining surviving tenant.

Property Address: 12640 Main St  
Williston, SC 29853

TMS# 047-07-08-001

9. The Mortgage was signed, witnessed and probated December 14, 2011; thereafter the Mortgage was recorded in the Office of the Clerk Of Court for Barnwell County on December 30, 2011, in Mortgage Book 979 at Page 50.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Subsequently, Calvin O. Wilson, Jr. died September 20, 2013 leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson, remaining surviving tenant..

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for October 1, 2014, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of October 1, 2014, the principal sum of \$108,728.34, with

interest from September 1, 2014, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

13. Pursuant to South Carolina Code Sections 29-3-650 and 29-3-660, Plaintiff specifically demands or reserves its right to a personal or deficiency judgment, unless heretofore or hereafter released, against the Notemaker(s) hereby obligated for the above-described debt.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

15. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Park Sterling Bank, by virtue of a mortgage given by Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson to Community Bank & Trust in the amount of \$46,000.00, dated February 11, 2000, and recorded February 18, 2000 in Book 451 at Page 322 Also including any other liens they may have. The Plaintiff is informed and believes that this mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released from the subject real estate. Park Sterling Bank is successor in interest to Community Bank and Trust.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Determine that the mortgage held by Park Sterling Bank, recorded February 18, 2000 in Book 451 at Page 322 has been paid in full, and direct the Clerk of Court/Register of Deeds for Barnwell County to release the lien of the mortgage from the subject property.

(3) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(4) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(5) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(6) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(7) Issue an order directing the Sheriff of Barnwell County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(8) Order such other and further relief as may be just and proper.



Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)

Andrew A. Powell (SC Bar #100210)

John J. Hearn (SC Bar # 6635)

Nikole Haltiwanger (SC Bar # 70491)

Ashley M. Wheeling-Goodson (SC Bar # 101423)

Andrew W. Montgomery (SC Bar #79893)

H. Guyton Murrell (SC Bar # 064134)

Kevin T. Brown (SC Bar # 064236)

220 Executive Center Drive  
Columbia, SC 29210

Post Office Box 100200 (29202)  
(803) 744-4444

Columbia, South Carolina

~~February 27, 2015~~

March 1

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BARNWELL

) Civil Action 2015-CP-06-070

QUICKEN LOANS, INC.,

) Plaintiff,

) vs.

) ANSWER

EZEKIEL T. WILSON

) A/K/A EZEKIEL (ELLEN) T. WILSON

) AND

) PARK STERLING BANK,

) Defendants.

FILED FOR RECORD  
2015 MAY 21 AM 10:39  
CLERK OF COURT  
BARNWELL COUNTY, SC

TO: THE PLAINTIFF ABOVE NAMED AND ITS ATTORNEY:

Defendant EZEKIEL T. WILSON A/K/A EZEKIEL (ELLEN) T. WILSON,  
individually, and where indicated below on behalf of all persons similarly situated, by  
and through her Personal Representative would respectfully allege.

1. Defendant Wilson DENIES each and every allegation of the Complaint  
not hereinafter expressly admitted and demands strict proof thereof.
2. Answering Paragraph 1 of the Complaint, Defendant Wilson ADMITS the  
allegations contained therein.
3. Answering Paragraph 2 of the Complaint, Defendant Wilson craves  
reference to the South Carolina Code of Laws for the exact text of Section 33-15-  
101(b)(8). Further answering Paragraph 2 of the Complaint, Defendant Wilson has  
insufficient information to admit or deny said allegations and therefore DENIES same  
and demands strict proof thereof.



4. Answering Paragraph 3 of the Complaint, Defendant Wilson has insufficient information to admit or deny the allegations contained therein and therefore DENIES same and demands strict proof thereof.

5. Answering Paragraph 4 of the Complaint, Defendant Wilson has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

6. Answering Paragraph 5 of the Complaint, Defendant Wilson ADMITS so much of said paragraph as alleges that Defendant Wilson claims an interest in the real estate that is the subject of this action; Defendant Wilson DENIES the remaining allegations of said paragraph and demands strict proof thereof.

7. Answering Paragraph 6 of the Complaint, Defendant Wilson has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

8. Answering Paragraph 7 of the Complaint, Defendant Wilson upon information and belief ADMITS the allegations contained therein.

9. Answering Paragraph 8 of the Complaint, Defendant Wilson upon information and belief ADMITS so much of said paragraph as alleges that Calvin O. Wilson, Jr. and Ezekiel T. Wilson (jointly, the "Wilsons") executed a certain real estate mortgage ("Mortgage"). Further answering Paragraph 8, Defendant Wilson craves reference to said Mortgage for the exact description of the property subject to the Mortgage and the precise terms and conditions of the Mortgage.

10. Answering Paragraph 9 of the Complaint, Defendant Wilson craves reference to said Mortgage for details of its execution and recordation.

11. Answering Paragraph 10 of the Complaint, Defendant Wilson ADMITS so much of said Paragraph as alleges that the Mortgage purports to secure the repayment of oney and purports to constitute a first lien on the property described therein. Further answering Paragraph 10, Defendant Wilson DENIES the remaining allegations of said paragraph, including the allegation that the Mortgage evidences the repayment of money.

12. Answering Paragraph 11 of the Complaint, Defendant Wilson DENIES that Calvin O. Wilson, Jr. died on September 20, 2013 "leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson." Defendant Wilson would show that Calvin O. Wilson, Jr. died on September 28, 2013 and his interest in the subject property simultaneously passed to Ezekiel (Ellen) T. Wilson pursuant to the survivorship rights in the deed of C.O. Wilson of record in Deed Book 205 at Page 310.

13. Answering Paragraph 12 of the Complaint, Defendant Wilson DENIES the allegations contained therein and demands strict proof thereof.

14. Answering Paragraph 13 of the Complaint, Defendant Wilson craves reference to South Carolina Code Sections 29-3-650 and 29-3-660 for the text of those statutes.

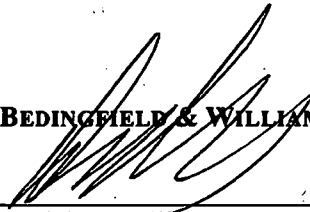
15. Answering Paragraph 14 of the Complaint, Defendant Wilson craves reference to said Mortgage for details of its terms and conditions.

16. Answering Paragraph 15 of the Complaint, Defendant Wilson craves reference to said Mortgage for details of its terms and conditions.

17. Answering Paragraph 16 of the Complaint, Defendant Wilson DENIES that the relief sought should be granted.

18. Answering Paragraph 17 of the Complaint, Defendant Wilson ADMITS upon information and belief so much of said paragraph as alleges that the Community Bank & Trust mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released.

WHEREFORE, Defendants, having fully answered Plaintiff's Complaint, prays that the same be dismissed with costs, and for such other and further relief as the Court may deem just and proper.

  
**BEDINGFIELD & WILLIAMS**

---

Daniel W. Williams  
S.C. Bar No. 10233  
PO Box 616  
Barnwell, SC 29812-0616

May 21, 2015  
Barnwell, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

Quicken Loans, Inc.,

Plaintiff,

v.

Wayne D. Wilson ; Calvin O. Wilson, III; Any other Heirs-at-Law or Devisees of Ezekiel (Ellen) T. Wilson, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interest in the real estate described herein; also any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe; Park Sterling Bank;

Defendant(s).

(020139-00050)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 15-CP-06-0070

FIRST AMENDED SUMMONS  
(NON-JURY)  
FORECLOSURE OF REAL ESTATE  
MORTGAGE  
Deficiency Judgment Waived

RE: 2015-LP-06-00007

2015 MAY 29 PM 1:30

FILED FOR RECORD

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

If you have been previously served with a Summons and Complaint or an Amended Summons and Complaint in this case and are responding to this Amended Summons and Complaint, pursuant to SCRCP 15(a), a party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen (15) days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S)  
UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S)  
RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a  
guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you  
fail to do so, application for such appointment will be made by Quicken Loans, Inc..



Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)

H. Guyton Murrell (SC Bar # 064134)

Kevin T. Brown (SC Bar # 064236)

Jason D. Wyman (SC Bar # 100271)

Ashley M. Wheeling-Goodson (SC Bar # 101423)

Andrew W. Montgomery (SC Bar #79893)

John J. Hearn (SC Bar # 6635)

Nikole Haltiwanger (SC Bar # 70491)

220 Executive Center Drive  
Columbia, SC 29210

Post Office Box 100200 (29202)  
(803) 744-4444

Columbia, South Carolina

May 18, 2015

19

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

Quicken Loans, Inc.,

Plaintiff,

v.

Wayne D. Wilson ; Calvin O. Wilson, III; Any other Heirs-at-Law or Devisees of Ezekiel (Ellen) T. Wilson, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interest in the real estate described herein; also any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe; Park Sterling Bank;

Defendant(s).

(020139-00050)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 15-CP-06-0070

FIRST AMENDED COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE  
MORTGAGE

Deficiency Judgment Waived

FILED FOR RECORD  
2015 MAY 29 PM 1:31  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Barnwell County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.
3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not

eligible for modification because the loan did not originate before January 1, 2009

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about December 14, 2011, Calvin O. Wilson, Jr. and Ezekiel T. Wilson made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$126,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Calvin O. Wilson, Jr. and Ezekiel T. Wilson made, executed and delivered unto Mortgage Electronic Registration Systems, Inc. as nominee for Quicken Loan, Inc. its successors and assigns a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on the North side of the Southern Railway in the Williston School District, Town of Williston, County of Barnwell, State of South Carolina, containing Two (2) acres, more or less, and having the following boundaries and measurements, to wit: on the North by Dicks Street, and measuring thereon 150 feet, more or less, on the East by lot now or formerly of G. E. Crouch, Estate of T. M. Willis and Lot of Negro Lodge and measuring thereon 600 feet, more or less; on the South by East Main Street separating this lot from right-of-way of Southern Railway, and measuring thereon 150 feet, more or less; and on the West by Mansfield Drive, and measuring thereon 600 feet, more or less.

This being the same property conveyed to Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson, as joint tenants with the right of survivorship, by deed of C. O. Wilson dated September 29, 1992 and recorded on September 30, 1992 in Book 205 at Page 310; subsequently, Calvin O. Wilson, Jr. died September 20, 2013 as evidenced by Barnwell County Probate Case No. 2013-ES-06-214 leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson, remaining surviving tenant; subsequently Ezekiel (Ellen) T. Wilson died intestate on November 17, 2014, leaving her interest in the subject property to her heirs/devisees, namely, Wayne D. Wilson and Calvin O. Wilson, III.

Property Address: 12640 Main St  
Williston, SC 29853

TMS# 047-07-08-001

9. The Mortgage was signed, witnessed and probated December 14, 2011; thereafter the Mortgage was recorded in the Office of the Clerk Of Court for Barnwell County on December 30, 2011, in Mortgage Book 979 at Page 50. This Mortgage was subsequently assigned to the Plaintiff herein by assignment dated February 6, 2015 and recorded on February 26, 2015 in Book 1088 at Page 120.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Subsequently, Calvin O. Wilson, Jr. died September 20, 2013 leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson, remaining surviving tenant.

12. Thereafter, Ezekiel (Ellen) T. Wilson died intestate on November 17, 2014, leaving her interest in the subject property to her heirs/devisees, namely, Wayne D. Wilson and Calvin O. Wilson, III.

13. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for October 1, 2014, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of October 1, 2014, the principal sum of \$108,728.34, with interest from September 1, 2014, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

14. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

15. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

16. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

17. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

18. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Park Sterling Bank, by virtue of a mortgage given by Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson to Community Bank & Trust in the amount of \$46,000.00, dated February



11, 2000, and recorded February 18, 2000 in Book 451 at Page 322 Also including any other liens they may have. The Plaintiff is informed and believes that this mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released from the subject real estate. Park Sterling Bank is successor in interest to Community Bank and Trust.

B. Wayne D. Wilson and Calvin O. Wilson, III. and any unknown heirs or devisees of the Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson, including any persons who may be in the military service of the United States of America, being a class designated as John Doe, and any unknown minors or persons under a disability being a class designated as Richard Roe, by virtue of any interest claimed under the law of intestate succession (S.C. Code Section 62-2-109) or under decedent's will

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Determine that the mortgage held by Park Sterling Bank, recorded February 18, 2000 in Book 451 at Page 322 has been paid in full, and direct the Clerk of Court/Register of Deeds for Barnwell County to release the lien of the mortgage from the subject property.

(3) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(4) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(5) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(6) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(7) Issue an order directing the Sheriff of Barnwell County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(8) Order such other and further relief as may be just and proper.



Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)

H. Guyton Murrell (SC Bar # 064134)

Kevin T. Brown (SC Bar # 064236)

Jason D. Wyman (SC Bar # 100271)

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220 Executive Center Drive  
Columbia, SC 29210

Post Office Box 100200 (29202)  
(803) 744-4444

Columbia, South Carolina  
May 19, 2015

STATE OF SOUTH CAROLINA )  
PLEAS )

COUNTY OF BARNWELL )  
\_\_\_\_\_ )

IN THE COURT OF COMMON

Civil Action 2015-CP-06-070

QUICKEN LOANS, INC., )  
Plaintiff, )

vs. )

EZEKIEL T. WILSON )  
A/K/A EZEKIEL (ELLEN) T. WILSON )  
ET AL., )  
Defendants. )  
\_\_\_\_\_ )

ESTATE OF EZEKIEL T. WILSON  
PERSONAL REPRESENTATIVE'S  
ANSWER AND COUNTER-CLAIMS  
IN RESPONSE TO  
FIRST AMENDED COMPLAINT

TO: THE PLAINTIFF ABOVE-NAMED AND ITS ATTORNEY:

Defendant Wayne D. Wilson as PERSONAL REPRESENTATIVE OF THE ESTATE  
OF EZEKIEL T. WILSON A/K/A EZEKIEL (ELLEN) T. WILSON, DECEASED,  
would respectfully allege:

**FOR A FIRST DEFENSE**

1. Defendant Personal Representative DENIES each and every allegation of the First Amended Complaint not hereinafter expressly admitted and demands strict proof thereof.
2. Answering Paragraph 1 of the First Amended Complaint, Defendant Personal Representative ADMITS the allegations contained therein.
3. Answering Paragraph 2 of the First Amended Complaint, Defendant Personal Representative craves reference to the South Carolina Code of Laws for the exact text of Section 33-15-101(b)(8). Further answering Paragraph 2 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

4. Answering Paragraph 3 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny the allegations contained therein and therefore DENIES same and demands strict proof thereof.

5. Answering Paragraph 4 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

6. Answering Paragraph 5 of the First Amended Complaint, Defendant Personal Representative ADMITS so much of said paragraph as alleges that Defendant Personal Representative claims an interest in the real estate that is the subject of this action; Defendant Personal Representative DENIES the remaining allegations of said paragraph and demands strict proof thereof.

7. Answering Paragraph 6 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

8. Answering Paragraph 7 of the First Amended Complaint, Defendant Personal Representative upon information and belief ADMITS the allegations contained therein.

9. Answering Paragraph 8 of the First Amended Complaint, Defendant Personal Representative upon information and belief ADMITS so much of said paragraph as alleges that Calvin O. Wilson, Jr. and Ezekiel T. Wilson (jointly, the "Wilsons") executed a certain real estate mortgage ("Mortgage"). Further answering Paragraph 8, Defendant Personal Representative craves reference to said Mortgage for the exact description of the property subject to the Mortgage and the precise terms and conditions of the Mortgage.

10. Answering Paragraph 9 of the First Amended Complaint, Defendant Personal Representative craves reference to said Mortgage for details of its execution and recordation.

11. Answering Paragraph 10 of the First Amended Complaint, Defendant Personal Representative ADMITS so much of said Paragraph as alleges that the

Mortgage purports to secure the repayment of money and purports to constitute a first lien on the property described therein. Further answering Paragraph 10, Defendant Personal Representative DENIES the remaining allegations of said paragraph, including the allegation that the Mortgage evidences the repayment of money.

12. Answering Paragraph 11 of the First Amended Complaint, Defendant Personal Representative DENIES that Calvin O. Wilson, Jr. died on September 20, 2013 "leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson." Defendant Personal Representative would show that Calvin O. Wilson, Jr. died on September 28, 2013 and his interest in the subject property simultaneously passed to Ezekiel (Ellen) T. Wilson pursuant to the survivorship rights in the deed of C.O. Wilson of record in Deed Book 205 at Page 310.

13. Answering Paragraph 12 of the First Amended Complaint, Defendant Personal Representative

14. Answering Paragraph 13 of the First Amended Complaint, Defendant Personal Representative DENIES the allegations contained therein and demands strict proof thereof.

15. Answering Paragraph 14 of the First Amended Complaint, Defendant Personal Representative craves reference to South Carolina Code Sections 29-3-650 and 29-3-660 for the text of those statutes.

16. Answering Paragraph 15 of the First Amended Complaint, Defendant Personal Representative craves reference to said Mortgage for details of its terms and conditions.

17. Answering Paragraph 16 of the First Amended Complaint, Defendant Personal Representative craves reference to said Mortgage for details of its terms and conditions.

18. Answering Paragraph 17 of the First Amended Complaint, Defendant Personal Representative DENIES that the relief sought should be granted.

19. Answering Paragraph 18 of the First Amended Complaint, Defendant Personal Representative ADMITS upon information and belief so much of said paragraph

as alleges that the Community Bank & Trust mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released.

**FOR A SECOND DEFENSE**  
**AND BY WAY OF COUNTERCLAIM**

20. Defendant Personal Representative realleges and reiterates the allegations contained in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

21. Upon information and belief, Plaintiff Quicken Loans, Inc. is a corporation organized and existing under the laws of a state other than South Carolina with its principal place of business in Michigan.

22. Plaintiff is in the business of making residential real estate loans in South Carolina.

23. This action involves a residential real estate loan in which a mortgage was given on real estate in Barnwell County, South Carolina.

24. The Wilsons contacted Plaintiff to obtain a real-estate-secured residential loan primarily for personal and family purposes.

25. S.C. Code Ann. § 37-10-102 required Plaintiff, at the time of the application or shortly thereafter, to ascertain the Wilsons preference as to the legal counsel who would represent them in all matters of the transaction relating to the closing of the transaction.

26. Upon information and belief, Plaintiff presented an attorney preference form to the Wilsons. The purpose of the form is to ascertain the borrower's preference as to the attorney to represent the borrower in all matters of the transaction.

27. Upon information and belief, the attorney preference form as prepared by Plaintiff for the Wilsons did not comply with the statute: the form was already completed to state that the "I/We will not use the services of legal counsel" or words to similar effect.

28. By presenting the Wilsons with a prepopulated form, Plaintiff failed to fulfill its statutory obligation to ascertain the borrowers' preferences as to legal counsel in

violation of S.C. Code Section 37-10-102 and denied each borrower the statutory right to select his or her own legal counsel.

29. By presenting the Wilsons with a prepopulated form, Plaintiff sought to obtain from the two borrowers waiver of their right to counsel in violation of S.C. Code Section 37-1-107.

30. The pre-populated form presented to Plaintiff deprived him of a meaningful choice as to the attorney to represent him in all aspects of the transaction and in and of itself is unconscionable and, in and of itself, pursuant to South Carolina law, in particular S.C. Code Ann §37-10-105 and §37-5-108

31. Upon information and belief the purpose of pre-populating the form was to steer business to Title Source.

32. Title Source is owned by the same parent company as Quicken.

33. By pre-populating the form, Quicken thereby enriches its parent company to the deprivation of plaintiff's rights given under the statute.

34. This scheme also aids in the unauthorized practice of law.

35. In pre-populating its form, Quicken directly engaged in the unauthorized practice of law.

36. The failure of Plaintiff to ascertain the Wilsons choices as to the legal counsel to represent them in all aspects of the transaction is unconscionable pursuant to South Carolina law, in particular, S.C. Code Ann. § 37-10-105 and §37-5-108.

37. Likewise, Plaintiff's seeking a waiver of the two borrower's statutory rights is unconscionable pursuant to South Carolina law, in particular, S.C. Code Ann. § 37-10-105 and §37-5-108.

38. Defendant is informed and believes that this court should issue its order (a) finding that the acts of Plaintiff were unconscionable, and (b) granting such relief as it

deems just and proper under S.C. Code Ann. § 37-10-105(C); and further, Defendant is entitled to a statutory penalty in the amount of \$7,500.00.

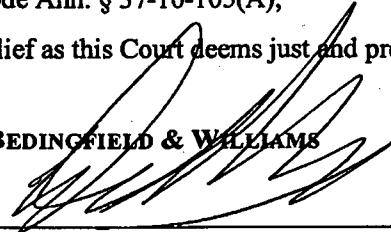
39. Defendant is statutorily entitled to attorney fees and costs .

### **RELIEF SOUGHT**

WHEREFORE, Defendant Wilson individually prays this Court:

- A. Inquire into the matters alleged herein;
- B. Deny the Plaintiff the relief sought in the First Amended Complaint as to Defendant and dismiss the First Amended Complaint with prejudice;
- C. Find that the actions of Plaintiff violate the letter and the spirit of the South Carolina Consumer Protection Code;
- D. Find that the actions of Plaintiff rise to the level of unconscionability and refuse to enforce the mortgage and mortgage note, declaring it void;
- E. Order relief under S.C. Code Ann. § 37-10-105(c), including
  - (i) an award of the total finance charge listed in Plaintiff's Truth in Lending,
  - (ii) an order allowing the remainder of the loan to be paid without interest;
  - (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and
  - (iv) attorney's fees and costs of this action.
- F. Award a penalty under S.C. Code Ann. § 37-10-105(A);
- G. Grant such other and further relief as this Court deems just and proper.

**BEDINGFIELD & WILLIAMS**

  
Daniel W. Williams S.C. Bar No. 10233  
PO Box 616  
Barnwell, SC 29812-0616  
Co-counsel for Defendant

*[Defendant's attorneys are listed on next page]*

June 19, 2015  
Barnwell, South Carolina



**Attorneys for Defendants**

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STATE OF SOUTH CAROLINA )  
PLEAS )

COUNTY OF BARNWELL )

QUICKEN LOANS, INC., )  
Plaintiff, )

vs. )

EZEKIEL T. WILSON )  
A/K/A EZEKIEL (ELLEN) T. WILSON )  
ET AL., )  
Defendants. )

IN THE COURT OF COMMON

Civil Action 2015-CP-06-070

SECOND  
AMENDED SUMMONS

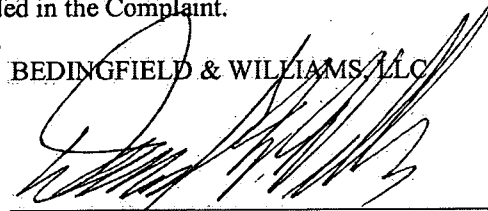
2015 OCT 22 AM 10:47

FILED FOR RECORD

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Amended Summons and Amended Complaint in this action, of which a copy hereof is served upon you, and to serve a copy of your Answer to the said Summons and Complaint on the subscriber at his office, Post Office Box 616, Barnwell, South Carolina 29812, within fifteen (15) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Summons and Amended Complaint within the time aforesaid, judgment by default will be rendered against you and the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

BEDINGFIELD & WILLIAMS, LLC

  
Daniel W. Williams, Esquire  
Attorney for Plaintiff  
Post Office Box 616  
Barnwell, South Carolina 29812  
(803) 259-2759

October 20, 2015  
Barnwell, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BARNWELL )  
 )

IN THE COURT OF COMMON PLEAS

Civil Action 2015-CP-06-070

QUICKEN LOANS, INC., )  
 )  
Plaintiff, )

vs. )

EZEKIEL T. WILSON )  
A/K/A EZEKIEL (ELLEN) T. WILSON )  
ET AL., )  
 )  
Defendants. )

ESTATE OF EZEKIEL T. WILSON )  
PERSONAL REPRESENTATIVE )  
SECOND AMENDED ANSWER )  
AND COUNTER-CLAIMS )  
IN RESPONSE TO )  
FIRST AMENDED COMPLAINT )

FILED FOR RECORD  
OCT 22 AM 10:47

TO: THE PLAINTIFF ABOVE-NAMED AND ITS ATTORNEY:

Defendant Wayne D. Wilson as PERSONAL REPRESENTATIVE OF THE ESTATE OF  
EZEKIEL T. WILSON A/K/A EZEKIEL (ELLEN) T. WILSON, DECEASED, answering the  
First Amended Complaint, would respectfully allege:

FOR A FIRST DEFENSE

1. Defendant Personal Representative DENIES each and every allegation of the First Amended Complaint not hereinafter expressly admitted and demands strict proof thereof.
2. Answering Paragraph 1 of the First Amended Complaint, Defendant Personal Representative ADMITS the allegations contained therein.
3. Answering Paragraph 2 of the First Amended Complaint, Defendant Personal Representative craves reference to the South Carolina Code of Laws for the exact text of Section 33-15-101(b)(8). Further answering Paragraph 2 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.
4. Answering Paragraph 3 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny the allegations contained therein and therefore DENIES same and demands strict proof thereof.

5. Answering Paragraph 4 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

6. Answering Paragraph 5 of the First Amended Complaint, Defendant Personal Representative ADMITS so much of said paragraph as alleges that Defendant Personal Representative claims an interest in the real estate that is the subject of this action; Defendant Personal Representative DENIES the remaining allegations of said paragraph and demands strict proof thereof.

7. Answering Paragraph 6 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

8. Answering Paragraph 7 of the First Amended Complaint, Defendant Personal Representative upon information and belief ADMITS the allegations contained therein.

9. Answering Paragraph 8 of the First Amended Complaint, Defendant Personal Representative upon information and belief ADMITS so much of said paragraph as alleges that Calvin O. Wilson, Jr. and Ezekiel T. Wilson (jointly, the "Wilsons") executed a certain real estate mortgage ("Mortgage"). Further answering Paragraph 8, Defendant Personal Representative craves reference to said Mortgage for the exact description of the property subject to the Mortgage and the precise terms and conditions of the Mortgage.

10. Answering Paragraph 9 of the First Amended Complaint, Defendant Personal Representative craves reference to said Mortgage and to said Assignment for details of their execution and recordation.

11. Answering Paragraph 10 of the First Amended Complaint, Defendant Personal Representative ADMITS so much of said Paragraph as alleges that the Mortgage purports to secure the repayment of money and purports to constitute a first lien on the property described therein. Further answering Paragraph 10, Defendant Personal Representative DENIES the remaining allegations of said paragraph, including the allegation that the Mortgage evidences the repayment of money.

12. Answering Paragraph 11 of the First Amended Complaint, Defendant Personal Representative DENIES that Calvin O. Wilson, Jr. died on September 20, 2013 "leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson." Defendant Personal Representative would show that Calvin O. Wilson, Jr. died on September 28, 2013 and his interest in the subject property simultaneously passed to Ezekiel (Ellen) T. Wilson pursuant to the survivorship rights in the deed of C.O. Wilson of record in Deed Book 205 at Page 310.

13. Answering Paragraph 12 of the First Amended Complaint, Defendant Personal Representative DENIES the allegations contained therein and demands strict proof thereof.

14. Answering Paragraph 13 of the First Amended Complaint, Defendant Personal Representative DENIES the allegations contained therein and demands strict proof thereof.

15. Answering Paragraph 14 of the First Amended Complaint, Defendant Personal Representative craves reference to South Carolina Code Sections 29-3-650 and 29-3-660 for the text of those statutes.

16. Answering Paragraph 15 of the First Amended Complaint, Defendant Personal Representative craves reference to said Mortgage for details of its terms and conditions.

17. Answering Paragraph 16 of the First Amended Complaint, Defendant Personal Representative craves reference to said Mortgage for details of its terms and conditions.

18. Answering Paragraph 17 of the First Amended Complaint, Defendant Personal Representative DENIES that the relief sought should be granted.

19. Answering Paragraph 18 of the First Amended Complaint, Defendant Personal Representative ADMITS upon information and belief so much of said paragraph as alleges that the Community Bank & Trust mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released.

FOR A SECOND DEFENSE

20. Defendant Personal Representative realleges and reiterates the allegations contained in Paragraphs 1 through 19 above as if fully repeated herein verbatim.

21. Upon information and belief, Plaintiff Quicken Loans, Inc. is a corporation organized and existing under the laws of a state other than South Carolina with its principal place of business in Michigan.

22. Plaintiff is in the business of making residential real estate loans in South Carolina. Plaintiff is not licensed to practice law in the State of South Carolina.

23. This action involves a residential real estate loan in which a mortgage was given on real estate in Barnwell County, South Carolina.

24. The Wilsons contacted Plaintiff to obtain a real-estate-secured residential loan primarily for personal and family purposes.

25. S.C. Code Ann. § 37-10-102 required Plaintiff, at the time of the application or shortly thereafter, to ascertain the Wilsons preference as to the legal counsel who would represent them in all matters of the transaction relating to the closing of the transaction.

26. Upon information and belief, Plaintiff presented an attorney preference form to the Wilsons. The purpose of the form is to document that the lender has ascertained the borrower's preference as to the attorney to represent the borrower in all matters of the transaction.

27. Upon information and belief, the attorney preference form as prepared by Plaintiff for the Wilsons did not comply with the statute: the form was already completed by Plaintiff to state that the "I/We will not use the services of legal counsel" or words to similar effect.

28. Upon information and belief, Plaintiff engaged in the unauthorized practice of law by rendering advice of a legal nature to the effect that the services of legal counsel are not required in South Carolina residential mortgage loan closings.

29. Upon information and belief, Plaintiff in the title examination process in connection with the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

30. Upon information and belief, Plaintiff in the preparation and review of documents in connection with the Wilson loan, either directly or through one or more of its agents, engaged

in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

31. Upon information and belief, Plaintiff in closing of the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

32. Upon information and belief, Plaintiff in the document recordation process in connection with the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

33. Upon information and belief, Plaintiff in the disbursement process in connection with the Wilson loan, either directly or through one or more of its agents, engaged or aided and abetted in the unauthorized practice of law in violation of the established laws of the State of South Carolina.

34. Upon information and belief, Plaintiff, having engaged in the unauthorized practice of law, should be denied the benefit of equitable remedies under the rule of *Matrix*<sup>1</sup>.

**FOR A THIRD DEFENSE**  
**AND BY WAY OF A FIRST COUNTERCLAIM**

35. Defendant Personal Representative realleges and reiterates the allegations contained in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

36. By presenting the Wilsons with a prepopulated form, Plaintiff sought to obtain from the two borrowers waiver of their right to counsel in violation of S.C. Code § 37-1-107.

37. Plaintiff's seeking a waiver of the Wilsons' statutory rights is unconscionable pursuant to South Carolina common law and statutes, including S.C. Code Ann. § 37-10-105 and §37-5-108.

38. Defendant Personal Representative is informed and believes that this court should issue its order (a) finding that the acts of Plaintiff were unconscionable, and (b) granting such relief as it deems just and proper under S.C. Code Ann. § 37-10-105(C) , including (i) an award

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<sup>1</sup> *Matrix Financial Services Corp. v. Frazer*, 394 S.C. 134, 714 S.E.2d 532 (S.Ct. 2011); see also *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 731 S.E.2d 547 (S.Ct. 2012).

of the total finance charge listed in Plaintiff's Truth in Lending disclosure, (ii) an order allowing the remainder of the loan to be paid without interest; (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iv) attorney's fees and costs of this action.

39. In addition, Defendant Personal Representative is informed and believes that this court should issue its order and grant relief as it deems just and proper under S.C. Code Ann. § 37-10-105(A), namely that any such relief should include (i) an award of a penalty as set forth therein, (ii) an order allowing recoupment or setoff in an amount equal to all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iii) attorneys' fees and costs of this action.

FOR A FOURTH DEFENSE  
AND BY WAY OF SECOND COUNTERCLAIM

40. Defendant Personal Representative realleges and reiterates the allegations contained in Paragraphs 1 through 39 above as if fully repeated herein verbatim.

41. By presenting the Wilsons with a prepopulated form, Plaintiff failed to fulfill its statutory obligation to ascertain the borrowers' preferences as to legal counsel in violation of S.C. Code Section 37-10-102 and denied each borrower the statutory right to select his or her own legal counsel.

42. The pre-populated form presented to the Wilsons deprived each of them of a meaningful choice as to the attorney to represent the borrower in all aspects of the transaction and in and of itself is unconscionable pursuant to South Carolina law, in particular S.C. Code Ann §37-10-105 and §37-5-108.

43. Upon information and belief the purpose of pre-populating the form was to steer business to Title Source.

44. Title Source is owned by the same parent company as Quicken.

45. By pre-populating the form, Quicken thereby enriches its parent company to the deprivation of Defendant's rights given under the statute.

46. This scheme also further aids in the unauthorized practice of law.



47. The failure of Plaintiff to ascertain the Wilsons' choices as to the legal counsel to represent them in all aspects of the transaction is unconscionable pursuant to South Carolina law, in particular, S.C. Code Ann. § 37-10-105 and §37-5-108, especially when coupled with coupled with the unauthorized practice of law and with the unlawful request for a waiver of the Wilsons' statutory rights under the Consumer Protection Code.

48. Defendant Personal Representative is informed and believes that this court should issue its order (a) finding that the acts of Plaintiff were unconscionable, and (b) granting such relief as it deems just and proper under S.C. Code Ann. § 37-10-105(C) , including (i) an award of the total finance charge listed in Plaintiff's Truth in Lending disclosure, (ii) an order allowing the remainder of the loan to be paid without interest; (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iv) attorney's fees and costs of this action.

49. In addition, Defendant Personal Representative is informed and believes that this court should issue its order and grant relief as it deems just and proper under S.C. Code Ann. § 37-10-105(A) , namely that any such relief should include (i) an award of a penalty as set forth therein, (ii) an order allowing recoupment or setoff in an amount equal to all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iii) attorneys' fees and costs of this action.

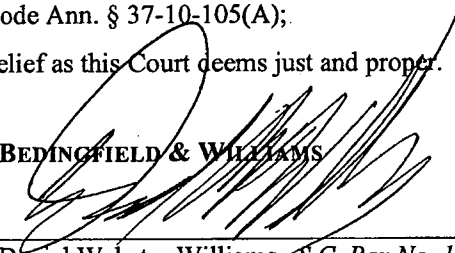
*[continued on following pages]*

**RELIEF SOUGHT**

WHEREFORE, Defendant Personal Representative prays this Court:

- A. Inquire into the matters alleged herein;
- B. Find that Plaintiff has engaged in the unauthorized practice of law and deny Plaintiff the benefit of any equitable remedies;
- C. Deny the Plaintiff the relief sought in the First Amended Complaint as to this Defendant and dismiss the First Amended Complaint with prejudice;
- D. Find that the actions of Plaintiff violate the letter and the spirit of the South Carolina Consumer Protection Code;
- E. Find that the actions of Plaintiff rise to the level of unconscionability and refuse to enforce the mortgage, declaring it void;
- F. Find that the actions of Plaintiff rise to the level of unconscionability and refuse to enforce the mortgage note, declaring it void;
- G. Order relief under S.C. Code Ann. § 37-10-105(c), including
  - (i) an award of the total finance charge listed in Plaintiff's Truth in Lending,
  - (ii) an order allowing the remainder of the loan to be paid without interest;
  - (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and
  - (iv) attorney's fees and costs of this action.
- H. Award a penalty under S.C. Code Ann. § 37-10-105(A);
- I. Grant such other and further relief as this Court deems just and proper.

**BEDINGFIELD & WILLIAMS**

  
Daniel Webster Williams S.C. Bar No. 10233  
PO Box 616  
Barnwell, SC 29812-0616  
*Co-counsel for Defendant*

*[Defendant's attorneys are listed on next page]*

October 21, 2015  
Barnwell, South Carolina

STATE OF SOUTH CAROLINA )  
PLEAS )

COUNTY OF BARNWELL )  
)

QUICKEN LOANS, INC., )  
Plaintiff, )

vs. )

EZEKIEL T. WILSON )  
A/K/A EZEKIEL (ELLEN) T. WILSON )  
ET AL., )  
Defendants. )

IN THE COURT OF COMMON

Civil Action 2015-CP-06-070

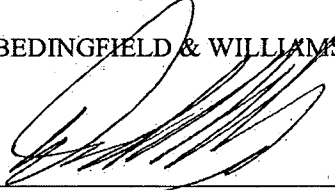
SUMMONS

FILED FOR RECORD  
2015 OCT 22 AM 10:46  
CLERK OF DISTRICT  
COURT  
BARNWELL COUNTY, S.C.

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Amended Summons and Amended Complaint in this action, of which a copy hereof is served upon you, and to serve a copy of your Answer to the said Summons and Complaint on the subscriber at his office, Post Office Box 616, Barnwell, South Carolina 29812, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Summons and Amended Complaint within the time aforesaid, judgment by default will be rendered against you and the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

BEDINGFIELD & WILLIAMS, LLC

  
Daniel W. Williams, Esquire  
Attorney for Plaintiff  
Post Office Box 616  
Barnwell, South Carolina 29812  
(803) 259-2759

October 20, 2015  
Barnwell, South Carolina

ROA\_0057

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BARNWELL )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action 2015-CP-06-070

QUICKEN LOANS, INC., )  
 ) Plaintiff, )  
 )  
vs. )  
 )  
EZEKIEL T. WILSON )  
A/K/A EZEKIEL (ELLEN) T. WILSON )  
ET AL., )  
 ) Defendants. )  
\_\_\_\_\_ )

WAYNE WILSON AND CALVIN  
WILSON'S ANSWER  
AND COUNTER-CLAIMS  
IN RESPONSE TO  
FIRST AMENDED COMPLAINT

FILED FOR RECORD  
2015 OCT 22 AM 10:46  
CLERK OF COURT  
JANICE L. GIBSON

TO: THE PLAINTIFF ABOVE-NAMED AND ITS ATTORNEY:

Wayne D. Wilson and Calvin Wilson, individually, answering the First Amended Complaint, would respectfully allege:

FOR A FIRST DEFENSE

1. Wayne D. Wilson and Calvin Wilson, individually, DENIES each and every allegation of the First Amended Complaint not hereinafter expressly admitted and demands strict proof thereof.
2. Answering Paragraph 1 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, ADMITS the allegations contained therein.
3. Answering Paragraph 2 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, craves reference to the South Carolina Code of Laws for the exact text of Section 33-15-101(b)(8). Further answering Paragraph 2 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.
4. Answering Paragraph 3 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, has insufficient information to admit or deny the allegations contained therein and therefore DENIES same and demands strict proof thereof.

5. Answering Paragraph 4 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

6. Answering Paragraph 5 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, ADMITS so much of said paragraph as alleges that Wayne D. Wilson and Calvin Wilson, individually, claims an interest in the real estate that is the subject of this action; Wayne D. Wilson and Calvin Wilson, individually, DENIES the remaining allegations of said paragraph and demands strict proof thereof.

7. Answering Paragraph 6 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

8. Answering Paragraph 7 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, upon information and belief ADMITS the allegations contained therein.

9. Answering Paragraph 8 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, upon information and belief ADMITS so much of said paragraph as alleges that Calvin O. Wilson, Jr. and Ezekiel T. Wilson (jointly, the "Wilsons") executed a certain real estate mortgage ("Mortgage"). Further answering Paragraph 8, Wayne D. Wilson and Calvin Wilson, individually, craves reference to said Mortgage for the exact description of the property subject to the Mortgage and the precise terms and conditions of the Mortgage.

10. Answering Paragraph 9 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, craves reference to said Mortgage and to said Assignment for details of their execution and recordation.

11. Answering Paragraph 10 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, ADMITS so much of said Paragraph as alleges that the Mortgage purports to secure the repayment of money and purports to constitute a first lien on the property described therein. Further answering Paragraph 10, Wayne D. Wilson and Calvin Wilson, individually, DENIES the remaining allegations of said paragraph, including the allegation that the Mortgage evidences the repayment of money.

12. Answering Paragraph 11 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, DENIES that Calvin O. Wilson, Jr. died on September 20, 2013 "leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson." Wayne D. Wilson and Calvin Wilson, individually, would show that Calvin O. Wilson, Jr. died on September 28, 2013 and his interest in the subject property simultaneously passed to Ezekiel (Ellen) T. Wilson pursuant to the survivorship rights in the deed of C.O. Wilson of record in Deed Book 205 at Page 310.

13. Answering Paragraph 12 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, DENIES the allegation contained therein and demands strict proof thereof.

14. Answering Paragraph 13 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, DENIES the allegations contained therein and demands strict proof thereof.

15. Answering Paragraph 14 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, craves reference to South Carolina Code Sections 29-3-650 and 29-3-660 for the text of those statutes.

16. Answering Paragraph 15 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, craves reference to said Mortgage for details of its terms and conditions.

17. Answering Paragraph 16 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, craves reference to said Mortgage for details of its terms and conditions.

18. Answering Paragraph 17 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, DENIES that the relief sought should be granted.

19. Answering Paragraph 18 of the First Amended Complaint, Wayne D. Wilson and Calvin Wilson, individually, ADMITS upon information and belief so much of said paragraph as alleges that the Community Bank & Trust mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released.

FOR A SECOND DEFENSE

20. Wayne D. Wilson and Calvin Wilson, individually, realleges and reiterates the allegations contained in Paragraphs 1 through 19 above as if fully repeated herein verbatim.

21. Upon information and belief, Plaintiff Quicken Loans, Inc. is a corporation organized and existing under the laws of a state other than South Carolina with its principal place of business in Michigan.

22. Plaintiff is in the business of making residential real estate loans in South Carolina. Plaintiff is not licensed to practice law in the State of South Carolina.

23. This action involves a residential real estate loan in which a mortgage was given on real estate in Barnwell County, South Carolina.

24. The Wilsons contacted Plaintiff to obtain a real-estate-secured residential loan primarily for personal and family purposes.

25. S.C. Code Ann. § 37-10-102 required Plaintiff, at the time of the application or shortly thereafter, to ascertain the Wilsons preference as to the legal counsel who would represent them in all matters of the transaction relating to the closing of the transaction.

26. Upon information and belief, Plaintiff presented an attorney preference form to the Wilsons. The purpose of the form is to document that the lender has ascertained the borrower's preference as to the attorney to represent the borrower in all matters of the transaction.

27. Upon information and belief, the attorney preference form as prepared by Plaintiff for the Wilsons did not comply with the statute: the form was already completed by Plaintiff to state that the "I/We will not use the services of legal counsel" or words to similar effect.

28. Upon information and belief, Plaintiff engaged in the unauthorized practice of law by rendering advice of a legal nature to the effect that the services of legal counsel are not required in South Carolina residential mortgage loan closings.

29. Upon information and belief, Plaintiff in the title examination process in connection with the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

30. Upon information and belief, Plaintiff in the preparation and review of documents in connection with the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

31. Upon information and belief, Plaintiff in closing of the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

32. Upon information and belief, Plaintiff in the document recordation process in connection with the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

33. Upon information and belief, Plaintiff in the disbursement process in connection with the Wilson loan, either directly or through one or more of its agents, engaged or aided and abetted in the unauthorized practice of law in violation of the established laws of the State of South Carolina.

34. Upon information and belief, Plaintiff, having engaged in the unauthorized practice of law, should be denied the benefit of equitable remedies under the rule of Matrix<sup>1</sup>.

FOR A THIRD DEFENSE  
AND BY WAY OF A FIRST COUNTERCLAIM

35. Wayne D. Wilson and Calvin Wilson, individually, realleges and reiterates the allegations contained in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

36. By presenting the Wilsons with a prepopulated form, Plaintiff sought to obtain from the two borrowers waiver of their right to counsel in violation of S.C. Code § 37-1-107.

37. Plaintiff's seeking a waiver of the Wilsons' statutory rights is unconscionable pursuant to South Carolina common law and statutes, including S.C. Code Ann. § 37-10-105 and §37-5-108.

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<sup>1</sup> Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (S.Ct. 2011); *see also* BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 731 S.E.2d 547 (S.Ct. 2012).



38. Wayne D. Wilson and Calvin Wilson, individually, is informed and believes that this court should issue its order (a) finding that the acts of Plaintiff were unconscionable, and (b) granting such relief as it deems just and proper under S.C. Code Ann. § 37-10-105(C), including (i) an award of the total finance charge listed in Plaintiff's Truth in Lending disclosure, (ii) an order allowing the remainder of the loan to be paid without interest; (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iv) attorney's fees and costs of this action.

39. In addition, Wayne D. Wilson and Calvin Wilson, individually, is informed and believes that this court should issue its order and grant relief as it deems just and proper under S.C. Code Ann. § 37-10-105(A), namely that any such relief should include (i) an award of a penalty as set forth therein, (ii) an order allowing recoupment or setoff in an amount equal to all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iii) attorneys' fees and costs of this action.

FOR A FOURTH DEFENSE  
AND BY WAY OF SECOND COUNTERCLAIM

40. Wayne D. Wilson and Calvin Wilson, individually, realleges and reiterates the allegations contained in Paragraphs 1 through 39 above as if fully repeated herein verbatim.

41. By presenting the Wilsons with a prepopulated form, Plaintiff failed to fulfill its statutory obligation to ascertain the borrowers' preferences as to legal counsel in violation of S.C. Code Section 37-10-102 and denied each borrower the statutory right to select his or her own legal counsel.

42. The pre-populated form presented to the Wilsons deprived each of them of a meaningful choice as to the attorney to represent the borrower in all aspects of the transaction and in and of itself is unconscionable pursuant to South Carolina law, in particular S.C. Code Ann §37-10-105 and §37-5-108.

43. Upon information and belief the purpose of pre-populating the form was to steer business to Title Source.

44. Title Source is owned by the same parent company as Quicken.

45. By pre-populating the form, Quicken thereby enriches its parent company to the depravation of Defendant's rights given under the statute.

46. This scheme also further aids in the unauthorized practice of law.

47. The failure of Plaintiff to ascertain the Wilsons' choices as to the legal counsel to represent them in all aspects of the transaction is unconscionable pursuant to South Carolina law, in particular, S.C. Code Ann. § 37-10-105 and §37-5-108, especially when coupled with coupled with the unauthorized practice of law and with the unlawful request for a waiver of the Wilsons' statutory rights under the Consumer Protection Code.

48. Wayne D. Wilson and Calvin Wilson, individually, is informed and believes that this court should issue its order (a) finding that the acts of Plaintiff were unconscionable, and (b) granting such relief as it deems just and proper under S.C. Code Ann. § 37-10-105(C) , including (i) an award of the total finance charge listed in Plaintiff's Truth in Lending disclosure, (ii) an order allowing the remainder of the loan to be paid without interest; (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iv) attorney's fees and costs of this action.

49. In addition, Wayne D. Wilson and Calvin Wilson, individually, is informed and believes that this court should issue its order and grant relief as it deems just and proper under S.C. Code Ann. § 37-10-105(A) , namely that any such relief should include (i) an award of a penalty as set forth therein, (ii) an order allowing recoupment or setoff in an amount equal to all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iii) attorneys' fees and costs of this action.

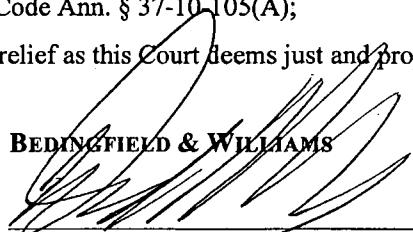
*[continued on following pages]*

**RELIEF SOUGHT**

WHEREFORE, Wayne D. Wilson and Calvin Wilson, individually, prays this Court:

- A. Inquire into the matters alleged herein;
- B. Find that Plaintiff has engaged in the unauthorized practice of law and deny Plaintiff the benefit of any equitable remedies;
- C. Deny the Plaintiff the relief sought in the First Amended Complaint as to this Defendant and dismiss the First Amended Complaint with prejudice;
- D. Find that the actions of Plaintiff violate the letter and the spirit of the South Carolina Consumer Protection Code;
- E. Find that the actions of Plaintiff rise to the level of unconscionability and refuse to enforce the mortgage, declaring it void;
- F. Find that the actions of Plaintiff rise to the level of unconscionability and refuse to enforce the mortgage note, declaring it void;
- G. Order relief under S.C. Code Ann. § 37-10-105(c), including
  - (i) an award of the total finance charge listed in Plaintiff's Truth in Lending,
  - (ii) an order allowing the remainder of the loan to be paid without interest;
  - (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and
  - (iv) attorney's fees and costs of this action.
- H. Award a penalty under S.C. Code Ann. § 37-10-105(A);
- I. Grant such other and further relief as this Court deems just and proper.

**BEDINGFIELD & WILLIAMS**

  
Daniel Webster Williams S.C. Bar No. 10233

PO Box 616

Barnwell, SC 29812-0616

*Co-counsel for Defendant*

*[Defendant's attorneys are listed on next page]*

October 21, 2015  
Barnwell, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF BARNWELL )

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc., )

Plaintiff, )

vs. )

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or Devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and )  
Assigns, and all other persons entitled )  
to claim through them; all unknown )  
persons with any right, title or interests )  
in the real estate described herein; also )  
any persons who may be in the military )  
service of the United States of America, )  
being a class designated as John Doe; )  
and any unknown minors or persons )  
under a disability being a class )  
designated as Richard Roe; Park )  
Sterling Bank, )

Defendant. )

Civil Action No. 2015-CP-06-070

**PLAINTIFF QUICKEN LOANS  
INC.'S ANSWER TO ESTATE OF  
EZEKIEL T. WILSON PERSONAL  
REPRESENTATIVE'S SECOND  
AMENDED ANSWER AND  
COUNTER-CLAIMS IN RESPONSE  
TO AMENDED COMPLAINT**

FILED FOR RECORD  
2015 NOV 10 PM 1:47  
CLERK OF COURT  
JUDICIAL CIRCUIT  
BARNWELL COUNTY, SC

Reserving all rights and remedies available to it, Plaintiff Quicken Loans Inc. ("Quicken Loans") hereby responds to Defendant Wayne D. Wilson, as Personal Representative of the Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson's ("Estate" or "Defendant"), Second Amended Answer and Counter-Claims in Response to First Amended Complaint ("Counterclaims") as follows:<sup>1</sup>

<sup>1</sup> Despite being captioned as a "Second Amended Answer and Counter-Claims," this is the first amended pleading the Estate has served upon Quicken Loans.

### **GENERAL DENIAL**

Each and every allegation of the Counterclaims is expressly denied unless specifically admitted, qualified, or explained herein.

### **FOR A FIRST DEFENSE**

1. Paragraphs 1 through 19 respond to Quicken Loans' Complaint, and therefore, no response is required. To the extent a response is required, Quicken Loans denies every allegation in Paragraphs 1 through 19 that does not admit the allegations contained in Quicken Loans' Complaint.
2. Responding to Paragraph 20, Quicken Loans incorporates its responses to the preceding paragraphs as if repeated verbatim herein.
3. Quicken Loans admits Paragraph 21.
4. Responding to Paragraph 22, Quicken Loans admits that it conducts business concerning residential real estate loans in South Carolina. Quicken Loans further admits that Quicken Loans Inc. is not an individual licensed to practice law in South Carolina and denies any allegation that it has engaged in the unauthorized practice of law.
5. Quicken Loans admits Paragraph 23.
6. Responding to Paragraph 24, Quicken Loans craves reference to the loan agreement referenced therein and denies any allegation inconsistent therewith.
7. Responding to Paragraph 25, Quicken Loans craves reference to the statute referenced therein and denies any allegation inconsistent therewith.
8. Quicken Loans admits that it provided Calvin O. Wilson, Jr. and Ezekiel T. Wilson with an attorney preference form. Responding to the remaining allegations contained

in Paragraph 26, Quicken Loans craves reference to the attorney preference form referenced therein and denies any allegation inconsistent therewith.

9. Quicken Loans denies Paragraph 27.

10. Quicken Loans denies Paragraph 28.

11. Quicken Loans denies Paragraph 29.

12. Quicken Loans denies Paragraph 30.

13. Quicken Loans denies Paragraph 31.

14. Quicken Loans denies Paragraph 32.

15. Quicken Loans denies Paragraph 33.

16. Quicken Loans denies Paragraph 34.

17. Responding to Paragraph 35, Quicken Loans incorporates its responses to the preceding paragraphs as if repeated verbatim herein.

18. Quicken Loans denies Paragraph 36.

19. Quicken Loans denies Paragraph 37.

20. Quicken Loans denies Paragraph 38.

21. Quicken Loans denies Paragraph 39.

22. Responding to Paragraph 40, Quicken Loans incorporates its responses to the preceding paragraphs as if repeated verbatim herein.

23. Quicken Loans denies Paragraph 41.

24. Quicken Loans denies Paragraph 42.

25. Quicken Loans denies Paragraph 43.

26. Quicken Loans admits Paragraph 44.

27. Quicken Loans denies Paragraph 45.

28. Quicken Loans denies Paragraph 46.
29. Quicken Loans denies Paragraph 47.
30. Quicken Loans denies Paragraph 48.
31. Quicken Loans denies Paragraph 49.
32. Responding to the Estate's prayer for relief beginning with "WHEREFORE," Quicken Loans denies that the Estate is entitled to the requested relief or any relief whatsoever.

**FOR A SECOND DEFENSE**

The Estate's Counterclaims fail to state a claim for relief against Quicken Loans upon which relief may be granted and, therefore, should be dismissed.

**FOR A THIRD DEFENSE**

The Estate is comparatively or contributorily at fault for its damages, if any.

**FOR A FOURTH DEFENSE**

The Estate failed to mitigate its damages, if any exist and are proven at trial.

**FOR A FIFTH DEFENSE**

Quicken Loans pleads the defense of set off. To the extent the Estate obtains any monetary recovery against Quicken Loans, such recovery should be set off by the amounts owed by the Estate, including, but not necessarily limited to, amounts owed on the loan referenced in Quicken Loans' Complaint.

**FOR A SIXTH DEFENSE**

The Estate's claims in equity are barred because it has an adequate remedy at law.

**FOR A SEVENTH DEFENSE**

To the extent the Estate seeks punitive or exemplary damages, those claims violate Quicken Loans' rights to procedural and substantive due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

**FOR AN EIGHTH DEFENSE**

The Estate's damages, to the extent it has any, were proximately caused by the acts or omissions of third parties and not by the acts or omissions of Quicken Loans.

**FOR A NINTH DEFENSE**

Quicken Loans would show that the Estate's claims are barred by the doctrines of waiver, estoppel, laches, and unclean hands.

**FOR A TENTH DEFENSE**

The Estate's claims are barred by the plain terms of the applicable contracts, loan documents, and mortgage.

**FOR AN ELEVENTH DEFENSE**

The Estate's claims are barred, in whole or in part, by the doctrines of release, waiver, and/or accord and satisfaction.

**FOR A TWELFTH DEFENSE**

The Estate's damages, to the extent they are proved, were caused by the intervening acts of third-parties.

**FOR A THIRTEENTH DEFENSE**

The Estate's claims are barred by the applicable statute of limitations.



#### **FOR A FOURTEENTH DEFENSE**

The Estate's claims under the South Carolina Consumer Protection Code are barred because any alleged violation by Quicken Loans was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

#### **FOR A FIFTEENTH DEFENSE**

There is no private right of action for the unauthorized practice law. Furthermore, there is no basis in the law for allowing the Estate to use allegations of unauthorized practice of law to avoid its legal obligations to repay loans that were made to Calvin and Ezekiel Wilson, to take back the mortgages that the Wilsons gave as security for the loans, or to exact from the Quicken Loans a penalty in the form of disgorgement of the fees that the Wilsons paid in consideration of certain goods and services in connection with their mortgage loans. Therefore, the Counterclaims should be dismissed.

#### **FOR A SIXTEENTH DEFENSE**

The Estate's claims for disgorgement are barred by the voluntary payment doctrine because the Wilsons paid the fees and charges the Estate now seeks to recover with knowledge of all the facts now alleged in the Counterclaims.

#### **FOR A SEVENTEENTH DEFENSE**

The Estate's claims are barred, in whole or in part, because the Estate would be unjustly enriched by the relief sought in the Counterclaims.

#### **FOR AN EIGHTEENTH DEFENSE**

The Estate's claims are barred, in whole or in part, by any or all of the doctrines of waiver, *in pari delicto*, accord and satisfaction, estoppel, consent, or ratification, because the

Wilsons willingly entered into, participated in, and benefited from the loan transactions in question.

**FOR A NINETEENTH DEFENSE**

The Estate's claims fail as a matter of law because they did not survive Calvin and Ezekiel Wilsons' death.

**FOR A TWENTIETH DEFENSE**

The Estate's claims fail as a matter of law because the Estate lacks standing to assert its claims.

**ADDITIONAL DEFENSES**

Quicken Loans reserves the right to amend and supplement its affirmative defenses to include any applicable defense of law or fact.

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*Attorneys for Quicken Loans Inc.*

Columbia, South Carolina  
November 6, 2015

1 STATE OF SOUTH CAROLINA  
2 COURT OF COMMON PLEAS  
3 COUNTY OF BARNWELL  
4 QUICKEN LOANS,  
5 Plaintiff,  
6 vs. CASE NO. 2015-CP-06-070  
7 EZEKIEL T. WILSON a/k/a  
8 EZEKIEL (ELLEN) WILSON, ET AL.,  
9 Defendant.  
10 HEARING BEFORE SPECIAL REFEREE J. MARTIN HARVEY  
11 DATE: March 18, 2016  
12 TIME: 10:17 AM  
13 LOCATION: Barnwell City Hall  
14 130 Main Street  
15 Barnwell, SC  
16 REPORTED BY: AMY R. COPE,  
17 Court Reporter  
18  
19 A. WILLIAM ROBERTS, JR., & ASSOCIATES  
20 Fast, Accurate & Friendly  
21 Charleston, SC Hilton Head, SC Columbia, SC  
22 (843) 722-8414 (843) 785-3263 (803) 731-5224  
23 Greenville, SC Myrtle Beach, SC Charlotte, NC  
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25

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(INDEX AT REAR OF TRANSCRIPT)

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1 SPECIAL REFEREE HARVEY: Now we'll go  
2 on the record.

3 MR. WILLIAMS: Your Honor, I think  
4 first issue is we have filed first our motion for  
5 summary judgment. I think Mr. Smith has asked that  
6 you hear his motion to transfer to the general  
7 docket first. You know, we would prefer -- but  
8 quite frankly, as long as you're going to hear all  
9 the motions and rule on them in the future, I don't  
10 know it matters who goes first with motions.

11 SPECIAL REFEREE HARVEY: Well, I -- you  
12 know, if you -- with the cross motions for summary  
13 judgment, it seems I can rule one way or the other,  
14 and then your motion to amend may or may not be  
15 moved. Do you have a Motion to Amend your  
16 pleadings and ask for --

17 MR. SMITH: We do. We have a motion to  
18 amend the pleadings and assert some additional  
19 claims. I don't think that that would have been --  
20 in no event would that be mooted by anything in the  
21 summary judgment motions. Our summary judgment  
22 motion goes to your questions of law regarding the  
23 attorney preference claims.

24 SPECIAL REFEREE HARVEY: Right. Right.

25 MR. SMITH: But the motion to amend

1 would not moot. This is one of several cases like  
2 this and we've made the exact same motion to amend  
3 in another case and it was consented to. We  
4 haven't heard the same consent, in this case there  
5 aren't any distinctions in the motions and claims  
6 that we're asserting in the pleading and that bears  
7 on the jury trial demand.

8 We made a jury trial demand in the  
9 amended complaint, as well as in addition to the  
10 jury demand we made back in January when we had the  
11 counterclaims of the estate, as well as claims  
12 raised by the Wilson's sons. And so those jury  
13 demands are out there. And as Dan said, we did ask  
14 that our motion to transfer to the general docket  
15 be heard first because that is a motion we believe  
16 that takes precedence as we read the rules and case  
17 law, and certainly we do not -- my client does not  
18 waive its right to a jury trial. And therefore,  
19 with all respect, seeks to have its case heard in  
20 the Circuit Court, including the motions so...

21 SPECIAL REFEREE HARVEY: Well, again,  
22 I'm going to take it under advisement regardless --

23 MR. SMITH: Correct.

24 SPECIAL REFEREE HARVEY: -- so I want to  
25 hear whatever was pending. I mean, for purposes of

A W R

1 matters of law, your motion for jury trial is  
2 granted it goes to the Circuit Court. Judge Early  
3 has been referring complicated stuff like this back  
4 to --

5 MR. SMITH: Is that right?

6 SPECIAL REFEREE HARVEY: -- I just got  
7 finished hearing a motion for partial summary  
8 judgment on something he didn't want to hear and he  
9 referred it to me for the limited purpose of making  
10 the ruling on the motions.

11 MR. SMITH: Interesting. Well, that's  
12 good information to have. It's certainly something  
13 that I'd advise my client about. And they would be  
14 able to take into account, but in terms of their  
15 assertion of --

16 SPECIAL REFEREE HARVEY: Sure.

17 MR. SMITH: -- a right to jury trail,  
18 we're here to assert that, defend that, not waive  
19 that, and be very careful with that. And so that's  
20 why we made the motions, why I sent the e-mails,  
21 and had the exchange about --

22 SPECIAL REFEREE HARVEY: Right.

23 MR. SMITH: -- that as a consequence of  
24 the clerks having to put those motions on the  
25 general docket.



1 SPECIAL REFEREE HARVEY: Well, it  
2 happens a lot when cases get referred around here  
3 --

4 MR. SMITH: Sure, sure, right.

5 SPECIAL REFEREE HARVEY: -- the clerks  
6 automatically stick them on there and then they  
7 take them off --

8 MR. SMITH: That's right.

9 SPECIAL REFEREE HARVEY: -- once they  
10 get reminded that it's been referred to a referee  
11 or a magistrate.

12 MR. SMITH: Right. And I think that  
13 happens right often and, you know, I'll go ahead  
14 and get into the substance of our motion was that  
15 by operation of the rule, which contemplates  
16 assignment of a case to a referee in a subsequent  
17 demand for a jury trial, Rule 53(b), the matter  
18 shall be transferred to the Circuit Court.

19 SPECIAL REFEREE HARVEY: Are you saying  
20 that Rule 53(b) grants -- gets you around the time  
21 limits imposed by Rule 38?

22 MR. SMITH: I'm saying that we're  
23 within the time limits --

24 SPECIAL REFEREE HARVEY: Okay. Because  
25 that was what I was wanting to hear was the dates

A W R

1 procedurally --

2 MR. SMITH: Sure. Sure.

3 SPECIAL REFEREE HARVEY: So Dan, you  
4 want to tell me --

5 MR. WILLIAMS: Yeah, I can let him  
6 argue and then I'll tell you why he's wrong; is  
7 that all right? Do you want to do it that way?

8 SPECIAL REFEREE HARVEY: Sure. But I  
9 want to know dates of the original summons and  
10 compliant, list those, filed, the answers. I  
11 understand that there was a -- y'all represent the  
12 estate and the sons altogether or is there one  
13 lawyer representing the sons and one  
14 representing --

15 MR. WILLIAMS: The son's answer was  
16 late and they moved to strike it and we've agreed  
17 to strike it. So that issue is not there any more.

18 SPECIAL REFEREE HARVEY: All right.

19 MR. WILLIAMS: So the issues are  
20 joined, the pleadings are --

21 SPECIAL REFEREE HARVEY: All right.  
22 Give me your timeline.

23 MR. SMITH: All right. The original  
24 foreclosure complaint was filed March 3, 2015.

25 SPECIAL REFEREE HARVEY: Okay.

A W R

1 MR. SMITH: The estate answered  
2 asserting their counterclaims May 21, 2015.

3 SPECIAL REFEREE HARVEY: Okay.

4 MR. SMITH: An amended foreclosure  
5 complaint was filed on May 29, 2015.

6 SPECIAL REFEREE HARVEY: Was that  
7 reflecting the acknowledgment of the death?

8 MR. SMITH: Yes, sir.

9 On June 19th, 2015, the estate filed an  
10 answer to the amended complaint asserting a single  
11 counterclaim.

12 SPECIAL REFEREE HARVEY: Okay.

13 MR. SMITH: August 20, 2015, reply to  
14 the estate's answer in counterclaims was filed.

15 And then on September 1, 2015, the case  
16 was referred to the special referee.

17 SPECIAL REFEREE HARVEY: Okay.

18 MR. SMITH: On October 22nd, 2015, the  
19 estate filed a pleading denominated second amended  
20 answer and counterclaims, asserted two  
21 counterclaims for violation of the attorney  
22 preference statute, including claims of  
23 unconscionability and an affirmative defense based  
24 on the Matrix Financial Services case.

25 Wayne and Calvin Wilson filed their

A W R

1 answer in counterclaims asserting the same claims  
2 in defense.

3 SPECIAL REFEREE HARVEY: Same day?

4 MR. SMITH: Same time, yes.

5 SPECIAL REFEREE HARVEY: Okay.

6 MR. SMITH: On November 10, 2015,  
7 Quicken Loans filed its reply to the second amended  
8 answer and counterclaim. And a couple of weeks  
9 later moved to strike the Wilson's, the sons',  
10 individual answer and counterclaims.

11 Quicken Loans filed its jury demand and  
12 motion to transfer on January 25, 2016. And after  
13 that, the sons withdrew their counterclaims.

14 SPECIAL REFEREE HARVEY: Okay.

15 MR. SMITH: The amended -- the motion  
16 to amend, which has the second amended complaint  
17 that includes a jury demand was filed  
18 March 11, 2016. And so the jury demands were  
19 timely for the following reasons in response to the  
20 times for answering the Wilson's sons' individual  
21 counterclaims had not passed, so the last pleading  
22 that will be addressed to those claims had not been  
23 filed at the time we made the jury demand.

24 As to the second amended complaint, it  
25 is timely because that's a new pleading. That is

A W R

1 the pleading that -- it is the complaint, it is not  
2 a responsive pleading. The jury demand is clearly  
3 reflected in the proposed second amended complaint  
4 that's been filed, which if the same conduct were  
5 followed here, as in other similar cases, would  
6 mean that that would be the operative complaint in  
7 the case and the jury demand would be present on  
8 that. Rule 54 clearly contemplates --

9 MR. BOGAN: 53.

10 MR. SMITH: -- excuse me, 53, thanks to  
11 the peanut gallery, Rule 53 clearly contemplates  
12 that the jury demand will be made -- can be made  
13 after the reference. And that's what's happened  
14 here. And even insofar as the jury demand would be  
15 untimely, but for the timeliness arguments I've --  
16 or timeliness reasons, I've pointed out, of course,  
17 the case still could be heard by a jury.

18 Moreover Rule 53(b) doesn't distinguish  
19 as to time. Rule 53(b) says that the matter shall  
20 be transferred to the general docket. And that  
21 happens quite frequently as, Your Honor, is  
22 well-aware. We'll have a foreclosure complaint  
23 filed, there will be counterclaims, the case will  
24 develop as the matter proceeds and the reference  
25 will be withdrawn for one reason or another.

1 They'll go over to the general docket and if  
2 there's an issue as to whether that demand for a  
3 jury trial stands or not, then that's litigated  
4 there.

5 And that's quite typical. And it's  
6 certainly what the rule contemplates. And if you  
7 read Rule 54 together with Rule 40, it appears that  
8 that was the intent of the drafters to facilitate  
9 the cases assignments to the appropriate court.

10 My client, having asserted the jury  
11 trial, respectfully seeks to have its claim  
12 adjudicated in the Circuit Court. And as I said,  
13 the language of 54(b) is mandatory, it doesn't --  
14 it says: Upon filing a jury demand, the matter  
15 shall be returned. It doesn't say it may be  
16 returned, it doesn't say if the following  
17 circumstances are met, it will be returned. It  
18 just says it shall be returned.

19 And we respectfully request that that  
20 motion be granted and we believe that it should be  
21 the end of the day, quite frankly. I appreciate  
22 what you said about having read everything and  
23 being prepared to take everything under  
24 consideration, but we respectfully request that  
25 that motion be addressed first so that this case

A W R

1 could proceed to the Circuit Court.

2 And as I said, it's interesting  
3 information, which we'll share with the client  
4 about cases being assigned back to, Your Honor, on  
5 motions. And that's a bridge we'd certainly cross  
6 when we came to it, it would be something we'd  
7 understand it being the rules and we would be able  
8 to address that then.

9 But what we see here is that this is  
10 not just -- this is one of several cases. And as  
11 of January of this year, it was clear that there  
12 would be several of these cases. There's one other  
13 that is here in Barnwell County, the others are  
14 filed in other counties and have been removed to  
15 Federal Courts. There's a Tyrone Moseley. There's  
16 a Mr. and Mrs. Boone. There's a Messicks case.  
17 And there's one by a gentleman by the name of  
18 Harry O'Neal. And all of these cases --

19 SPECIAL REFEREE HARVEY: All of them in  
20 Barnwell?

21 MR. SMITH: Not all in Barnwell, I  
22 think one of them --

23 SPECIAL REFEREE HARVEY: I recognize  
24 some of those names is --

25 MR. SMITH: Right, right. The Boones

A W R

1 are in Orangeburg. The Messicks may be in  
2 Dorchester. O'Neal is somebody you may be familiar  
3 with, I believe your firm represented them in a  
4 bankruptcy, he's here, I believe, and Bowling is  
5 here as well.

6           These cases are all related, you know,  
7 I -- these gentleman and I were litigating attorney  
8 preference cases 20 years ago and if you told us --  
9 or if you told me that I'd be down in Barnwell  
10 litigating attorney preference cases 20 years after  
11 Bazzel versus Green Tree, I would have said you've  
12 got to be kidding me, but we're here today still.

13           And we don't see anything like the  
14 volume, but we've got a half of dozen cases that  
15 are going to be proceeding in the Circuit Courts  
16 and the Federal District Courts. And what you can  
17 tell from the summary judgment motion that the  
18 Wilsons have filed in this case, is that it's some  
19 novel theories that are being asserted and these  
20 are not theories that have been supported by any  
21 existing precedent.

22           And their motion asks the Court here to  
23 do something that wasn't secured in Bazzel versus  
24 Green Tree or in King versus General Finance --  
25 American General Finance or any of the dozens and

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1. dozens of cases where there were attorney  
2 preference violations.

3           And, you know, when we get to that,  
4 we'll address that issue. But this case is  
5 different from all of those cases, I mean, my  
6 colleagues on the other side may stand up and say,  
7 oh, yeah, we argued all those issues, but --

8           SPECIAL REFEREE HARVEY: Let's stick to  
9 the jury question and let me --

10           MR. SMITH: Fair enough. Fair enough.

11           SPECIAL REFEREE HARVEY: -- get  
12 Mr. Williams --

13           MR. SMITH: I believe that's it, unless  
14 you've got any questions. We're really basing our  
15 motion on the plain language of the rule and --  
16 plain and mandatory language of the rule. Our  
17 client's assertion of their right to the jury  
18 trial. And we thank you for that consideration. I  
19 ask that it be addressed first and to the  
20 exclusion, the others.

21           SPECIAL REFEREE HARVEY: All right.

22           MR. WILLIAMS: Thank you, if it pleases  
23 the Court, let me hand up to you first something  
24 that's been filed with the Circuit Court and it is  
25 the order of reference in this case. You will see

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1 it's an order of reference signed by the clerk, but  
2 at the end of the order of reference, you will see  
3 it was also a motion of Green Tree --

4 SPECIAL REFEREE HARVEY: You mean  
5 Quicken.

6 MR. WILLIAMS: -- I'm sorry, you said  
7 Green Tree and I'm thinking 20 years ago. It's on  
8 a motion of Quicken. So Quicken -- this isn't some  
9 procedural tool of the Circuit Court where they  
10 automatically send a case to special referee.  
11 Quicken in this case specifically asked for this  
12 case to be sent to the special referee and they did  
13 so after there was a pleading in front of it  
14 alleging attorney preference violations.

15 They don't claim that they're entitled  
16 to a jury trial because of the theory of  
17 unconscionability, clearly not, that's a matter of  
18 law for the court. The UPL issue quite frankly  
19 wouldn't be before you and you've got to wait on  
20 what the Supreme Court does for that.

21 So the only thing they could be asking  
22 for a jury trial for would be the attorney  
23 preference case, issue, that was before them as  
24 early as June of last year and they waited until  
25 after we filed our summary judgment motion to

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1 request -- to make their jury trial request.

2 Having said that, in all sincerity I  
3 think in discretion you can send this back, if you  
4 so determine, but there is a case and it's Richland  
5 County versus Lowman, case stands for proposition  
6 that once you consent or if you move, I would say,  
7 will a matter be heard by a special referee, you  
8 have waived your right to a jury trial.

9 Once again, this motion that Quicken  
10 made to move this case to you, to the special  
11 referee, the issues were there before they made the  
12 motion. So they knew about that and they knowingly  
13 waived their right to a jury trial.

14 Now, what are you entitled to a jury  
15 trial for in South Carolina? And Rule 53 doesn't  
16 tell you that, but Rule 38 and Rule 39 gives some  
17 guidance. And if you look first at Rule 39(b),  
18 issues of law are for the court, all right. Issues  
19 of fact are for juries. There hasn't been the  
20 first affidavit presented today in support of this  
21 motion to indicate any issue of fact that needs to  
22 be decided by a jury.

23 In fact, instead of giving you an  
24 affidavit saying there's factual issues that need  
25 to be determined by a jury, they have filed a

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1 summary judgment motion. Their summary judgment  
2 motion is based in part upon the same exact form  
3 that we say gives us the right to summary judgment.  
4 It's up to you to interpret what that form means;  
5 not a jury, that's a matter of law for the court.

6 So we don't think this is a matter that  
7 should be in front of a jury in the first place,  
8 all right.

9 Now, they haven't addressed their  
10 amended pleading, so I would -- we do not consent  
11 to that. It's a different case than the Bowling  
12 case that they referred to you and I would let him  
13 argue that and then I'll respond back.

14 SPECIAL REFEREE HARVEY: Okay.  
15 Anything in reply, Mr. Bogan(sic)?

16 MR. SMITH: Yes, Your Honor, thank you.  
17 The Richland County versus Lowman case predates the  
18 rule change, in particular the rule change adopting  
19 the language we rely on, which says that the matter  
20 must be transferred back to the Circuit Court.

21 As for affidavits and issues of fact,  
22 there are two things that I would call to the  
23 Court's attention. Exhibit 2 to the memo in  
24 opposition to plaintiff's motion of summary  
25 judgment is the affidavit of Carlton Robinson.

1 Mr. Robinson is a lawyer who has testified by  
2 affidavit that he represented the Wilsons in  
3 connection with the closing. And he explains the  
4 documents to everybody before he conducts the  
5 closing, including explanation to the rights of  
6 attorney preference and doesn't go forward with the  
7 transaction until he believes that all the  
8 requirements have been met.

9 Exhibit H to our motion for summary  
10 judgment is an executed loan application, dated  
11 December 12, 2011. The last page of that  
12 application has a section entitled borrower  
13 preferences. It has a line for legal counsel and a  
14 line for insurance agent --

15 SPECIAL REFEREE HARVEY: I've seen it.

16 MR. SMITH: -- each of those is filled  
17 out. That document is signed; that's an issue of  
18 fact for the jury to decide. Was the attorney  
19 preference statute violated or not, just to be  
20 clear, that is an issue of fact that a jury should  
21 decide in this case. And there's competing  
22 evidence on both sides of that issue for a jury to  
23 decide.

24 As for the motion to amend --

25 SPECIAL REFEREE HARVEY: Don't go into

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1 that yet.

2 MR. SMITH: Okay.

3 SPECIAL REFEREE HARVEY: If you want me  
4 to address the jury trial motion, I really don't  
5 think you want me, because if you want me to rule  
6 right now, I'm going to deny it. But if you'll let  
7 me think about it more, I will, but I'm going to  
8 hear the other motions first. That's my  
9 inclination based on what Mr. Williams is saying, I  
10 think you're out of time.

11 MR. SMITH: Then we would -- we think  
12 that's a matter that affects our mode of trial.  
13 And we'll give notice of our appeal of that  
14 decision and we can take that up. We've got a  
15 notice prepared to file and a superseding ready to  
16 present to, Your Honor --

17 MR. WILLIAMS: You haven't ruled, Your  
18 Honor, you told him you wanted to consider it. So  
19 you haven't ruled --

20 SPECIAL REFEREE HARVEY: I haven't  
21 ruled, I said if you're going to insist, that my  
22 inclination is, but I haven't ruled. My intention  
23 is to go forward with these motions for summary  
24 judgment. And my understanding is until something  
25 is in writing and my signature is on it, it's not a

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1 final decision, right?

2 MR. SMITH: I think if, Your Honor,  
3 rules and goes forward, one of the problems we've  
4 got is that the rule says that it shall be  
5 transferred. And I think that's --

6 SPECIAL REFEREE HARVEY: I also think  
7 in conjunction with the other rules that it's got  
8 to be timely and I don't think you're timely.

9 MR. SMITH: The --

10 SPECIAL REFEREE HARVEY: But I'm  
11 certainly willing to give it --

12 MR. SMITH: -- I don't think I heard --

13 SPECIAL REFEREE HARVEY: -- a more  
14 thorough consideration than what you're asking me  
15 to give right now.

16 MR. SMITH: -- well, I don't even think  
17 I heard a timeliness argument, so --

18 SPECIAL REFEREE HARVEY: I think you  
19 pretty much said timely.

20 MR. WILLIAMS: I think I did, Your  
21 Honor, I mean, that was the import and -- so...

22 SPECIAL REFEREE HARVEY: Mr. Williams,  
23 I'm going to go forward with your motion. I'm  
24 going to hear their cross-motion for summary  
25 judgment. I've got serious questions about both

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1 motions, to be honest with you. And it may be that  
2 once I rule, you'll get your jury trial.

3 MR. SMITH: Yes, sir. Well, we think  
4 going on to any other motions would be a denial of  
5 the motion that we made.

6 MR. WILLIAMS: Your Honor, I agreed to  
7 let them go first based upon them not objecting to  
8 all the motions being heard. So it's sort of  
9 unfair for them now to come up and say, oh, you've  
10 got to hear us first or we're not going to -- you  
11 can't consider anything else.

12 SPECIAL REFEREE HARVEY: And I made it  
13 clear I was here taking it under advisement and I'm  
14 still taking it under advisement.

15 MR. SMITH: I understand. I just --  
16 but so the record is clear, we did ask that ours be  
17 heard first and to the exclusion of all others --

18 SPECIAL REFEREE HARVEY: Right.

19 MR. SMITH: -- so there's no -- we  
20 haven't consented --

21 SPECIAL REFEREE HARVEY: Your motion is  
22 under advisement, I haven't made a ruling.

23 MR. SMITH: Thank you, Your Honor.

24 SPECIAL REFEREE HARVEY: And I very  
25 well -- you could win, I'm just saying I -- from

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1 what I'm reading on both briefs, it's -- I'm not  
2 sure it's a cut-and-dry issue either way.

3 Go ahead.

4 MR. WILLIAMS: He's got a motion to  
5 amend, I can address that real quickly if he wants  
6 to say something about it first or if you want  
7 to move on --

8 SPECIAL REFEREE HARVEY: I want to hear  
9 that summary judgment motion.

10 MR. WILLIAMS: Okay. Your Honor, we  
11 have moved for summary judgment in this case based  
12 on the fact that there's no material element of  
13 fact and that we are entitled to judgment by a  
14 matter of law. As, Your Honor, is aware this  
15 matter involves the attorney preference statute,  
16 which is found at 37-10-102. And we have the  
17 statute in our binder under tab A, along with  
18 several other statutes. And I believe it's at the  
19 end of the binder somewhere.

20 But essentially what it says is that a  
21 lender shall; it's mandatory language, ascertain  
22 the preference of the attorney he wishes to use to  
23 enclose -- to close the entire loan transaction.

24 All right. And what's happened is this  
25 law was initially passed in 1982 and there was a AI

1 afterwards that promulgated a form for the specific  
2 purpose of ascertaining the preference. That form  
3 is found in tab 1, all right. And in the AI, the  
4 administrator found that the purpose of the statute  
5 was, of course, to protect borrowers, but also to  
6 make sure that the borrower had his choice of  
7 attorney to represent him in the transaction and to  
8 do so at a time before he's inundated with  
9 documents, all right, concerning the transaction,  
10 so the lawyer's involved upfront.

11 We know from King versus American  
12 General, that you can't ascertain the preference at  
13 the closing. Preference has to be ascertained at  
14 the front of the transaction. The statute was  
15 amended in 1996 and no longer does it have to be on  
16 the first page of the loan application, it can be  
17 within three days, we believe, of a loan  
18 application, but it has to be up-front.

19 Now, the policy again of this, the  
20 policy of buyer services, the policy of the  
21 Consumer Protection Code in general is to protect  
22 borrowers. The first Tilley versus Pacesetter case  
23 found that this statute, like the rest of the code,  
24 should be construed liberally for that purpose.

25 Now, as a matter -- so as a matter of

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1 fact, that's not disputed by either party, there is  
2 a preference form signed by CO Wilson and  
3 Ezekiel T. Wilson. Ezekiel T. Wilson was known as  
4 Ellen Wilson over in Williston. It's dated  
5 properly.

6 I will tell you that the form appears  
7 to me to comport with the form promulgated by the  
8 administrator, with one big exception, it's  
9 pre-populated. It's pre-populated not by the  
10 Wilsons, but pre-populated by the lender, in this  
11 case, Quicken. And what the form says is this:  
12 I/we will not use the services of legal counsel.  
13 All right. I/we will not use the services of legal  
14 counsel.

15 Now, how did that get there? In  
16 another case, the deposition of a gentleman named  
17 Jeffrey Campbell was taken. And Mr. Campbell  
18 basically described the application --

19 MR. SMITH: Excuse me, just so that  
20 there's no doubt about it, we object to the  
21 reference to prior testimony from another case,  
22 which was depositions read into record, depositions  
23 taken pursuant to confidentiality order,  
24 depositions taken in another case that did not  
25 involve the Wilsons. In another case that did not

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1 relate to the attorney preference statute. In  
2 fact, we all repeatedly said in that courtroom  
3 there that this is not an attorney preference case.

4 So we object and I'll get into that  
5 when I make my presentation, but I didn't want to  
6 be perceived as having waived --

7 SPECIAL REFEREE HARVEY: Your objection  
8 is noted. Go ahead, Mr. Wilson.

9 MR. SMITH: -- in any of this.

10 MR. WILLIAMS: Once again, this is the  
11 testimony in a deposition that was actually put  
12 into the court order.

13 SPECIAL REFEREE HARVEY: It was  
14 30(b)(6)?

15 MR. SMITH: 30(b)(6) and it's been  
16 entered into a court record, all right.  
17 Essentially what he tells us in his testimony  
18 before the court is that a Quicken mortgage banker  
19 takes information for the loan application. And  
20 sometime during that loan application, the  
21 original -- the initial process, a question is  
22 prompted by the software on their computer and a  
23 specific question is asked the borrower.

24 And that question is: Will the  
25 borrower select legal counsel to represent them in

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1 this transaction? Now, that is not what the  
2 attorney preference statute maintains be done. It  
3 is not a mandatory ascertainment of the lawyer that  
4 you wish to represent you in all aspects of the  
5 transaction.

6 But what happens after that question is  
7 answered, either yes or no, if it's answered, no,  
8 you get the language that we see in this form  
9 automatically pre-populated by Quicken's computer  
10 software. And it says: I/we will not use the  
11 services of legal counsel.

12 We have no reason to think that if we  
13 took a separate deposition that they would give us  
14 a different answer than that. This is what they  
15 told the court in a separate proceeding, we believe  
16 we can rely on this for our summary judgment  
17 motion.

18 They presented no affidavits today  
19 challenging that, and they could have, they had  
20 until a couple of days ago to do that, all right.  
21 Now, what's wrong with this statement? A lot of  
22 things are wrong with it. The first thing that's  
23 wrong with it is, it is an impermissible waiver of  
24 statutory rights given under the Consumer  
25 Protection Code.

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1 Now, Your Honor, if you look at  
2 37-1-107, there's a statute and it says that no  
3 rights given under the code can be waived or  
4 foregone by a consumer. It suggests that you can  
5 close a loan in this state without an attorney in  
6 violation of the public policy set forth and buyer  
7 service and all the cases since buyer service.

8 It violates 40-5-320 because low and  
9 behold, we know from the settlement statement and  
10 what happened in this transaction -- and the  
11 settlement statement is found at tab 3 -- that the  
12 loan was assigned to a company called Title Source.  
13 Title Source is an affiliate company, a sister  
14 company of Quicken, owned by the same parent  
15 company.

16 Title Source was paid a settlement  
17 closing fee of \$525, as well as an abstract and  
18 title search fee of \$150. So the form's not at  
19 fault, it does what it says it does, it sends a  
20 loan closing to a nonlawyer, it's just illegal.  
21 It's illegal for the reasons I've just stated.

22 Now, to be sure, a lawyer named  
23 Carlton Robinson does show up at the house and this  
24 is the first time he sees the Wilsons. And I don't  
25 -- if he says he explained the attorney preference

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1 to them, I don't know. But this is the thing, at  
2 the closing it's too late. We know from the King  
3 case that the assertion from trying to ascertain  
4 attorney preference at the time of closing borders  
5 on frivolity, according to Justice Kittredge, you  
6 can't do it then.

7           It was done, the form was dated 11/7 --  
8 I'm sorry, yeah, November 7th, 2011, the same date  
9 as the application, that's when you do it -- that's  
10 when they did it, they just did it wrong. And this  
11 is where we get into the unconscionability part.  
12 You know, this form -- and conscionability(sic) is  
13 composed of two things: First, the absence of  
14 unequal choice. And the second is terms that are  
15 so oppressive that no reasonable person would  
16 expect you to make them, the other party to make  
17 them, or would ask you to make them, all right, and  
18 no reasonable person would accept.

19           If you look at the Simpson versus MUSA  
20 case that we've included in our information, when  
21 you look at absence of unequal choice, you look at  
22 the bargaining power of the parties, in this case  
23 you have Quicken Loans versus the Wilsons. And you  
24 look at whether or not the borrower would be a  
25 substantial business concern to Quicken.

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1 Well, it's one mortgage out of however  
2 many they do. They claim they're the largest  
3 Internet provider in the nation and either the  
4 second or third largest mortgage lender in the  
5 nation. But in this case, it's more crucial than  
6 that because you've got a form that was designed  
7 for the express purpose of allowing the borrower to  
8 make the choice and it's prefilled in by Quicken,  
9 all right.

10 And if you go back and you look at the  
11 testimony of Mr. Campbell, even if the borrowers  
12 had said, yes, the form would not have been filled  
13 out with the name of an attorney; it never is. If  
14 the borrower says, yes, the form is filled out,  
15 please contact the lender with preference. And  
16 guess what happens if you don't do that, the loan  
17 goes to Title Source, okay. So --

18 SPECIAL REFEREE HARVEY: And that's in  
19 the testimony?

20 MR. WILLIAMS: That's in the testimony.  
21 In no situation, no situation, does this form  
22 ascertain the preference of attorney as it's  
23 required to do. Once again, the statute says:  
24 Preference must be ascertain; must be.

25 Now, this is not an insurance



1 preference case, but look at section 2 on the form,  
2 if you would, and low and behold you see State Farm  
3 filled in; that was their insurance company. We  
4 can't figure out for the life of us how they're  
5 able to ascertain the insurance preference, but  
6 they can't ascertain the attorney preference.

7 They can fill it in for the Wilsons for  
8 their insurance company, but not for their  
9 attorney. So this is a form that's supposed to  
10 give them a choice and they have absolutely no  
11 choice on the face of the form. It's never given  
12 to them, never given to anybody. It's always  
13 filled out one or two ways: I/we will not use the  
14 service of legal contact, or please contact lender  
15 with your preference.

16 All right. So on the face, there's no  
17 choice given to the borrower. Now, let's talk  
18 about that second prong of unconscionability. The  
19 second prong is terms that are so oppressive that  
20 no reasonable person would make them and no  
21 reasonable person would accept them.

22 I would submit to you that no  
23 reasonable person would make or accept terms which  
24 would violate statutory law. No reasonable person  
25 would knowingly waive rights that they can't waive

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1 under the code.

2 SPECIAL REFEREE HARVEY: Why isn't that  
3 an issue of fact?

4 MR. WILLIAMS: Why isn't what an issue  
5 of fact?

6 SPECIAL REFEREE HARVEY: What a  
7 reasonable person would determine?

8 MR. WILLIAMS: Because it's -- because  
9 unconscionability is always an issue for the court,  
10 that's why. It may be an issue of fact, but it's  
11 always an issue for the court, it's never an issue  
12 for the jury, all right?

13 SPECIAL REFEREE HARVEY: All right.  
14 I'm listening.

15 MR. WILLIAMS: And, in fact -- and, in  
16 fact, not only were they not knowingly waiving  
17 their right, they wouldn't commit an act which  
18 violates a statute which has potential criminal  
19 consequences, and that's 40-5-320. Title Source is  
20 not a lawyer. Title Source does furnish lawyers.  
21 Title Source is paid a settlement for a closing fee  
22 in this case, all right, so --

23 SPECIAL REFEREE HARVEY: Didn't you  
24 also put in your memorandum that Quicken -- a  
25 statement that Quicken doesn't offer a choice of

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1 lawyers?

2 MR. WILLIAMS: The lawyer's assigned by  
3 Title Source.

4 SPECIAL REFEREE HARVEY: Right.

5 MR. WILLIAMS: So Quicken sends this  
6 case, after they get you to sign this form, to  
7 Title Source, but --

8 SPECIAL REFEREE HARVEY: Right, but I  
9 think you had a point, maybe I misread it, it says  
10 you get the choice, where it says: I will select a  
11 lawyer and it says contact Quicken. And then the  
12 other choice is like it was in the form, but  
13 instead of that language, didn't you argue in that  
14 brief that Quicken should have said these are some  
15 possible lawyers and you can choose one of these  
16 that we've approved for closing?

17 MR. WILLIAMS: If you look at the form,  
18 what the administrator did back in 1993 to say,  
19 look, if the borrower tells you we don't have a  
20 preference, the way around that is to give them a  
21 list of acceptable names, give them a phonebook.  
22 Okay, tell them to pick somebody, all right, tell  
23 them to call a neighbor, tell them to call your  
24 friend, okay. But you've got to ascertain  
25 preference and that's -- thank you for bringing

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1 that up, that's a good point. What did they do in  
2 this case, they marked that form nonapplicable.

3 So even under 1-B, there's absolutely  
4 no way that a borrower can select an attorney,  
5 either by calling somebody by looking at the  
6 phonebook or looking at a list provided --

7 SPECIAL REFEREE HARVEY: And that's in  
8 the deposition testimony?

9 MR. WILLIAMS: That's correct.

10 SPECIAL REFEREE HARVEY: Okay.

11 MR. WILLIAMS: And it's always filled  
12 out that way, no matter what the person answers the  
13 question, will the borrower select legal counsel;  
14 yes or no, it's always that way. So the form gives  
15 absolutely no right or way for the borrower to  
16 select his attorney..

17 Now, if you look at the Simpson case  
18 for that second prong and that's the oppressive and  
19 one-side attorney prong, what the court has looked  
20 at is whether or not -- whether or not the terms,  
21 in this case it would be the terms of the  
22 preference form, violate public policy.

23 They do because it violates, one, buyer  
24 services that suggests you can close a loan without  
25 an attorney. Two, it violates 40-5-320 because it

1 then uses this to send a loan to Title Source,  
2 which violates public policy and it's a waiver  
3 under the code of your rights to select an  
4 attorney.

5 So it violates three policies of the  
6 state and therefore clearly is oppressive and  
7 unconscionable. Now, the terminations of public  
8 policy -- and that's why this is an issue for the  
9 court, not an issue for the jury. The terminations  
10 of unconscionability, those issues are for the  
11 Court.

12 What the form -- whether the form was  
13 given on a particular date, that's a question of  
14 fact. We don't dispute that, we agree that this  
15 form was given on November the 7th, 2011. We agree  
16 to that, all right.

17 So let me check with co-counsel, but I  
18 think that's about it. Just in case I did not say  
19 this, the nonapplicable part is pre-populated also  
20 by Quicken, according to their computer system.

21 SPECIAL REFEREE HARVEY: You didn't say  
22 it on the record, but it's in your brief.

23 MR. WILLIAMS: All right.

24 SPECIAL REFEREE HARVEY: Hold on one  
25 second, let me think a minute. Mr. Williams, why

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1 would not the exclusion -- because this is a loan  
2 secured by a residence, why would not that -- and I  
3 can't cite the statute, but why would not that  
4 exclusion apply to your claim?

5 There's an exclusion in the Consumer  
6 Protection Code that some of these defenses are not  
7 applicable --

8 MR. WILSON: Chapter 10, this is in  
9 chapter 10. And chapter 10 applies to everything  
10 else that's not in the Consumer Protection Code,  
11 all right. So it clearly -- chapter 10 applies to  
12 first loan mortgages, all right. And the attorney  
13 preference statute is included in chapter 10.

14 Now, by reference, it can also apply to  
15 consumer credit transactions and consumer loans  
16 under different sections, but chapter 10 was  
17 initially meant just for first mortgage liens in  
18 the state.

19 SPECIAL REFEREE HARVEY: Okay. And the  
20 next subject I want to jump to is because of  
21 something he raised and while you're standing  
22 there, why doesn't the three-year statute of  
23 34-10-105 apply here?

24 MR. WILLIAMS: Look at the statute, and  
25 there is a three-year statute, but this is a

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1 counterclaim. And we are allowed under a  
2 counterclaim for the attorney preference statute  
3 under section A, for if they file and sue us to  
4 foreclose the home, all right.

5 And, you know, that's a setoff, we  
6 admit to that, it's a reduction in the amount that  
7 we've got to pay or the amount of the lien  
8 foreclosed upon, but we're still entitled to that  
9 right, and that's expressed in the statute.

10 While I'm here, section C is applicable  
11 for three reasons. First, if you go back and look  
12 at 105 -- let me find my code sections, so I don't  
13 quote you wrong --

14 MR. HAMM: Tab 11.

15 MR. WILLIAMS: Tab 11, section A  
16 talking about the statute of limitations says: No  
17 debtor may bring a class action, no debtor may  
18 bring an action for violation of this chapter for  
19 more than three years after the violation occurred,  
20 except, except as set forth in subsection C.

21 And subsection C is the  
22 unconscionability portion. That wouldn't be there  
23 if they didn't mean that subsection C applied to  
24 attorney preference violations in cases of  
25 unconscionability. But -- bear with me, Judge, let

1 me hand up to you Act 1997, '99, regarding amending  
2 10-105-A. And if you recall the amendment before  
3 this -- the Act before this Act -- the penalty  
4 before this Act was basically the old re-user  
5 penalty, all right. It was amended because of the  
6 number of attorney preferences cases filed to  
7 lessen the penalty, all right, from \$1,500 to \$75  
8 for debtor, all right.

9 But they also put in C. And C is the  
10 unconscionability, in other words if it's really,  
11 really bad, if it's unconscionable, you get the  
12 remedy set forth in C. And if you look at the  
13 title it says: An act to amend 37-10-105, code of  
14 laws related to penalties for violation of the  
15 attorney preference loan provision under the  
16 Consumer Protection Code. It mentions nothing  
17 else.

18 And then if you look under B enacted by  
19 the General Assembly for the State of South  
20 Carolina, it says: Provides for certain actions by  
21 consumers against lenders violating attorney  
22 preference option.

23 They clearly meant this subsection C to  
24 apply to the code. And one Circuit Court judge,  
25 Clifton Newman has already found -- and that's



1 included in our brief -- has already found that C  
2 applies.

3 So this is not -- there may not be a  
4 lot of them out there, but this is not new ground,  
5 this has happened before.

6 SPECIAL REFEREE HARVEY: Okay. Thank  
7 you. Mr. Bogan or whoever?

8 MR. SMITH: I'll do it, Your Honor.

9 MR. WILLIAMS: Just for the record,  
10 references that we made to tabs was to our app  
11 index for motion for partial and summary judgment  
12 filed with the Court.

13 MR. SMITH: May it please the Court.  
14 There's several reasons --

15 SPECIAL REFEREE HARVEY: And excuse me,  
16 if you would like to incorporate not only your  
17 rebuttal, but your argument on your motion, you're  
18 welcome to do that, however you want to.

19 MR. SMITH: Thank you.

20 SPECIAL REFEREE HARVEY: I'm not going  
21 to hold you to following the filling in the blanks,  
22 no pun intended.

23 MR. SMITH: I'll address their motion  
24 for summary judgment first. One of the ways I'll  
25 do that is to just sort of passingly mention

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1 there's a couple of legal bars to the claim in the  
2 first instance and I'll return to that in a minute.  
3 And before engaging in any of the arguments, can I  
4 identify several reasons for denial of the motion  
5 for summary judgment in first instance. And then  
6 I'll address the contentions that they've made.

7 The motion has to be denied if there's  
8 a scintilla of evidence to create an issue of fact,  
9 genuine issue of material fact. And in this case,  
10 the central question is the ascertainment of the  
11 borrower's preference in accordance with 37-10-102.  
12 A premise of the plaintiff's motion is that the  
13 Wilsons didn't have a choice and weren't  
14 represented.

15 We've submitted the affidavit of  
16 Carlton Robinson. I want to be sure that you have  
17 a copy of our opposition to the plaintiff's motion  
18 for summary judgment. I'm not sure what all -- I  
19 want to be sure all the mail got to you.

20 MR. WILLIAMS: We don't have that  
21 either, Judge, we don't have the brief, I believe,  
22 in opposition either.

23 SPECIAL REFEREE HARVEY: All right. I  
24 have your motion to amend your pleadings.

25 MR. SMITH: Right.

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1 SPECIAL REFEREE HARVEY: I have your --  
2 cross-motion for summary judgment and your  
3 memorandum. It says memorandum in support of  
4 cross-motion and response in opposition to  
5 defendant's motion to summary judgment.

6 MR. SMITH: There's another one.

7 SPECIAL REFEREE HARVEY: Oh, there's  
8 another one?

9 MR. SMITH: Yeah, it went out  
10 March 16th.

11 MR. BOGAN: Within two days with the  
12 affidavit.

13 MR. DIBBLE: Do we have a copy?

14 MR. HUTTO: We got a copy now, but we  
15 didn't.

16 MR. WILLIAMS: Your Honor, to the  
17 extent that it wasn't adequately delivered to us,  
18 any affidavit within the time period, we object to  
19 this just for the record.

20 MR. SMITH: It was served within the  
21 time period. I think the certificate of service  
22 will show that. Attached there is an affidavit of  
23 Carlton Robinson, it's Exhibit 2 to the memorandum  
24 in opposition to the motion for summary judgment.

25 Mr. Robinson testified that he

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1 represented the Wilsons. Attached to his affidavit  
2 is a disclosure statement in which the Wilsons  
3 agreed to his representation of them. It is dated  
4 December 14, 2011. An exhibit to our cross-motion  
5 for summary judgment, the document that I believe  
6 you do say you do have, is Exhibit H, it's an  
7 executed loan application signed by the borrowers.

8 The last page of the loan application,  
9 dated December 12, 2011, has a section entitled:  
10 Borrower preferences. One of the places -- one of  
11 the headings under that is legal counsel, filled in  
12 next to that is the name of Carlton Robinson, and  
13 that is signed at the bottom by the Wilsons.

14 This is evidence that the Wilson's  
15 preference was Carlton Robinson and they went ahead  
16 with the closing of the loan with that. In  
17 addition, attached to that memo is an affidavit of  
18 counsel regarding the need for additional  
19 discovery. Rule 56 provides for such an affidavit.  
20 We believe that further discovery in this case will  
21 elicit testimony, for instance, related to the  
22 particular loan in question.

23 To date there is absolutely zero in the  
24 record before you regarding the Wilson's loan.  
25 That's not in the plaintiff's motion. It's not in

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1 the plaintiff's memo. It's not in plaintiff's  
2 appendix, except maybe for a HUD-1 and the  
3 affidavit. There is no evidence about the loan,  
4 how it was made, what was -- what occurred at  
5 closing.

6 The plaintiffs -- so aside from the  
7 scintilla of evidence, we see -- because there's no  
8 evidence about the Wilson's loan itself, the  
9 plaintiffs have failed to support the motion with  
10 admissible evidence. These depositions are  
11 admitted in violation of a Confidentiality  
12 Protective Order, that's improper.

13 SPECIAL REFEREE HARVEY: Can you give  
14 me a copy of the order?

15 MR. SMITH: Yes.

16 MR. WILLIAMS: Your Honor, we've  
17 attached the order in our tabs and you got it. And  
18 we're not publishing it, this is court, so...

19 MR. SMITH: The Confidentiality  
20 Protective Order said that the Boones, the  
21 Messicks, and the Johnsons would use those  
22 depositions only for the purposes of that  
23 litigation. It didn't give the Wilsons any rights  
24 whatsoever. The Wilsons having that information is  
25 a violation of the Confidentiality Protective

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1 Order. The Wilsons aren't supposed to have that  
2 information, that is a violation.

3 MR. WILLIAMS: Again --

4 MR. SMITH: Because of that violation,  
5 that information shouldn't be taken into account.

6 MR. WILLIAMS: -- again, it's in open  
7 court, Judge, read into the record, now it's public  
8 information.

9 SPECIAL REFEREE HARVEY: All right.  
10 I'll let you address that in a second,  
11 Mr. Williams.

12 MR. SMITH: There's also nothing to tie  
13 that deposition testimony or the testimony of  
14 Mr. Hughes, which is also included there, to this  
15 case. All of that testimony related to a matter  
16 that did not involve the attorney preference, an  
17 allegation of attorney preference violation.

18 We did not litigate attorney preference  
19 violations in that case. We did not discover the  
20 defense of attorney preference violations in that  
21 case. We did not discover anything related to the  
22 Wilsons in that case, it's totally immaterial and  
23 irrelevant. There's nothing to tie that testimony  
24 to the Wilson's loan.

25 If you look at the testimony, all of

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1 it's present tense, the Wilson's closed in December  
2 of 2011, for example, there's nothing to tie any of  
3 that testimony to the Wilson's loan.

4 There's nothing in that testimony to  
5 address the evidence about the Wilson's choice of  
6 their attorney or their loan application or their  
7 loan.

8 Moving on to unconscionability. And as  
9 we said, we believe further the affidavit that we  
10 filed in opposition to the motion says: Additional  
11 discovery would be necessary in order to fairly and  
12 reasonably litigate the issues that are presented,  
13 including unconscionability.

14 The code tells us we must have a  
15 reasonable opportunity to litigate that issue.  
16 37-5-108, subsection 3, says: The parties shall be  
17 afforded a reasonable opportunity to present  
18 evidence as to the setting of the transaction, the  
19 purpose of the transaction, the effect of the  
20 agreement or transaction, or the conduct.

21 Plaintiff's motion violates 5-108, does  
22 not afford the defendants reasonable opportunity to  
23 present evidence about those facts. Furthermore,  
24 subsection 4A of 37-5-108 identifies the factors  
25 that must be considered. Subsection A-1, one of

1 the issues is: Is there a gross disparity between  
2 the price and value of the loan. The plaintiffs  
3 have put nothing in the record on that, maybe  
4 that's because the Wilsons had a 3.99 percent fixed  
5 rate.

6 The loan represented a significant  
7 reduction in interest rate from the prior Wells  
8 Fargo loan of 6.375 percent. They took \$14,000 in  
9 cash out. We believe that if we're allowed a  
10 reasonable opportunity to present evidence as to  
11 the relationship between the price of the credit  
12 and the value of the loan, we will be able to show  
13 that there is no disparity, much less gross  
14 disparity. This is an excellent loan for the  
15 Wilsons.

16 Another of the factors that must be  
17 considered -- given consideration is whether the  
18 lender has knowingly taken advantage of the  
19 inability of a consumer to protect themselves by  
20 reason of ignorance, illiteracy, or the inability  
21 to understand the agreement. Plaintiffs have put  
22 nothing in the record, there's nothing in the  
23 record, we believe, if we're entitled -- if we're  
24 allowed to conduct discovery, given a reasonable  
25 opportunity to present evidence, we will be able to

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1 show that the Wilson's were not inable(sic) to  
2 protect -- unable to protect themselves by reason  
3 of ignorance, illiteracy, or their ability to  
4 understand the agreement.

5 Another of the factors that must be  
6 considered under subsection B of 37-5-108 is  
7 whether the creditor knew or should have known the  
8 borrower couldn't pay the loan back. Again, just  
9 like everything else regarding the Wilsons and  
10 their loan, there's nothing in the record from the  
11 plaintiffs supporting their motion about that  
12 factor.

13 And we believe if given an opportunity  
14 to present evidence about this fact, we will be  
15 able to show that there was -- there were no facts  
16 given rise to any suspicion that the borrowers  
17 couldn't pay the loan back. In fact, the Wilsons  
18 did pay the loan back until Mrs. Wilson died, even  
19 after Mr. Wilson's death, the loan was paid. About  
20 the time she died, the Wilsons no longer made  
21 payments.

22 The code says the defendant must be  
23 given a reasonable opportunity to present evidence  
24 and the court must consider evidence on these  
25 specific factors, which the plaintiff's motion for

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1 summary judgment does not purport to address. So  
2 before we even engage the plaintiff's arguments,  
3 there's yet another reason to deny this motion for  
4 summary judgment, it is simply premature and it  
5 deprives the defendant of the rights that the code  
6 gives it.

7 And unconscionability is a pretty  
8 traumatic remedy. It's a doctrine that first  
9 cropped up in the law in the Uniform Commercial  
10 Code and it was applied to the Consumer Protection  
11 Code. And it's a pretty Draconian remedy that is  
12 afforded under subsection C of 37-10-105. And it's  
13 something that the code requires a court to give  
14 due deliberation to, it's not meant to be  
15 short-circuited in the way that plaintiff's motion  
16 does here.

17 There are a couple of legal bars to the  
18 claims, which we've raised, you know, as a matter  
19 of law in our summary judgment motion, the  
20 three-year statute of limitation, 10-105, the  
21 statute begins to run from the time of the  
22 violation, it would have run in December of 2014.

23 SPECIAL REFEREE HARVEY: What's your  
24 response to Mr. Williams's statement that -- or  
25 argument that the filing of the complaint revised

1 the counterclaim?

2 MR. SMITH: It doesn't exactly revive  
3 it, it allows a setoff for the penalty.

4 SPECIAL REFEREE HARVEY: Okay. So  
5 you've got a setoff against another \$100,000 loan?

6 MR. SMITH: That's right. That's  
7 entirely different from what we're faced with here.

8 SPECIAL REFEREE HARVEY: Okay.

9 MR. SMITH: And, you know, to use  
10 subsection C -- and I'll get into this a little  
11 more in a minute -- to use subsection C as a way to  
12 evade the three-year statute of limitations, it's  
13 to write out of the code the amendments that were  
14 made in 1997.

15 One of the things that the legislature  
16 did was to say three years and it was real clear,  
17 it could have said three years from anything, but  
18 it chose three years from the alleged violation.  
19 And everybody in that body, including those of us  
20 who were there as spectators, recognized that that  
21 meant when the violation occurs -- when the  
22 violation occurs, that's going to start the  
23 statutes running. And it won't be any reviving of  
24 it.

25 And that is -- what they're trying to

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1 do with C is to write out that limitation. There  
2 are other things they're trying to write out with  
3 the subsection C, but as we've -- as we've briefed  
4 in our summary judgment motion, that claim doesn't  
5 survive. The survival statute is pretty broadly  
6 written, however, our Supreme Court has construed  
7 the statutes in such a way -- has construed the  
8 statute and has found that not all claims are saved  
9 by it. Not all claims survive. For example, most  
10 notably the fraud exception.

11 Now, when the Supreme Court was  
12 confronted with the contention that it was crossing  
13 the line in legislating, the Supreme Court said --  
14 by allowing the fraud exception, the Supreme Court  
15 said, no, we're not, we're simply construing the  
16 statute.

17 And over the course of time, there have  
18 been a number of things that the Supreme Court has  
19 found to be within an exception to the survival  
20 statute. Workers' comp claims is one of them. The  
21 one we've briefed is from the case of Ferguson  
22 versus Charleston Lincoln Mercury. A claim arising  
23 under the Dealers Act, which similar to the  
24 Consumer Protection Code, created a cause of action  
25 for fraudulent and deceptive activity that stopped

1 a little bit short of fraud.

2 In the Ferguson case, the plaintiff  
3 challenged a fee and said the fee was illegal under  
4 the act and moreover it wasn't properly disclosed.  
5 Your disclosure form concealed from me the true  
6 facts. Your disclosure form improperly misled me.  
7 Your disclosure form was in violation of the law.

8 The court held that was an action based  
9 on the theory of fraud and deceit. Plaintiff  
10 basically contended he was misled into paying for  
11 the car. He never would have entered into that  
12 transaction if he had known. Defendant concealed  
13 those facts from him.

14 If that sounds familiar, I think it's  
15 just like the argument we've heard about from  
16 unconscionability in this case, that the form of  
17 disclosure was wrong. That it misled the Wilsons,  
18 that if they had known the true facts they never  
19 would have entered into the transaction. Well,  
20 those contentions bring the claim very squarely  
21 within Ferguson and the fraud exception to the  
22 survival statute.

23 I want to address a couple of arguments  
24 plaintiffs have raised, one thing on the -- before  
25 I do, the attorney preference -- and this goes back

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1 to your question about the survival of the attorney  
2 preference claim as a setoff, being a setoff --  
3 being a defense, it's not proper for a motion for  
4 summary judgment, that would be decided at the end.  
5 And there's a case called RWE Newcomb, which we  
6 cite to you on that point, a 2006 case of the  
7 Supreme Court.

8 SPECIAL REFEREE HARVEY: That's the  
9 amount of the setoff is decided at the end?

10 MR. SMITH: That you can't get summary  
11 judgment on a defense and setoff is a defense.

12 Fleming versus Green Tree, of course,  
13 Your Honor, knows that a trial judge's order is not  
14 binding in any event, but that's really beside the  
15 point because in that case, if you read that order  
16 and you look at the record and we addressed this in  
17 our brief, in Fleming, Green Tree never did try to  
18 comply with the attorney preference statute. They  
19 didn't send a form to the borrower. They didn't  
20 send a form, as Quicken Loans did, that said,  
21 borrower you have the right to select counsel to  
22 represent you.

23 They didn't have any attorneys who  
24 closed loans. They didn't have any loans that were  
25 closed by attorneys. They didn't have any

1 borrowers who were represented, as the Wilsons were  
2 represented by Mr. Robinson. It's a totally and  
3 opposite case.

4 And it's -- it simply has no bearing  
5 whatsoever here. As for the waiver argument, there  
6 are no facts regarding the Wilsons. There's  
7 nothing in the record to support any kind of  
8 waiver. And what we're seeing here with the waiver  
9 argument is the same thing we see with a  
10 unconscionability argument, which I'll get to in a  
11 minute, it's conflation of everything in the  
12 attorney preference statute.

13 Under the Wilson's theory, the attorney  
14 preference statute is the end all and be all of the  
15 entire Consumer Protection Code. That if that is  
16 violated, then everything else under the sun is  
17 violated. And that is simply not the way the code  
18 is written. It just totally reads out -- that  
19 theory totally reads out of the case, the very  
20 plain language of the code.

21 If the General Assembly had meant for a  
22 waiver to be unconscionable, they would have told  
23 us so. They didn't say that. They just said that  
24 waiver is unenforceable. And a waiver, of course,  
25 is a knowing relinquishment of rights. Quicken

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1 Loans didn't seek a waiver. There's nobody asking  
2 the Wilsons to waive any rights. The evidence is  
3 if you were to take the testimony, if -- and we  
4 believe that we're entitled to do discovery on this  
5 as to the Wilsons, but even the plaintiffs concede  
6 that somebody asked the Wilsons if they had a  
7 preference or not.

8 The plaintiff's motion is premised in  
9 part on the contention that Quicken Loans asked  
10 them if they had a preference for an attorney.  
11 That simply doesn't support a waiver. There are  
12 not any facts to support a waiver.

13 Last night as I was getting ready, I  
14 found a couple of cases, which we'll send to you on  
15 this point, there are not any South Carolina cases  
16 on this point. But where courts have looked at  
17 similar U3C provisions. There's a Kansas case and  
18 a Massachusetts case, in which courts have found  
19 that unless there is a waiver, there's not a  
20 waiver. And forgive me for saying that as  
21 simplistically as I did, but what I'm saying is the  
22 thing that is done as represented in the facts, is  
23 something that looks like a waiver.

24 And nobody asked the Wilsons to waive  
25 anything. And there's certainly at least an issue



1 of fact on that. Now, the --

2 SPECIAL REFEREE HARVEY: You're not  
3 going to start a Tom Davis on me and start reading  
4 me that book, are you?

5 MR. SMITH: I'm not going to read the  
6 book. It gives me confidence to hold it though,  
7 it's as if, you know, all the knowledge in these  
8 books is somehow transmuted to my brain and my  
9 lips.

10 The code -- the plaintiff's argument  
11 conflates attorney preference waiver and  
12 unconscionability. The code doesn't. The code  
13 keeps those separate. And the code keeps them  
14 separate for a reason. Each of them is different.  
15 And under the plaintiff's theory, every attorney  
16 preference violation is unconscionable because  
17 their theory is that I didn't have a choice in --  
18 failed to give me a choice is unconscionable, ipso  
19 facto.

20 That's not what the code says. The  
21 code says the borrower must ascertain the  
22 preference. And I want to talk about what the code  
23 says regarding attorney preference. The plaintiffs  
24 had cited an administrative interpretation and  
25 they've cited King versus American General Finance.

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1 Neither of those has anything to do with the code,  
2 as it is written today.

3 In 1997, the code was changed and the  
4 material parts of the code that those -- that the  
5 administrative interpretation and that decision  
6 addressed were eliminated. As you read King versus  
7 American General it's real clear that the Supreme  
8 Court was preoccupied there with the language in  
9 the statute related to the timing of the  
10 disclosure.

11 And in that case, what they were  
12 litigating is, well, we didn't give it at the  
13 application, we gave it sometime and that would --  
14 sometime prior to the closing and that should  
15 suffice. And the Supreme Court said, oh, no, no,  
16 and they said that because of the language in the  
17 statute at the time the decision was rendered.

18 Mr. Hamm and the Department of Consumer  
19 Affairs issued an interpretation based on the same  
20 language. Where the code said you must ascertain  
21 on the first page of the application the borrower's  
22 preference. That's not what the code says now and  
23 it hasn't said that since 1997. And it's -- it  
24 is -- it's important to take notice of what the  
25 code says because that's the case that we've got

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1 here.

2 And the language says the creditor must  
3 ascertain prior to closing; must ascertain prior to  
4 closing. Well, when did the closing occur? Well,  
5 we need some evidence about that. What happened  
6 prior to the closing? There's not any evidence  
7 about that. We believe that we would be able to  
8 put forward some evidence about that.

9 The creditor must ascertain the  
10 preference prior to the closing; it's not true that  
11 King, in particular the language on timing of the  
12 disclosure, controls this case. It's not true that  
13 administrative interpretation controls this case.

14 37-7-102 says it has to be done prior  
15 to closing, that's a bit different from the  
16 language the Supreme Court construed in King. The  
17 quote that was read aloud where Justice Kittredge  
18 said it bordered on frivolity, the argument that  
19 American General was making in that case, that's  
20 because of what the law said in that case.

21 It would be an entirely different  
22 question on the statute that we've got today  
23 because essentially American General was arguing  
24 the statute we've got today, we did it prior to  
25 closing. Justice Kittredge says that borders on

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1 frivolity to say that. Well, it doesn't border on  
2 frivolity once the General Assembly says that's all  
3 that's required. And the General Assembly --  
4 Justice Kittredge was simply interpreting the  
5 legislative dictate handed down in the statute at  
6 the time and that's all the court is going to do  
7 here.

8 Under the plaintiff's theory of the  
9 absence of choice as to legal counsel creates -- is  
10 what stands in for the unconscionability. As we've  
11 said there's an issue of fact of whether the  
12 borrower had a preference, whether the preference  
13 was ascertained, that's an issue of fact.

14 To conflate the statutes the way they  
15 do is to sort of skim over all these points on  
16 which there are issues of facts. They contend that  
17 a nonlawyer performed a closing, that's an issue of  
18 fact. That's not true, we believe we would be able  
19 to prove that's not true, Mr. Robinson's affidavit  
20 makes it clear that's not true.

21 They say that there was an absence of  
22 meaningful choice. You know, as I read the briefs  
23 and as I listened, you -- that language sounds  
24 right, an absence of meaningful choice, that has  
25 something to do with unconscionability, you know,

1 because we've read the cases, but that's not all  
2 that the cases say.

3 The cases say that unconscionability is  
4 an absence of meaningful choice due to one-sided  
5 contract terms, not due to an attorney preference  
6 violation. They say that it's -- they say that the  
7 terms have to be so oppressive that no reasonable  
8 person would accept them. And that's certainly an  
9 issue, as I pointed out 37-5-108-3, gives us an  
10 opportunity to do, we should have a reasonable  
11 opportunity to present evidence on them.

12 And as I also pointed out, once we do,  
13 I think you'll find that the terms that were  
14 offered -- the loan and the terms that were offered  
15 to the Wilsons, they were not, in fact, oppressive.  
16 They were such that a reasonable person would enter  
17 into them. They were, in fact, what the Wilsons  
18 chose to do rather than pay Wells Fargo six and  
19 however many eighths percent they were paying them  
20 on their existing mortgage.

21 Subsection C, in a doc in subsection C,  
22 the General Assembly did not simply draft onto the  
23 attorney preference statute an additional rendering,  
24 that just makes nonsense out of what the General  
25 Assembly did. What the General Assembly did in

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1 1997 was to take that penalty of usury statute of  
2 forfeiture loan finance charges and two times the  
3 -- and a penalty of two times of excess loan  
4 finance charges and they did away with that  
5 entirely from the attorney preference violation.

6 What the plaintiffs are doing by  
7 conflating unconscionability with attorney  
8 preference, in addition to ignoring the parts of  
9 the code that give us a reasonable opportunity for  
10 that to present evidence about unconscionability is  
11 to read out of the law the distinction that is  
12 made.

13 And if you read the code -- and again,  
14 I mean, the headings are not the law. What a clerk  
15 in the General Assembly put at the top of Act 99 is  
16 not the law. What the General Assembly voted on is  
17 the law. And then the unconscionability section in  
18 37-10-105, doesn't say if the attorney preference  
19 violation was really bad, then the following things  
20 are available to the plaintiff. It says: If the  
21 court finds as a matter of law that the agreement  
22 or the transaction is unconscionable.

23 The General Assembly, with that  
24 language, directs the court's attention to the  
25 agreement and the transaction. It's very different

1 from 37-10-102, which speaks about attorney  
2 preference ascertained. Subsection C says: If the  
3 court has a matter of law and finds that the  
4 agreement or transaction is unconscionable,  
5 pursuant to 37-5-108.

6 So we flip back to 37-5-108, where I  
7 started, which says: The defendant must be given a  
8 reasonable opportunity to present evidence. For  
9 all these reasons, the plaintiff's motion for  
10 summary judgment should be denied because of the  
11 statute of limitations bar and the fact that the  
12 unconscionability claims do not survive all of  
13 the -- our motion for summary judgment on those  
14 claims, which our motion made as a matter of law,  
15 should be granted and that would leave them with a  
16 setoff claim for an attorney preference violation  
17 issues of fact about that.

18 As we've said, we believe that further  
19 discovery and testimony before the court, and going  
20 back to our jury trial, would give us a right to  
21 have heard by a jury.

22 SPECIAL REFEREE HARVEY: All right,  
23 Mr. Bogan, let me ask you --

24 MR. SMITH: I'm Smith.

25 SPECIAL REFEREE HARVEY: I'm sorry.

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1 MR. SMITH: Although you made me about  
2 25 years younger, so...

3 SPECIAL REFEREE HARVEY: 37-10-108A:  
4 Creditor must ascertain prior to closing preference  
5 of the borrower.

6 MR. SMITH: Right.

7 SPECIAL REFEREE HARVEY: Next  
8 paragraph: The creditor may comply with this  
9 section by...

10 Your argument is because of the word,  
11 may, there that it does -- as long as it's prior to  
12 closing, it doesn't have to be at the time the  
13 application is done.

14 MR. SMITH: That's absolutely right.  
15 And especially because the legislature -- because  
16 we know what was in the code before then. I mean,  
17 we know that before then that it said you must  
18 ascertain at the time of application. And that's  
19 what it said. And the legislature struck that out  
20 very purposefully, very intentionally, and  
21 substituted prior to closing.

22 You've struck on something though  
23 that's a distinction that I do want to call out a  
24 little bit, Your Honor. Another way that the  
25 plaintiff's theory kind of ignores some of the

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1 language, conflates issues, and kind of focuses on  
2 a particular part of the code, the exclusions of  
3 others, is just focus on the attorney preference  
4 form. The General Assembly said the creditor may  
5 comply by including the preference information on  
6 or with the credit application.

7 Now, there's a -- there's a fair debate  
8 to be had about just exactly what does this statute  
9 mean? And this is the kind of thing that would be  
10 developed on the record with further discovery.  
11 And here's what I'm talking about: The creditor  
12 may comply by providing written notice of the  
13 preference information.

14 Well, what is preference information?  
15 Preference information is, according to Davis  
16 versus Nation's Credit, it's informing the borrower  
17 of the right to chose. And the attorney preference  
18 form that Quicken Loans sent to the Wilsons says:  
19 You have a right to choose your attorney to  
20 represent you in the closing of this loan.

21 And it says in it black and white on  
22 there and it's just above the part they focus on  
23 that they call the pre-populated language. So  
24 there's an issue of fact about what does that mean?  
25 Did we provide written notice of preference

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1 information? We contend we did. We think  
2 discovery will prove that. We think a trial in  
3 front of a jury would reach a verdict, if we did  
4 that.

5 But notice that's only one way that you  
6 may comply. You can also ascertain the preference  
7 otherwise. You can ascertain it verbally, the  
8 statute doesn't preclude that. The facts about  
9 ascertainment go beyond the form. And that's what  
10 plaintiff's theory and that's what plaintiff's  
11 motion for summary judgment ignored.

12 That's why we believe that additional  
13 discovery, factfinding, and a trial are necessary  
14 to flush out the facts to see if the creditor did  
15 ascertain the preference of the borrower.

16 Now, what is the preference of the  
17 borrower? Mr. Hamm's Department of Consumer  
18 Affairs said show them the phonebook. Well, if the  
19 -- with due respect to the Department of Consumer  
20 Affairs in those days, I don't know how that  
21 protects the consumer. I mean, I could give  
22 somebody a list that said here's a list of three,  
23 Huey, Dewey, and Louie, pick one of those. And  
24 that does not achieve consumer protection.

25 The purpose of this statute is not to

1 make the borrower make a choice. The purpose of  
2 this statute is to ascertain prior to closing the  
3 purpose of the borrower.

4 And I don't know about you, but many  
5 times I have told my bank, I don't have a  
6 preference, do you have somebody who closes -- who  
7 can close this loan. And they sometimes say yes.  
8 And I sometimes say that would be just fine.

9 And I think that's the general  
10 experience. I think with facts in the record, we'd  
11 be able to show that's what happens in the real  
12 world. And that sometimes the borrower just  
13 doesn't have a preference.

14 Now, that's all right with the General  
15 Assembly. All the creditor has to do is ascertain  
16 preference. It's not all right with the Wilsons  
17 and their theory of the case and their motion for  
18 summary judgment. But that's not what -- their  
19 theory, motion for summary judgment is not what the  
20 code says. The code says ascertain the preference,  
21 that's a factual issue if we can --

22 SPECIAL REFEREE HARVEY: Last question  
23 I have for you.

24 MR. SMITH: Yes, sir.

25 SPECIAL REFEREE HARVEY: Your

1 Protective Order indicates that deposition  
2 testimony must be designated in the deposition, at  
3 least that's the way I'm reading the Protective  
4 Order. Do you have something from the transcript  
5 of that deposition that indicates that --

6 MR. SMITH: I can get that to you.

7 SPECIAL REFEREE HARVEY: Will you pass  
8 it up to me later?

9 MR. SMITH: I may have to send it to  
10 you, I may not have it --

11 SPECIAL REFEREE HARVEY: That's fine.  
12 That's fine. Mr. Williams, do you want to --

13 MR. WILLIAMS: Yeah, I may have to have  
14 them help me out because I've heard a lot, which I  
15 don't think -- well, we'll get to that.

16 What we presented to you in our  
17 appendix is not the deposition, but what is  
18 actually read into a court record. And once it's  
19 read into a court record, it's not confidential  
20 anymore, it's part of the court record. And we can  
21 refer to it, it's part of the public domain now.

22 All right. Now up to that point, I  
23 can't go out and publish to some other person  
24 what's in the deposition --

25 SPECIAL REFEREE HARVEY: And you're

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1 offering as a statement against interest -- you're  
2 offering that as a statement against interest  
3 because if the designee -- if the person testifying  
4 was testifying as the corporation?

5 MR. WILLIAMS: That's right. And they  
6 were testifying as the corporation in court, these  
7 people actually appeared in court also. But we  
8 read in part of 30(b)(6) depositions, as we're  
9 allowed, and it's now part of the public record.

10 SPECIAL REFEREE HARVEY: Did the court  
11 -- was anything done at the time it was read in,  
12 this is subject to Protective Order?

13 MR. WILLIAMS: No, I don't believe so.  
14 So let me talk about what they just handed up today  
15 and what they just handed us today and that is  
16 their memorandum in opposition, which we received  
17 today, it's dated the 16th. This affidavit is  
18 attached to it, it's dated the 16th. They say in  
19 the last page to it that they mailed -- stuck it  
20 into us in the mail on the 16th, but I didn't get  
21 it by e-mail. If I would have had it by e-mail, I  
22 could have been prepared to argue --

23 SPECIAL REFEREE HARVEY: I'll give you  
24 time.

25 MR. WILLIAMS: Well, I think it should

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1 be disallowed, but I understand, Your Honor, wants  
2 to let them have their say. But when you consider  
3 it, they know they got provided affidavits, they  
4 provided an affidavit of a fellow named  
5 Carlton Robinson, who says: At the closing, I  
6 asked them if it was okay for me to be their  
7 attorney, if they had any preference attorney.  
8 That's too late.

9 The statute today says it has to be  
10 done prior to closing. They didn't offer an  
11 affidavit from somebody from Quicken that I saw, in  
12 the few minutes I had to look, that said we told  
13 them verbally, we collected a form from them,  
14 sometime before closing ascertained who they wanted  
15 to close the loan.

16 The only thing we got in this file is  
17 that one form dated 11/7/11. Now, the timing of it  
18 is fine, we don't -- it's what it says, it's what  
19 it does, that we have contention with and that's  
20 what we've argued about. There's no evidence  
21 presented to you today, and it's incumbent upon  
22 them to give some kind of evidence, that there was  
23 ever any other ascertainment of attorney preference  
24 between that time and the closing.

25 We know when the closing was, why do we

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1 know? Because the mortgage is recorded at the  
2 courthouse and that's part of this record. The  
3 settlement statement is part of this record. We  
4 know the loan closed on 12/14, that's not an issue  
5 of fact for anyone to determine. And they've  
6 presented nothing to you today to show any other  
7 supposed attorney preference attempt, other than  
8 that one form in November.

9 SPECIAL REFEREE HARVEY: What about the  
10 Cause of Action expiring with the death of --

11 MR. WILLIAMS: Well, I'm glad you asked  
12 me that because that was addressed, it's already  
13 been addressed by the court, the Supreme Court, in  
14 the second Tilley case. And --

15 MR. SMITH: I'm sorry, I wasn't clear,  
16 I was addressing unconscionability. Tilley didn't  
17 address unconscionability.

18 MR. WILLIAMS: Do you need it?

19 MR. SMITH: I don't think so.

20 MR. WILLIAMS: Tilley addresses  
21 survivability. Unconscionability has certain  
22 elements that we've talked about. Fraud, which  
23 doesn't survive, has separate and distinct  
24 elements. What Tilley said is well in the Ferguson  
25 case and that's what they cited to you, we didn't

1 allow that to go forward because the Dealers Act  
2 has its own definition of fraud, and they alleged  
3 fraud under the Dealers Act, therefore it doesn't  
4 survive.

5 Fraud is not defined, according to  
6 Tilley, in the Consumer Protection Code, all right.  
7 So you're back to your common law definition of  
8 fraud, which is the nine elements that we always  
9 forget what they are, we haven't alleged any of  
10 that. What we've alleged is a violation of the  
11 statute that is unconscionable, okay, which has  
12 separate elements from fraud.

13 And, in fact, I think what I argued a  
14 while ago is what they said or properly performed  
15 to say is it ain't fraudulent, it's true. They did  
16 send the loan to a nonlawyer to close it, sent it  
17 to Title Source. That's what's reflected in the  
18 settlement statement.

19 Now, a lawyer does show up at the  
20 closing to get the documents signed. That's his  
21 first involvement with the Wilsons. That's the  
22 issue we're going to the Supreme Court. You've got  
23 jurisdiction over that, they'll have appellate  
24 jurisdiction over that, original jurisdiction over  
25 the UPL issues. So I can't -- and they overlap

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1 some, they have to by just the nature of it. But  
2 what we're here today saying is not -- we haven't  
3 said -- what we've moved for is summary judgment  
4 based upon the unconscionability of the attorney  
5 preference form, you have that in front of you, you  
6 know what it is. There's been absolutely no  
7 evidence presented today of any other form or any  
8 other oral attempt to ascertain preference prior to  
9 the closing. That's what it is.

10 We say that that form on it's face, the  
11 way it's done is unconscionable because it's  
12 pre-populated in such a manner that it acts the  
13 waiver of the code and violates buyer's services  
14 because it suggests you close a loan without an  
15 attorney. And it violates 40-5-3-20 because it  
16 allows a non-attorney to furnish lawyers.

17 SPECIAL REFEREE HARVEY: So I don't  
18 have to go to 37-5-108 then to determine  
19 unconscionability is your argument?

20 MR. WILLIAMS: What I'm saying is you  
21 can consider those things; we've presented it in a  
22 way you can consider other factors, all right, but  
23 this is so glaringly bad, so glaringly bad just  
24 looking at the form and just looking at this, is  
25 unconscionable. They say it's a good interest

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1 rate. Well, that's not unconscionability of the  
2 form, okay. That's a different issue, all right.  
3 We're moving solely on the unconscionability of the  
4 form and the way they did this -- and it can't  
5 escape the fact that the person they send this loan  
6 to, that charges the \$525, is their sister company,  
7 all right. So --

8 SPECIAL REFEREE HARVEY: Okay.

9 MR. WILLIAMS: -- now, a judge at some  
10 point in time, based upon undisputed facts, has to  
11 determine whether or not the statute was violated.  
12 Maybe you -- we haven't asked you to set the  
13 penalty yet, you have to determine that I think to  
14 get to the unconscionability issue. So it's  
15 correct to determine that today.

16 We haven't asked you to set the remedy  
17 for the unconscionability, nor to determine the  
18 penalty today, but it is proper for you to  
19 determine whether there's been a violation. So I  
20 think that's it, unless you have any questions?

21 SPECIAL REFEREE HARVEY: Nope. Okay,  
22 now, if the rule requires a liberal granting of a  
23 motion to remand, Mr. Williams, why shouldn't I  
24 grant their motion to remand?

25 MR. WILLIAMS: On the time bar,

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1 Ellen Wilson died November the 17th, 2014.

2 SPECIAL REFEREE HARVEY: But just  
3 because it's time bar, doesn't mean they can't  
4 allege it and then you prove an affirmative  
5 defense, right?

6 MR. WILLIAMS: It's different than a  
7 statute of limitations issue. There's absolutely  
8 no way that they can recover any asset from the  
9 estate. And the only thing they can proceed on is  
10 their security agreement.

11 SPECIAL REFEREE HARVEY: Is the estate  
12 closed, is that what you're saying, or the eight  
13 months has expired?

14 MR. WILLIAMS: The eight months and the  
15 year has expired. Let me get my file out. That's  
16 why we allowed the amendment in the other case  
17 because there's time. They're out of time here.

18 MR. HUTTO: Do you need the timeline?

19 MR. WILLIAMS: The sequence of events,  
20 Your Honor, we request that be made an exhibit, it  
21 just merely reflects the dates --

22 SPECIAL REFEREE HARVEY: The same thing  
23 that was read in the record with Mr. Smith?

24 MR. WILLIAMS: Well, with some  
25 additional dates. The date of death, according to

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1 the complaint, the date of the fall is  
2 September 2014. The date Ms. Wilson died was  
3 11/17/14. And the complaint was filed over a year  
4 ago for the foreclosure.

5 The estate was opened in April. Notice  
6 of creditors first ran 5/13/2015. I'm handing to  
7 you, Your Honor, a certified copy of the Probate  
8 Court record. There's no claim filed with the  
9 Probate Court against the estate, one year has  
10 passed from the date of death. Creditor's claims  
11 ran in January.

12 SPECIAL REFEREE HARVEY: Who was the  
13 PR?

14 MR. WILLIAMS: Wayne Wilson.

15 SPECIAL REFEREE HARVEY: And he's a  
16 defendant?

17 MR. WILLIAMS: He's a defendant in the  
18 foreclosure, yeah, that's right. Not only do you  
19 have to serve the PR, you have to file the claim  
20 with the court.

21 SPECIAL REFEREE HARVEY: Yeah, I'm  
22 arguing that in another case.

23 MR. WILLIAMS: Okay. Well, I think  
24 that's what the statute says and the --

25 SPECIAL REFEREE HARVEY: I'm not sure

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1 the judge is going to rule with me.

2 MR. WILLIAMS: There's a case though  
3 that says that and if you read 803, the language of  
4 803 is mandatory. And it's not a statute of  
5 limitations issue, it's a complete bar. And I'd  
6 also hand up to you the case of the estate of  
7 Hover.

8 SPECIAL REFEREE HARVEY: Yeah, I'm  
9 familiar with that case too.

10 MR. WILLIAMS: All right. And Hover is  
11 pretty clear, this is not just a statute of  
12 limitations, it's a complete bar. And if you were  
13 to allow the amendment, you're allowing something  
14 that just can't happen. Even if we consent to the  
15 amendment and even if we don't raise it as an  
16 affirmative defense, they still can't collect from  
17 the estate.

18 So allowing the amendment a year later  
19 when they had full opportunity to amend their  
20 pleadings earlier, it's just time bar, they can't  
21 do it, it's much stricter than the statute of  
22 limitations. And if you're familiar with Hover,  
23 Justice Beatty wrote the opinion: Thus the General  
24 Assembly has created two avenues to which a secured  
25 creditor can seek recovery, volume, the opening of

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1 an estate, and the appointment of a PR.

2 The first avenue with a secured  
3 creditor, they pursue the foreclosure proceedings  
4 on the security and for the mortgage without  
5 presenting your claim against the estate and may do  
6 so outside the time limits with, all right, with a  
7 nonclaim statute.

8 Alternatively, the secured creditor may  
9 seek to directly from the assets of the estate,  
10 which then required the claim be presented in  
11 Probate Court within the time limits of a nonclaim  
12 statute. However, if the creditor chooses the  
13 first avenue and the foreclosure proceedings fail  
14 to yield the full amount of security, the creditor  
15 must have presented the claim on the security in  
16 Probate Court with the time limits prescribed by  
17 the nonclaim statute.

18 It's too late, they just can't. That's  
19 why the amendments don't apply. And further, if  
20 you go back to the initial complaint, it was for a  
21 deficiency. Somebody at Quicken, upon learning  
22 that Ms. Wilson had died, made the tactical  
23 decision to waive the deficiency. They didn't have  
24 to do that, but they did. And it's too late now to  
25 amend and serve claims against the estate.

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1 SPECIAL REFEREE HARVEY: I didn't mean  
2 to cut you off. But as you could tell, my  
3 inclination was to grant your motion. And I'm glad  
4 to hear from you --

5 MR. SMITH: Yeah. Well, I respectfully  
6 request an opportunity to read some of the stuff  
7 that I was handed --

8 SPECIAL REFEREE HARVEY: Sure. I'm  
9 more than willing for any of y'all to give me  
10 additional briefing, if you're so inclined.

11 MR. SMITH: Yeah. A couple of points,  
12 I take -- I may be misunderstanding the bar  
13 argument, but I understand it's got a couple of  
14 additions to it. The amendments are going to  
15 relate back to the filing of the original  
16 complaint. The amendment -- the amendments, the  
17 claims you're seeking to assert are breach of  
18 contract on the note. A breach of a contract of  
19 the compliance agreement against the estate; that's  
20 a separate thing. And also the assertion of an  
21 equitable mortgage.

22 The claim here in the amended pleadings  
23 is that, oh, your mortgage is no good. And if  
24 that's the case, then we're simply trying to reduce  
25 the judgment on the note -- reduce the -- reduce

1 the debt on the note to a judgment that could go  
2 against the property. I'll be happy to address  
3 these things about Hover --

4 SPECIAL REFEREE HARVEY: You're welcome  
5 to, sure.

6 MR. SMITH: -- and other Probate Court  
7 related arguments. But the amendments are  
8 liberally allowed. And one thing I did notice in  
9 Hover, they at least got to litigate the issue.  
10 And I think we're entitled to litigate the issues  
11 that are being asserted as a bar to our amendment.

12 SPECIAL REFEREE HARVEY: Thank you,  
13 sir. How long do you want to give me any  
14 additional information?

15 MR. WILLIAMS: Ten days, Your Honor, is  
16 fine.

17 SPECIAL REFEREE HARVEY: Okay. Well, I  
18 will tell you I will deliberate on what you've  
19 given me and my notes that I've gotten, very  
20 thoroughly prepared and argued by both sides. I  
21 got a son that's getting married on April the 9th,  
22 so I don't know whether I'll have a decision to you  
23 before April the 9th --

24 MR. SMITH: Ten days might be  
25 unrealistic.



1 MR. HAMM: You focus on your son, Your  
2 Honor.

3 SPECIAL REFEREE HARVEY: Well, it's his  
4 second strike, so he better not -- he better hit a  
5 home run with this one.

6 MR. HUTTO: Well, baseball you're not  
7 out until at least three, so...

8 SPECIAL REFEREE HARVEY: He will be if  
9 this one doesn't work.

10 MR. WILLIAMS: I'm assuming he argued  
11 his motion for summary judgment when he replied to  
12 mine?

13 SPECIAL REFEREE HARVEY: Yes, I  
14 accepted everything as his argument and that's why  
15 I asked you some of the questions that I did  
16 because they were in response to his.

17 All right. Gentlemen, you have a good  
18 weekend.

19 MR. SMITH: Thank you, Your Honor.

20 MR. WILLIAMS: Thank you.

21 (EXHIBIT 1, Sequence of events  
22 timeline, was marked for identification.)

23 (The hearing was concluded at 12:03 PM.)  
24  
25

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STATE OF SOUTH CAROLINA )

COUNTY OF BARNWELL )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc., )

Plaintiff, )

vs. )

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and )  
Assigns, and all other persons entitled )  
to claim through them; all unknown )  
persons with any right, title or interests )  
in the real estate described herein; also )  
any persons who may be in the military )  
service of the United States of America, )  
being a class designated as John Doe; )  
and any unknown minors or persons )  
under a disability being a class )  
designated as Richard Roe; Park )  
Sterling Bank, )

Defendants. )

Civil Action No. 2015-CP-06-070

**Plaintiff Quicken Loans Inc.'s Motion  
To Strike Answer and Counterclaims  
Of Wayne Wilson And Calvin Wilson  
And For An Entry Of Default**

FILED FOR RECORD  
2015 NOV 24 PM 2:50  
BARNWELL COUNTY, SC

Pursuant to Rule 12(f) and 55(a) of the South Carolina Rules of Civil Procedure, Plaintiff Quicken Loans Inc. ("Quicken Loans") hereby moves to strike the untimely filed Answer and Counterclaims of Defendants Wayne D. Wilson and Calvin O. Wilson ("Defendants") and for an entry of default for the following reasons:

1. Quicken Loans filed its First Amended Summons and Complaint on May 29, 2015.

2. Quicken Loans perfected service of the First Amended Summons and Complaint on both Wayne D. Wilson and Calvin O. Wilson on June 4, 2015.<sup>1</sup>

3. Proofs of service as to both Wayne D. Wilson and Calvin O. Wilson were filed on June 10, 2015.

4. The deadline for Defendants to file a responsive pleading to the First Amended Complaint was July 6, 2015.

5. Defendants did not file a responsive pleading before their deadline expired.

6. Without consent of counsel or leave of court, Defendants, for the first time, filed an Answer and Counterclaims on October 22, 2015.

7. Defendants' Answer and Counterclaims were filed in violation of Rules 6 and 12(a) of the South Carolina Rules of Civil Procedure.

8. Accordingly, Defendants Answer and Counterclaims should be stricken under Rule 12(f) of the South Carolina Rules of Civil Procedure.

9. Additionally, because Quicken Loans has shown to the Court that Defendants did not file a timely answer, they should be held in default pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure.

10. This motion is further supported by the relevant statutory and case law, the South Carolina Rules of Civil Procedure, and any memorandum in support that may be filed in this action.

***[SIGNATURE ON FOLLOWING PAGE]***

---

<sup>1</sup> Defendants were not named as parties in the original Complaint.

Respectfully submitted

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*Attorneys for Quicken Loans Inc.*

Columbia, South Carolina  
November 20, 2015

STATE OF SOUTH CAROLINA )

COUNTY OF BARNWELL )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc.,<sup>1</sup>

Plaintiff,

vs.

Wayne D. Wilson; Calvin O. Wilson,  
III; Any other Heirs-at-law or Devisees  
of Ezekiel (Ellen) T. Wilson, Deceased,  
their heirs, Personal Representatives,  
Administrators, Successors and Assigns,  
and all other persons entitled to claim  
through them; all unknown persons with  
any right, title or interests in the real  
estate described herein; also any persons  
who may be in the military service of the  
United States of America, being a class  
designated as John Doe; and any  
unknown minors or persons under a  
disability being a class designated as  
Richard Roe; Park Sterling Bank,

Defendants.

Civil Action No. 2015-CP-06-070

**PLAINTIFF QUICKEN LOANS**  
**INC.'S NOTICE OF DEMAND**  
**FOR JURY TRIAL**

FILED FOR RECORD  
2016 JAN 25 PM 3:53  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

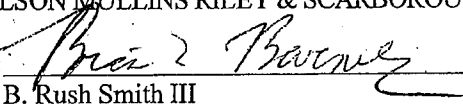
Pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure, Plaintiff Quicken Loans Inc. hereby demands a jury trial on all counterclaims properly asserted against it by any defendant in this action and requests this action to be placed with the Barnwell County Court of Common Pleas on the General Docket so that they may be placed on the Jury Trial Roster at the appropriate time.

**Signature on Following Page**

<sup>1</sup> Plaintiff should have been identified as Quicken Loans Inc. in the caption.

Respectfully submitted,

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*Attorneys for Quicken Loans Inc.*

Columbia, South Carolina  
January 21, 2016

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BARNWELL ) SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc.,<sup>1</sup> ) Civil Action No. 2015-CP-06-070  
 )

Plaintiff, )

vs. )

**PLAINTIFF QUICKEN LOANS  
INC.'S MOTION TO TRANSFER TO  
GENERAL DOCKET**

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or Devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and Assigns, )  
and all other persons entitled to claim )  
through them; all unknown persons with )  
any right, title or interests in the real )  
estate described herein; also any persons )  
who may be in the military service of the )  
United States of America, being a class )  
designated as John Doe; and any )  
unknown minors or persons under a )  
disability being a class designated as )  
Richard Roe; Park Sterling Bank, )

Defendants. )

**NOW COMES** Plaintiff Quicken Loans Inc. ("Quicken Loans"), pursuant to Rules 38, 39, and 53 of the South Carolina Rules of Civil Procedure, and hereby moves this Honorable Court for an Order transferring the counterclaims in this matter from the Special Referee for Barnwell County to the Barnwell County Court of Common Pleas' General Docket so that they may be placed on the Jury Trial Roster at the appropriate time. In support of this Motion, Quicken Loans states as follows:

**FACTUAL AND PROCEDURAL BACKGROUND**

Quicken Loans filed this foreclosure action on March 3, 2015, against Defendant Ezekial T. Wilson a/k/a Ezekial (Ellen) T. Wilson. Mrs. Wilson's estate answered the Complaint on

<sup>1</sup> Plaintiff should have been identified as Quicken Loans Inc. in the caption.

May 21, 2015 (hereinafter Mrs. Wilson's estate may be referred to as "the Estate"). The Estate's original Answer did not contain any counterclaims. Upon learning of Mrs. Wilson's death, Quicken Loans filed a First Amended Complaint on May 29, 2015, naming as parties the Estate, Mrs. Wilson's sons Wayne D. Wilson and Calvin O. Wilson, III, and any other heirs or assigns having an interest in the subject property (hereinafter Wayne D. Wilson and Calvin O. Wilson, in their individual capacities, may be referred to as "the Sons") (collectively the Estate and the Sons may be referred to as the "Defendants").

The Estate answered the First Amended Complaint on June 19, 2015, and for the first time, asserted one counterclaim for violation of the South Carolina Consumer Protection Code.<sup>2</sup> The deadline for the Sons to file a response to the First Amended Complaint expired on July 6, 2015. The Sons, however, allowed that deadline to expire without filing a responsive pleading. Quicken Loans answered the Estate's counterclaim on August 20, 2015, denying any liability.

Quicken Loans then moved for an Order of Reference to J. Martin Harvey, Jr., Special Referee for Barnwell County, on August 27, 2015. The motion was granted and the case was referred to the Special Referee on September 1, 2015.

On October 22, 2015, the Estate filed a Second Amended Answer and Counterclaims.<sup>3</sup> This pleading added a second counterclaim for violation of the South Carolina Consumer Protection Code. Quicken Loans answered the Estate's Second Amended Answer and Counterclaims on November 10, 2015.

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<sup>2</sup> Defendant Wayne D. Wilson is the personal representative of Mrs. Wilson's estate. Wayne D. Wilson only appeared in his representative capacity, and not his individual capacity, when he filed the May 21, 2015, and June 19, 2015, Answers.

<sup>3</sup> Despite being described as the "Second" Amended Answer and Counterclaims, this was the first amended answer and counterclaims served on Quicken Loans.



Despite being in default, and without consent of counsel or leave of the Court, the Sons filed an Answer and Counterclaims on October 22, 2015. The Sons' Answer and Counterclaims asserts two counterclaims for violation of the South Carolina Consumer Protection Code. On November 24, 2015, Quicken Loans filed a motion to strike the Sons' pleading on the grounds that it is untimely. That motion is still pending before the Special Referee. Contemporaneously with the filing of this Motion, Quicken Loans filed a Jury Trial Demand pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure.

#### **STANDARD OF REVIEW**

Rule 38 of the South Carolina Rules of Civil Procedure ("SCRCP") "preserves inviolate" the right of a trial by jury as declared by the Constitution or as given by a statute of South Carolina. Rule 38(a), SCRCP. Rule 38 explains that "[a]ny party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue." Rule 38(b), SCRCP. Pursuant to Rule 53(b), after a case has been referred to a special referee, [a]ny party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury, and upon the filing of a jury demand, the matter shall be returned to the circuit court." Rule 53(b), SCRCP.

#### **ARGUMENT**

The Sons' counterclaims allege that Quicken Loans violated various provisions of the South Carolina Consumer Protection Code by not complying with the "Attorney-Preference Statute," S.C. Code Ann. § 37-10-102. (Sons' Answer & Countercl. at ¶¶ 35-49.) The Sons seek relief including: monetary damages, civil penalties, and attorneys' fees under both of their counterclaims. (*Id.*) The nature of the Sons' counterclaims in large part are, therefore, legal and

entitle Quicken Loans to a jury trial on those counts. *See Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) (holding legal actions create right to a jury trial); *see also Wells Fargo Bank, N.A. v. Smith*, No. 2009-125666, 2012 WL 10987189, at \*6 (S.C. Ct. App. June 13, 2012) (noting that attorney-preference claim is legal in nature); *Freeman v. A. & M. Mobile Home Sales, Inc.*, 293 S.C. 255, 257, 359 S.E.2d 532, 533-34 (Ct. App. 1987) (using jury to determine whether defendant violated the South Carolina Consumer Protection Code); *Dorell v. Florence Dist. No. One of Florence Cnty.*, 288 S.C. 246, 250, 341 S.E.2d 797, 799 (Ct. App. 1986) (recognizing that money damages are a legal remedy).

Under Rule 38(b), Quicken Loans has until “10 days after the service of the last pleading directed to [any issue triable of right by a jury].” Here, the Sons’ counterclaims raise the same triable issues as the Estate’s counterclaims. (*Compare* Sons’ Answer & Countercl. at ¶¶ 35-49 *with* Estate’s Second Am. Answer & Countercl. at ¶¶ 35-49.) Thus, Quicken Loans’ reply to the Son’s Answer and Counterclaims will be “the last pleading directed to” the issues triable of right by jury in this action. As such, Quicken Loan’s jury demand is not due until 10 days after its reply deadline to the Sons’ Answer and Counterclaim should the Court permit the pleading despite the default. Rule 38(b), SCRPC.

The Sons did not file their Answer and Counterclaims until October 22, 2015. In response, Quicken Loans filed a motion to strike that pleading pursuant to Rule 12(f), SCRPC, which is still pending. As a result, Quicken Loans’ time for filing a reply is tolled until “15 days after notice of the court’s action on a motion to strike.” Rule 12(a), SCRPC. Quicken Loans filed its jury demand contemporaneously with this motion. Because its deadline to file a reply to the Sons’ Answer and Counterclaims has yet to expire, Quicken Loans’ Jury Trial Demand is timely under Rule 38(b). Therefore, all counterclaims asserted against Quicken Loans by

Defendants should be transferred to the General Docket so that they may be placed on the Jury Trial Roster at the appropriate time as proscribed by Rule 40, SCRCP. See Rule 53(b), SCRCP (“[U]pon the filing of a jury demand, the matter shall be returned to the circuit court.”).

Even if the Court were to strike the Sons’ pleading or determine that Quicken Loans waived its right to make a jury demand, the Court still has discretion to place this case on the General Docket for a jury trial pursuant to Rule 39(b), SCRCP.<sup>4</sup> Under Rule 39(b), the Court should grant an untimely request for a jury trial if doing so would not prejudice the non-moving party. See *Patterson*, 312 S.C. at 472, 441 S.E.2d at 329 (holding that regardless of whether movant has a sufficient reason to justify an untimely request for a jury trial, an order granting the request is proper where there is no prejudice to the non-moving party).

Here, Quicken Loans is entitled to a jury trial on all counterclaims asserted against it. Quicken Loans would be unfairly prejudiced if denied its constitutional right to a jury trial on those claims. Moreover, this case has not progressed beyond the initial pleading stage. Indeed, Defendants did not file their current counterclaims until October 22, 2015. Before that date, Quicken Loans was only faced with a single counterclaim asserted by a single defendant. Now,

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<sup>4</sup> Even if a party has waived the right to demand a jury trial, the Court retains the discretion to order a trial by jury. As Rule 39(b) details, “notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.” Rule 39(b), SCRCP; see also *Patterson v. McNeill-Patterson & Assoc., Inc.*, 312 S.C. 471, 472, 441 S.E.2d 328, 329 (Ct. App. 1994) (“Under the South Carolina Rules of Civil Procedure, ‘the court in its discretion upon motion may order a trial by jury of any or all issues.’ Further, ‘[a] party’s failure to make a timely demand for a jury trial does not mean the opposing party acquires a right to have, as a matter of law, a non-jury trial.’” (citing Rule 39(b), SCRCP)). Defendants may argue that Quicken Loans waived the right to demand a jury trial by moving for an order of reference to the Special Referee. That motion was filed, however, on August 27, 2015. This was well before the Estate filed its Second Amended Answer and Counterclaims, and before the Sons appeared in this action and lodged their counterclaims. Accordingly, the circumstances at this juncture are considerably different than when Quicken Loans initially filed the motion for an order of reference. In any event, under the plain language of Rule 38, Quicken Loans has not waived the right to demand a jury trial, as the last pleading has not yet been filed.

it is facing four-times as many counterclaims brought by three-times as many defendants. Further, Quicken Loans' deadline for answering the Sons' Answer and Counterclaims has not yet expired.

Defendants cannot show that they would suffer any prejudice if the case is placed back on the General Docket for an eventual jury trial on Defendants' counterclaims. As the Supreme Court has explained, "[a] party's failure to make a timely demand for a jury trial does not mean the opposing party acquires a right to have, as a matter of law, a non-jury trial." *Hannah v. United Refrigeration Servs., Inc.*, 305 S.C. 394, 394, 409 S.E.2d 360, 361 (1991). Moreover, the parties have only exchanged initial written discovery requests, which they would have done even if the case had never been referred to the Special Referee.<sup>5</sup> See *Paterson*, 312 S.C. at 472-73, 441 S.E.2d at 329 (rejecting prejudice argument after case spent one-year on non-jury roster because "[t]he South Carolina Rules of Civil Procedure . . . permit a defendant to fully investigate the merits of a plaintiff's case . . . [i]rrespective of the mode of trial."). Because Defendants will not be prejudiced by a jury trial on their counterclaims, the Court should exercise its discretion under Rule 39 and grant this Motion.

### **CONCLUSION**

For the reasons stated above, Quicken Loans respectfully requests the Court grant its motion to transfer this case to the General Docket for the Court of Common Pleas for Barnwell County so that it may be placed on the Jury Trial Roster in due course as prescribed by the South Carolina Rules of Civil Procedure. The undersigned affirms that that he has consulted with opposing counsel on these issues before and believes that no further consultation would serve a useful purpose.

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<sup>5</sup> In fact, the parties served discovery requests before the order of reference was entered.

Respectfully submitted,

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January 20, 2016

STATE OF SOUTH CAROLINA )  
COUNTY OF BARNWELL )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Civil Action 2015-CP-06-0070

Quicken Loans, Inc., )

Plaintiff, )

vs. )

Wayne D. Wilson *et al.* )

Defendants. )

MEMORANDUM IN SUPPORT  
OF DEFENDANT'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT

Defendant Wayne D. Wilson as Personal Representative of the Estate of Ezekiel Wilson, by and through his undersigned counsel, has moved for partial Summary Judgment pursuant to Rule 56, SCRCP. Defendant Personal Representative bases this Motion on the grounds that there is no genuine issue of material fact as to the attorney preference form utilized by Quicken Loans Inc. ("Quicken"), that the manner in which the attorney preference form was utilized by Quicken in the subject transaction is in and of itself unconscionable, and that this Defendant is entitled to a judgment as a matter of law.

#### SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). In determining whether any triable issues of fact exist, the Court must view the evidence and all inferences which can be reasonably drawn from the evidence in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

The standard is high: "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Nonetheless, while high, the bar is not insurmountable. As will be discussed in greater detail below, the case at hand presents a situation where summary judgment is appropriate. The applicable law has been clearly enunciated by the Supreme Court. Quicken Loans had to ascertain the attorney preference of the borrower "contemporaneously with the credit application." King et al. vs. American General Finance, Inc., 386 S.C. 82, 91, 687 S.E.2d 321 (2009). *Appendix Tab 16*. Equally important at this juncture is the absence of any genuine issue of any material fact. Indeed, it is perhaps a unique case in that the evidence required to prove the Defendant's case has been created by or at the behest of the Plaintiff, Quicken Loans, Inc.

#### THE ATTORNEY PREFERENCE STATUTE

S.C. Code Section § 37-10-102, commonly referred to as the "attorney preference statute," provides in pertinent part:

"Whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for a personal, family or household purpose:

(a) The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction . . . ."

The purpose of § 37-10-102(a) is to protect consumers. Camp v. Springs Mortgage Corporation, 310 S.C. 514, 436 S.E.2d 304 (1993). The provisions of § 37-10-102 are to be liberally construed to achieve this purpose. Tilley v. Pacesetter, 333 S.C. 33, 508 S.E.2d 16 (1998) *Appendix Tab 19*, citing S.C. Code § 37-1-102 (1976). Moreover, rights and benefits provided by § 37-10-102(a) cannot be waived by the consumer. S.C. Code Ann. § 37-1-107 (1976). *Appendix Tab 11*.

S.C. Code § 37-10-102 does not mandate how the lender is to “ascertain the preference.”  
Instead, the statute provides:

The creditor may comply with this section by:

(1) including the preference information on or with the credit application so that this information shall be provided on a form substantially similar to a form distributed by the administrator<sup>1</sup>; or

(2) providing written notice to the borrower of the preference information with the notice being delivered or mailed no later than three business days after the application is received or prepared. If a creditor uses a preference notice form substantially similar to a form distributed by the administrator, the form is in compliance with this section.

S.C. Code § 37-10-102(a) (emphasis added).

The “form distributed by the administrator” is set forth in an Administrative Interpretation issued by the Department of Consumer Affairs in 1983, shortly after the enactment of S.C. Code § 37-10-102. Administrative Interpretation No. 10.102(a)-8302 (the “AI”).

*Appendix Tab 6.* This form – when properly used – provides a “safe harbor” for the lender endeavoring to comply with the attorney preference statute. S.C. Code § 37-10-102(a) *supra*; *see also* § 37-6-104(4).

In the A.I., the Administrator, after first noting “the provisions of Section 37-1-102 and the Consumer Protection Code as a whole,” found that:

“... in enacting § 37-10-102(a), the General Assembly had two main objectives: (1) to provide the borrower with the right to legal counsel of his choosing...; and (2) to make these rights known to the borrower (applicant) by a conspicuous disclosure and have the borrower make his preference known before he is inundated with other documents related to the transaction.”

The Administrator further stated:

“... by having the borrower affirmatively select an attorney or insurance agent, it becomes less likely that the borrower will ultimately acquiesce to the *lender's* choice of an attorney or insurance agent for whom the borrower would have to pay, even though that attorney or agent might actually represent the interests of the lender...”

Administrative Interpretation 10.102(a)-8302 (italics in original)

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1. The “administrator” is defined in S.C. Code § 37-1-301(2) and § 37-6-103 as “the officer appointed by the Commission on Consumer Affairs to administer this title.”



The AI has been specifically addressed and cited with approval at least twice by the South Carolina Supreme Court. *Davis v. NationsCredit Finance Inc.*, 326 S.C. 83, 484 S.E.2d 471(1997), *King v. American General*, 386 S.C.82, 687 S.E.2d 321(2009). *Appendix Tabs 13, 16*. Further, the General Assembly implicitly adopted the A.I. when it amended § 37-10-102(a) to specifically allow lenders to comply with § 37-10-102(a) by using the preference form supplied by the Administrator. *1996 Act No. 355, § 1*.

### THE APPLICATION PROCESS AT QUICKEN LOANS

Plaintiff Quicken Loans uses the form recommended in the A.I. However, the manner in which it uses the form is designed to circumvent the attorney preference statute: Quicken's procedures employ the prescribed form but ignore the other guidelines set forth in the A.I. By completing the form before it is presented to the borrower, Quicken runs afoul of § 37-10-102(a) and the A.I.

Quicken's standard procedures have been well documented in a declaratory judgment action filed in the original jurisdiction of the South Carolina Supreme Court. *Boone et al. vs. Quicken Loans, Inc. et al.*, Case No. 2013-002288 (S.C. Supreme Court). The matter was referred to Judge Diane S. Goodstein as Special Referee. In proceedings before the Special Referee, Quicken testified about its application process by designating Jeffrey Campbell, its senior corporate counsel, to speak for the company pursuant to Rule 30(b)(6). TRANSCRIPT 312-359 *Appendix Tab 8*. In the procedures developed by Quicken, the application is generally made online or by telephone. In what appears to be the usual situation, the consumer is online. While a Quicken employee – licensed as a mortgage banker in South Carolina – is also online, certain basic information for the application is completed. And at some point in time, the borrower and the lender link up by telephone so that they are actually talking while each is looking at his computer. TR 316:3-11.

To assist its mortgage bankers, Quicken employs workflow software that "walks them through the process of taking a mortgage loan application." TR 314:9-12. The loan origination system, called AMP, prompts the mortgage banker to ask certain questions of the borrower. TR 337:15-338:3.

According to Quicken's Jeffrey Campbell, the borrower is asked the following question:

"Will the borrower select legal counsel to represent them in this transaction?"

TR 319:4-14

According to Mr. Campbell, if the borrower responds "yes" an attorney preference form identical to the form promulgated by the South Carolina Department of Consumer Affairs is then automatically prepopulated to read:

"Please contact lender with preference"

TR 331:12-23

The text is not keyed in. Rather it is programmatically filled in by the AMP software, based on the answer to the mortgage banker's question. TR 337:17-19. Asked if the Quicken employee asks for the name of the borrower's preferred attorney, Mr. Campbell replied. "No." He explained: "At that point in time, we are trying to obtain whether or not the client has a preference, not who that person is." TR 331-332. If the borrower does not later contact Quicken with his/her preference, all matters relating to the closing are assigned to Title Source, a sister company that is a real estate settlement services provider. Jeffrey Campbell TR 793:18-22. Quicken Loans and Title Source are affiliated companies, both being subsidiaries of Rock Holdings Inc. Affiliated Business Arrangement Disclosure, *Appendix Tab 4*.

According to Quicken, if the borrower responds "no" the same form is prepopulated to read:

"I/we will not use the services of legal counsel"

TR 337:15-21

All matters relating to the closing are then assigned to Title Source. Jeffrey Campbell TR 332:19-25, Jennifer Randall (a divisional vice president at Quicken Loans) TR 546, 550, 1825, 1844 *Appendix Tab 9*.

Quicken's proprietary workflow software does not allow for the name of an attorney selected by the borrower to be entered into the form. TR 331:24-332:10. When the loan applicant states that he or she has no particular preference as to an attorney, there is no list of names

presented as recommended in the A.I. by the Department of Consumer Affairs when it promulgated the "safe harbor" preference form<sup>2</sup> that Quicken utilizes. TR 323:18-23.

According to Quicken, as a result of this process, approximately 95% of all Quicken residential real estate loan closings in South Carolina are assigned to Title Source. Jennifer Randall, TR 535:15-19, TR 541:8-12, TR 546:22-547:23. Quicken asserts that its affiliate, Title Source - not the borrower - selects and hires the lawyer to represent the borrower through the various steps of the closing process. Jeffrey Campbell TR 793:18-22.<sup>3</sup> The borrower does not sign any document authorizing Quicken or Title Source to select an attorney to represent the borrower. Instead, at the time of the execution of the loan documents at closing, the borrower is asked to execute a document confirming his or her acceptance of the legal counsel selected by Title Source.

#### THE WILSON APPLICATION FOR A QUICKEN LOAN

Late in 2011 Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson applied for a mortgage loan with Quicken. That loan was closed on December 14, 2011. *Appendix Tab 3*. There is nothing in the record nor has there been any allegation that Quicken deviated from its standard procedures as outlined above. This is evinced by the Wilsons' signed preference form. *Appendix Tab 2*.

According to Quicken's standard procedures, the borrowers were asked the following question:

"Will the borrower select legal counsel to represent them in this transaction?"

After answering this question in the negative, Mr. and Mrs. Wilson were presented with an attorney preference checklist form. *Appendix Tab 2*.

The checklist form is identical to the attorney checklist form promulgated by the South Carolina Department of Consumer Affairs in the A.I. *Appendix Tab 1*. However, the form was

2. Administrative Interpretation No. 10-102(a)-8302.
3. Judge Goodstein, the Special Referee appointed by the Supreme Court in the *Boone* case, after a trial of more than two weeks, found that Quicken and Title Source had engaged in the unauthorized practice of law (UPL) and recommended that the Supreme Court so rule. *Report and Recommendations of Special Referee*, filed December 14, 2015, App. Case No. 2013-002288 (S.C. Supreme Court).

prepopulated by Quicken. Instead of allowing the Wilson's to fill out the form, the form is prepopulated by Quicken to state:

"I/we will not use the services of legal counsel"

Consistent with the procedure recommended in the A.I., Section 1(b) of the form states:

"Having been informed of this right, and having no preference I asked for assistance from (the lender) and was referred to a list of acceptable attorneys. From that list I select

\_\_\_\_\_  
Attorney's Name

Instead of providing the Wilson's with a list of acceptable attorneys and allowing the Wilson's to fill out this portion of the form with an attorney of their choice, Quicken before presenting the form to the Wilson's completed it to state:

"Not Applicable"

The "insurance agent" portion of the preference form stands in marked contrast to the treatment of the attorney selection portion. The Quicken form correctly sets out the details of the Wilsons' choice for homeowner's insurance coverage. These are the same type of details that could have been provided regarding the borrowers' choice of an attorney – details that could be provided if Quicken had not programmatically elected to exclude that information from the preference form, effectively excluding lawyers selected by the borrower from some ninety-five percent of Quicken's South Carolina loan transactions.

### ARGUMENT

#### I. QUICKEN DOES NOT COMPLY WITH THE REQUIREMENTS OF THE ATTORNEY PREFERENCE STATUTE

According to Quicken, while taking the borrower's application by phone and/or on line, it does not advise the borrowers that they have the right to select the legal counsel that is employed to represent them in all matters related to the closing of the transaction. Nor does Quicken orally ascertain the borrower's preference as to any attorney. Rather, as noted above, the borrower is asked: "Will the borrower select legal counsel to represent them in this transaction?" Jeffrey Campbell, TR 319:8-11.

This question, assuming it to have been posed to the Wilson's, does not substantially comply with § 37-10-102(a). The statute mandates that the creditor "...must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters related to the closing of the transaction...." The question asked by Quicken does not advise the borrower of this right, which belongs to the borrower, not the lender. Moreover, this right cannot be waived by the borrower. § 37-1-107 (1976).

The prepopulated preference form is all the more disturbing as it contemplates a non-lawyer will close the loan. After Quicken completed the Wilsons' preference form to read: "I/we will not use the services of legal counsel," the processing and closing of the loan was assigned, not to an attorney, but to Title Source to perform "settlement services." Line 1102 of the Wilson's HUD-1 Settlement Statement reflects Title Source was paid a settlement or closing fee as well as an abstracting fee. *Appendix Tab3*. Approximately ninety-five percent (95%) of mortgage loans in South Carolina are assigned to Title Source to perform "settlement services". Jennifer Randall TR 535:18-19

Quicken Loans has engaged Title Source to provide title insurance and settlement services. Today their agreement is formalized in a Master Services Agreement ("MSA"), dated December 21, 2012. Quicken's Jeffrey S. Campbell, TR 763-64; Title Source COO Brian Hughes, TR 1687-95. Embraced within the MSA are "settlement services" in connection with residential mortgage transactions in South Carolina.

Among these services are "... **title search**, title curative work (including payoffs or lien releases), **title abstract and exam**, settlement service, notary service, attorney signings, signing service, witness signing service, **document preparation** including deed preparation in states where [Title Source] has authority to prepare deeds, closing document quality control, receipt of funds required to close, wire management, **disbursement**, policy issuance, **recording**, courier, mail fees and post-closing review of critical documentation."

MSA, Schedule 1 (emphasis added to highlight legal services); Brian Hughes, TR 1697-98.

When the Wilson loan was closed in December 2011, there was no formal written agreement in place between Quicken and Title Source. Brian Hughes TR 1688:4-6. However, the services provided by Title Source prior to the formal MSA were "generally the same as what's in the master services agreement. Brian Hughes TR 1688:10-14.

The Master Services Agreement authorizes Title Source to utilize subcontractors, including abstractors, signing agents and attorneys. The MSA requires Title Source to "select" and "supervise" all subcontractors, including attorney-subcontractors who perform settlement services that are required to be performed by an attorney. MSA; Jeffrey Campbell TR 789:6-17; Brian Hughes, TR 1697-98, 1770.

The MSA provides that Title Source in turn selects and retains attorneys and non-attorneys to participate in various portions of the loan-closing process in South Carolina.

S.C. Code Ann. § 40-5-320(A) provides:

"(A) It is unlawful for a corporation or voluntary association to...

(3) hold itself out to the public as being entitled to practice law, render or furnish legal services, advise or to furnish attorneys, or counsel, or to render legal services in actions or proceedings."

By having the borrower sign a form agreeing not to use the services of legal counsel to close the loan, Quicken violates this provision and causes the borrower to participate unwittingly in an illegal act.

Quicken claims that it contracts with Title Source which in turn arranges for attorneys to perform the functions which must be performed or supervised by an attorney in a mortgage-loan closing, *i.e.*, title abstract/search/exam, document preparation, the actual closing, recordation and disbursement. Title Source and Quicken argue that neither has engaged in the practice of law. However, the prohibition of § 40-5-320 is broader. The statute not only prohibits a corporation from performing legal services, it also prohibits a corporation from holding itself out as entitled "... to furnish attorneys or counsel ...." *Appendix Tab 11*. Even if our Supreme Court should find that Quicken and Title Source have not engaged in the practice of law, these sister corporations are still in violation of § 40-5-320 in that they are furnishing attorneys or counsel. Section 40-5-320 codifies a well-established rule of law: one cannot do indirectly what the law will not allow one to do directly. *Marchant v. Wannamaker*, 176 S.C. 369, 180 S.E. 350 (1935). The preference form sets up the violation, and the borrowers by signing the form unwittingly participate in the violation.

It is noteworthy that, while the Quicken application process will not permit the entry of an attorney's name on the preference form, the process does allow entry of the borrower's

insurance agent preference and prepopulates the form with that information. As explained by Quicken's Jeffrey Campbell, *supra*, what can and cannot be entered into the form during the application process is programmatically fixed: there can be no deviation.

Quicken fails to comply with § 37-10-102(a) in that it does not inform the borrower of their right to select counsel, and its misuse of the form promulgated by the department illegally operates as a waiver of the borrower's right to be represented by the legal counsel of his/her choice, in violation of § 37-1-107. Even more troubling and disturbing, it contemplates a loan closing occurring without the supervision of an attorney.

## II. QUICKEN'S VIOLATION OF THE ATTORNEY PREFERENCE STATUTE AND DISREGARD OF THE REQUIREMENTS OF THE CONSUMER PROTECTION CODE IS UNCONSCIONABLE

In addition to the \$1,500 to \$7,500 penalty found in § 37-10-105(A), the Consumer Protection Code provides additional remedies if the trial court finds an agreement or transaction (a) to be unconscionable at the time it is made or (b) was induced by unconscionable conduct. § 37-10-105(C). When making this determination, a trial judge is to consider, among others, several factors outlined in § 37-5-108. *See, e.g.,* S.C. Code Ann. § 37-5-108(1)(b) ("any term or part of the agreement or transaction [was] unconscionable at the time it was made") and § 37-5-108(4)(e) ("the fact that the ... lender has knowingly taken advantage of the inability of the ... debtor reasonably to protect his interests ...."). *Appendix Tab 11.*

S.C. Code Ann. § 37-10-105(C) provides:

(C) If the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to Section 37-5-108 at the time it was made, or was induced by unconscionable conduct, the court may, in an action other than a class action:

- (1) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unconscionable at the time it was made;
- (2) enforce the remainder of the agreement without the unconscionable term or part, or limit the application of the unconscionable term or part to avoid an unconscionable result;
- (3) rewrite or modify the agreement to eliminate an unconscionable term, part, or result and enforce the new agreement; or
- (4) award:

(a) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge;

(b) not more than double the amount of the excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party; and

(c) attorney's fees and costs.

An action pursuant to this subsection may not be brought after the original scheduled maturity date of the debt.

Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Fanning v. Fritz Pontiac-Cadillac-Buick, Inc.* 322 S.C. 399, 472 S.E.2d 242 (1996). *Appendix Tab 14*. Under § 37-10-105(C), a factor to be considered is "[t]he fact that the lender has knowingly taken advantage of the inability of the consumer or debtor reasonably to protect his interest by reason of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement, or similar factors. S.C. Code Ann. § 37-5-108 (4)(e) (1976).<sup>4</sup>

In *Greentree Financial Corp. v. Fleming*, Circuit Judge Clifton Newman found that Green Tree's conduct was unconscionable because "Green Tree took advantage of the Class members' ignorance of the law governing real estate secured transactions and failed to notify the Class members of their statutory right to be advised they could employ their own legal counsel." Civil Action 96-CP-40-4282, Order, dated February 10, 2002 *Appendix Tab 15*. Citing *State v. Buyer's Service*, 292 S.C. 426, 357 S.E.2d 15 (1987), Judge Newman reasoned that the lender's willful failure to notify the borrowers of their rights under the Consumer Protection Code, ensured that the borrowers would be unable to properly protect their own interest:

"Green Tree's unconscionable conduct was paramount in inducing the Defendants to enter into these transactions in the first place since the law required Green Tree to advise the Class members of their attorney and insurance agent preference rights at the time of

---

4. At the time of the Quicken loan closing, Mrs. Wilson was 81 years old; she passed away less than three years later. Probate File 2015-ES-06-00066. At the time of the Quicken loan closing, Mr. Wilson was 82 years old; he passed away less than two years later. Probate File 2015-ES-06-000\_\_.



credit application. Because this Court finds that these transactions were induced by Green Tree's unconscionable conduct, the Court may award the additional penalties of § 37-10-105(C)."

In the case at hand, no meaningful choice was afforded to Calvin and Ezekiel Wilson. Quicken supplied a disclosure form, but Quicken completed the form before forwarding it to the Wilsons for signatures. Instead of allowing the borrowers to fill out the form as contemplated by the A.I., Quicken pre-populated the form with:

"I/ We will not be represented by legal counsel in this transaction"

Moreover, Quicken also completed part 1(b) (where the borrowers would indicate their selection from a list of acceptable attorneys). Instead of ascertaining the Wilsons' preference, Quicken informed them that this was "Not Applicable". Thus, the borrowers were deprived of any meaningful choice to select the attorney to represent them in all aspects of the transaction, defeating the very purpose for which the statute was enacted.

By pre-populating the form to indicate the borrower would not be represented by counsel, Quicken ensured that the borrowers would be unable to protect their interests and caused the borrowers to attempt to waive their rights under the Consumer Protection Code. Such conduct and results are in direct conflict with SC Code Ann. Section 37-1-107(1) which states that a "... debtor may not waive or agree to forgo rights or benefits under this title." Quicken's indifference to § 37-1-107 and callous disregard of this essential component of the Consumer Protection Code is vividly illustrated by Quicken's own pleadings. In *Plaintiff Quicken Loans Inc.'s Answer to Estate of Ezekiel T. Wilson Personal Representative's Second Amended Answer and Counter-Claims in Response to Amended Complaint*, Quicken's own counsel asserts the statutorily prohibited "waiver" three separate times - for a Ninth Defense, Eleventh Defense and Eighteenth Defense - once again reflecting a total indifference and disregard for protections afforded by § 37-1-107. *Appendix Tab 23*. Attempting to induce the weaker parties in the transaction to waive their rights under the Code runs contrary to the purpose of the preference statute as well the requirements of *Buyer's Service*. *Appendix Tab 18*. The purpose of both is to protect consumers. Such conduct is unconscionable.

In the context of arbitration agreements, the S.C. Supreme Court has found provisions in an arbitration contract which waived a consumer's remedies to violate public policy, rendering

the arbitration agreement unenforceable. Simpson v. MSA of Myrtle Beach Inc. 322 S.C. 399, 472 S.E.2d 242 (1996). *Appendix Tab 17.*

In finding the agreement to be oppressive and one-sided, the Court in Simpson found that an arbitration clause which limited treble and double damages violated statutory law because it prevented Simpson from receiving mandatory statutory remedies in her underlying claims. The court also found that unconditionally permitting the weaker party to waive statutory remedies runs contrary to the underlying statutes' very purposes of punishing acts that adversely affect the public interest. Simpson at 373 S.C. 29-30.

Again, the underlying purpose of § 37-10-102 and of Buyer's Service is to protect consumers. The prepopulated preference form takes away any meaningful choice of an attorney selected by the consumer to represent his/her interest. Use of the form violates the statute and operates as an illegal waiver of the right to be represented by any attorney, much less the consumer's choice of legal counsel. The conduct of using the form is oppressive and one-sided and is unconscionable.

The pre-populated Attorney/Insurance Preference Form is in and of itself unconscionable. By engaging in an unconscionable activity when taking the loan application – the very first step in a real-estate-secured loan transaction – Quicken effectively closes the door to taints the entire process. This alone is sufficient to warrant a ruling as a matter of law and the entry of summary judgment.

When viewed in the context of other actions by Quicken, a finding of unconscionability is all the more compelling when the other actions of Quicken are taken into account:

- The violation of § 37-1-107 which states that a " ... debtor may not waive or agree to forgo rights or benefits under this title."
- The violation of § 40-5-320 which prohibits a corporation from "holding itself out as being entitled to ... furnish legal services, advise or to furnish attorneys or counsel..."

The Supreme Court has previously noted the additional weight to be given to the "cumulative effect" of unconscionable conduct. Simpson v. MSA of Myrtle Beach, Inc., *supra*.

## CONCLUSION

For the reasons set forth above, Defendant respectfully requests that the Special Master enter summary judgment against Plaintiff. In the event that the Referee is inclined to grant Defendant's motion, Defendant respectfully further requests that:

- (A) a hearing be scheduled so that the parties can be heard on the issues of
  - (i) the appropriate relief to be granted, (ii) prejudgment interest, and
  - (iii), attorneys' fees and costs, and
- (B) formal entry of judgment be deferred until all issues have been addressed.

Judicial economy would be enhanced by the filing of a single comprehensive Order, addressing all issues.

Respectfully submitted,

BEDINGFIELD & WILLIAMS

*Daniel W. Williams*

Daniel Webster Williams S.C. Bar No. 10233

PO Box 616

Barnwell, SC 29812-0616

Co-counsel for Defendant

*by cllh with express permission*

[Defendant's attorneys are listed on next page]

March 8, 2016

Barnwell, South Carolina

Appendix: separate bound volume

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Wilson - Memo in Support of Motion for Partial SJ 2016-03-08c.doc/14

ROA\_0177

THE STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

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Quicken Loans Inc. .... Plaintiff,  
v.  
Wayne D. Wilson *et al.* ..... Defendants.

Civil Action 2015-CP-06-0070

Honorable J. Martin Harvey, Jr.  
Special Referee for Barnwell County

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APPENDIX  
TO  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
by  
Defendant Wayne D. Wilson, Personal Representative of  
Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson, Deceased

---

**BEDINGFIELD & WILLIAMS**  
Daniel W. Williams *S.C. Bar No. 10233*

**WILLIAMS & WILLIAMS**  
C. Bradley Hutto *S.C. Bar No. 6436*

**RICHARDSON PLOWDEN & ROBINSON**  
Steven W. Hamm *S.C. Bar No. 2634*

**DIBBLE LAW OFFICES**  
Charles L. Dibble *S.C. Bar No. 1674*  
*Co-counsel for Defendant*

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♦ *Vance L. Boone et al. vs. Quicken Loans, Inc. et al.*, Appellate Case No. 2013-002288 (a declaratory judgment action filed in the original jurisdiction of the South Carolina Supreme Court). Testimony was taken before Special Referee Diane Schafer Goodstein. In her Report and Recommendations, filed on December 14, 2015, she concluded that Quicken Loans, Inc. and its affiliate, Title Source, Inc. had engaged in the unauthorized practice of law.

1

## Attorney/Insurance Preference Form

Date \_\_\_\_\_

1. I (we) have been informed by the lender that I (we) have a right to select legal counsel to represent me (us) in all matters of this transaction relating to the closing of the loan.

(a) I select \_\_\_\_\_  
Attorney's Name Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

- (b) Having been informed of this right, and having no preference, I asked for assistance from (the lender/mortgage broker) and was referred to a list of acceptable attorneys. From that list I select

\_\_\_\_\_  
Attorney's Name

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

2. I (we) have been informed by (the lender/mortgage broker) that I (we) have a right to select an insurance agent to furnish required \_\_\_\_\_ insurance in connection with this mortgage transaction.

(a) I select \_\_\_\_\_  
Agent's Name Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

- (b) Having been informed of this right, and having no preference, I asked for assistance from (the lender/mortgage broker) and was referred to a list of qualified agents. From that list I select

\_\_\_\_\_  
Agent's Name

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

2



## ATTORNEY/INSURANCE PREFERENCE CHECKLIST

|                                                                 |  |                                                      |  |
|-----------------------------------------------------------------|--|------------------------------------------------------|--|
| Borrower Name(s):<br>Calvin O. Wilson, Jr.<br>Ezekiel T. Wilson |  | Lender:<br>Quicken Loans Inc.<br>Company NMLS#: 3030 |  |
| Property Address:<br>12640 Main St<br>Williston, SC 29853       |  | Date:<br>November 4, 2011                            |  |

1. I (We) have been informed by the lender that I (we) have a right to select legal counsel to represent me(us) in all matters of this transaction relating to the closing of the loan.

(a) I select I/We will not use the services of legal counsel.

*C.O. Wilson Jr 11-7-11* *Ezekiel T. Wilson E.T.W. 11-7-11*

|          |      |          |      |
|----------|------|----------|------|
| Borrower | Date | Borrower | Date |
|          |      |          |      |

(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of acceptable attorneys. From that list I select

|                |      |                |      |
|----------------|------|----------------|------|
| Not Applicable | Date | Not Applicable | Date |
| Borrower       |      | Borrower       |      |

|                |      |                |      |
|----------------|------|----------------|------|
| Not Applicable | Date | Not Applicable | Date |
| Borrower       |      | Borrower       |      |

2. I (We) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required Homeowner's Insurance in connection with this mortgage transaction.

(a) I select State Farm

*C.O. Wilson Jr 11-7-11* *Ezekiel T. Wilson E.T.W. 11-7-11*

|          |      |          |      |
|----------|------|----------|------|
| Borrower | Date | Borrower | Date |
|          |      |          |      |

(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of qualified agents. From that list I select

|                |      |                |      |
|----------------|------|----------------|------|
| Not Applicable | Date | Not Applicable | Date |
| Borrower       |      | Borrower       |      |

|                |      |                |      |
|----------------|------|----------------|------|
| Not Applicable | Date | Not Applicable | Date |
| Borrower       |      | Borrower       |      |

1085(BC) (06/09)

VMP MORTGAGE FORMS - (800)521-7291

9/06

2279146783



QL(Wilson)\_0057

ROA\_0183

3



## A. Settlement Statement (HUD-1)

OMB Approval No. 2502-0265

|                                                                                                                                                                                                                                                                                      |                                                                                                                                                                      |                                                                                                                              |                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> RHS 3. <input checked="" type="checkbox"/> Conv. Unins.                                                                                                                                                                  | 6. File Number.                                                                                                                                                      | 7. Loan Number.                                                                                                              | 8. Mortgage Insurance Case Number. |
| 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> Conv. Ins.                                                                                                                                                                                                                |                                                                                                                                                                      | 4992                                                                                                                         |                                    |
| C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals. |                                                                                                                                                                      |                                                                                                                              |                                    |
| D. Name & Address of Borrower:<br>Calvin O. Wilson, Jr.<br>Ezekiel T. Wilson<br><br>P.O. Box 411<br>Williston, SC 29853                                                                                                                                                              | E. Name & Address of Seller:                                                                                                                                         | F. Name & Address of Lender:<br>Quicken Loans Inc.<br>Company NMLSR: 3030<br><br>1050 Woodward Ave<br>Detroit, MI 48226-1906 |                                    |
| G. Property Location:<br>12640 Main St<br>Williston, SC 29853                                                                                                                                                                                                                        | H. Settlement Agent:<br>Title Source, Inc.<br>1450 West Long Lake Road #400, Troy, MI<br>(248)312-1200<br>Place of Settlement:<br>12640 Main St, Williston, SC 29853 | I. Settlement Date:<br>December 14, 2011<br>48098<br>Disbursement Date: 12/19/11                                             |                                    |

|                                                                                                     |                                                                            |
|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| 100. Gross Amount Due from Borrower                                                                 | 400. Gross Amount Due to Seller                                            |
| 101. Contract sales price                                                                           | 401. Contract sales price                                                  |
| 102. Personal property                                                                              | 402. Personal property                                                     |
| 103. Settlement charges to borrower (line 1400) \$3,592.02                                          | 403.                                                                       |
| 104. WELLS FARGO HM MORTGAG \$100,633.39                                                            | 404.                                                                       |
| 105. Please see page 6 for additional items \$8,095.93                                              | 405.                                                                       |
| Adjustment for items paid by seller in advance                                                      | Adjustments for items paid by seller in advance                            |
| 106. City/town taxes to                                                                             | 406. City/town taxes to                                                    |
| 107. County taxes to                                                                                | 407. County taxes to                                                       |
| 108. Assessments to                                                                                 | 408. Assessments to                                                        |
| 109.                                                                                                | 409.                                                                       |
| 110.                                                                                                | 410.                                                                       |
| 111.                                                                                                | 411.                                                                       |
| 112.                                                                                                | 412.                                                                       |
| 120. Gross Amount Due from Borrower \$112,321.34                                                    | 420. Gross Amount Due to Seller                                            |
| 200. Amounts Paid by or in Behalf of Borrower                                                       | 500. Reductions in Amount Due to Seller                                    |
| 201. Deposit or earnest money                                                                       | 501. Excess deposit (see instructions)                                     |
| 202. Principal amount of new loan(s) \$126,000.00                                                   | 502. Settlement charges to seller (line 1400)                              |
| 203. Existing loan(s) taken subject to                                                              | 503. Existing loan(s) taken subject to                                     |
| 204. Good Faith Deposit to Quicken Loans Inc. \$500.00                                              | 504. Payoff of first mortgage loan                                         |
| 205.                                                                                                | 505. Payoff of second mortgage loan                                        |
| 206.                                                                                                | 506.                                                                       |
| 207.                                                                                                | 507.                                                                       |
| 208.                                                                                                | 508.                                                                       |
| 209.                                                                                                | 509.                                                                       |
| Adjustments for items unpaid by seller                                                              | Adjustments for items unpaid by seller                                     |
| 210. City/town taxes to                                                                             | 510. City/town taxes to                                                    |
| 211. County taxes to                                                                                | 511. County taxes to                                                       |
| 212. Assessments to                                                                                 | 512. Assessments to                                                        |
| 213.                                                                                                | 513.                                                                       |
| 214.                                                                                                | 514.                                                                       |
| 215.                                                                                                | 515.                                                                       |
| 216.                                                                                                | 516.                                                                       |
| 217.                                                                                                | 517.                                                                       |
| 218.                                                                                                | 518.                                                                       |
| 219.                                                                                                | 519.                                                                       |
| 220. Total Paid by/for Borrower \$126,500.00                                                        | 520. Total Reduction Amount Due Seller                                     |
| 300. Cash at Settlement from/to Borrower                                                            | 600. Cash at Settlement to/from Seller                                     |
| 301. Gross amount due from borrower (line 120) \$112,321.34                                         | 601. Gross amount due to seller (line 420)                                 |
| 302. Less amounts paid by/for borrower (line 220) \$126,500.00                                      | 602. Less reductions in amount due seller (line 520)                       |
| 303. Cash <input type="checkbox"/> From <input checked="" type="checkbox"/> To Borrower \$14,178.66 | 603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller |

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

Settlement Statement  
Waller-Kuehn Financial Services

VMP-8

Previous editions are obsolete

Page 1 of 4

HUD-1 11/17/08  
VMP601FA (990) 00

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QI(Wilson)\_0500

ROA\_0185

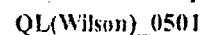
Settlement Statement  
Wichita Kiewit Financial Services

VMP 8

Previous editions are obsolete

Page 2 of 4

HJD-1 11/17/08  
VMPG01FA (08) 01 CO

**ROA 0186**

| Comparison of Good Faith Estimate (GFE) and HUD-1 Charges            |                   | Good Faith Estimate | HUD-1      |
|----------------------------------------------------------------------|-------------------|---------------------|------------|
| Charges That Cannot Increase                                         |                   |                     |            |
|                                                                      | HUD-1 Line Number |                     |            |
| Our origination charge                                               | #801              | \$1,045.00          | \$1,045.00 |
| Your credit or charge (points) for the specific interest rate chosen | #802              | \$785.63            | \$157.50   |
| Your adjusted origination charges                                    | #803              | \$1,830.63          | \$1,202.50 |
| Transfer taxes                                                       | #1203             | \$0.00              | \$0.00     |

| Charges That in Total Cannot Increase More Than 10% |       | Good Faith Estimate | HUD-1    |
|-----------------------------------------------------|-------|---------------------|----------|
| Government recording charges                        | #1201 | \$22.00             | \$22.00  |
| Title services and lender's title insurance         | #1101 | \$981.20            | \$981.20 |
| Appraisal fee                                       | #804  | \$430.00            | \$430.00 |
| Credit Report                                       | #805  | \$17.80             | \$17.80  |
| Life of Loan Tax Service                            | #806  | \$60.00             | \$60.00  |
| Flood Life of Loan Coverage                         | #807  | \$5.00              | \$5.00   |
| Flood Determination Fee                             | #808  | \$10.50             | \$10.50  |
| Tax Certification Fee                               | #812  | \$18.00             | \$18.00  |
|                                                     | #     |                     |          |
|                                                     | #     |                     |          |
|                                                     | #     |                     |          |

|                                                       |            |            |
|-------------------------------------------------------|------------|------------|
| Total                                                 | \$1,544.50 | \$1,544.50 |
| Percent Difference (HUD-1 minus GFE) in Total Charges |            | %          |

| Charges That Can Change                 |                   | Good Faith Estimate | HUD-1    |
|-----------------------------------------|-------------------|---------------------|----------|
| Initial deposit for your escrow account | #1001             | \$813.94            | \$663.41 |
| Daily interest charges                  | #901 \$13.97 /day | \$279.40            | \$181.61 |
| Homeowner's Insurance                   | #903              |                     |          |
|                                         | #                 |                     |          |
|                                         | #                 |                     |          |
|                                         | #                 |                     |          |
|                                         | #                 |                     |          |

#### Loan Terms

|                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Your initial loan amount is                                                                                           | \$ 126,000.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Your loan term is                                                                                                     | 15 years                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Your initial interest rate is                                                                                         | 3.9900 %                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Your initial monthly amount owed for principal, interest, and any mortgage insurance is                               | \$ 931.38 Includes<br><input checked="" type="checkbox"/> Principal<br><input checked="" type="checkbox"/> Interest<br><input type="checkbox"/> Mortgage Insurance                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Can your interest rate rise?                                                                                          | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of _____ % The first change will be on _____ and can change again every _____ after<br>Every change date, your interest rate can increase or decrease by _____ % Over the life of the loan, your interest rate is guaranteed to never be lower than _____ % or higher than _____ %                                                                                                                                                                                                                                           |
| Even if you make payments on time, can your loan balance rise?                                                        | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise? | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, the first increase can be on _____ and the monthly amount owed can rise to \$ _____ The maximum it can ever rise to is \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Does your loan have a prepayment penalty?                                                                             | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, your maximum prepayment penalty is \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Does your loan have a balloon payment?                                                                                | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, you have a balloon payment of \$ _____ due in _____ years on _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Total monthly amount owed including escrow account payments                                                           | <input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself.<br><input checked="" type="checkbox"/> You have an additional monthly escrow payment of \$ 135.20 that results in a total initial monthly amount owed of \$ 1,066.58 This includes principal, interest, any mortgage insurance and any items checked below:<br><input checked="" type="checkbox"/> Property taxes <input checked="" type="checkbox"/> Homeowner's insurance<br><input type="checkbox"/> Flood insurance <input type="checkbox"/> |

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.



I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

**Borrower**

Calvin O. Wilson Jr. 12/14/2011  
Calvin O. Wilson, Jr. Date

Ezekiel T. Wilson 12/14/2011  
Ezekiel T. Wilson Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Seller**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

**Settlement Agent**

Debra M. Miller 12/14/11  
Debra M. Miller Date

☐ Refer to the attached *Signature Addendum* for additional parties and signatures.



| Charges That In Total Cannot Increase More Than 10% (Continued) | Good Faith Estimate | HUD-1 |
|-----------------------------------------------------------------|---------------------|-------|
| #                                                               |                     |       |
| #                                                               |                     |       |
| #                                                               |                     |       |
| #                                                               |                     |       |
| #                                                               |                     |       |
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| Charges That Can Change (Continued) | Good Faith Estimate | HUD-1 |
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J. Summary of Borrower's Transaction (Continued from Page 5)

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

Settlement Statement Supplement  
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 Wells-Kuehn Financial Services © 2005



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**AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE**

Date: November 4, 2011

To: Calvin O. Wilson and Ezekiel T. Wilson

Subject Property: 12640 Main St  
Williston, SC 29853

From: Quicken Loans Inc. Company NMLS#: 3030 ("Lender")

Title Source, Inc. provides title insurance, title search, settlement, and appraisal management services to clients of Lender. Title Source also does business under the name of TSI Appraisal Services. In-House Realty LLC provides real estate brokerage services to clients of Lender.

This is to give you notice that Lender has a business relationship with Title Source and In-House Realty. Lender, Title Source and In-House Realty are owned (subsidiaries) by Rock Holdings Inc. Because of this relationship, this referral may provide Lender a financial or other benefit.

Set forth below is the estimated charge or range of charges for the settlement services listed. Except for appraisal services, you are not required to use Title Source, TSI Appraisal Services or In-House Realty as a condition for settlement of your loan for purchase, sale, or refinance of the subject property.

THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND AND DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES (WITH THE EXCEPTION OF APPRAISAL SERVICES).

| PROVIDER               | SETTLEMENT SERVICE             | ESTIMATE OF CHARGES                                                                                                                                                                                                                                                                          |
|------------------------|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title Source, Inc.     | Settlement or Closing Fee      | \$ 475.00 to 525.00                                                                                                                                                                                                                                                                          |
| Title Source, Inc.     | Title Insurance/Title Search   | \$ 309.52 to 359.52                                                                                                                                                                                                                                                                          |
| TSI Appraisal Services | Appraisal Management Services  | \$ 80.00 to 80.00                                                                                                                                                                                                                                                                            |
| In-House Realty LLC    | Real Estate Brokerage Services | Real estate commissions are typically 6% of the purchase price and paid by the seller. If In-House Realty acts as buyer's agent, the commission paid by seller will be shared with In-House Realty pursuant to a brokerage/referral agreement. In-House Realty may also earn a referral fee. |

**ACKNOWLEDGMENT**

I/we have read this disclosure form and understand that Lender is referring me/us to the above described settlement service provider(s) and may receive a financial or other benefit as the result of the referral.

Calvin O. Wilson Jr.  
Calvin O. Wilson Jr. Date

Nov. 7, 2011  
Date

Ezekiel T. Wilson E.T.W.  
Ezekiel T. Wilson Date

\_\_\_\_\_  
Date

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St. Paul, MN 55117

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RHONDA D. MCELVEEN  
CLERK OF COURT

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Prepared By:  
Heather Tabor

56124738-1137857  
Company NMLS#: 3030

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MORTGAGE

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#### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated December 14, 2011 together with all Riders to this document.  
(B) "Borrower" is Calvin O. Wilson, Jr. and Ezekiel T. Wilson, husband and wife

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

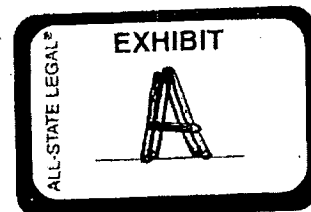
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VMP Mortgage Solutions, Inc.

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(D) "Lender" is Quicken Loans Inc.

Lender is a Corporation  
organized and existing under the laws of the State of Michigan  
Lender's address is 1050 Woodward Ave, Detroit, MI 48226-1906

(E) "Note" means the promissory note signed by Borrower and dated December 14, 2011  
The Note states that Borrower owes Lender One Hundred Twenty Six Thousand and 00/100 Dollars

(U.S. \$ 126,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2027

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

|                                                |                                                         |                                                                          |
|------------------------------------------------|---------------------------------------------------------|--------------------------------------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider                               |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider                                |
| <input type="checkbox"/> VA Rider              | <input type="checkbox"/> Biweekly Payment Rider         | <input checked="" type="checkbox"/> Other(s) [specify]<br>Legal Attached |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appellable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used

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in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County of Barnwell

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.  
SUBJECT TO COVENANTS OF RECORD.

Parcel ID Number:  
12640 Main St

047-07-08-001

which currently has the address of  
[Street]

Williston

(City), South Carolina 29853

[Zip Code]

("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns,) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.



12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. **Release.** Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Homestead Waiver.** Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Calvin Olin Wilson III  
CALVIN OLIN WILSON III  
WITNESS

Calvin O. Wilson, Jr. 12/14/2011 (Seal)  
Calvin O. Wilson, Jr. -Borrower

Ezekiel T. Wilson  
Ezekiel T. Wilson

Ezekiel T. Wilson 12/14/2011 (Seal)  
Ezekiel T. Wilson -Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

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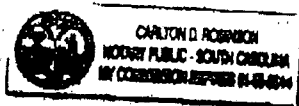
STATE OF SOUTH CAROLINA Barnwell

I, Calvin D. Wilson, Jr. and Ezekiel T. Wilson  
do hereby certify that Calvin D. Wilson, Jr. and Ezekiel T. Wilson, husband and wife

County ss:

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 14th day of December, 2011



Notary Public for South Carolina Carlton D Robinson

My Commission Expires: 11/5/2014

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EXHIBIT A - LEGAL DESCRIPTION

Tax Id Number(s): 047-07-08-001

Land Situated in the City of Williston in the County of Barnwell in the State of SC

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON THE NORTH SIDE OF THE SOUTHERN RAILWAY IN THE WILLISTON SCHOOL DISTRICT, TOWN OF WILLISTON, COUNTY OF BARNWELL, STATE OF SOUTH CAROLINA, CONTAINING TWO (2) ACRES, MORE OR LESS, AND HAVING THE FOLLOWING BOUNDARIES AND MEASUREMENTS, TO-WIT: ON THE NORTH BY DICKS STREET, AND MEASURING THEREON 150 FEET, MORE OR LESS, ON THE EAST BY LOT NOW OR FORMERLY OF G. E. CROUCH, ESTATE OF T. M. WILLIS AND LOT OF NEGRO LODGE, AND MEASURING THEREON 600 FEET, MORE OR LESS; ON THE SOUTH BY EAST MAIN STREET SEPARATING THIS LOT FROM RIGHT-OF-WAY OF SOUTHERN RAILWAY, AND MEASURING THEREON 150 FEET, MORE OR LESS; AND ON THE WEST BY MANSFIELD DRIVE, AND MEASURING THEREON 600 FEET, MORE OR LESS.

Being the same property conveyed to Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Willson, as joint tenants with rights of survivorship, and not as tenants in common by C.O. Wilson, by deed dated September 29, 1992 and recorded October 7, 1992 of record in Deed Book 205, Page 310, in the County Clerk's Office.

Commonly known as: 12640 Main Street, Williston, SC 29853



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not directly related to the disclosures. In many instances, contractual terms are situated on the same side of the same document as the required Truth in Lending disclosures.

We are aware of no legislative history nor any principle of statutory construction requiring the interpretation that the assumption notice be placed with the segregated disclosure. Because Regulation Z requires or permits certain other disclosures to be set apart from the segregated disclosures, it follows that the assumption notice required by Section 10.102(c) may likewise be set apart from the segregated disclosures, and yet still be within the disclosure statement required by the Federal Truth in Lending Act.

Neither Regulation Z nor the Consumer Protection Code, however, give any guidance as to where the various disclosures must be placed in a particular document.

To eliminate confusion as to where the assumption notice must be placed in relation to the segregated disclosures, other federally required disclosures and other contract terms, this Department will consider any Section 10.102(c) assumption notice to be in compliance if it is placed conspicuously anywhere on the same side of the same page as the document containing the segregated disclosures, so long as the correct terminology is used and the creditor otherwise complies with Section 10.102.

In conclusion, a creditor may comply with requirements of Section 10.102(c) by incorporating the Section 10.102(c) assumption notice into the same document used for the Truth in Lending disclosures required by Regulation Z Sections 226.77 and 226.18, even if the Section 10.102(c) assumption notice is not incorporated directly into the segregated disclosures required by Regulation Z Section 226.17.

October 11, 1983

Administrative Interpretation No. 10.102(a)-8302

**FORM FOR INDICATION OF BORROWER'S PREFERENCE FOR LEGAL COUNSEL AND INSURANCE AGENT MAY BE INCORPORATED INTO APPLICATION DOCUMENT BY USE OF A RUBBER STAMP OR MAY BE PROVIDED ON A SEPARATE SHEET.**

The Department of Consumer Affairs has been asked whether a lender may avoid having the borrower's preference indication required by S. C. Code Ann. § 37-10-102(a) (1976, as amended) on the application form itself.

Section 37-10-102(a) provides, in pertinent part:

The creditor shall ascertain the preference of the borrower as to the legal counsel that shall be employed to represent the debtor in all matters of the transaction relating to the closing of the loan and the insurance agent to furnish required insurance in connection with the mortgage and shall comply

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with such preference and the loan application on the first page thereof shall contain such information as is necessary to ascertain these preferences of the borrower.

Certain lenders have preprinted application forms for mortgage loans and would be required to reprint a large number of application forms if the above section were read to strictly require that the preference be placed physically on the first page of the application. Other lenders use applications which comply with the requirements of buyers on the secondary market. For example, the Federal Home Loan Mortgage Corporation (Freddie Mac) requires a particular application form to be filled out and that form leaves no room for the borrower's preference checklist on the first or front page. Alteration of this form would likely damage that loan's marketability to Freddie Mac.

The primary rule of statutory construction is to ascertain and effectuate the legislative intent. *Bankers Trust of South Carolina v. Bruce*, 275 S. C. 35, 267 S.E.2d 424 (1980). While courts are to apply terms of a statute according to their literal meaning, courts will disregard the literal import of words if application of the literal meaning of the words would result in unjust or absurd consequences, or would defeat the plain legislative intent. *Martin v. Ellisor*, 266 S. C. 377, 223 S.E.2d 415 (1976); *State ex rel. McLeod v. Montgomery*, 244 S. C. 308, 136 S.E.2d 778 (1964).

While South Carolina has no formal legislative history, the General Assembly has provided some guidance in S. C. Code Ann. § 37-1-102 (1976, as amended) which reads in pertinent part:

- (1) This title shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) The underlying purposes and policies of this title are:
  - (a) To simplify, clarify and modernize the law governing retail installment sales, consumer credit and usury.
  - \* \* \*
  - (c) To further consumer understanding of the terms of credit transactions and to foster competition among the suppliers of consumer credit so that consumers may obtain credit at reasonable costs;
  - (d) To protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
  - (e) To permit and encourage the development of fair and economically sound consumer credit practices; . . .

Section 37-10-102(a) was taken largely from S. C. Code Ann. §§ 29-3-210 and 29-3-220 (1976) which provide a similar right to select an

attorney and an insurance agent. The provision that these preferences should be expressed on the first page of the loan application, however, was added by Section 37-10-102(a) and the original Sections 29-3-210 and 29-3-220 were repealed by Section 57 of Act 385 of 1982.

This evidences no legislative intent to either make loan transactions in South Carolina unmarketable on the secondary market (which would make credit less available) or to bring these transactions into potential conflict with federal law. On the contrary, given the provisions of Section 37-1-102 and the Consumer Protection Code as a whole, it would appear that in enacting Section 37-10-102(a) the General Assembly had two main objectives: (1) to provide the borrower with the right to legal counsel of his choosing and to an insurance agent of his choosing if insurance is required by the lender, and (2) to make these rights known to the borrower (applicant) by a conspicuous disclosure and have the borrower make his preference known before he is inundated with other documents related to the transaction. By having the borrower affirmatively select an attorney or insurance agent, it becomes less likely that the borrower will ultimately acquiesce to the lender's choice of an attorney or agent for whom the borrower would have to pay, even though that attorney or agent might actually represent the interests of the lender.

If space permits, a borrower's preference checklist which is designed to determine those preferences set forth in Section 37-10-102(a) may be printed on a rubber stamp and stamped on any empty space on the first page of the loan application in which it will be legible and conspicuous. A borrower's preference checklist may also be printed on a separate sheet which would be presented to the borrower prior to or contemporaneous with the application form. If a separate sheet is presented to the consumer as the first sheet he or she sees, for purposes of compliance with Section 37-10-102(a) it may be deemed the first page of the application.

For enforcement purposes, a legible checklist in substantially the following form will be deemed in compliance:

Date \_\_\_\_\_

1.) I (we) have been informed by (the lender) that I (we) have a right to select legal counsel to represent me (us) in all matters of this transaction relating to the closing of the loan.

(a) I select \_\_\_\_\_

|                 |                               |
|-----------------|-------------------------------|
| Attorney's Name | Borrower's Signature          |
|                 | _____<br>Borrower's Signature |

- (b) Having been informed of this right, and having no preference I asked for assistance from (the lender) and was referred to a list of acceptable attorneys. From that list I select \_\_\_\_\_

Attorney's Name

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

- 2.) I (we) have been informed by (the lender) that I (we) have a right to select an insurance agent to furnish required \_\_\_\_\_ insurance in connection with this mortgage transaction.

- (a) I select \_\_\_\_\_

Agent's Name

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

- (b) Having been informed of this right, and having no preference, I asked for assistance from (the lender) and was referred to a list of qualified agents. From that list I select \_\_\_\_\_

Agent's Name

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

This form may be oversimplified for certain transactions, particularly if a number of insurance coverages are required. We believe, however, it can be lengthened within the same format.

In summary, the attorney and insurance agent preference need not be indicated directly on the application form so long as the borrower is presented a clear and conspicuous disclosure of this right prior to or contemporaneously with the application form. Use of the above form for these purposes will be deemed compliance with Section 37-10-102(a) by this Department if such form is filled out correctly.

November 25, 1983

Administrative Interpretation No. 3.202-8303

**THE CONSUMER PROTECTION CODE DOES NOT AUTHORIZE A "RELEASE FEE," ALTHOUGH CERTAIN EXPENSES INVOLVED IN RELEASING A PORTION OF REAL ESTATE THAT IS COLLATERAL FOR A CONSUMER LOAN MAY BE RECOUPED BY THE LENDER AS PERMISSIBLE ADDITIONAL CHARGES.**

A supervised lender has asked whether a "release fee" can be charged in connection with real estate consumer loans. The loans involved

B-214

7



THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

JAN 30 2015

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Vance L. Boone, Thelma Boone, Travis G. Messex,  
Teresa S. Messex, Brian Johnson, and Kelli Johnson, on  
behalf of themselves and all others similarly situated, .....

Petitioners/  
Plaintiffs,

v.

Quicken Loans Inc. and Title Source, Inc., .....

Respondents/  
Defendants.

Appellate Case No. 2013-002288

Honorable Diane S. Goodstein, Special Referee

**CONFIDENTIALITY PROTECTIVE ORDER**

Whereas the parties to this Confidentiality Protective Order ("parties"), have stipulated that certain discovery material is and should be treated as confidential, and have agreed to the terms of this Order; accordingly, it is this 11 day of January, ~~2014~~ <sup>2015</sup> ORDERED:

1. **Scope.** All documents produced in the course of discovery, all responses to discovery requests and all deposition testimony and deposition exhibits and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order to the extent they contain confidential information as set forth below. This Order is binding upon the parties and their attorneys and all persons who receive confidential information in this action.
2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a

manner which will not interfere with the legibility of the document and which will permit complete removal of the confidential designation. Except as otherwise provided herein, documents shall be designated confidential prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential as otherwise allowed by this Order.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information. Documents produced by a non-party pursuant to subpoena are subject to this Order and may be designated confidential within seven business days after receipt of the documents. Information or documents which are available in the public sector may not be designated as confidential.

4. **Depositions.** Portions of depositions shall be deemed confidential only if designated as such when the deposition is taken or within seven business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected.

5. **Protection of Confidential Material.**

a. **General Protections.** Documents designated confidential under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below (¶ 5.b.) for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed

(including any appeal of that litigation). The parties shall not disclose documents designated as confidential to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes have been certified, or unless the documents designated as confidential are about the putative class member's loan.

b. **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated confidential under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated confidential pursuant to this Order:

- (1) counsel and employees of counsel for the parties who have responsibility for the preparation and conduct of the lawsuit;
- (2) parties and employees of a party to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed;
- (3) witnesses and deponents;
- (4) third-party contractors specifically engaged on behalf of a party or employee of a party to this Order for the limited purpose of making photocopies of documents or performing similar document services;

(5) court reporters and videographers engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

(6) court personnel;

(7) consultants, investigators, or experts (hereinafter referred to collectively as "consultants") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and

(8) other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

c. **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the documents along with the originals of the forms signed by those persons acknowledging their obligations under this Order.

d. **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies"), of documents designated as Confidential under this Order or any portion of such a document, shall be immediately affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

e. **Ordinary Course of Business.** The producing party may continue to use and disclose documents designated confidential in this litigation within the scope of its ordinary course of business without violating confidentiality or this Order.

6. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the Special Referee, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in Rule 41.1, South Carolina Rules of Civil Procedure, or such other rule or procedure as may apply in the relevant jurisdiction. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that documents may be filed under seal only with the permission of the court after proper motion pursuant to Rule 41.1, South Carolina Rules of Civil Procedure.

7. **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection.

8. **Challenges to Designation as Confidential.** Any confidential designation is subject to challenge. The following procedures shall apply to any such challenge.

a. The burden of proving the necessity of a confidential designation remains with the party asserting confidentiality.

b. A party who contends that documents designated confidential are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the confidential designation.

c. Notwithstanding any challenge to the designation of documents as confidential, all material previously designated confidential shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

- (1) the party who claims that the documents are confidential withdraws such designation in writing;
- (2) the party who claims that the documents are confidential fails to move timely for an Order designating the documents as confidential as set forth in paragraph 8.b. above; or
- (3) the court rules that the documents should no longer be designated as confidential information.

d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

**9. Treatment on Conclusion of Litigation.**

a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated confidential shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

b. **Return of Confidential Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above (¶5.d.) shall be returned to the producing party unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product including an index which refers or relates to information designated confidential so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be confidential under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the confidential documents.

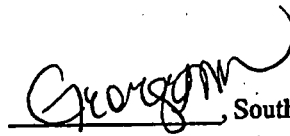
**10. Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this

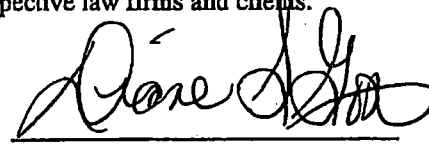
Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

11. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as confidential by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

12. **Persons Bound.** This Order shall take effect when entered and shall be binding upon all counsel in this action and their respective law firms and clients.

**IT IS SO ORDERED.**

  
\_\_\_\_\_, South Carolina  
This 11 day of Jan, 2015.

  
\_\_\_\_\_  
The Honorable Diane S. Goodstein  
Circuit Court Judge, Special Referee



ATTACHMENT A  
ACKNOWLEDGMENT OF UNDERSTANDING  
AND  
AGREEMENT TO BE BOUND

**RECEIVED**

JAN 30 2015

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**S.C. Supreme Court**

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Vance L. Boone, Thelma Boone, Travis G. Messex,  
Teresa S. Messex, Brian Johnson, and Kelli Johnson, on  
behalf of themselves and all others similarly situated, .....

Petitioners/  
Plaintiffs,

v.

Quicken Loans Inc. and Title Source, Inc., .....

Respondents/  
Defendants.

Appellate Case No. 2013-002288

Honorable Diane S. Goodstein, Special Referee

The undersigned hereby acknowledges that he or she has read the Protective Order dated [confidentiality order date], in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the South Carolina Supreme Court in matters relating to the Protective Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Name: [undersigned name [att A]]

Job Title: [Job Title [att A]]

Employer: [Employer [att A]]

Business Address: [Business Address [att A]]

Date: [date attachment A signed]

[Signature [attachment A]]  
Signature

8

1 A. Jeffrey Scott Campbell.

2 MR. HUTTO: Second designation is on page 9, lines 20  
3 through 22.

4 Q. Tell me what your job title is, Mr. Campbell.

5 A. My job title is senior corporate counsel.

6 Q. How long have you been with Quicken?

7 A. Approximately four years.

8 MR. HUTTO: And I'm sorry. That actually went through  
9 line 23.

10 The next designation is on line 10, starting at line 8  
11 and going all the way through that page and to the top of the  
12 next page, which would be page 11, line 7. It actually  
13 continues -- yes, that's right, line 7.

14 Q. It is my understanding that you can testify today about  
15 the business relationship and the legal relationship between  
16 Quicken and Title Source; is that right?

17 A. I can testify to the relationship, the business  
18 relationship between Quicken Loans and Title Source.

19 Q. And can you testify to the preparation of documents as  
20 it pertains to the application process?

21 A. That's correct.

22 Q. And you can testify about the application process from  
23 start to finish for Quicken; is that correct?

24 A. I believe I can.

25 Q. Does Quicken have any standard operating procedures for

1 the application process?

2 A. I'm sorry, I'm not sure I understand the question.

3 Q. How do you train your employees to take applications  
4 from borrowers?

5 A. So the mortgage banker will take an application from a  
6 borrower. That mortgage banker is required to be licensed by  
7 the state in which they are taking applications, so they will  
8 receive training and they will pass an examination in order  
9 to obtain that license. We offer training for each mortgage  
10 banker, and then they have access to our software system that  
11 walks them through the process of taking a mortgage loan  
12 application.

13 MR. HUTTO: Anybody who's looking, if I miss a  
14 designation, say so. But the next one I have is page 11,  
15 starting at line 22 and going through 12, line 15.

16 Q. Are the mortgage bankers Quicken employees?

17 A. Yes.

18 Q. Walk through and tell me what the first thing a person  
19 taking an application would do.

20 A. The first -- the very first thing would be making  
21 contact with the borrower and talking about what that person  
22 is looking to achieve.

23 Q. All right. Now, does the borrower contact the banker  
24 first or does the banker contact the borrower? How does that  
25 work?

1 A. It could be either, depending on the situation. So if  
2 it's a client who has already closed a loan with Quicken  
3 Loans, they may reach back out to the banker or reach  
4 directly or call Quicken Loans looking for information. It  
5 could also come through a lead source in which Quicken, the  
6 Quicken Loans mortgage banker, would reach out to that  
7 person.

8 MR. HUTTO: Moving to page 13, lines 4 through the  
9 following page 14 onto the following page of 15 all the way  
10 to 16, line 21.

11 Q. After they talk to the potential borrower about their  
12 goals and what they want to achieve in obtaining the loan,  
13 what's the next step?

14 A. So the banker would offer or discuss available products,  
15 available interest rates and offer or present what we have to  
16 offer to the client.

17 Q. And then what comes next?

18 A. That depends on the client, whether they express an  
19 interest to move forward. If they want to proceed and begin  
20 making an application, they will start providing initial  
21 information to the mortgage banker.

22 Q. And is there a list of the information that the mortgage  
23 banker needs to go along with the application?

24 A. The information would be all the information required to  
25 complete a 1003.

1 Q. What? A what?

2 A. A 1003, a uniform loan application.

3 Q. How is this information taken? Is it taken by phone,  
4 online, by mail?

5 A. Typically it's taken over the phone. So in the usual  
6 scenario, the banker is on the phone with the client asking  
7 them questions, and the client is sharing information with  
8 the mortgage banker.

9 Q. Can it also be taken online?

10 A. There is some information that can be provided online  
11 but not the entire loan application.

12 Q. What information is provided online?

13 A. I don't know.

14 Q. Have you ever taken a loan application?

15 A. No, I have not.

16 Q. How are you getting the information to testify today?  
17 How do you know about this subject?

18 A. Based on my experience in projects that I've worked on,  
19 I have knowledge and an understanding of how mortgage bankers  
20 work through that process.

21 Q. Have you seen documents that would explain how the  
22 process works?

23 A. Yes, I have.

24 Q. Where are those documents?

25 A. They're stored electronically at Quicken Loans.

1 Q. And would they explain the process that you are talking  
2 about and that you're going to talk about today?

3 A. Yes. Generally, yes.

4 Q. So you take the application, and I think you refer to  
5 the standard form 1003; is that right?

6 A. That's correct.

7 Q. And after you do that, what's the next step?

8 A. There's information that must be entered in our loan  
9 origination system, which is all the information contained on  
10 the 1003, as well as product information, whether the client  
11 wants to lock the interest rate or not lock the interest  
12 rate.

13 We also have specific questions within our loan  
14 origination system that have to be answered prior to the  
15 generation of an application disclosure package, and that  
16 application disclosure package would be delivered to the  
17 client.

18 Q. What are those specific questions?

19 A. It depends mainly on the state in which the property is  
20 located. So for example, South Carolina, we have a question  
21 directed to whether or not the client has a preference for  
22 legal counsel.

23 Q. Okay. What other questions did you have regarding  
24 preference for legal counsel?

25 A. I'm sorry. What is the question?

1 Q. What other questions do you have other than preference  
2 for legal counsel?

3 A. In South Carolina, I'm unaware. There are other  
4 state-specific questions.

5 Q. For South Carolina, is there, either electronically or  
6 in a written document, a document that would tell me those  
7 questions that you have to ask a borrower?

8 A. I don't know. It's built within our loan origination  
9 system.

10 Q. So it's in your computer system?

11 A. That's correct.

12 Q. So there's some type of electronic document, if you  
13 will; is that correct?

14 A. Well, it's not a document, but the question is built  
15 within our system, our process, within our loan origination  
16 system.

17 MR. HUTTO: All right. Turning to the top of page 17,  
18 all of page 17, all of 18, all of 19, all of 20, down to  
19 page -- well, actually, it's 23, 24.

20 MR. SMITH: I had a stop at 22.

21 MR. HUTTO: Yes, I'm sorry. You're correct, 19, 20, 21  
22 and we were going to stop at 8, but they've had a  
23 counterdesignation that takes it all the way to 13.

24 MR. SMITH: On 22.

25 MR. HUTTO: On 22.



1 MR. SMITH: Okay.

2 MR. HUTTO: All right. So starting at the top of 17,  
3 going through 22, line 13.

4 Q. I think you're saying that the mortgage banker looks at  
5 the screen and a question pops up and he reads the question  
6 to the potential borrower and gets an answer; is that  
7 correct?

8 A. There's a question for the mortgage banker. So for  
9 example, in South Carolina, the question that's presented to  
10 the mortgage banker is, "Will the borrower select legal  
11 counsel to represent them in this transaction?" That is a  
12 question that's presented to the mortgage banker to ensure  
13 that the mortgage banker has or provides that notice to the  
14 client as they are applying for the mortgage loan.

15 Q. When did that process start?

16 A. That began approximately 2001.

17 Q. Okay. So you have been at Quicken since 2011; is that  
18 correct?

19 A. 2011, that's correct.

20 Q. What date did you start, if you remember?

21 A. It was May 2nd, 2011.

22 Q. All right. And that question has been somehow asked to  
23 the borrower since you have been there; is that correct?

24 A. That's correct.

25 Q. Is there a form that is sent to the borrower regarding

1 the attorney preference?

2 A. There is.

3 Q. How is it sent to the borrower?

4 A. Just to back up a quick second, so as a part of that  
5 application process, the mortgage banker will be asking all  
6 these questions, including that state-specific question that  
7 you just asked about. Once the mortgage banker has completed  
8 that process, and the banker can't move forward through the  
9 loan origination system without asking that question, so  
10 that's a safeguard that's built into the system.

11 Q. Okay.

12 A. Once everything has been obtained, the banker can then  
13 generate an application package.

14 Q. So he can't generate the application package until he  
15 asks the question and other questions applicable in South  
16 Carolina.

17 A. True.

18 Q. Do you remember what the other questions applicable in  
19 South Carolina are?

20 A. I do not.

21 Q. Does he ask about an insurance preference?

22 A. Yes, well --

23 MR. SMITH: Excuse me, objection. Relevance. Insurance  
24 preference is not relevant.

25 MR. HUTTO: Is that just that one question?

1 THE COURT: Yes. Looks like it. It's on the top of  
2 page 19, 1, 2 and 3.

3 MR. HUTTO: May we address the objection?

4 THE COURT: Sure.

5 MR. HUTTO: We're going to -- I'm not sure. It appears  
6 somewhere else. And the reason we think it's relevant is  
7 when the person answers the question about the insurance,  
8 let's say they say, "I have State Farm." Apparently they can  
9 type in State Farm or Farm Bureau. They can type that in or  
10 it gets entered in, whereas if the person says to the earlier  
11 question, "Do you want to choose a lawyer?" and they said,  
12 "Yes, Diane Goodstein," they can't type in -- the program  
13 doesn't let them type that in. It's a prepopulated one or  
14 two answer, yet when they get to the insurance question, they  
15 can actually enter the name of whatever the borrower says.

16 And I think it's relevant to show that they could have  
17 designed the program to take the name of the attorney right  
18 on the front end rather than prepopulate it with two  
19 questions, neither one of which will be the name of the  
20 attorney if the person speaks the name of the attorney, much  
21 like they might speak State Farm or Farm Bureau when they  
22 answer the insurance question.

23 THE COURT: Okay. With regards to that, and first of  
24 all, thank you, Quicken, for not creating a program that they  
25 can type in Diane Goodstein.

1 MR. SMITH: The objection still stands. Insurance agent  
2 preference is irrelevant and the --

3 THE COURT: I agree.

4 MR. SMITH: -- argument that I just --

5 THE COURT: It's just typing it in.

6 MR. SMITH: Well, and the argument that I just heard  
7 that says you can type in an insurance -- because you can  
8 type in an insurance agent preference you can type in the  
9 attorney preference takes us down the path of attorney  
10 preference issues, because, in fact, most people, and this --  
11 and I put myself in this category, when I talk to my banker  
12 and they say, "Who do you want to close this loan at this  
13 point in the process?" and they say, "Who's your home  
14 insurance with?" I know the answer to one question, but I  
15 don't know the answer to both questions.

16 I know about my home insurance because I have that  
17 continuously. The argument that, well, everybody knows their  
18 attorney preference and so you should ask that or you ought  
19 to ask that doesn't make anything in this case more or less  
20 likely to be true. And so we'd move to exclude that.

21 THE COURT: Got it.

22 MR. SMITH: And there will be other references to  
23 insurance agent preference and the difference.

24 THE COURT: Insofar as it demonstrates -- and oh, by the  
25 way, I don't think this demonstrates that, but if later on it

1 demonstrates that, let me know. As it is posed on the  
2 insurance agent lines, it's not relevant; however, with  
3 regards to the program allowing names to be typed in one  
4 place and not another place, for what it's worth, I'm going  
5 to allow that, okay? Is that clear?

6 Okay. So keep going. Jump over insurance and keep  
7 going. How is it sent to the borrower. Isn't that where we  
8 are?

9 MR. HUTTO: What page was I on?

10 THE COURT: 18, top of 19, how does he ask about  
11 insurance?

12 MR. HUTTO: Got it. Got it. Okay.

13 THE COURT: "Is there a list of acceptable attorneys..."

14 MR. HUTTO: Okay. Got it. Starting on 19, line 4 then.

15 Q. Is there a list of acceptable attorneys provided to the  
16 borrower in the event he doesn't have a preference?

17 A. I'm sorry. Could you repeat that?

18 Q. Is there a list of acceptable attorneys provided to the  
19 borrower in the event he does not have any preference as to  
20 attorneys?

21 A. No. Based on the response that the client provides to  
22 the mortgage banker, we will prepare that attorney checklist,  
23 and we do not generate or prepare a list of attorneys.

24 Q. Do you ever provide documents to the potential borrower  
25 online while you are taking the application over the phone?

1 A. I'm sorry. I don't know what that means.

2 Q. Can you be talking to the borrower on the phone, taking  
3 the application information and providing him the information  
4 at the same time or simultaneously online?

5 A. I'm not exactly sure what the question is, but I will  
6 answer it this way: There has to be enough information  
7 obtained to reach an application status. At that point, the  
8 mortgage banker will generate an application disclosure  
9 package.

10 Q. Okay.

11 A. If the client wishes to receive or consents to receive  
12 those disclosures electronically, then while both parties are  
13 on the phone, they can discuss the disclosures that were sent  
14 electronically.

15 Q. So after he has sufficient information to generate the  
16 package, he can deliver the package to the borrower  
17 electronically?

18 A. Correct.

19 Q. He can also deliver it by mail?

20 A. Correct.

21 Q. Are these documents ever signed electronically?

22 A. Yes, they are.

23 Q. Is this the way it's done for all loan applications for  
24 South Carolina mortgage loans?

25 A. Which way?

1 Q. You just told me about a process where you take the  
2 information for the application, all right? You have to ask  
3 certain questions of a South Carolina borrower, including his  
4 preference to an attorney, all right? And after you have  
5 asked those questions, then you can generate a package. Is  
6 it done that way in all South Carolina mortgage loan  
7 transactions?

8 A. Yes.

9 Q. And in all South Carolina mortgage loan transactions,  
10 that loan application package that you generated with the  
11 disclosures, is it then sent to the borrower either  
12 electronically or by mail; is that correct?

13 A. That is correct.

14 Q. As senior corporate counsel, what are your job  
15 responsibilities at Quicken?

16 A. I am a leader of the -- a compliance team. There is  
17 five of us, and as a team, we're responsible for making sure  
18 that Quicken Loans complies with all laws and regulations,  
19 both at the federal and state level, that regulate the  
20 origination of mortgage loans.

21 Q. Are the disclosure documents ever sent to a potential  
22 borrower, either electronically or by mail, prior to you  
23 asking him questions on the phone, "Who do you wish to choose  
24 for your attorney?"

25 A. I think I answered that. Before they can generate that

1 application package, before it's eligible for delivery, the  
2 banker would have to ask that question.

3 Q. So it's your testimony today that the question is always  
4 asked before the attorney preference form generated in the  
5 disclosure package that you send out?

6 A. Yes, that's part of our process.

7 MR. HUTTO: Moving on to page 23, lines 1 through 13.

8 Q. Before I move on to ask you questions about Exhibits 23  
9 and 24, if you have -- if you have never taken a loan  
10 application, how do you know the process that you've just  
11 described to me?

12 A. Currently we are weeks away from one of the biggest  
13 regulatory overhauls in the mortgage lending industry the  
14 TRID rule, which takes effect August 1st, that rule changes  
15 the definition of what a mortgage loan application is. And  
16 because of that rule, I have spent I can't even tell you how  
17 many hours, lots of hours, examining the application process,  
18 how we take mortgage loan applications and what changes we'll  
19 need to take for August 1st.

20 MR. HUTTO: All right. I'll go back to line 5 for a  
21 minute --

22 MR. SMITH: Excuse me. I have a process question. If  
23 the reader reads the wrong word, what do you want us to do?

24 MR. HUTTO: Well, I'm going to ask him to read it again  
25 right now.



1 MR. SMITH: Thanks.

2 MR. HUTTO: Okay.

3 THE COURT: Just do something like that.

4 MR. SMITH: I just wanted to know. That's fine. That's  
5 good.

6 MR. HUTTO: Mr. Dibble, I want you to go back and reread  
7 the first -- lines 5 and 6 again. I think you used the word  
8 "industry," and it looks like it's "history," but for the  
9 record, can you --

10 MR. DIBBLE: I apologize.

11 MR. HUTTO: Do you want us to read the whole thing  
12 again?

13 MR. MORGANROTH: Yes, I think it would be clearer.

14 MR. HUTTO: Let's reread that question and answer again  
15 to get it correct, okay?

16 MR. SMITH: So page 23, line 1 --

17 MR. HUTTO: 1 through 13.

18 Q. Before I move on to ask you questions about Exhibits 23  
19 and 24, if you have ever -- if you have never taken a loan  
20 application, how do you know the process that you have just  
21 described to me?

22 A. Currently we are weeks away from one of the largest  
23 regulatory overhauls in mortgage lending history.

24 MR. HUTTO: Mr. Dibble, let's stop right there. It's  
25 biggest, not largest. You are reading in your mind so fast,

1 you're changing the words.

2 Okay. And it's TRID, T-R-I-D, instead of tried. Just  
3 so the court reporter knows, when he says TRID or tried, it's  
4 T-R-I-D.

5 Q. Before I move on to ask you questions about Exhibits 23  
6 and 24, if you have never taken a loan application, how do  
7 you know the process that you have just described to me?

8 A. Currently we are weeks away from one of the biggest  
9 regulatory overhauls in mortgage lending history. The TRID  
10 rule takes effect August 1st. That rule changes the  
11 definition of what a mortgage loan application is. And  
12 because of that rule, I have spent I can't even tell you how  
13 many hours, lots of hours, examining the application process,  
14 how we take mortgage loan applications and what changes we  
15 will need to take for August 1st.

16 MR. HUTTO: All right. The next is 23, lines 21  
17 through 6, and they make reference to a deposition Exhibit  
18 No. 24, which -- I'm going to see if it corresponds to -- do  
19 you know what it corresponds to?

20 MR. SMITH: If it helps you out in your search, I think  
21 it was either 135, 145, 146 or 147. I could be wrong, but  
22 it's the same type of document.

23 MR. HUTTO: I think it's No. 146.

24 MR. SMITH: I think it may be 147, Brad.

25 MR. HUTTO: Let's look.

1 MR. SMITH: 147.

2 MR. HUTTO: Yes. So for the record, Your Honor, when we  
3 refer to deposition Exhibit No. 124, it's actually trial  
4 exhibit Plaintiffs' Exhibit 147.

5 THE COURT: Okay.

6 MR. SMITH: And, Your Honor, this is one of the  
7 documents we had an objection to. This is one of the sample  
8 documents that Your Honor wanted to hear in context.

9 THE COURT: Okay.

10 MR. SMITH: This is -- I'm not sure which. May I? Yes,  
11 this is a document entitled Sample No. 147. We objected to  
12 it on grounds of relevance and foundation for admission.  
13 Your Honor wanted to hear it in context.

14 The witness was never asked to identify the document, if  
15 he knew what it was. He was directed to a page, as you'll  
16 see at the next -- first line of the -- I shouldn't say  
17 "never was," but at this point in the testimony, the witness  
18 is not being asked to identify the document or otherwise lay  
19 a foundation for it, and he's directed to one document.

20 This document is one we've objected to before, but we  
21 understand Your Honor's ruling, and so I raise that for the  
22 Court, but this next couple of questions where he's asked  
23 about only the one document, subject to our prior objection,  
24 we don't have a problem with that. But this is one of those  
25 documents that we've objected to, and I'll be standing up

1 again as we move on. Just wanted to let Your Honor know.

2 (Counsel confer.)

3 THE COURT: Objection's overruled. You may proceed.

4 (Plaintiffs' Exhibit 147 admitted into evidence.)

5 Q. If you would look at Exhibit 24, which I'll note to the  
6 Court's now been marked as Plaintiffs' Exhibit 147, QL 4178  
7 for me, look at that page, 4178?

8 A. 4178, okay.

9 Q. Can you tell me what this form is?

10 A. The attorney/insurance preference checklist.

11 Q. Is this particular form, in the top box it's dated  
12 May 19th, 2015, but by the signature date, there's a date of  
13 11/7/2011. Can you tell me why that is?

14 A. I believe the reason why the date shows May 19th, 2015,  
15 is because this is a sample loan package that was generated  
16 after the loan had closed.

17 MR. HUTTO: Next we'll move to page 25.

18 THE COURT: I need you to just stop, because as part of  
19 my determination to admit it, I included the representations  
20 of Mr. Smith at page 24, line 10 through page 25, line 4.

21 MR. HUTTO: Right. And that was initially given to us  
22 as a counterdesignation, but in retrospect, we see that it's  
23 his speaking, but you're saying --

24 MR. SMITH: Right. I don't want my -- I was not  
25 testifying. Those are the facts, but --

1 THE COURT: I just simply think it's important for our  
2 record, good, bad or indifferent, that that was part of my  
3 determination. Rightly or wrongly, it's important that that  
4 be part of the record with those representations of counsel.

5 MR. HUTTO: So now we're on the top of page 25, starting  
6 at line 6, going through the rest of page 25, going through  
7 26, going through page 27, through page 28, down to line 17.  
8 So this would be 25, 6 through 28, 17.

9 Q. So when this form was originally generated on  
10 November the 7th, 2011, would it have been filled out,  
11 "Please contact lender with preference"?

12 A. Based upon the information provided to us by the client,  
13 we would have placed, "Please contact lender with  
14 preference." The state-specific question that we talked  
15 about, the banker would have selected "yes," that there was a  
16 preference. And then that would have printed on the form  
17 based on the response, the information that the client  
18 provided.

19 Q. Okay. Look at --

20 A. I apologize, just one correction. The question and  
21 answer, "Will the borrower select legal counsel to represent  
22 them in this transaction?" And so yes, they would have said  
23 "yes," they will select.

24 Q. Well, does the mortgage banker, when the question is  
25 asked, "Will the borrower select legal counsel to represent

1 them in this transaction?" do they then say, "Who? Who do  
2 you want to represent you?"

3 A. No, no.

4 Q. So the form is then filled out, "Please contact lender  
5 with preference," instead of just writing the lawyer's name  
6 in the box?

7 A. That's correct. We do not capture the name of the  
8 attorney at that point. At that point in time, we are trying  
9 to obtain whether or not the client has a preference, not who  
10 that person is.

11 Q. Well, let me show you an Exhibit 23, several pages back,  
12 the attorney preference form from the Moseley transaction.

13 MR. SMITH: Objection. Relevance. Moseley documents  
14 were excluded.

15 THE COURT: Right. It's one of the ones that were  
16 excluded.

17 MR. HUTTO: Okay. We'll skip on down to 26, starting at  
18 line 23.

19 Q. If I were to look at every attorney preference form that  
20 you have since -- well, for the past four years, since you've  
21 been there, would there be under 1A, where it says, "I select  
22 some forms that say, 'Please contact lender with preference,'  
23 and forms that say, 'I/we will not use the services of legal  
24 counsel'?"

25 A. That's correct. It would be one of those two responses.

1 Q. No other response?

2 A. No.

3 MR. HUTTO: Skipping to line 15 on page 27.

4 Q. And I'm saying that phrase from memory. What's the  
5 exact phrase in Mr. Moseley's preference?

6 MR. SMITH: Objection. Relevance.

7 THE COURT: Sustained.

8 MR. HUTTO: Your Honor, we had a sample there, and he  
9 just testified that they're all the same. We just happened  
10 to have marked that one to ask him the question. It's not  
11 going to whether it's Mr. Moseley's or not. That's the  
12 sample that was being used to ask him at the time. He  
13 just --

14 THE COURT: Don't you have Exhibit 24?

15 MR. HUTTO: Well, we do, but I could substitute that  
16 word in there if you'd like instead of Mr. Moseley, but --

17 THE COURT: That's a sample.

18 MR. SMITH: Your Honor, there will be a series of  
19 questions about Mr. Moseley's documents. There will be  
20 questions about the Moseleys and/or O'Neal documents  
21 throughout the deposition. We'll continue to make this  
22 objection.

23 THE COURT: Well, here's where I am with it: So what do  
24 we do?

25 MR. HUTTO: We could just say the word "borrower." It

1 really doesn't matter that it's Mr. Moseley's.

2 MR. SMITH: I object because that's not the question the  
3 witness has answered. It does matter what the words were.  
4 Furthermore, this is all cumulative. We've already --  
5 they've already got the testimony in the page just above  
6 that's being -- that they're trying to get repeated here.  
7 Our objection -- we stand on our objection.

8 MR. HUTTO: He did not make a contemporaneous objection  
9 at the deposition to put us on notice that he was objecting  
10 to us using this as the sample.

11 MR. SMITH: It's a relevance objection. I don't have to  
12 make it at the deposition.

13 THE COURT: Let me ask you this question: -- I get it  
14 completely. Let me just ask this: Is this Exhibit 24 that I  
15 just put in?

16 MR. HUTTO: It's the same form.

17 THE COURT: I get it, but what are you looking at? What  
18 is at that deposition? What is the witness looking at? The  
19 sample, 24, right? That is now something else.

20 MR. HUTTO: He's looking at a sample that happens to  
21 have Mr. Moseley's name typed into it as opposed to the  
22 sample doesn't have anybody's name typed into it, but it's  
23 the same form.

24 THE COURT: Okay. So I'll look at -- I'll be looking at  
25 24. I'll be looking at 24. I just want to have benefit of



1 going to get into it a little bit more, but when we went to  
2 put Mr. Moseley up, they stipulated that his forms were just  
3 like our named plaintiffs' forms.

4 THE COURT: Yes.

5 MR. HUTTO: So we could have used one of those, but we  
6 didn't. And so you've got it, I think --

7 THE COURT: It's okay. I've got it. Keep going. Don't  
8 sweat the small stuff.

9 MR. HUTTO: All right.

10 THE COURT: Keep moving. I've got it, and I've marked  
11 it. That's my mark. That's mine you all (indicating).

12 MR. HUTTO: Reading on page 27, line 19.

13 Q. And what you're testifying to me today is that's  
14 generated from what Mr. Moseley tells the mortgage banker?

15 MR. SMITH: Objection. Irrelevant.

16 THE COURT: Sustained.

17 MR. HUTTO: We'd like -- we want to proffer it. I guess  
18 we did. We proffered it.

19 THE COURT: No, it's in.

20 MR. HUTTO: Okay.

21 THE COURT: It's in. The sample is in.

22 MR. HUTTO: I understand the sample is in, but how they  
23 fill it out is what we're asking about.

24 THE COURT: I got it.

25 MR. HUTTO: Okay. Page 28, line 2.

1 Q. Is that right?

2 MR. SMITH: Objection. That's Mr. Moseley. Relevance.

3 A. It's generated based on --

4 THE COURT: Hold on. Let me take a look. Okay. I'm  
5 going to overrule it. I think that while I would sustain 19  
6 to 22 -- to 21 -- excuse me, to 22, 23 is generic. Okay, go  
7 ahead. And he is taking --

8 Q. When he is taking information from the application; is  
9 that right?

10 THE COURT: And then there's another question.

11 MR. HUTTO: "Is that right," is the question on the top  
12 of page 28, line 2.

13 A. It's generated based on the information provided by the  
14 client.

15 Q. Okay. Who keys the phrase in, "I/we will not use the  
16 services of legal counsel"?

17 A. It's not keyed in. It's programatically filled in, so  
18 the software, based on the answer to that question, will  
19 place that language on there.

20 Q. What's the name of the software?

21 A. It's our loan origination system. It's called AMP.

22 MR. HUTTO: So page 29, lines 2 through 16.

23 Q. And does the AMP software prompt the mortgage banker to  
24 ask the questions of the borrower that you just told me  
25 about?

1 A. Yes. As it is a part of the loan application process,  
2 as we discussed earlier, they cannot generate an application  
3 disclosure package without asking that question.

4 Q. Do you record the loan application process, process  
5 requirements for quality assurance?

6 A. I believe telephone calls are recorded.

7 MR. HUTTO: Going to page 32, starting at line 20,  
8 continuing on to 33 and 34 through line 9.

9 MR. SMITH: I'm sorry say that again.

10 MR. HUTTO: Starting on page 32 at line 20, all of the  
11 rest of 32 then all of 33 and then on to 34, line 9.

12 Q. Would every attorney preference form in section 1B be  
13 filled out "not applicable"?

14 A. I believe that's true.

15 Q. Now, in section 2A, an insurance company is disclosed;  
16 is that correct?

17 A. That's correct.

18 Q. And they are allowed to write that --

19 MR. SMITH: Objection. The relevance of the insurance  
20 agent preference is irrelevant for the reasons we've just  
21 described previously.

22 THE COURT: Let me look at it.

23 All right. Here's what's relevant: 1 through 3 and  
24 then 16 and then beginning at 20.

25 MR. HUTTO: Okay. All right. So 1 through 3.

1 Q. Now, in section 2A, an insurance company is disclosed;  
2 is that correct?

3 A. That's correct.

4 MR. HUTTO: Moving down to line 16.

5 Q. And the mortgage banker was able to type that onto the  
6 form, correct?

7 A. Again, there's no keying of information. It's part of  
8 that process that I described where they are asking questions  
9 and collecting information to fill out the 1003. They would  
10 have asked the client who the insurance company is and keyed  
11 that into the software, into AMP. Once they generate the  
12 application package, that information would print on the  
13 form. If there was no information collected, it would appear  
14 blank.

15 Q. Is there a separate question asked like the attorney  
16 preference question, "Who is your preference for insurance on  
17 the loan?"

18 MR. SMITH: Objection. Insurance agent preference is  
19 irrelevant.

20 THE COURT: Wait a minute.

21 I sustain that. And only down to 9. So what else?  
22 What's next?

23 MR. HUTTO: Okay. Page 34, line 20, going on to all of  
24 35 and to the very first line of 36.

25 Q. So for South Carolina you ask a particular question, "Do

1 you have a preference as to the attorney to close this  
2 transaction"; is that right?

3 A. There is a question in AMP for the banker that says,  
4 "Will the borrower select legal counsel to represent them in  
5 this transaction?"

6 Q. That is a question in AMP. Now, is there a written  
7 procedure that tells the mortgage banker to ask that question  
8 to the borrower?

9 A. Again, it's part of the origination, the loan  
10 application process. There isn't a document that I'm aware  
11 of that instructs the banker to follow certain steps, other  
12 than training materials that are prepared for the mortgage  
13 bankers, that will train them to know that that is a right  
14 that the client has in South Carolina.

15 Q. So in the AMP software, there is a question, "Will the  
16 borrower select his own legal counsel"; is that right?

17 A. Yes.

18 Q. Is that question ever posed to the borrower?

19 A. Right. So again, that is a question that's in AMP as  
20 part of the application process. The banker has to notify  
21 the client of that right and provide a response.

22 MR. HUTTO: I think we start on now 37, line 9 and go  
23 through 38, 39, 40, 41 and 42 to line 15, the word "no." He  
24 objects to 2 through 4.

25 MR. SMITH: Excuse me. I have the designation beginning

1 Quicken Loans will have to make. Some are existing  
2 disclosures that are currently disclosed on the  
3 Truth-In-Lending Disclosure and then some are additional new  
4 disclosures.

5 Q. And what forms will this TRID form replace?

6 A. This is a copy of the closing disclosure, and the  
7 closing disclosure will replace the HUD Settlement Statement  
8 and the Truth-In-Lending Disclosure.

9 Q. I'd like to move on to another exhibit. If you can pull  
10 up Plaintiffs' Exhibit No. 1, it's entitled Master Services  
11 Agreement..

12 A. Okay.

13 Q. Do you know what this is, Mr. Campbell?

14 A. I do.

15 Q. What is it?

16 A. This is a master services agreement between Quicken  
17 Loans and Title Source.

18 Q. And what does it cover, what type of services?

19 A. It covers the services that we would expect from Title  
20 Source, which is title insurance and settlement services.

21 Q. I'd like you to turn to Bates stamp 1674. It's  
22 Schedule I.

23 A. Okay.

24 Q. Do you see section 3? It says "Scope of services."

25 A. Yes.

1 Q. I'd like to focus first on section 3.1. So 3.1 lists  
2 services such as title search. And just to back up for a  
3 minute, it says, "Supplier." And is it your understanding  
4 supplier is Title Source here as a third-party vendor?

5 A. Yes, that's my understanding.

6 Q. So supplier is to provide title insurance and settlement  
7 services, and then it goes through a general list. Do you  
8 see the list of title search; title curative work, including  
9 payoffs or lien releases; title abstract and exam; settlement  
10 service; notary service; attorney signings; signing service;  
11 witness signing service; document preparation, including deed  
12 preparation in states where supplier has authority to prepare  
13 deeds; closing document quality control; receipt of funds  
14 required to close; wire management; disbursement; policy  
15 issuance; recording; courier; mail fees and post-closing  
16 review of critical document. Do you see that?

17 A. I do.

18 Q. Are these the general categories of settlement services  
19 that Title Source performs or has agreed to perform to  
20 undertake as a settlement service provider?

21 A. It is. The -- this is an agreement by Title Source to  
22 perform these services. Again, this is a master services  
23 agreement that was drafted to cover on a national basis.

24 Q. It's not geared to any one particular state?

25 A. No, it's not.

1 said, "I do have a preference and here's my preference: I  
2 want to hire Brad Hutto," Title Source would still be  
3 responsible for vetting you as an attorney to make sure that  
4 you're licensed and that you're capable of performing the  
5 service.

6 Q. So under your master services agreement, Exhibit No. 1,  
7 you have contracted out to Title Source to supervise the  
8 attorneys that they may hire through PCN or through  
9 McDonnell & Associates or the private attorneys that the  
10 borrower may suggest or the ones that they want to close the  
11 loan?

12 A. That's true. They would -- they would have -- Title  
13 Source would do that review. There are some instances where  
14 clients inform us that they do have a preference, and they  
15 select an attorney who is not qualified or cannot perform the  
16 service. Again, that is discovered through the review and  
17 the vetting process that TSI employees.

18 Q. Not Quicken?

19 A. Correct.

20 Q. Okay. Excuse me one second.

21 So let's say that Title Source vets the lawyer chosen by  
22 the consumer to appear at the closing and they said, "That  
23 lawyer's fine with us." Is there somebody from either  
24 Quicken or Title Source at the closing to supervise the  
25 closing --



1 required to hire a lawyer to do so, to supervise those tasks  
2 pursuant to section 9.2 of the master services agreement?

3 A. I'm sorry. Could you repeat that?

4 Q. If a lawyer is required to supervise certain tasks that  
5 fall within the master services agreement, whether it's  
6 closing tasks or supervisory tasks --

7 A. Sure.

8 Q. -- like in South Carolina, would Title Source be  
9 required to retain such an attorney to do so under  
10 section 9.2?

11 A. No.

12 Q. First there would be a preference that's -- the  
13 preference of the consumer would be sought out to see if they  
14 have the preference to hire their own counsel; is that right?

15 A. That's true. For every loan application that's taken as  
16 a part of our process, we have built in a state specific  
17 question to determine whether or not there's a preference.

18 Q. And if there is no preference, then does Title Source  
19 select legal counsel to supervise the tasks in accordance  
20 with section -- in accordance with Plaintiffs' Exhibit 1, the  
21 master service agreement?

22 A. That's my understanding.

23 Q. Okay. And if you could turn to section 4.3.2, I believe  
24 that's on 1677 is the Bates-stamp number. In situations  
25 where the consumer does not or the borrower does not have a

9

1 process?

2 A. AMP is used in the closing process.

3 MR. HUTTO: Page 14, line 6 through 25, going on to all  
4 of page 15.

5 Q. You just talked about the steps of a closing process.

6 What are they?

7 A. The steps of a closing process, we call the client to  
8 schedule a closing appointment.

9 Q. Okay.

10 A. Then we reserve the appointment with an attorney in  
11 South Carolina who will conduct the closing or, in many other  
12 states, a notary.

13 Q. Now, do you do that or does Title Source do that?

14 A. We produce the order when Title Source is involved.

15 Q. How often is Title Source involved?

16 A. I don't have an exact number.

17 Q. Can you give me a percentage, an estimate?

18 A. An estimate? So I will estimate that we are probably  
19 95 percent Title Source on the refinance side only.

20 Q. So let me break it up and talk to you about when Title  
21 Source is involved, what you do, and then we will talk about  
22 when they are not involved, okay?

23 A. Sure.

24 Q. Tell me, you call the client and schedule an appointment  
25 when Title Source is involved. What happens next?

1 MR. HUTTO: Now we go on over to page 24, starting at  
2 line 9 and continuing through the middle of 25. Or does it  
3 continue on all the way through 27, 28, 29? Are there any  
4 breaks?

5 MR. SMITH: I show it going to 29.

6 MR. HUTTO: Okay. That's what I thought. All right.  
7 Starting on 24 and going to page 29, starting at line 9.

8 Q. And I think you indicated that with regard to  
9 refinances, Title Source handled approximately 95 percent of  
10 the closings; is that correct?

11 A. What I stated was that that was my estimate. I don't  
12 have the metrics handy for reference, to reference.

13 Q. But by that estimate, can I conclude that 5 percent of  
14 the closings are handled by lawyers that are selected by the  
15 borrowers?

16 A. Yes, you can conclude that the client selected their own  
17 attorney to conduct the closing.

18 Q. But for approximately, and I know it's an estimate, but  
19 for approximately 5 percent?

20 A. Approximately.

21 Q. Who prepares the mortgage in a refinance transaction?

22 A. The mortgage is printed by Quicken Loans team members,  
23 and obviously the attorney that's going to conduct the  
24 closing is going to supervise all of the closing documents at  
25 that point.

1 MR. HUTTO: Then I have us going over to 33, lines 6  
2 through 21, and I actually go up to the top of 34, line 4.

3 Is that what you have, Mr. Dibble?

4 MR. DIBBLE: Right.

5 Q. The application is taken. It's concluded, you've got to  
6 move forward with the loan. Part of moving forward with the  
7 loan is at some point in time having a loan closing, all  
8 right? And if the lawyer is not designated by the borrower,  
9 somebody has to decide who is going to close the loan, who is  
10 going to be the settlement agent. How does that happen? How  
11 does Title Source get picked?

12 A. So if the client doesn't have a preference on who to  
13 work with, then we would present being able to move forward  
14 with Title Source.

15 Q. Quicken chooses Title Source to be the settlement agent,  
16 correct? Is that right in this circumstance?

17 A. Yes. We would move forward with Title Source if the  
18 client doesn't have a preference on who to work with for  
19 settlement services.

20 MR. HUTTO: Going to page 35, starting at Line 11 and  
21 going through 36, line 22.

22 Q. And it's consistent for Title Source to assign whatever  
23 attorney is to come to the closing, at least in 95 percent of  
24 the transactions?

25 A. Yes, Title Source is going to locate a South Carolina

1 licensed attorney that can meet our borrower at the time and  
2 location of their choice.

3 Q. And in all cases where Title Source is listed as  
4 settlement agent, that occurs; is that correct?

5 A. In South Carolina, yes.

6 Q. Now, when Title Source is involved, when does Quicken  
7 become aware of what attorney is going to appear at the  
8 closing?

9 A. We know that we're going to place an attorney at the  
10 time that we schedule the closing. At that point in the  
11 process, we don't know their name.

12 Q. When do you learn their name?

13 A. Once the closing has been complete, we receive the  
14 authorization to record and disburse from the attorney that  
15 conducted the closing.

16 Q. So after the closing is uniformly when you actually find  
17 out who the actual lawyer is who attends the closing; is that  
18 correct?

19 A. Correct.

20 MR. HUTTO: All right. I've got us going over to  
21 page 39, going through 40, and at the bottom of 40 looks like  
22 we skip a little bit at the top of 41 and then the rest of  
23 41, 42 to the top of 43.

24 Actually, I think we've got to start at the top of 39 on  
25 4.

1 A. No.

2 Q. Are there any memorandums, endorsements, additions,  
3 addendums, to your operating procedure in the entire country  
4 that pertain to just South Carolina?

5 A. No.

6 Q. Does Quicken retain any attorneys to appear at closings  
7 in South Carolina?

8 A. Quicken does not retain attorneys to complete closings  
9 in South Carolina. We do, however, work with Title Source  
10 when the client hasn't selected their own attorney to do the  
11 closing.

12 Q. When Quicken prepares the HUD-1 settlement statement and  
13 Title Source is acting as the settlement agent, does it list  
14 any attorney as receiving a closing fee?

15 A. The closing fee doesn't specifically -- when the closing  
16 fee's present, there is not an attorney fee present.

17 Q. What do you mean by that?

18 A. So Title Source, we have the closing fee listed on the  
19 settlement statement, not specifically a fee for the attorney  
20 to supervise the closing.

21 Q. What line do you use, if you know?

22 A. 1102.

23 Q. And when an attorney is used, what line is used?

24 A. I don't know.

25 Q. How does Quicken pay Title Source for its services?

1 mortgage stored in our loan origination system, and so when  
2 we select the closing documents to be printed, we're using  
3 the standard, industry standard Fannie Mae/Freddie Mac  
4 VA-approved forms. And our loan origination system will  
5 insert the loan's specific information on these required  
6 forms.

7 Q. Does Quicken Loans have any expectation that this  
8 document, the promissory note, will be reviewed by a South  
9 Carolina lawyer before it's executed?

10 A. Absolutely.

11 Q. And who hires the South Carolina lawyer?

12 A. It depends on whether the borrower has selected to use  
13 their own attorney or, if they didn't have a preference,  
14 Title Source would secure the attorney for our client.

15 Q. I'd like you to turn to Defendants' Exhibit 7.

16 A. Okay.

17 Q. For the record, that's a copy of a mortgage, and it's  
18 relating to that same Boones' loan, October 26, 2011.

19 A. Yes.

20 Q. Is this part of the closing package?

21 A. It is.

22 Q. Can you tell me how this document is generated?

23 A. In the same manner as the promissory note. So we -- we  
24 have the -- the form that is required by Fannie Mae or  
25 Freddie Mac are available to loan origination system, and



1 Q. Okay. And --

2 A. Can I clarify one thing?

3 Q. Sure.

4 A. We only send that order when Title Source is involved in  
5 the transaction, just to be clear.

6 Q. Right. There are some occasions in which the borrower  
7 may have specified the name of somebody that they want to  
8 use, and in those cases, that attorney would be contacted?

9 A. Yes. Anytime that the client expresses a preference, we  
10 would honor that.

11 Q. But if there is no expression by the borrower for a loan  
12 in South Carolina, by default, it goes to Title Source?

13 A. If the client doesn't have a preference, yes, we would  
14 work with Title Source.

15 Q. And I guess my question, and nobody else? Title Source  
16 has the exclusive contract or agreement with Quicken in cases  
17 where there is no preference expressed by the borrower?

18 A. I'm not comfortable speaking to the contract and I'm not  
19 aware of any other providers.

20 Q. Okay. And it's my understanding that the -- both Title  
21 Source and Quicken enter data into a system that eventually  
22 will be printed out by Quicken as the HUD statement?

23 A. Correct.

24 Q. And in the HUD statement, we've seen throughout this  
25 trial that there is a \$525 closing and settlement fee on

10

1 Q. What, if anything, was your understanding of whether  
2 this protocol would be followed?

3 A. We believed this protocol would be followed. This is  
4 how we established our practices.

5 Q. Now, later we know that Title Source entered into a  
6 contract with another firm, McDonnell & Associates. Does  
7 McDonnell & Associates follow the same protocols basically?

8 A. Yes, we'd have the same expectation of McDonnell &  
9 Associates to follow the same protocol.

10 Q. I want to turn to those contracts in just a minute, but  
11 I want to pull back a little bit and ask you what services  
12 does Title Source provide to Quicken Loans?

13 A. We provide title insurance services. We facilitate the  
14 closing of transactions by tracking and delivering documents  
15 to the attorneys. We obtain networks like PCN or McDonnell &  
16 Associates to ensure that there are South Carolina attorneys  
17 at closing. We disburse loan proceeds in accordance with the  
18 closing instructions from Quicken Loans. We do data entry  
19 into our system.

20 Q. Is there an agreement between Title Source and Quicken  
21 Loans regarding the provision of these services?

22 A. There is a master services agreement between Title  
23 Source and Quicken Loans.

24 Q. I want to call your attention to Plaintiffs' Exhibit 1.

25 A. I have it, yes.

1 Q. What is that document?

2 A. Master services agreement dated December 21st, 2012,  
3 between Title Source and Quicken Loans.

4 Q. Prior to December 21st, 2012, was there a written  
5 agreement between Title Source and Quicken Loans?

6 A. There was not a written agreement prior to that date.

7 Q. Was Title Source providing services to Quicken Loans  
8 prior to December 21st, 2012?

9 A. Yes, we were.

10 Q. Were the services the same as or generally the same as  
11 or different from those described in the master services  
12 agreement and related schedules?

13 A. The services would be generally the same as what's  
14 related in the master services agreement.

15 Q. Now, the agreements -- the agreement consists of the  
16 body of the agreement, some exhibits and some schedules. I  
17 want to call your attention first to Schedule I of the  
18 agreement, which begins at TSI 1674.

19 A. Yes, sir.

20 Q. Do you have that before you?

21 A. I do.

22 Q. And does it refer to the master services agreement?

23 A. Yes, it does. It's Schedule No. 1 of the master  
24 services agreement.

25 Q. Does this schedule detail the services that Title Source

1 South Carolina attorney, we would set the recording fees and  
2 the mortgage to be recorded at the county level.

3 Q. How about Items P and Q? What is policy review and  
4 title policy?

5 A. Once we had disbursement and recordation, then we would  
6 issue that final policy that I mentioned earlier to Quicken  
7 Loans. So we'd review accuracy and issue final policy to  
8 Quicken Loans, final loan policy or lender policy.

9 Q. And Items R through T?

10 A. These are all post-closing audits to ensure accuracy of  
11 the documents that are signed, make sure that we are sending  
12 the documents back to Quicken Loans and ensure that all  
13 documents that were requested to be signed and returned have  
14 been returned.

15 Q. And did Title Source perform these services in  
16 connection with Plaintiffs' loans in this case?

17 A. Yes, sir, we did.

18 Q. I want to refer you to two different provisions and ask  
19 you to kind of look at them side by side, if you would. Look  
20 at section 10.8 in the body of the master services agreement,  
21 together with section 3.2 of Schedule I. If we can stack on  
22 the left-hand side section 10.8, which is at TSI 1661.

23 A. Yes, sir. And then --

24 Q. Just take a look at those provisions, please, and tell  
25 me your understanding of those as regards closing of

1 residential real estate loans in South Carolina.

2 A. Section 10.8 is the use of subcontractors. That allows  
3 TSI to use subcontractors. And, for example, in South  
4 Carolina, we would use attorneys to close the loans and  
5 supervise the disbursement and recordation. We would use an  
6 attorney to provide certification of title for the issuance  
7 of a title commitment. So it allows us to use services that  
8 TSI does not perform.

9 Q. And did Title Source, in fact, enter into contracts to  
10 ensure that South Carolina lawyers provided the requisite  
11 services for residential real estate closings in South  
12 Carolina?

13 A. Yes, sir, we did.

14 Q. I want to call your attention to some of those  
15 agreements. Turning first to Plaintiffs' Exhibit 6, and  
16 that's an exhibit of several pages, so I want to ask you to  
17 take a look at that, please, sir, and tell me what that is.

18 A. This is a letter of understanding with PCN or  
19 Professional Closing Network to provide attorneys in South  
20 Carolina in order to perform settlement services and  
21 supervise disbursement recording.

22 Q. What was Title Source's understanding of what the  
23 PC Network lawyers would do pursuant to this contract?

24 A. They would comply with all federal, state regulations  
25 and act in accordance with those laws.

1 A. Yes.

2 Q. Okay. So under the master services agreement between  
3 Quicken and Title Source, Title Source was contracting to  
4 provide settlement services, correct?

5 A. That's correct.

6 Q. And some of those settlement services were clearly, as  
7 far as South Carolina's concerned, legal services?

8 A. Not that we would perform, but we would use  
9 subcontractors to perform.

10 Q. Okay. But the contract calls on you to perform them,  
11 but it authorizes you to employ subcontractors to do so.

12 A. That's correct.

13 Q. Okay. I mean, just to be clear, first of all, you  
14 signed that contract, correct?

15 A. The master service agreement with Quicken Loans you're  
16 referring to?

17 Q. With Quicken Loans, that's right.

18 A. Yes.

19 Q. All right. And so you knew at the time that Title  
20 Source was signing that contract that it was obligating  
21 itself to Quicken Loans to provide legal services, maybe not  
22 directly, but that you were going to get those done through  
23 subcontractors; is that right?

24 A. Title Source would subcontract to get the services done.  
25 Title Source wouldn't provide legal services.

11



**SECTION 37-1-101.** Short title.

This title shall be known and may be cited as South Carolina Consumer Protection Code.

HISTORY: 1962 Code Section 8-800.101; 1974 (58) 2879.

**SECTION 37-1-102.** Purposes; rules of construction.

(1) This title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this title are:

(a) to simplify, clarify and modernize the law governing retail installment sales, consumer credit and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

(g) to make uniform the law, including administrative rules, among the various jurisdictions.

(3) A reference to a requirement imposed by this title includes reference to a related rule of the administrator adopted pursuant to this title.

HISTORY: 1962 Code Section 8-800.102; 1974 (58) 2879; 1980 Act No. 326, Section 1A.

**SECTION 37-1-103.** Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this title, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

HISTORY: 1962 Code Section 8-800.103; 1974 (58) 2879.

**SECTION 37-1-104.** Construction against implicit repeal.

This title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

HISTORY: 1962 Code Section 8-800.104; 1974 (58) 2879.

**SECTION 37-1-105.** Severability.

If any provision of this title or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

HISTORY: 1962 Code Section 8-800.105; 1974 (58) 2879.

**SECTION 37-1-107.**

**Waiver; agreement to forego rights; settlement of claims.**

(1) Except as otherwise provided in this title, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this title.

(2) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this title, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this title, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a buyer, lessee, or debtor may be settled for less value than the amount claimed.

(4) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this title is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

*HISTORY: 1962 Code Section 8-800.107; 1974 (58) 2879; 1984 Act No. 261, Section 1.*

**SECTION 37-1-301. General definitions.**

In addition to definitions appearing in subsequent articles, in this title:

(1) "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) "Administrator" means the administrator designated in the Article (Chapter 6) on Administration (Section 37-6-103).

**SECTION 37-5-108.**

**Unconscionability; inducement by unconscionable conduct.**

(1) With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit transaction, if the court as a matter of law finds:

(a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or

(b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained.

(2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction. In addition, the consumer has a cause of action to recover actual damages and, in an action other than a class action, a right to recover from the person violating this section a penalty in the amount determined by the court of not less than one hundred dollars nor more than one thousand dollars. For purposes of this subsection and subsection (3), the term "collecting a debt" in a consumer credit transaction includes the collection or the attempt to collect any rental charge or any other fee or charge or any item rented to a lessee in connection with a consumer rental-purchase agreement as described in Section 37-2-701(6).

(3) If it is claimed or appears to the court that the agreement or transaction or any term or part thereof may be unconscionable, or that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the agreement or transaction or term or part thereof, or of the conduct, to aid the court in making the determination.

(4) (a) In applying subsection (1), consideration must be given to applicable factors, such as, but without limitation:

(i) in the case of a consumer credit sale, consumer lease, or consumer rental-purchase agreement, knowledge by the seller or lessor at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased;

(ii) in the case of a consumer credit sale, consumer lease, consumer rental-purchase agreement, or consumer loan, gross disparity between the price of the property or services sold, leased, or loaned and the value of the property, services, or loan measured by the price at which similar property, services, or loans are readily obtainable in consumer credit transactions by like consumers;

(iii) the fact that the creditor contracted for or received separate charges for insurance with respect to a consumer credit sale, consumer loan, or consumer rental-purchase agreement with the effect of making the sale or loan unconscionable, considered as a whole, when including the sale of insurance from which the consumer receives no potential benefit as referenced in Section 37-4-106(1)(a);

**SECTION 37-5-108. (continued)**

**Unconscionability; inducement by unconscionable conduct.**

(iv) the fact that the seller, lessor, or lender knowingly has taken advantage of the inability of the consumer or debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement, or similar factors;

(v) taking a nonpurchase money, nonpossessory security interest in household goods defined as the following: clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects, including wedding rings of the consumer and his dependents; except that when a purchase money consumer credit transaction is refinanced or consolidated, the security lawfully collateralizing the previous consumer credit transaction continues to secure the new consumer credit transaction, even if the new consumer credit transaction is for a larger amount or is in other respects a nonpurchase money consumer credit transaction; and further, that a nonpurchase money, nonpossessory security interest may be taken in a work of art, electronic entertainment equipment, except one television and one radio, items acquired as antiques and which are over one hundred years of age, and jewelry, except wedding rings.

In construing subitem (v), the courts must be guided by the interpretations and rulings of the federal courts and the Federal Trade Commission to the Credit Trade Regulation Rule (16 C.F.R. PART 444).

(b) In applying subsection (1), consideration may be given to the extension of credit to a consumer if, considering the consumer's current and expected income, current obligations, and employment status, the creditor knows or should know that the consumer is unable to make the scheduled payment on the obligation when due. Rental renewals necessary to acquire ownership in a consumer rental-purchase agreement are not obligations contemplated in this item (b).

(5) In applying subsection (2), consideration shall be given to each of the following factors, among others, as applicable:

(a) using or threatening to use force, violence, or criminal prosecution against the consumer or members of his family, including harm to the physical person, reputation, or property of any person;

(b) communicating with the consumer or a member of his family at frequent intervals during a twenty-four hour period or at unusual hours or under other circumstances so that it is a reasonable inference that the primary purpose of the communication was to harass the consumer. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium. A creditor or debt collector may not:

(i) communicate with a consumer at any unusual time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, it may be assumed that a convenient time to communicate with a consumer is between 8 a.m. and 9 p.m.; or

(ii) communicate with a consumer who is represented by an attorney when such fact is known to the creditor or debt collector unless the attorney consents to direct communication or fails to respond within ten days to a communication;

(v) a claim or implication that the consumer committed any crime or other conduct to disgrace the consumer; or

(vi) any written communication which simulates or appears to be a document authorized, issued, or approved by any state or federal agency or court or creates a false impression as to its source;

(d) causing or threatening to cause injury to the consumer's reputation or economic status by disclosing information affecting the consumer's reputation for creditworthiness with knowledge or reason to know that the information is false; communicating with the consumer's employer before obtaining a final judgment against the consumer, except as permitted by statute or to verify the consumer's employment; disclosing to a person, with knowledge or reason to know that the person does not have a legitimate business need for the information, or in any way prohibited by statute, information affecting the consumer's credit or other reputation; or disclosing information concerning the existence of a debt known to be disputed by the consumer without disclosing that fact;

(e) engaging in conduct with knowledge that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct (Section 37-6-111).

(6) No action at law claiming unconscionable debt collection may be commenced in any court until at least thirty days after the facts and circumstances of any claim of unconscionable conduct in collecting a debt arising out of a consumer credit transaction has been filed in writing with the administrator of the Department of Consumer Affairs. The administrator shall immediately provide to the person or organization complained against with a copy of any complaint alleging unconscionable debt collection practices filed with the Department of Consumer Affairs. The administrator shall immediately provide to the Director of the Consumer Finance Division of the Board of Financial Institutions a copy of any written claim of unconscionable conduct in collecting a debt filed against a supervised lender under this title or a restricted lender under Title 34. A creditor or debt collector may only take such action as is authorized by law to protect its collateral during the thirty-day state agency review period. The administrator shall take immediate steps to investigate, evaluate, and attempt to resolve such complaints. The administrator and director shall jointly take immediate steps to investigate, evaluate, and attempt to resolve complaints involving supervised and restricted lenders. If in an action, properly filed after the thirty-day state agency review period with regard to conduct in collecting a debt arising out of a consumer credit transaction, in which unconscionability is claimed the court finds unconscionability pursuant to subsection (1) or (2), the court shall award reasonable fees to the attorney for the consumer or debtor. If the court does not find unconscionability and the consumer or debtor claiming unconscionability has brought or maintained an action he knew to be groundless, the court may award reasonable fees to the attorney for the party against whom the claim is made. In determining attorney's fees, the amount of the recovery on behalf of the consumer is not controlling.

(7) The remedies of this section are in addition to remedies available for the same conduct under law other than this title.

**SECTION 37-5-108. (continued)**

**Unconscionability; inducement by unconscionable conduct.**

(8) For the purpose of this section, a charge or practice expressly permitted by this title is not in itself unconscionable.

(9) Nothing in this title may be construed to prevent a finding of unconscionability where a creditor assesses an origination charge, prepaid finance charge, service, or other prepaid charge which substantially exceeds the usual and customary charge for the particular type of consumer credit transaction. In such a transaction the court shall consider the relative sophistication of the debtor and the creditor, the relative bargaining power of the debtor and creditor, and any oral or written representations made by the creditor regarding the credit service charge or the loan finance charge of the consumer credit transaction.

HISTORY: 1962 Code Section 8-800.338; 1974 (58) 2879; 1976 Act No. 686 Section 38; 1982 Act No. 385, Section 43; 1985 Act No. 121, Sections 10, 11; 1985 Act No. 153, Sections 3, 4; 1995 Act No. 135, Section 17; 2003 Act No. 42, Section 4, eff Jan. 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

**SECTION 37-6-103. "Administrator" defined.**

"Administrator" means the officer appointed by the Commission on Consumer Affairs to administer this title (part 5 of this chapter).

HISTORY: 1962 Code Section 8-800.373; 1974 (58) 2879.



CHAPTER 10  
Miscellaneous Loan Provisions

**SECTION 37-10-101.** Scope.

Except as otherwise provided in other chapters of this title, this chapter applies to designated loan transactions other than consumer loan transactions (Sections 37-3-104 and 37-3-105).

*HISTORY: 1982 Act No. 385, Section 56; 1984 Act No. 261, Section 7.*

**SECTION 37-10-102.** Attorney's fees and other charges on mortgage loans for personal, family or household purposes.

Whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for a personal, family or household purpose:

(a) The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction and except in the case of a loan on property that is subject to the South Carolina Horizontal Property Act (Section 27-31-10, et seq.) the insurance agent to furnish required hazard and flood property insurance in connection with the mortgage and comply with such preference.

The creditor may comply with this section by:

(1) including the preference information on or with the credit application so that this information shall be provided on a form substantially similar to a form distributed by the administrator; or

(2) providing written notice to the borrower of the preference information with the notice being delivered or mailed no later than three business days after the application is received or prepared. If a creditor uses a preference notice form substantially similar to a form distributed by the administrator, the form is in compliance with this section.

The creditor may require the attorney or agent to provide reasonable security to the creditor by way of mortgage title insurance in a company acceptable to the creditor and to comply with reasonable closing procedures. If title insurance is made a condition of the loan at any point during the negotiations, it must remain a condition all the time thereafter regardless of which attorney ultimately closes the transaction. Any legal fees other than for examination and certification of the title, the preparation of all required documents, and the closing of the transaction required or incurred by the creditor in connection with the transaction is the responsibility of the creditor regardless of which party pays for the title work, document preparation, and closing.

(b) The creditor may contract and receive the following additional charges in a transaction in which the creditor authorizes a transferee of the real estate that serves as security for the transaction to assume the original debtor's obligation -

(i) except as otherwise provided in subparagraph (iii), the additional charges authorized by Section 37-3-202;

(ii) the charge for any credit report on the debtor required by the creditor, if not paid to the creditor or a person related to the creditor; and

(iii) a nonrefundable assumption fee in an amount not exceeding the lesser of four hundred dollars or one percent of the unpaid balance of the loan at the time the assumption transaction is consummated.

*HISTORY: 1982 Act No. 385, Section 56; 1984 Act No. 355, Section 10; 1989 Act No. 164, Section 3; 1991 Act No. 142, Section 23; 1996 Act No. 355, Section 1.*

**SECTION 37-10-103.** Prepayment of loans of one hundred fifty thousand dollars or less.

The debtor may prepay in full at any time without penalty the debt represented by a personal, family, or household purpose loan agreement that is secured in whole or in part by a first or junior lien on real estate if the aggregate of all sums advanced will not exceed one hundred fifty thousand dollars.

*HISTORY: 1982 Act No. 385, Section 56; 1984 Act No. 355, Section 11; 2003 Act No. 42, Section 2.A, eff. Jan. 1, 2004, and applying to loans for which the loan applications were taken on or after that date.*

**SECTION 37-10-104.** Agricultural loans under twenty-five thousand dollars.

With respect to a loan under which the aggregate of all sums advanced or contemplated by the parties in good faith to be advanced is less than twenty-five thousand dollars and which is primarily for an agricultural purpose, the maximum loan finance charge that may be contracted for and received shall be eighteen percent per annum, calculated according to the actuarial method.

*HISTORY: 1982 Act No. 385, Section 56.*

**SECTION 37-10-105. Violations; civil actions.**

(A) If a creditor violates a provision of this chapter, the debtor has a cause of action, other than in a class action, to recover actual damages and also a right in an action, other than in a class action, to recover from the person violating this chapter a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars. No debtor may bring a class action for a violation of this chapter. No debtor may bring an action for a violation of this chapter more than three years after the violation occurred, except as set forth in subsection (C). The three-year statute of limitations applies to actions commenced after May 2, 1997. No inference should be drawn as to the applicable statute of limitations for any pending actions. This subsection does not bar a debtor from asserting a violation of this chapter in an action to collect a debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action.

(B) No creditor may be held liable in an action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(C) If the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to Section 37-5-108 at the time it was made, or was induced by unconscionable conduct, the court may, in an action other than a class action:

(1) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unconscionable at the time it was made;

(2) enforce the remainder of the agreement without the unconscionable term or part, or limit the application of the unconscionable term or part to avoid an unconscionable result;

(3) rewrite or modify the agreement to eliminate an unconscionable term, part, or result and enforce the new agreement; or

(4) award:

(a) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge;

(b) not more than double the amount of the excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party; and

(c) attorney's fees and costs.

An action pursuant to this subsection may not be brought after the original scheduled maturity date of the debt.

(D) In an action in which it is found that a creditor has violated this chapter, the court shall award to the debtor the costs of the action and to his attorneys their reasonable fees. In determining attorneys' fees, the amount of the recovery on behalf of the debtor is not controlling.

*HISTORY: 1982 Act No. 385, Section 56; 1997 Act No. 99, Section 1.*

**SECTION 40-5-320.** Practice of law by corporations and voluntary associations unlawful.

(A) It is unlawful for a corporation or voluntary association to:

- (1) practice or appear as an attorney at law for a person other than itself in a court in this State or before a judicial body;
- (2) make it a business to practice as an attorney at law for a person other than itself in a court or judicial body;
- (3) hold itself out to the public as being entitled to practice law, render or furnish legal services, advise or to furnish attorneys or counsel, or render legal services in actions or proceedings;
- (4) assume to be entitled to practice law or to assume, use, or advertise the title of lawyer, attorney, attorney at law, or equivalent terms in any language as to convey the impression that it is entitled to practice law or to furnish legal advice, services, or counsel; or
- (5) advertise that it has, owns, conducts, or maintains a law office or an office for the practice of law or for furnishing legal advice, services, or counsel, either alone or together with, by, or through a person, whether a duly and regularly admitted attorney at law, or not.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

*HISTORY: 1962 Code Section 56-142; 1952 Code Section 56-142; 1946 (44) 2575; 1993 Act No. 184 Section 224.*

dangers in allowing lay persons to handle real estate closings. See, e.g., Bowers v. Transamerica Title Ins. Co., 100 Wash.2d 581, 675 P.2d 193 (1983); Coffee County Abstract and Title Co. v. State ex rel. Norwood, 445 So.2d 852 (Ala.1984); Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957); Oregon State Bar v. Security Escrows, Inc., 233 Or. 80, 377 P.2d 334 (1962); New Jersey State Bar Ass'n v. Northern N.J. Mortgage Assocs., 32 N.J. 430, 161 A.2d 257 (1960).

While some of these cases hold that lay persons may conduct closings, they note that giving advice as to the effect of the various instruments required to be executed constitutes the unauthorized practice of law. Thus, in Coffee County Abstract and Title Co., supra, the title company was permitted to conduct real estate closings with the restriction that no legal advice or opinions be given. Chief Justice Torbert, concurring, gave instructions as to how such a closing should be handled: "If the parties to the transaction raise a legal question at the closing, the title company should stop the proceeding and instruct them to consult their attorneys." 445 So.2d at 857.

We agree this approach, in theory, would protect the public from receiving improper legal advice. However, there is in practice no way of assuring that lay persons conducting a closing will adhere to the restrictions. One handling a closing might easily be tempted to offer a few words of \*434 explanation, however innocent, rather than risk losing a fee for his or her employer.

[7] We are convinced that real estate and mortgage loan closings should be conducted only under the supervision of attorneys, who have the ability to furnish their clients legal advice should the need arise and fall under the regulatory rules of this court. Again, protection of the public is of paramount concern.

#### D. Recording Instruments

The circuit court's order permits Buyers Service to continue its practice of mailing or hand-carrying instruments to the courthouse for recording. The State contends this activity is the practice of law. We agree.

[8] We do not consider the physical transportation or mailing of documents to the courthouse to be the practice of law. However, when this step takes place as part of a real estate transfer it falls under the definition of the practice of law as formulated by this court in In re Duncan, supra. It is an aspect of conveyancing and affects legal rights. The appropriate sequence of recording is critical in order to protect a purchaser's title to property.

[9] We conclude that instructions to the Clerk of Court or Register of Mesne Conveyances as to the manner of recording, if given by a lay person for the benefit of another, must be given under the supervision of an attorney.

Both parties' remaining exceptions relating to evidentiary rulings are without merit, and we affirm pursuant to Supreme Court Rule 23.

AFFIRMED IN PART AND REVERSED IN PART.

\*\*20 NESS, C.J., GREGORY and FINNEY, JJ., and RICHTER, Acting Associate J., concur.  
CHANDLER, J., not participating.

S.C., 1987:

State v. Buyers Service Co., Inc.  
292 S.C. 426, 357 S.E.2d 15

END OF DOCUMENT

20

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2015CP0600070

Quicken Loans Inc vs. Ezekiel T Etal Wilson, a/k/a

**CHECK ONE:**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

**Order of Reference (Harvey)**

Dated at Barnwell, South Carolina, this 1st day of September, 2015.

Court Reporter:

S/ Rhonda D. McElveen  
Barnwell County Clerk of Court - Rhonda D. McElveen

This judgment was entered on the 1st day of September, 2015, and a copy mailed first class this 15th day of September, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

John Judson Hearn PO Box 100200 Columbia, SC  
29202-3200 (mic@filing)

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Martin Harvey, Jr. (Sp. Ref. 1c in Ct house box)

Daniel Webster Williams PO Box 616 Barnwell,  
SC 29812

ATTORNEY(S) FOR THE DEFENDANT(S)

Constance B. Mansfield  
Constance B. Mansfield - Deputy Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

Quicken Loans, Inc.

Plaintiff,

vs.

Wayne D. Wilson ; Calvin O. Wilson, III; Any other Heirs-at-Law or Devisees of Ezekiel (Ellen) T. Wilson, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interest in the real estate described herein; also any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe; Park Sterling Bank,

(520139-00050 AWG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 15-CP-06-0070

**ORDER OF REFERENCE**

FILED  
2015 SEP -1 PM 1:30

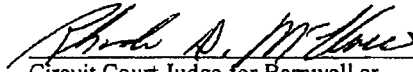
Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure and the common law of this state;

IT IS ORDERED that this action is referred to the Honorable J. Martin Harvey, Jr., Special Referee for Barnwell County, to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRPC, and all matters arising from or reasonably related to such action. The Special Referee shall retain jurisdiction to perform all necessary acts incident to this action, including issuance of a writ of assistance or issuance of any rule to show cause why a party should not be bound by any judgment that may be entered of record. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the action or any motions pursuant to the South Carolina Rules of Civil Procedure, including but not limited to, Rule 60(b).



Pursuant to Rule 53(e), SCRCP, any appeal from the final judgment entered by the Special Referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Sept 1<sup>st</sup>, 2015

  
\_\_\_\_\_  
Circuit Court Judge for Barnwell or  
Clerk of Court for Barnwell County

CERTIFICATE OF SERVICE BY MAIL

Case # 2014-CP-38-0261

I, Ashley Wheeling-Goodson, an attorney with Rogers Townsend & Thomas, PC, do hereby certify that I have on August ~~26~~<sup>27</sup>, 2015 caused to be served a copy of the following document upon counsel of record and parties by U.S. Mail, with proper postage, at the address indicated below:

**Document Served:**

Notice of Motion and Motion for Order of Reference

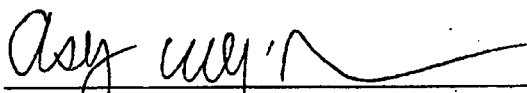
**Counsel Served:**

Daniel Williams, Esquire  
Bedingfield & Williams, LLC  
P.O. Box 616  
Barnwell, SC 29812

Steven W. Hamm  
P.O. Box 7788  
Columbia, SC 29202

C. Bradley Hutto  
P.O. Box 1084  
Orangeburg, SC 29116

Charles L. Dibble  
P.O. Drawer 1240  
Columbia, SC 29202



Ashley Wheeling-Goodson (SC Bar #101423)  
Charles S. Gwynne Jr. (SC Bar # 73844)  
ROGERS TOWNSEND & THOMAS, PC  
220 Executive Center Drive (29210)  
Post Office Box 100200  
Columbia, South Carolina 29202-3200  
(803)771-7900  
ATTORNEYS FOR Plaintiff

FILED  
2015 SEP -1 PM 1:30

21

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

Quicken Loans, Inc.,

Plaintiff,

v.

Wayne D. Wilson ; Calvin O. Wilson, III; Any other Heirs-at-Law or devisees of Ezekiel (Ellen) T. Wilson, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interest in the real estate described herein; also any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe; Park Sterling Bank;

Defendant(s).

(020139-00050)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 15-CP-06-0070

FIRST AMENDED COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE  
MORTGAGE

Deficiency Judgment Waived

2015 MAY 29 PM 1:30

FILED FOR RECORD

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Barnwell County, South Carolina.

2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not

eligible for modification because the loan did not originate before January 1, 2009

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about December 14, 2011, Calvin O. Wilson, Jr. and Ezekiel T. Wilson made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$126,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Calvin O. Wilson, Jr. and Ezekiel T. Wilson made, executed and delivered unto Mortgage Electronic Registration Systems, Inc. as nominee for Quicken Loan, Inc. its successors and assigns a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on the North side of the Southern Railway in the Williston School District, Town of Williston, County of Barnwell, State of South Carolina, containing Two (2) acres, more or less, and having the following boundaries and measurements, to wit: on the North by Dicks Street, and measuring thereon 150 feet, more or less, on the East by lot now or formerly of G. E. Crouch, Estate of T. M. Willis and Lot of Negro Lodge and measuring thereon 600 feet, more or less; on the South by East Main Street separating this lot from right-of-way of Southern Railway, and measuring thereon 150 feet, more or less; and on the West by Mansfield Drive, and measuring thereon 600 feet, more or less.

This being the same property conveyed to Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson, as joint tenants with the right of survivorship, by deed of C. O. Wilson dated September 29, 1992 and recorded on September 30, 1992 in Book 205 at Page 310; subsequently, Calvin O. Wilson, Jr. died September 20, 2013 as evidenced by Barnwell County Probate Case No. 2013-ES-06-214 leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson, remaining surviving tenant; subsequently Ezekiel (Ellen) T. Wilson died intestate on November 17, 2014, leaving her interest in the subject property to her heirs/devisees, namely, Wayne D. Wilson and Calvin O. Wilson, III.

Property Address: 12640 Main St  
Williston, SC 29853

TMS# 047-07-08-001

9. The Mortgage was signed, witnessed and probated December 14, 2011; thereafter the Mortgage was recorded in the Office of the Clerk Of Court for Barnwell County on December 30, 2011. in Mortgage Book 979 at Page 50. This Mortgage was subsequently assigned to the Plaintiff herein by assignment dated February 6, 2015 and recorded on February 26, 2015 in Book 1088 at Page 120.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Subsequently, Calvin O. Wilson, Jr. died September 20, 2013 leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson, remaining surviving tenant.

12. Thereafter, Ezekiel (Ellen) T. Wilson died intestate on November 17, 2014, leaving her interest in the subject property to her heirs/devisees, namely, Wayne D. Wilson and Calvin O. Wilson.

13. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for October 1, 2014, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of October 1, 2014, the principal sum of \$108,728.34, with interest from September 1, 2014, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

14. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

15. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

16. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

17. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

18. The hereinafter named Defendant(s), may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Park Sterling Bank, by virtue of a mortgage given by Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson to Community Bank & Trust in the amount of \$46,000.00, dated February

11, 2000, and recorded February 18, 2000 in Book 451 at Page 322. Also including any other liens they may have. The Plaintiff is informed and believes that this mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released from the subject real estate. Park Sterling Bank is successor in interest to Community Bank and Trust.

B. Wayne D. Wilson and Calvin O. Wilson, III. and any unknown heirs or devisees of the Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson, including any persons who may be in the military service of the United States of America, being a class designated as John Doe, and any unknown minors or persons under a disability being a class designated as Richard Roe, by virtue of any interest claimed under the law of intestate succession (S.C. Code Section 62-2-109) or under decedent's will

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Determine that the mortgage held by Park Sterling Bank, recorded February 18, 2000 in Book 451 at Page 322 has been paid in full, and direct the Clerk of Court/Register of Deeds for Barnwell County to release the lien of the mortgage from the subject property.

(3) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(4) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(5) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(6) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71. of the South Carolina Rules of Civil Procedure:

(7) Issue an order directing the Sheriff of Barnwell County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary:

(8) Order such other and further relief as may be just and proper.



Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF

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Columbia, South Carolina  
May 19, 2015



22

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BARNWELL ) SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc., ) Civil Action No. 2015-CP-06-070  
 )

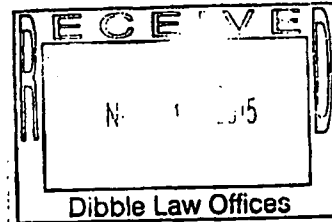
Plaintiff, )

vs. )

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or Devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and )  
Assigns, and all other persons entitled )  
to claim through them; all unknown )  
persons with any right, title or interests )  
in the real estate described herein; also )  
any persons who may be in the military )  
service of the United States of America, )  
being a class designated as John Doe; )  
and any unknown minors or persons )  
under a disability being a class )  
designated as Richard Roe; Park )  
Sterling Bank, )

Defendant. )

**PLAINTIFF QUICKEN LOANS  
INC.'S ANSWER TO ESTATE OF  
EZEKIEL T. WILSON PERSONAL  
REPRESENTATIVE'S SECOND  
AMENDED ANSWER AND  
COUNTER-CLAIMS IN RESPONSE  
TO AMENDED COMPLAINT**



Reserving all rights and remedies available to it, Plaintiff Quicken Loans Inc. ("Quicken Loans") hereby responds to Defendant Wayne D. Wilson, as Personal Representative of the Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson's ("Estate" or "Defendant"), Second Amended Answer and Counter-Claims in Response to First Amended Complaint ("Counterclaims") as follows:<sup>1</sup>

<sup>1</sup> Despite being captioned as a "Second Amended Answer and Counter-Claims," this is the first amended pleading the Estate has served upon Quicken Loans.

### **GENERAL DENIAL**

Each and every allegation of the Counterclaims is expressly denied unless specifically admitted, qualified, or explained herein.

### **FOR A FIRST DEFENSE**

1. Paragraphs 1 through 19 respond to Quicken Loans' Complaint, and therefore, no response is required. To the extent a response is required, Quicken Loans denies every allegation in Paragraphs 1 through 19 that does not admit the allegations contained in Quicken Loans' Complaint.

2. Responding to Paragraph 20, Quicken Loans incorporates its responses to the preceding paragraphs as if repeated verbatim herein.

3. Quicken Loans admits Paragraph 21.

4. Responding to Paragraph 22, Quicken Loans admits that it conducts business concerning residential real estate loans in South Carolina. Quicken Loans further admits that Quicken Loans Inc. is not an individual licensed to practice law in South Carolina and denies any allegation that it has engaged in the unauthorized practice of law.

5. Quicken Loans admits Paragraph 23.

6. Responding to Paragraph 24, Quicken Loans craves reference to the loan agreement referenced therein and denies any allegation inconsistent therewith.

7. Responding to Paragraph 25, Quicken Loans craves reference to the statute referenced therein and denies any allegation inconsistent therewith.

8. Quicken Loans admits that it provided Calvin O. Wilson, Jr. and Ezekiel T. Wilson with an attorney preference form. Responding to the remaining allegations contained

in Paragraph 26, Quicken Loans craves reference to the attorney preference form referenced therein and denies any allegation inconsistent therewith.

9. Quicken Loans denies Paragraph 27.

10. Quicken Loans denies Paragraph 28.

11. Quicken Loans denies Paragraph 29.

12. Quicken Loans denies Paragraph 30.

13. Quicken Loans denies Paragraph 31.

14. Quicken Loans denies Paragraph 32.

15. Quicken Loans denies Paragraph 33.

16. Quicken Loans denies Paragraph 34.

17. Responding to Paragraph 35, Quicken Loans incorporates its responses to the preceding paragraphs as if repeated verbatim herein.

18. Quicken Loans denies Paragraph 36.

19. Quicken Loans denies Paragraph 37.

20. Quicken Loans denies Paragraph 38.

21. Quicken Loans denies Paragraph 39.

22. Responding to Paragraph 40, Quicken Loans incorporates its responses to the preceding paragraphs as if repeated verbatim herein.

23. Quicken Loans denies Paragraph 41.

24. Quicken Loans denies Paragraph 42.

25. Quicken Loans denies Paragraph 43.

26. Quicken Loans admits Paragraph 44.

27. Quicken Loans denies Paragraph 45.

28. Quicken Loans denies Paragraph 46.
29. Quicken Loans denies Paragraph 47.
30. Quicken Loans denies Paragraph 48.
31. Quicken Loans denies Paragraph 49.
32. Responding to the Estate's prayer for relief beginning with "WHEREFORE,"

Quicken Loans denies that the Estate is entitled to the requested relief or any relief whatsoever.

#### **FOR A SECOND DEFENSE**

The Estate's Counterclaims fail to state a claim for relief against Quicken Loans upon which relief may be granted and, therefore, should be dismissed.

#### **FOR A THIRD DEFENSE**

The Estate is comparatively or contributorily at fault for its damages, if any.

#### **FOR A FOURTH DEFENSE**

The Estate failed to mitigate its damages, if any exist and are proven at trial.

#### **FOR A FIFTH DEFENSE**

Quicken Loans pleads the defense of set off. To the extent the Estate obtains any monetary recovery against Quicken Loans, such recovery should be set off by the amounts owed by the Estate, including, but not necessarily limited to, amounts owed on the loan referenced in Quicken Loans' Complaint.

#### **FOR A SIXTH DEFENSE**

The Estate's claims in equity are barred because it has an adequate remedy at law.

**FOR A SEVENTH DEFENSE**

To the extent the Estate seeks punitive or exemplary damages, those claims violate Quicken Loans' rights to procedural and substantive due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

**FOR AN EIGHTH DEFENSE**

The Estate's damages, to the extent it has any, were proximately caused by the acts or omissions of third parties and not by the acts or omissions of Quicken Loans.

**FOR A NINTH DEFENSE**

(\*) || Quicken Loans would show that the Estate's claims are barred by the doctrines of waiver, estoppel, laches, and unclean hands

**FOR A TENTH DEFENSE**

The Estate's claims are barred by the plain terms of the applicable contracts, loan documents, and mortgage.

**FOR AN ELEVENTH DEFENSE**

(\*) || The Estate's claims are barred, in whole or in part, by the doctrines of release, waiver, and/or accord and satisfaction.

**FOR A TWELFTH DEFENSE**

The Estate's damages, to the extent they are proved, were caused by the intervening acts of third-parties.

**FOR A THIRTEENTH DEFENSE**

The Estate's claims are barred by the applicable statute of limitations.

**FOR A FOURTEENTH DEFENSE**

The Estate's claims under the South Carolina Consumer Protection Code are barred because any alleged violation by Quicken Loans was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

**FOR A FIFTEENTH DEFENSE**

There is no private right of action for the unauthorized practice law. Furthermore, there is no basis in the law for allowing the Estate to use allegations of unauthorized practice of law to avoid its legal obligations to repay loans that were made to Calvin and Ezekiel Wilson, to take back the mortgages that the Wilsons gave as security for the loans, or to exact from the Quicken Loans a penalty in the form of disgorgement of the fees that the Wilsons paid in consideration of certain goods and services in connection with their mortgage loans. Therefore, the Counterclaims should be dismissed.

**FOR A SIXTEENTH DEFENSE**

The Estate's claims for disgorgement are barred by the voluntary payment doctrine because the Wilsons paid the fees and charges the Estate now seeks to recover with knowledge of all the facts now alleged in the Counterclaims.

**FOR A SEVENTEENTH DEFENSE**

The Estate's claims are barred, in whole or in part, because the Estate would be unjustly enriched by the relief sought in the Counterclaims.

**FOR AN EIGHTEENTH DEFENSE**

|| The Estate's claims are barred, in whole or in part, by any or all of the doctrines of waiver, *in pari delicto*, accord and satisfaction, estoppel, consent, or ratification, because the

Wilsons willingly entered into, participated in, and benefited from the loan transactions in question.

**FOR A NINETEENTH DEFENSE**

The Estate's claims fail as a matter of law because they did not survive Calvin and Ezekiel Wilsons' death.

**FOR A TWENTIETH DEFENSE**

The Estate's claims fail as a matter of law because the Estate lacks standing to assert its claims.

**ADDITIONAL DEFENSES**

Quicken Loans reserves the right to amend and supplement its affirmative defenses to include any applicable defense of law or fact.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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*Attorneys for Quicken Loans Inc.*

Columbia, South Carolina  
November 6, 2015



23

Filed  
10/22/2015

STATE OF SOUTH CAROLINA )  
COUNTY OF BARNWELL )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
Civil Action 2015-CP-06-070

QUICKEN LOANS, INC., )  
Plaintiff, )  
vs. )  
EZEKIEL T. WILSON )  
A/K/A EZEKIEL (ELLEN) T. WILSON )  
ET AL., )  
Defendants. )  
\_\_\_\_\_ )

ESTATE OF EZEKIEL T. WILSON  
PERSONAL REPRESENTATIVE'S  
SECOND AMENDED ANSWER  
AND COUNTER-CLAIMS  
IN RESPONSE TO  
FIRST AMENDED COMPLAINT

FILED

NOV 22 11:10 AM '15

TO: THE PLAINTIFF ABOVE-NAMED AND ITS ATTORNEY:

Defendant Wayne D. Wilson as PERSONAL REPRESENTATIVE OF THE ESTATE OF  
EZEKIEL T. WILSON A/K/A EZEKIEL (ELLEN) T. WILSON, DECEASED, answering the  
First Amended Complaint, would respectfully allege:

FOR A FIRST DEFENSE

1. Defendant Personal Representative DENIES each and every allegation of the First Amended Complaint not hereinafter expressly admitted and demands strict proof thereof.
2. Answering Paragraph 1 of the First Amended Complaint, Defendant Personal Representative ADMITS the allegations contained therein.
3. Answering Paragraph 2 of the First Amended Complaint, Defendant Personal Representative craves reference to the South Carolina Code of Laws for the exact text of Section 33-15-101(b)(8). Further answering Paragraph 2 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.
4. Answering Paragraph 3 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny the allegations contained therein and therefore DENIES same and demands strict proof thereof.

5. Answering Paragraph 4 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

6. Answering Paragraph 5 of the First Amended Complaint, Defendant Personal Representative ADMITS so much of said paragraph as alleges that Defendant Personal Representative claims an interest in the real estate that is the subject of this action; Defendant Personal Representative DENIES the remaining allegations of said paragraph and demands strict proof thereof.

7. Answering Paragraph 6 of the First Amended Complaint, Defendant Personal Representative has insufficient information to admit or deny said allegations and therefore DENIES same and demands strict proof thereof.

8. Answering Paragraph 7 of the First Amended Complaint, Defendant Personal Representative upon information and belief ADMITS the allegations contained therein.

9. Answering Paragraph 8 of the First Amended Complaint, Defendant Personal Representative upon information and belief ADMITS so much of said paragraph as alleges that Calvin O. Wilson, Jr. and Ezekiel T. Wilson (jointly, the "Wilsons") executed a certain real estate mortgage ("Mortgage"). Further answering Paragraph 8, Defendant Personal Representative craves reference to said Mortgage for the exact description of the property subject to the Mortgage and the precise terms and conditions of the Mortgage.

10. Answering Paragraph 9 of the First Amended Complaint, Defendant Personal Representative craves reference to said Mortgage and to said Assignment for details of their execution and recordation.

11. Answering Paragraph 10 of the First Amended Complaint, Defendant Personal Representative ADMITS so much of said Paragraph as alleges that the Mortgage purports to secure the repayment of money and purports to constitute a first lien on the property described therein. Further answering Paragraph 10, Defendant Personal Representative DENIES the remaining allegations of said paragraph, including the allegation that the Mortgage evidences the repayment of money.

12. Answering Paragraph 11 of the First Amended Complaint, Defendant Personal Representative DENIES that Calvin O. Wilson, Jr. died on September 20, 2013 "leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson." Defendant Personal Representative would show that Calvin O. Wilson, Jr. died on September 28, 2013 and his interest in the subject property simultaneously passed to Ezekiel (Ellen) T. Wilson pursuant to the survivorship rights in the deed of C.O. Wilson of record in Deed Book 205 at Page 310.

13. Answering Paragraph 12 of the First Amended Complaint, Defendant Personal Representative DENIES the allegations contained therein and demands strict proof thereof.

14. Answering Paragraph 13 of the First Amended Complaint, Defendant Personal Representative DENIES the allegations contained therein and demands strict proof thereof.

15. Answering Paragraph 14 of the First Amended Complaint, Defendant Personal Representative craves reference to South Carolina Code Sections 29-3-650 and 29-3-660 for the text of those statutes.

16. Answering Paragraph 15 of the First Amended Complaint, Defendant Personal Representative craves reference to said Mortgage for details of its terms and conditions.

17. Answering Paragraph 16 of the First Amended Complaint, Defendant Personal Representative craves reference to said Mortgage for details of its terms and conditions.

18. Answering Paragraph 17 of the First Amended Complaint, Defendant Personal Representative DENIES that the relief sought should be granted.

19. Answering Paragraph 18 of the First Amended Complaint, Defendant Personal Representative ADMITS upon information and belief so much of said paragraph as alleges that the Community Bank & Trust mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released.

FOR A SECOND DEFENSE

20. Defendant Personal Representative realleges and reiterates the allegations contained in Paragraphs 1 through 19 above as if fully repeated herein verbatim.

21. Upon information and belief, Plaintiff Quicken Loans, Inc. is a corporation organized and existing under the laws of a state other than South Carolina with its principal place of business in Michigan.

22. Plaintiff is in the business of making residential real estate loans in South Carolina. Plaintiff is not licensed to practice law in the State of South Carolina.

23. This action involves a residential real estate loan in which a mortgage was given on real estate in Barnwell County, South Carolina.

24. The Wilsons contacted Plaintiff to obtain a real-estate-secured residential loan primarily for personal and family purposes.

25. S.C. Code Ann. § 37-10-102 required Plaintiff, at the time of the application or shortly thereafter, to ascertain the Wilsons preference as to the legal counsel who would represent them in all matters of the transaction relating to the closing of the transaction.

26. Upon information and belief, Plaintiff presented an attorney preference form to the Wilsons. The purpose of the form is to document that the lender has ascertained the borrower's preference as to the attorney to represent the borrower in all matters of the transaction.

27. Upon information and belief, the attorney preference form as prepared by Plaintiff for the Wilsons did not comply with the statute: the form was already completed by Plaintiff to state that the "I/We will not use the services of legal counsel" or words to similar effect.

28. Upon information and belief, Plaintiff engaged in the unauthorized practice of law by rendering advice of a legal nature to the effect that the services of legal counsel are not required in South Carolina residential mortgage loan closings.

29. Upon information and belief, Plaintiff in the title examination process in connection with the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

30. Upon information and belief, Plaintiff in the preparation and review of documents in connection with the Wilson loan, either directly or through one or more of its agents, engaged

in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

31. Upon information and belief, Plaintiff in closing of the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

32. Upon information and belief, Plaintiff in the document recordation process in connection with the Wilson loan, either directly or through one or more of its agents, engaged in or aided and abetted the unauthorized practice of law in violation of the established laws of the State of South Carolina.

33. Upon information and belief, Plaintiff in the disbursement process in connection with the Wilson loan, either directly or through one or more of its agents, engaged or aided and abetted in the unauthorized practice of law in violation of the established laws of the State of South Carolina.

34. Upon information and belief, Plaintiff, having engaged in the unauthorized practice of law, should be denied the benefit of equitable remedies under the rule of *Matrix*<sup>1</sup>.

FOR A THIRD DEFENSE  
AND BY WAY OF A FIRST COUNTERCLAIM

35. Defendant Personal Representative realleges and reiterates the allegations contained in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

36. By presenting the Wilsons with a prepopulated form, Plaintiff sought to obtain from the two borrowers waiver of their right to counsel in violation of S.C. Code § 37-1-107.

37. Plaintiff's seeking a waiver of the Wilsons' statutory rights is unconscionable pursuant to South Carolina common law and statutes, including S.C. Code Ann. § 37-10-105 and §37-5-108.

38. Defendant Personal Representative is informed and believes that this court should issue its order (a) finding that the acts of Plaintiff were unconscionable, and (b) granting such relief as it deems just and proper under S.C. Code Ann. § 37-10-105(C), including (i) an award

<sup>1</sup> *Matrix Financial Services Corp. v. Frazer*, 394 S.C. 134, 714 S.E.2d 532 (S.Ct. 2011); see also *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 731 S.E.2d 547 (S.Ct. 2012).

of the total finance charge listed in Plaintiff's Truth in Lending disclosure, (ii) an order allowing the remainder of the loan to be paid without interest; (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iv) attorney's fees and costs of this action.

39. In addition, Defendant Personal Representative is informed and believes that this court should issue its order and grant relief as it deems just and proper under S.C. Code Ann. § 37-10-105(A), namely that any such relief should include (i) an award of a penalty as set forth therein, (ii) an order allowing recoupment or setoff in an amount equal to all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iii) attorneys' fees and costs of this action.

FOR A FOURTH DEFENSE  
AND BY WAY OF SECOND COUNTERCLAIM

40. Defendant Personal Representative realleges and reiterates the allegations contained in Paragraphs 1 through 39 above as if fully repeated herein verbatim.

41. By presenting the Wilsons with a prepopulated form, Plaintiff failed to fulfill its statutory obligation to ascertain the borrowers' preferences as to legal counsel in violation of S.C. Code Section 37-10-102 and denied each borrower the statutory right to select his or her own legal counsel.

42. The pre-populated form presented to the Wilsons deprived each of them of a meaningful choice as to the attorney to represent the borrower in all aspects of the transaction and in and of itself is unconscionable pursuant to South Carolina law, in particular S.C. Code Ann §37-10-105 and §37-5-108.

43. Upon information and belief the purpose of pre-populating the form was to steer business to Title Source.

44. Title Source is owned by the same parent company as Quicken.

45. By pre-populating the form, Quicken thereby enriches its parent company to the depravation of Defendant's rights given under the statute.

46. This scheme also further aids in the unauthorized practice of law.

47. The failure of Plaintiff to ascertain the Wilsons' choices as to the legal counsel to represent them in all aspects of the transaction is unconscionable pursuant to South Carolina law, in particular, S.C. Code Ann. § 37-10-105 and §37-5-108, especially when coupled with coupled with the unauthorized practice of law and with the unlawful request for a waiver of the Wilsons' statutory rights under the Consumer Protection Code.

48. Defendant Personal Representative is informed and believes that this court should issue its order (a) finding that the acts of Plaintiff were unconscionable, and (b) granting such relief as it deems just and proper under S.C. Code Ann. § 37-10-105(C) , including (i) an award of the total finance charge listed in Plaintiff's Truth in Lending disclosure, (ii) an order allowing the remainder of the loan to be paid without interest; (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iv) attorney's fees and costs of this action.

49. In addition, Defendant Personal Representative is informed and believes that this court should issue its order and grant relief as it deems just and proper under S.C. Code Ann. § 37-10-105(A) , namely that any such relief should include (i) an award of a penalty as set forth therein, (ii) an order allowing recoupment or setoff in an amount equal to all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and (iii) attorneys' fees and costs of this action.

*[continued on following pages]*



**RELIEF SOUGHT**

WHEREFORE, Defendant Personal Representative prays this Court:

- A. Inquire into the matters alleged herein;
- B. Find that Plaintiff has engaged in the unauthorized practice of law and deny Plaintiff the benefit of any equitable remedies;
- C. Deny the Plaintiff the relief sought in the First Amended Complaint as to this Defendant and dismiss the First Amended Complaint with prejudice;
- D. Find that the actions of Plaintiff violate the letter and the spirit of the South Carolina Consumer Protection Code;
- E. Find that the actions of Plaintiff rise to the level of unconscionability and refuse to enforce the mortgage, declaring it void;
- F. Find that the actions of Plaintiff rise to the level of unconscionability and refuse to enforce the mortgage note, declaring it void;
- G. Order relief under S.C. Code Ann. § 37-10-105(c), including
  - (i) an award of the total finance charge listed in Plaintiff's Truth in Lending,
  - (ii) an order allowing the remainder of the loan to be paid without interest;
  - (iii) an award of all closing costs or other costs paid to Plaintiff or Third Parties in connection to the loan; and
  - (iv) attorney's fees and costs of this action.
- H. Award a penalty under S.C. Code Ann. § 37-10-105(A);
- I. Grant such other and further relief as this Court deems just and proper.

**BEDINGFIELD & WILLIAMS**

Daniel Webster Williams S.C. Bar No. 10233

PO Box 616

Barnwell, SC 29812-0616

*Co-counsel for Defendant*

*[Defendant's attorneys are listed on next page]*

October 21, 2015

Barnwell, South Carolina

24

STATE OF SOUTH CAROLINA )  
COUNTY OF BARNWELL )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

C/A 2015-CP-06-0070

Quicken Loans, Inc., )  
Plaintiff, )

vs. )

Wilson et al. )  
Defendants. )

NOTICE OF MOTION  
AND  
MOTION FOR PARTIAL SUMMARY JUDGMENT

FILED  
2015 JUN 15 11:20:03  
CLERK OF COURT

TO: THE PLAINTIFF AND ITS ATTORNEY, BRIAN M. BARNWELL, ESQUIRE

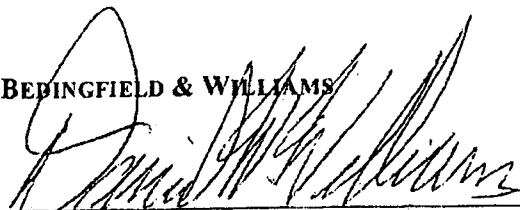
PLEASE TAKE NOTICE that ten days after service hereof or as soon thereafter as counsel may be heard, Defendant Wayne Wilson as Personal Representative of the Estate of Ezekiel Wilson, by and through his undersigned counsel, will move for partial Summary Judgment pursuant to Rule 56, S.C.R.C.P. Defendant Personal Representative bases this Motion on the grounds that (1) there is no genuine issue of material fact as to the attorney preference form utilized by Quicken Loans and the manner in which Quicken Loans utilizes the attorney preference form, (2) the manner in which Quicken Loans utilizes the attorney preference form is in and of itself unconscionable, and (3) this Defendant is entitled to judgment as a matter of law.

In support of this Motion, Defendant Personal Representative relies on and incorporates herein Plaintiff's loan documents as well as the prior sworn testimony of Quicken officials, statutory and case law, and such other affidavits, memoranda, documents, transcripts, filings, pleadings, or admissions, as may be presented to the Court at the time of hearing, or filed at or prior to the hearing on this matter. Defendant Personal Representative specifically reserves all rights to file any supporting affidavits, memorandum, exhibits, documents, and matters in this matter and to further move or amend said motion, if necessary, for other and further relief from the Court. A copy of Preference Form and HUD-1 Statement are attached to this Motion as Exhibit A & B, respectively.

*Signature page follows . . .*

January \_\_, 2016

Barnwell, South Carolina

  
**BEDINGFIELD & WILLIAMS**

Daniel Webster Williams S.C. Bar No. 10233  
PO Box 616  
Barnwell, SC 29812-0616

*[Defendant's attorneys are listed on next page]*

**Attorneys for Defendant Personal Representative**

**RICHARDSON PLOWDEN & ROBINSON, P.A.**

Steven W. Hamm      *S.C. Bar No. 2634*  
PO Box 7788  
Columbia, SC 29202-7788  
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[shamm@richardsonplowden.com](mailto:shamm@richardsonplowden.com)

**WILLIAMS & WILLIAMS**

C. Bradley Hutto      *S.C. Bar No. 6436*  
PO Box 1084  
Orangeburg, SC 29116-1084  
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F: 803.536.6544  
[cbhutto@williamsattys.com](mailto:cbhutto@williamsattys.com)

**BEDINGFIELD & WILLIAMS**

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PO Box 616  
Barnwell, SC 29812-0616  
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F: 803.259.5922  
[danwilliams@bellsouth.net](mailto:danwilliams@bellsouth.net)

**DIBBLE LAW OFFICES**

Charles L. Dibble      *S.C. Bar No. 1674*  
PO Drawer 1240  
Columbia, SC 29202-1240  
T: 803.254.0307  
F: 866.253.0458  
[cdibble@dibblelawofc.com](mailto:cdibble@dibblelawofc.com)



| Comparison of Good Faith Estimate (GFE) and HUD-1 Charges            |                   | Good Faith Estimate | HUD-1      |
|----------------------------------------------------------------------|-------------------|---------------------|------------|
| <b>Charges That Cannot Increase</b>                                  |                   |                     |            |
| Our origination charge                                               | #801              | \$1,045.00          | \$1,045.00 |
| Your credit or charge (points) for the specific interest rate chosen | #802              | \$785.63            | \$157.50   |
| Your adjusted origination charges                                    | #803              | \$1,830.63          | \$1,202.50 |
| Transfer taxes                                                       | #1203             | \$0.00              | \$0.00     |
| <b>Charges That in Total Cannot Increase More Than 10%</b>           |                   |                     |            |
| Government recording charges                                         | #1201             | \$22.00             | \$22.00    |
| Title services and lender's title insurance                          | #1101             | \$981.20            | \$981.20   |
| Appraisal fee                                                        | #804              | \$430.00            | \$430.00   |
| Credit Report                                                        | #805              | \$17.80             | \$17.80    |
| Life of Loan Tax Service                                             | #806              | \$60.00             | \$60.00    |
| Flood Life of Loan Coverage                                          | #807              | \$5.00              | \$5.00     |
| Flood Determination Fee                                              | #808              | \$10.50             | \$10.50    |
| Tax Certification Fee                                                | #812              | \$18.00             | \$18.00    |
|                                                                      | \$                |                     |            |
|                                                                      | \$                |                     |            |
|                                                                      | \$                |                     |            |
|                                                                      |                   | \$1,544.50          | \$1,544.50 |
|                                                                      |                   | \$                  | %          |
| <b>Charges That Can Change</b>                                       |                   | Good Faith Estimate | HUD-1      |
| Initial deposit for your escrow account                              | #1001             | \$813.94            | \$663.41   |
| Daily interest charges                                               | #901 \$13.97 /day | \$279.40            | \$181.61   |
| Homeowner's Insurance                                                | #903              |                     |            |
|                                                                      | \$                |                     |            |
|                                                                      | \$                |                     |            |
|                                                                      | \$                |                     |            |
|                                                                      | \$                |                     |            |
|                                                                      | \$                |                     |            |

#### Loan Terms

|                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Your initial loan amount is                                                                                           | \$ 126,000.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Your loan term is                                                                                                     | 15 years                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Your initial interest rate is                                                                                         | 3.9900 %                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Your initial monthly amount owed for principal, interest, and any mortgage insurance is                               | \$ 931.38 Includes<br><input checked="" type="checkbox"/> Principal<br><input checked="" type="checkbox"/> Interest<br><input type="checkbox"/> Mortgage Insurance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Can your interest rate rise?                                                                                          | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of _____ % The first change will be on _____ and can change again every _____ after<br>Every change date, your interest rate can increase or decrease by _____ % Over the life of the loan, your interest rate is guaranteed to never be lower than _____ % or higher than _____ %                                                                                                                                                                                                                                                                       |
| Even if you make payments on time, can your loan balance rise?                                                        | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise? | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, the first increase can be on _____ and the monthly amount owed can rise to \$ _____ The maximum it can ever rise to is \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Does your loan have a prepayment penalty?                                                                             | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, your maximum prepayment penalty is \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Does your loan have a balloon payment?                                                                                | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, you have a balloon payment of \$ _____ due in _____ years on _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Total monthly amount owed including escrow account payments                                                           | <input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself.<br><input checked="" type="checkbox"/> You have an additional monthly escrow payment of \$ 135.20 that results in a total initial monthly amount owed of \$ 1,066.58 This includes principal, interest, any mortgage insurance and any items checked below:<br><input checked="" type="checkbox"/> Property taxes <input checked="" type="checkbox"/> Homeowner's insurance<br><input type="checkbox"/> Flood insurance <input type="checkbox"/><br><input type="checkbox"/> |

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender



I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower

Calvin O. Wilson, Jr. 12/14/2011  
Date

Ezekiel T. Wilson 12/14/2011  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent

Eric M. Miller 12/14/11  
Date  
Title Source Inc

☐ Refer to the attached *Signature Addendum* for additional parties and signatures.





\_\_\_\_\_

Calvin O. Wilson, Jr.  
Ezekiel T. Wilson  
P.O. Box 411  
Williston, SD 57853

Title Source, Inc.  
1450 West Long Lake Road #400, Troy, MI 48098  
(248)312-1200

TABLE 1. *Continued*

[illegible]

1. CAP ONE NA
2. Current Taxes Due To BARNWELL COUNTY
3. Duplicate Bill Fee To BARNWELL COUNTY

\$7,542.00  
\$553.43  
\$0.50



| Charges That In Total Cannot Increase More Than 10% (Continued) | Good Faith Estimate | HUD-1 |
|-----------------------------------------------------------------|---------------------|-------|
| #                                                               |                     |       |
| #                                                               |                     |       |
| #                                                               |                     |       |
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| #                                                               |                     |       |
| #                                                               |                     |       |

| Charges That Can Change (Continued) | Good Faith Estimate | HUD-1 |
|-------------------------------------|---------------------|-------|
| #                                   |                     |       |
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| #                                   |                     |       |

J. Summary of Borrower's Transaction (Continued from Page 5)

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

Settlement Statement Supplement  
 VAP 6  
 Western Kansas Financial Services © 2009



VAP601247 (06/24/00)  
 Page 2 of 2

QL(Wilson)\_0505

ROA\_0320

STATE OF SOUTH CAROLINA )

COUNTY OF BARNWELL )

Quicken Loans, Inc., )

Plaintiff, )

vs. )

Wayne D. Wilson; Calvin O. Wilson, III; )  
any other Heirs-at-Law or Devisees of )  
Ezekiel (Ellen) T. Wilson, Deceased, their )  
Heirs, Personal Representatives, )  
Administrators, Successors and Assigns, and )  
all other persons entitled to claim through )  
them; all unknown persons with any right, )  
title or interest in the real estate described )  
herein; also any persons who may be in the )  
military service of the United States of )  
America, being a class designed as John )  
Doe; and any unknown minors or persons )  
under a disability being a class designated )  
as Richard Roe; Park Sterling Bank, )

Defendant(s). )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

C/A #2015-CP-06-0070

CERTIFICATE OF MAILING

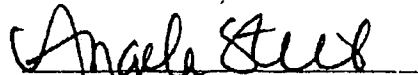
I do hereby certify that I have served a copy of the enclosed **Notice of Motion and Motion for Partial Summary Judgment** in the above captioned matter by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es) on January 19th, 2016.

Brian M. Barnwell, Esquire  
Nelson Mullins Riley & Scarborough  
P. O. Box 11070  
Columbia, SC 29211-1070

Steven W. Hamm, Esquire  
PO Box 7788  
Columbia, SC 29202

C. Bradley Hutto, Esquire  
PO Box 1084  
Orangeburg, SC 29116

Charles L. Dibble, Esquire  
PO Drawer 1240  
Columbia, SC 29202



Angela Stull  
Paralegal to Daniel W. Williams

Barnwell, South Carolina

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BARNWELL ) SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc.,<sup>1</sup> ) Civil Action No. 2015-CP-06-070  
 )

Plaintiff, )  
 )

vs. )  
 )

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or Devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and Assigns, )  
and all other persons entitled to claim )  
through them; all unknown persons with )  
any right, title or interests in the real )  
estate described herein; also any persons )  
who may be in the military service of the )  
United States of America, being a class )  
designated as John Doe; and any )  
unknown minors or persons under a )  
disability being a class designated as )  
Richard Roe; Park Sterling Bank, )  
Defendants. )

**PLAINTIFF QUICKEN LOANS**  
**INC.'S CROSS-MOTION FOR**  
**SUMMARY JUDGMENT**

FILED FOR RECORD  
2016 MAR 11 PM 1:43  
CLERK OF COURT  
BARNWELL COUNTY, SC

NOW COMES Plaintiff Quicken Loans Inc. ("Quicken Loans"), pursuant to Rule 56, SCRPC, and respectfully moves this Court for entry of summary judgment.

The pleadings, exhibits, and affidavits submitted in support hereof, show that there is no genuine issue as to any material fact and that Quicken Loans is entitled to judgment as a matter of law as to Defendant Wayne D. Wilson, as Personal Representative of the Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson's ("Estate" or "Defendant") counterclaims. The attached Memorandum in Support is incorporated expressly as if repeated verbatim.

<sup>1</sup> Plaintiff should have been identified as Quicken Loans Inc. in the caption.

The Estate asserts two counterclaims against Quicken Loans. Both claims allege that, in 2011, Quicken Loans violated South Carolina Code Ann. Section 37-10-102(a), the "Attorney Preference Statute," by failing to ascertain Mrs. Wilson's preference for an attorney to represent her in all matters concerning the closing of a mortgage loan "prior to closing." Based on this allegation, the Estate seeks relief under subsections (A) and (C) of Section 37-10-105. Pursuant to Rule 7, the grounds warranting summary judgment are summarized as follows:

- The Estate's claims under Section 37-10-105(A) are time-barred;
- The record indisputably establishes that Quicken Loans complied with the Attorney Preference Statute in using the "safe harbor" form recognized by the statute; and
- Section 37-10-105(C) does not provide relief for an alleged violation of the Attorney Preference Statute.

Because each of the Estate's counterclaims fails as a matter of law, the Court should grant summary judgment in Quicken Loans' favor. Quicken Loans' Motion is further based on the South Carolina Rules of Civil Procedure, the applicable statutory and case law, and the memorandum in support, which is attached hereto as attachment 1.

***[SIGNATURE ON FOLLOWING PAGE]***

Respectfully submitted,

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*Attorneys for Quicken Loans Inc.*

Columbia, South Carolina

March 8, 2016

# **Attachment 1**

**(Memorandum in Support)**

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BARNWELL ) SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc.,<sup>1</sup> ) Civil Action No. 2015-CP-06-070  
 )

Plaintiff, )  
 )

vs. )  
 )

Wayne D. Wilson; Calvin O. Wilson, )  
 )  
III; Any other Heirs-at-law or Devisees )  
 )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
 )  
their heirs, Personal Representatives, )  
 )  
Administrators, Successors and Assigns, )  
 )  
and all other persons entitled to claim )  
 )  
through them; all unknown persons with )  
 )  
any right, title or interests in the real )  
 )  
estate described herein; also any persons )  
 )  
who may be in the military service of the )  
 )  
United States of America, being a class )  
 )  
designated as John Doe; and any )  
 )  
unknown minors or persons under a )  
 )  
disability being a class designated as )  
 )  
Richard Roe; Park Sterling Bank, )  
 )  
Defendants. )  
 )

**PLAINTIFF QUICKEN LOANS  
INC.'S MEMORANDUM IN  
SUPPORT OF CROSS-MOTION  
FOR SUMMARY JUDGMENT AND  
RESPONSE IN OPPOSITION TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff Quicken Loans Inc. ("Quicken Loans") respectfully submits this Memorandum in Support of its Cross-Motion for Summary Judgment as to Defendant Wayne D. Wilson, as Personal Representative of the Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson's ("Estate" or "Defendant") counterclaims. This Memorandum also serves as Quicken Loans' Response in Opposition to the Estate's Motion for Partial Summary Judgment.

The Estate asserts two counterclaims against Quicken Loans. Both counterclaims allege that, in 2011, Quicken Loans violated South Carolina Code Ann. § 37-10-102(a), the "Attorney Preference Statute," by failing to ascertain Mrs. Wilson's preference for an attorney to represent

---

<sup>1</sup> Plaintiff should have been identified as Quicken Loans Inc. in the caption.



her in all matters concerning a mortgage loan "prior to closing." Based on this allegation, the Estate seeks statutory penalties, actual damages, injunctive relief, and attorneys' fees under subsections (A) and (C) of South Carolina Code Ann. § 37-10-105. The Estate's claims fail as a matter of law for the following reasons:

- The Estate's claims under Section 37-10-105(A) are time-barred;
- The record indisputably establishes that Quicken Loans complied with the Attorney Preference Statute in using the "safe harbor" form recognized by the statute; and
- Section 37-10-105(C) does not provide relief for an alleged violation of the Attorney Preference Statute.

Because each of the Estate's counterclaims fails as a matter of law, the Court should grant summary judgment in Quicken Loans' favor.

#### **FACTUAL AND PROCEDURAL HISTORY**

On November 4, 2011, Ezekiel Wilson and her husband, Calvin Wilson, spoke over the telephone with a Quicken Loans' representative named Guy Brusca about obtaining a refinance loan (the "Loan"). (See Ex. A, 11/7/11 Loan App.) The information the Wilsons provided to Mr. Brusca was entered into the application, which was then provided to the Wilsons. (See *id.*) The Wilsons reviewed the application and signed it on November 7, 2011. (*Id.* at p.4.) The purpose of the Loan was to pay off several of the Wilsons' existing debts and to provide cash from the equity of their home. (See *id.* at p.1.)

Following the application and prior to the closing, on November 7, 2011, Mr. and Mrs. Wilson signed an Attorney/Insurance Preference Checklist (the "AIP Checklist"). (Ex. B, AIP Checklist.) The AIP Checklist informed the Wilsons of their right to select their own attorney and insurance agent. (*Id.*) Like the application, the AIP Checklist included information that the Wilsons provided to Mr. Brusca over the telephone during the application intake process.

Specifically, the AIP Checklist stated that the Wilsons chose State Farm as their insurance agent but that they did not have a preference as to which attorney closed the Loan. (Id.)

On December 14, 2011, Defendant executed a note in the amount of \$126,000.00 (the "Note") in favor of Quicken Loans secured by a mortgage (the "Mortgage") on certain real property located at 12640 Main Street, Williston, South Carolina (the "Property"). (Ex. C, Note; Ex. D, Mortgage.) The Loan included a 3.99% fixed interest rate, which was 2.385% lower than the existing loan that it refinanced. (Compare Note with Ex. E, Wells Fargo Payoff Statement.) The Loan also provided the Wilsons with \$14,178.66 in cash, which accomplished their stated purpose for seeking a refinance loan. (Ex. F, Settlement Statement; see also 11/7/11 Loan App.)

Carlton Robinson, a licensed South Carolina attorney, closed the loan. (See Ex. G, Closing Attorney's Statement.) At the closing, Mr. and Mrs. Wilson signed an updated loan application. (Ex. H, 12/14/11 Loan App. at p.4) The final page of this application, which the Wilsons signed, confirms that State Farm was their preferred insurance agent and that Carlton Robinson was their preferred attorney. (Id.)

After the closing, the Wilsons completed a Client Survey. (Ex. I, Client Survey.) In the survey, the Wilsons stated that they received "excellent" service from Quicken Loans and that they were actively recommending Quicken Loans to several family members. (Id.) One of the Wilsons also stated as follows: "I was treated to outstanding service by Quicken personnel. All questions I asked w[ere] answered effectively and very helpful." (Id.)

On September 20, 2013, Mr. Calvin Wilson died. (Am. Compl. ¶ 11.) On November 17, 2014, Mrs. Ezekiel Wilson died. (Id. at ¶ 12.) At about the time Mrs. Wilson died, the Loan went into default. (Id. at ¶ 13 (alleging Loan is in default and due for 10/1/14).) Quicken Loans commenced this foreclosure action on March 3, 2015. (See Compl.) After several amendments,

the Estate now asserts two counterclaims against Quicken Loans. (Second Am. Answer and Countercl.)<sup>2</sup> Both of the Estates' counterclaims are based on the allegation that Quicken Loans violated the Attorney Preference Statute, S.C. Code Ann. § 37-10-102. (*Id.*) Aside from self-serving and conclusory allegations, the Estate cannot produce any evidence to support its claims. Because the facts, viewed in the light most favorable to the Estate, establish that each of its claims fails as a matter of law, the Court should grant summary judgment in Quicken Loans' favor.

#### **LEGAL STANDARD**

A motion for summary judgment should be granted where the Court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. A party opposing a motion for summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a ***genuine issue for trial.***'" Hedgepath v. AT&T Co., 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (quoting Baughman v. AT&T Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)) (emphasis in original). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Id.* at 355, 559 S.E.2d at 336. Reliance on self-serving allegations in a pleading is insufficient to overcome a motion for summary judgment. Rule 56(c), SCRPC; see also Singletary v. Wachovia Mortg. Corp., No. 2:11-0484-RMG-BM, 2013 U.S. Dist. LEXIS 42709, at \*24-25 (D.S.C. Jan. 28, 2013) (holding that unsubstantiated allegations in plaintiffs' verified complaint did not create an issue of fact where record evidence established that bank provided RESPA notices).

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<sup>2</sup> For a complete procedural history, please see Quicken Loans' Motion to Amend the Pleadings, which is incorporated herein by reference.

## ARGUMENT

The Estate's counterclaims allege that Quicken Loans failed to ascertain Mrs. Wilson's preference for a closing attorney in violation of the Attorney Preference Statute. (Second Am. Ans. & Countercl. ¶¶ 35-48.) Based on these allegations, the Estate seeks statutory penalties, actual damages, injunctive relief, and attorneys' fees under subsections (A) and (C) of South Carolina Code Ann. § 37-10-105. (*Id.* at ¶¶ 38-39 & 48-49.)

### **I. The Estate's Attorney Preference claims are barred by the statute of limitations.**

Section 37-10-102 states, in relevant part, as follows:

The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction and . . . the insurance agent to furnish required hazard and flood property insurance in connection with the mortgage and comply with such preference.

S.C. Code Ann. § 37-10-102(a). A creditor complies with Section 37-10-102(a) by either "including the preference information on or with the credit application" or by "providing written notice to the borrower of the preference information with the notice being delivered or mailed no later than three business days after the application is received or prepared." *Id.* Section 37-10-105(A), which creates a private right of action for violations of the Attorney Preference Statute, states that "[n]o debtor may bring an action for a violation of this chapter more than three years *after the violation occurred.*" S.C. Code Ann. § 37-10-105(A) (emphasis added).<sup>3</sup>

Mrs. Wilson signed the loan application on November 7, 2011. (11/7/11 Loan App.) Quicken Loans, therefore, was required to provide Mrs. Wilson with the attorney preference disclosure by November 10, 2011. S.C. Code Ann. § 37-10-102(a). If Quicken Loans violated

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<sup>3</sup> The Estate also purports to assert claims under Section 37-10-105(C). As explained below, subsection (C) does not apply to violations of the Attorney Preference Statute, and in any event, the record establishes that the Estate cannot sustain such a claim.

the Attorney Preference Statute, which it denies, the statute of limitations would have expired, at the latest, on November 11, 2014. S.C. Code Ann. § 34-10-105(A). The Estate did not file its counterclaims until May 29, 2015. (Am. Answer & Countercl.) Accordingly, the Estate's counterclaims are time-barred.<sup>4</sup>

**II. The Estate's counterclaims fail because Quicken Loans complied with the Attorney Preference Statute.**

As set forth above, a creditor may comply with Section 37-10-102(a) by "including the preference information on or with the credit application" or by "providing written notice to the borrower of the preference information with the notice being delivered or mailed no later than three business days after the application is received or prepared." S.C. Code Ann. § 37-10-102(a). Quicken Loans complied with Section 37-10-102(a) "prior to closing" the Loan.

Specifically, Mrs. Wilson signed the AIP Checklist on November 7, 2011, the same day that she signed the loan application. (11/7/11 Loan App.; AIP Checklist.) The Loan did not close until a month later, on December 14, 2011. The AIP Checklist expressly advised Mrs. Wilson of her right to select any attorney. (AIP Checklist.) The notice language used in the AIP Check List is "substantially similar," and in fact is identical to the language used on the example form distributed by the South Carolina Department of Consumer Affairs ("SCDCA"). (Compare id. with Ex. J, SCDCA Attorney/Insurance Preference Form.)

Moreover, the Estate has no evidence to show that Mrs. Wilson did not receive or understand the AIP Checklist. See Sanders v. Allis Chalmers Mfg. Co., 237 S.C. 133, 139 115 S.E.2d 793, 796 (1960) (holding that a party who signs a contract is presumed to know its terms and is bound them). The Estate also cannot show that the information concerning the Wilsons'

---

<sup>4</sup> Any argument from the Estate that the statute of limitations did not start to run until after the Loan closed is irrelevant in any event. The Loan closed on December 14, 2011, which also is more than three years before the Estate filed its claims.

choice for an insurance agent and lack of preference for an attorney that was entered onto the AIP Checklist was inaccurate. Further, the Estate cannot show that Mrs. Wilson would have preferred for someone other than Carlton Robinson to close the loan or that Quicken Loans prevented her from using that person. (See 12/14/11 Loan App. at p.4 (listing Carlton Robinson as the Wilsons' preferred attorney and State Farm as their preferred insurance agent).) Mrs. Wilson had her chance, prior to closing, to express her preference for an attorney. Because the Estate's unsupported allegations are insufficient to maintain its claims, the Court should enter summary judgment in favor of Quicken Loans. See Hedgepath, 348 S.C. at 354, 559 S.E.2d at 335.

**III. South Carolina Code Ann. § 37-10-105(C) does not apply to the Estates' counterclaims.**

Based on Quicken Loans' alleged violation of the Attorney Preference Statute, the Estate also asks the Court to declare the Loan unconscionable pursuant to Section 37-10-105(C). (Second Am. Answer & Countercl. ¶¶ 38 & 48.) As an initial matter, these claims fail because, as explained above, Quicken Loans complied with the Attorney Preference Statute. Additionally, the Estate's claims under Section 37-10-105(C) also fail for the following three reasons:

1. No relief for alleged violations of the Attorney Preference Statute is provided by Section 37-10-105(C);
2. The Estate has not established facts to support a claim under Section 37-10-105(C); and
3. Any claims Mrs. Wilson had under Section 37-10-105(C) did not survive her death

Thus, the Estate's request for relief pursuant to subsection (C) fails as a matter of law.

**A. Violations of the Attorney Preference Statute are not actionable under Section 37-10-105(C).**

Subsection (A) of Section 37-10-105 states that it applies “[i]f a creditor violates a provision of this chapter,” while subsection (C) only applies if an agreement is unconscionable pursuant to Section 37-5-108. A violation of the Attorney Preference Statute is a violation of Chapter 10 and is, therefore, actionable under Section 37-10-105(A). An alleged violation of the Attorney Preference Statute, however, does not render the Note and Mortgage unconscionable. Thus, subsection (C) does not apply.

Indeed, when faced with a similar question, the South Carolina Supreme Court held that the complete absence of an attorney at a loan closing after August 8, 2011, only prohibits a lender from seeking the equitable remedy of foreclosure. See Matrix Fin. Serv. Corp. v. Frazer, 394 S.C. 134, 140, 714 S.E.2d 532, 535 (2011). The Matrix court did not hold that the absence of a closing attorney would prevent the lender from pursuing a breach of contract action on the note and mortgage. See id. If the total absence of an attorney at a closing does not render a note and mortgage unconscionable, then neither would allegedly not using an attorney identified by the borrower. This conclusion is further supported by the fact that Matrix does not even apply to loans entered into before August 8, 2011, even though the Attorney Preference Statute has been in the Code for much longer. See id.

Moreover, if the General Assembly intended for a violation of the Attorney Preference Statute to be actionable under subsection (C), it would have expressly said so like it did in subsection (A). Compare S.C. Code Ann. § 37-10-105(A) (“If a creditor *violates a provision of this chapter*, the debtor has a cause of action . . . .” (emphasis added)) with S.C. Code Ann. § 37-10-105(C) (creating a cause of action if “the agreement or transaction is unconscionable pursuant to Section 37-5-108”); see also State v. Leopard, 349 S.C. 467, 473, 563 S.E.2d 342, 345 (2002)

(holding that courts must “refuse to delve beyond the clear and unambiguous words of the statute” and when the General Assembly has “included [a provision] in one phrase but not in the other [it] implies it should not be read into the other”); see also Hainer v. Am. Medical Intern., Inc., 328 S.C. 103, 106, 492 S.C. 128, 134 (1997) (“[I]f Legislature had intended certain result in statute, it would have said so.”).

Furthermore, if subsection (C) is applied to impose penalties for a violation of the Attorney Preference Statute, such a construction would render as a nullity the “1997 amendments to § 37-10-105[, which] changed the penalty structure to a per debtor penalty and prohibit[ed] class actions.” Tilley v. Pacesetter Corp., 355 S.C. 361, 370, 585 S.E.2d 292, 296 (2003) (recognizing that “[t]he purpose of the amendment was to decrease liability for violations of the attorney and insurance preference statutes”). Notably, when addressing the 1997 amendments and how they applied to violations of the Attorney Preference Statute, the South Carolina Supreme Court stated that subsection (A) was the only “relevant part” of § 37-10-105 to consider. Id. Thus, the Estate has no basis for seeking recovery under subsection (C), and summary judgment is proper.

**B. The Estate cannot establish unconscionability or sufficiently plead allegations of unconscionability.**

Even if Section 37-10-105(C) did apply to attorney preference claims, which it does not, the Estate has failed to establish that the Loan is unconscionable or was unconscionably induced pursuant to Section 37-5-108. Section 37-5-108 lists five factors that the Court should consider when determining issues of unconscionability and unconscionable inducement. S.C. Code Ann. § 37-5-108(4)(a). The Estate simply challenges the manner in which the Loan was closed. (Second Am. Answer & Countercl. ¶¶ 35-49.) However, the Estate does not challenge the substantive terms of the Loan and as such, most of the Section 37-5-108(4)(a) factors are wholly



inapplicable to this matter. (See id.) As the Estate's argument is limited to the manner in which the Loan was closed, the Estate's argument is limited to the following, which is the only factor that could apply to unconscionable inducement claims:

(iv) the fact that the seller, lessor, or lender knowingly has taken advantage of the inability of the consumer or debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement, or similar factors.

S.C. Code Ann. § 37-5-108(4)(a)(iv). The Estate's argument fails.

There is no evidence showing that Mrs. Wilson was physically or mentally infirm when she signed the AIP Checklist, the Note, or the Mortgage. There is also no evidence that Mrs. Wilson was ignorant, illiterate, or unable to understand the terms of the loan contract. To the contrary, South Carolina law presumes that Mrs. Wilson understood the terms of the documents she signed. See Sanders, 237 S.C. at 139, 115 S.E.2d at 796 (holding that a party who signs a contract is presumed to know its terms and is bound by them). Moreover, even if Mrs. Wilson did have any of these characteristics, the Estate cannot show that Quicken Loans knew about them or that it intentionally exploited them. To the contrary, the Loan provided the Wilsons a lower interest rate and \$14,178.66 in cash, which was their stated purpose for seeking a refinance loan. (See Note; see also Settlement Statement.)

Furthermore, if the Estate argues that there is some factor not listed in Section 37-5-108(4)(a) that supports its claim, that argument still fails as a matter of law because it would not have any supporting evidence. Indeed, there is no evidence showing that the identity of the closing attorney had any impact on Mrs. Wilson's decision to enter into the Loan. Rather, the only record evidence in existence states that the Wilsons were "treated to outstanding service by Quicken personnel" and "[a]ll questions [they] asked [were] answered effectively and very

helpful.” (Client Survey.) Therefore, the Loan is not unconscionable, and summary judgment is proper.

**C. Mrs. Wilsons’ purported Section 37-10-105(C) claims did not survive her death.**

“At common law, a personal action *ex delicto* did not survive the death of either party.” Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 564, 564 S.E.2d 94, 97 (2002). The common law was partially abrogated by South Carolina’s survival statute, which states, in relevant part, as follows:

Causes of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive both to and against the personal or real representative, as the case may be, of a deceased person and the legal representative of an insolvent person or a defunct or insolvent corporation, any law or rule to the contrary notwithstanding.

S.C. Code Ann. § 15-5-90. “Despite this broad language, South Carolina case law has continued to recognize a common law exception regarding causes of action for fraud and deceit.” Ferguson, 349 S.C. at 564, 564 S.E.2d at 97.

In Ferguson, the plaintiff brought a claim under the South Carolina Regulation of Manufactures, Distributors, and Dealers Act (“Dealers Act”), which shares a common purpose with the Consumer Protection Code, i.e. the protection of consumers. Id. The essence of the plaintiff’s claim was that the defendant misled the plaintiff into paying more for a car “through intentionally deceptive actions or through grossly negligent disclosure practices.” Id. The Court held that although the plaintiff’s claim arose under the Dealers Act, it was based on allegations of fraud and deceit and, therefore, did not survive the plaintiff’s death. Id.

In 2003, the South Carolina Supreme Court held that an attorney preference claim brought under a prior version of Section 37-10-105 survived the borrower’s death because it did

not involve fraud or deceit. Tilley, 355 S.C. at 378, 585 S.E.2d at 301. Like present day Section 37-10-105(A), the penalty statute at issue in Tilley created a cause of action for a “violation of this chapter [Chapter 10].” Id. at 369, 585 S.E.2d at 296. Because the plaintiff’s claim was based on a “simple violation of a statutory requirement” and did not “depend on actual fraud,” the Tilley court distinguished Ferguson and held that the claim survived the plaintiff’s death. Id. at 378, 585 S.E.2d at 301.

The Estate’s claims under Section 37-10-105(C) are not the same claims that were at issue in Tilley. As stated above, the claim in Tilley was akin to a claim under present day Section 37-10-105(A), which creates a cause of action for any violation of Chapter 10 of Title 37. In order to establish a claim for unconscionable inducement under subsection (C), however, the Estate would have to show that Quicken Loans “knowingly” took advantage of Mrs. Wilson’s “physical or mental infirmities, ignorance, illiteracy, [or] inability to understand the language of the agreement.” S.C. Code Ann. §§ 37-10-105(C) & 37-5-108(4)(a)(iv). Indeed, the whole premise of the Estate’s subsection (C) claims are that Quicken Loans engaged in a deceptive “scheme” to mislead Mrs. Wilson about her rights and to steer business towards an alleged affiliate. (Second Am. Answer & Countercl. ¶¶ 35-49.)

The Estate’s claims under subsection (C) fall under the fraud and deceit exception to the survivor statute. See Ferguson, 349 S.C. at 565, 564 S.E.2d at 97 (holding statutory claims based on “intentionally deceptive actions or through grossly negligent disclosure practices” do not survive). Because these claims did not survive Mrs. Wilson’s death, summary judgment is proper.

**IV. The Estate's Motion for Partial Summary Judgment should be denied.**

The Estate's one-page motion states, in conclusory fashion, that the Loan is unconscionable. The motion does not explain why the Loan is allegedly unconscionable, and it does not state the relief that the Estate seeks. Therefore, the Estate's motion does not satisfy the notice requirements of Rule 7(b)(1), which states that all motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Rule 7(b), SCRPC. "By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly." Camp v. Camp, 386 S.C. 571, 576, 689, S.E.2d 634, 636 (2010). Because the Estate's motion does not comply with Rule 7(b)(1), it should be denied.

Moreover, as set forth above, the Estate's claims fail as a matter of law. Therefore, the Estate's Motion for Partial Summary Judgment should also be denied on the merits, and summary judgment should be entered in favor of Quicken Loans.

**CONCLUSION**

For the reasons set forth above, the Court should deny the Estate's Motion for Partial Summary Judgment and grant Quicken Loans Motion for Summary Judgment as to the Estate's counterclaims.

***[SIGNATURE ON FOLLOWING PAGE]***

Respectfully submitted,

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*Attorneys for Quicken Loans Inc.*

Columbia, South Carolina

March 8, 2016

# **EXHIBIT A**

## **11/7/11 LOAN APPLICATION**

Uniform Residential Loan Application PRELIMINARY 11/04/11

[illegible]

If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply for joint credit (sign below):

|                 |                 |          |
|-----------------|-----------------|----------|
| X. C. N. Wilson | X. E. N. Wilson | E. J. W. |
| C. N. Wilson    | E. N. Wilson    |          |

|                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                 |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Mortgage Applied for: <input type="checkbox"/> VA <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> Other (explain):<br><input type="checkbox"/> FHA <input type="checkbox"/> USDA/Rural Housing Service                                      |  | Agency Case Number: _____<br>Lender Case Number: _____                                                                                                                          |  |
| Amount: \$ 126,200.00<br>Interest Rate: 3.990%<br>No. of Payments: 180<br>Amortization Type: <input checked="" type="checkbox"/> Fixed Rate <input type="checkbox"/> Other (explain):<br><input type="checkbox"/> ARM (type): _____                                   |  | Date: 1/19/92                                                                                                                                                                   |  |
| Subject Property Address (street, city, state & ZIP):<br>12640 Main St, Hilliston, SC 29853<br>Berklell County Year Built: 1950                                                                                                                                       |  |                                                                                                                                                                                 |  |
| Legal Description of Subject Property (attach description if necessary):<br>_____                                                                                                                                                                                     |  |                                                                                                                                                                                 |  |
| Purpose of Loan: <input checked="" type="checkbox"/> Purchase <input type="checkbox"/> Construction <input type="checkbox"/> Other (explain):<br><input checked="" type="checkbox"/> Refinance <input type="checkbox"/> Consolidation/Permanent                       |  | Property will be for: <input checked="" type="checkbox"/> Primary Residence <input type="checkbox"/> Secondary Residence <input type="checkbox"/> Investment                    |  |
| Complete this line if construction or construction-permanent loan.<br>Year Let: Original Cost: \$ _____ Amount Existing Loans: \$ _____ (a) Present Value of Lot: \$ _____ (b) Cost of Improvements: \$ _____ Total (a + b): \$ _____                                 |  |                                                                                                                                                                                 |  |
| Complete this line if this is a refinance loan.<br>Year: Original Cost: \$ _____ Amount Existing Loans: \$ _____ Purpose of Refinance: <input type="checkbox"/> To make <input type="checkbox"/> To be made                                                           |  |                                                                                                                                                                                 |  |
| 1995 \$ 60,000.00 \$ 126,200.00 Cash Out: \$ _____                                                                                                                                                                                                                    |  |                                                                                                                                                                                 |  |
| Title will be held in trust Name(s):<br>Calvin O. Wilson, Jr. Ezekiel T. Wilson                                                                                                                                                                                       |  | Manager in which title will be held:<br>JNEFOS                                                                                                                                  |  |
| Source of Down Payment, Settlement Charges, and/or Subordinate Financing (explain):<br>_____                                                                                                                                                                          |  | Estate will be held in: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Life Estate <input type="checkbox"/> Leasehold                                  |  |
| BORROWER INFORMATION                                                                                                                                                                                                                                                  |  |                                                                                                                                                                                 |  |
| Borrower's Name (include Jr. or Sr. if applicable):<br>Calvin O. Wilson, Jr.                                                                                                                                                                                          |  | Co-Borrower's Name (include Jr. or Sr. if applicable):<br>Ezekiel T. Wilson                                                                                                     |  |
| Social Security Number: _____ Home Phone (incl. area code): _____ DOB (mm/dd/yyyy): _____ Yr. School: _____                                                                                                                                                           |  | Social Security Number: _____ Home Phone (incl. area code): _____ DOB (mm/dd/yyyy): _____ Yr. School: _____                                                                     |  |
| <input checked="" type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed, separated)<br><input type="checkbox"/> Separated                                                                                                   |  | <input checked="" type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed, separated)<br><input type="checkbox"/> Separated             |  |
| Present Address (street, city, state, ZIP): <input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent _____ 16 _____ No. Yrs.:<br>12640 Main St Hilliston, SC 29853                                                                                       |  | Present Address (street, city, state, ZIP): <input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent _____ 16 _____ No. Yrs.:<br>12640 Main St Hilliston, SC 29853 |  |
| Mailing Address, if different from Present Address: _____                                                                                                                                                                                                             |  | Mailing Address, if different from Present Address: _____                                                                                                                       |  |
| If residing at present address for less than two years, complete the following:<br>Former Address (street, city, state, ZIP): <input type="checkbox"/> Own <input type="checkbox"/> Rent _____ No. Yrs.: _____                                                        |  |                                                                                                                                                                                 |  |
| Former Address (street, city, state, ZIP): <input type="checkbox"/> Own <input type="checkbox"/> Rent _____ No. Yrs.: _____                                                                                                                                           |  |                                                                                                                                                                                 |  |
| EMPLOYMENT INFORMATION                                                                                                                                                                                                                                                |  |                                                                                                                                                                                 |  |
| Name & Address of Employer: _____ Self Employed: <input type="checkbox"/> Yes, on this job: _____<br>Yes, employer in this line of work/profession: _____                                                                                                             |  | Name & Address of Employer: _____ Self Employed: <input type="checkbox"/> Yes, on this job: _____<br>Yes, employer in this line of work/profession: _____                       |  |
| Position/Title/Type of Business: _____ Business Phone (incl. area code): _____                                                                                                                                                                                        |  | Position/Title/Type of Business: _____ Business Phone (incl. area code): _____                                                                                                  |  |
| If employed in current position for less than two years or if currently employed in more than one position, complete the following:<br>Name & Address of Employer: _____ Self Employed: <input type="checkbox"/> Dates (from - to): _____<br>Monthly Income: \$ _____ |  |                                                                                                                                                                                 |  |
| Name & Address of Employer: _____ Self Employed: <input type="checkbox"/> Dates (from - to): _____<br>Monthly Income: \$ _____                                                                                                                                        |  | Name & Address of Employer: _____ Self Employed: <input type="checkbox"/> Dates (from - to): _____<br>Monthly Income: \$ _____                                                  |  |
| Position/Title/Type of Business: _____ Business Phone (incl. area code): _____                                                                                                                                                                                        |  | Position/Title/Type of Business: _____ Business Phone (incl. area code): _____                                                                                                  |  |
| Name & Address of Employer: _____ Self Employed: <input type="checkbox"/> Dates (from - to): _____<br>Monthly Income: \$ _____                                                                                                                                        |  | Name & Address of Employer: _____ Self Employed: <input type="checkbox"/> Dates (from - to): _____<br>Monthly Income: \$ _____                                                  |  |
| Position/Title/Type of Business: _____ Business Phone (incl. area code): _____                                                                                                                                                                                        |  | Position/Title/Type of Business: _____ Business Phone (incl. area code): _____                                                                                                  |  |

Uniform Residential Loan Application  
Fannie Mae eForm 1003  
WFO 60100001  
WFO 60100001  
2279146759



FD-302 (Rev. 10-6-95)  
Page 1 of 4

QL(Wilson)\_0058

**ROA 0341**





|                                                                                                                                                  |               |                |            |          |                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------|------------|----------|----------------------|
|                                                                                                                                                  | 100%          | 213,000,00     | 299,000,00 | <b>V</b> | <b>Creditor Name</b> |
| <b>List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s)</b> |               |                |            |          |                      |
|                                                                                                                                                  | Creditor Name | Account Number |            |          |                      |

[illegible][illegible]

Uniform Residential Loan Application  
Fannie Mae/Freddie Mac  
VAIP ©  
Wells Fargo Financial Services

Fannie Mae Form 1003 7/05 (Rev. 6/09)  
Freddie Mac Form 85 7/05 (Rev. 6/09)  
VALP 21H 10/30/00  
Form 30

OL(Wilson) 0060

**ROA 0343**

CONTINUATION SHEET RESIDENTIAL LOAN APPLICATION

|                                                                                                                                           |                                                                    |                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------|
| Use the continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower. | Borrower:<br>Calvin O. Wilson<br>Co-Borrower:<br>Ezekiel T. Wilson | Agency Case Number:<br><br>Lender Case Number:<br>4992 |
|-------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------|

--- Borrower Preferences ---

Legal Counsel: \_\_\_\_\_

Insurance Agent: \_\_\_\_\_

--- Stocks and Bonds ---

--- Co-Borrower's Other Income ---

Social Security \$891.00

\$0.00  
\$0.00

I/We fully understand that it is a Federal offense punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts. As provided under the provisions of Title 18, United States Code, Section 1001, et seq.

|                                    |                 |                                              |                 |
|------------------------------------|-----------------|----------------------------------------------|-----------------|
| Borrower's Signature<br>C O Wilson | Date<br>11-7-11 | Co-Borrower's Signature<br>Ezekiel T. Wilson | Date<br>11-7-11 |
|------------------------------------|-----------------|----------------------------------------------|-----------------|

Uniform Residential Loan Application  
Fannie Mae Form 1003  
VAP ©  
Violates Rules of Fannie Mae Servicing



Partially Mailed Form 1003 700  
Federal Mortgage Lender  
2002-2011 (09/11/11)  
Page 4 of 4

QL(Wilson)\_0061

ROA\_0344

**EXHIBIT B**

**AIP CHECKLIST**

| ATTORNEY/INSURANCE PREFERENCE CHECK LIST                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                       |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------|--|
| Borrower Name(s):<br>Calvin O. Wilson, Jr.<br>Ezekiel T. Wilson                                                                                                                                                                                                                                                                                                                                                            |  | Lender:<br>Quicken Loans Inc.<br>Company: NMLS#: 3030 |  |
| Property Address:<br>12640 Main St<br>Williston, SC 29853                                                                                                                                                                                                                                                                                                                                                                  |  | Date:<br>November 4, 2011                             |  |
| <p>1. I (We) have been informed by the lender that I (we) have a right to select legal counsel to represent me(us) in all matters of this transaction relating to the closing of the loan.</p> <p>(a) I select I/We will not use the services of legal counsel.</p> <p><i>C. O. Wilson Jr. 11-7-11</i> <i>Ezekiel T. Wilson 11-7-11</i></p> <p>Borrower: Calvin O. Wilson, Jr. Date: Borrower: Ezekiel T. Wilson Date:</p> |  |                                                       |  |
| Borrower                                                                                                                                                                                                                                                                                                                                                                                                                   |  | Date: Borrower                                        |  |
| Date:                                                                                                                                                                                                                                                                                                                                                                                                                      |  | Borrower                                              |  |
| <p>(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of acceptable attorneys. From that list I select:</p> <p><u>Not Applicable</u> <u>Not Applicable</u></p> <p>Borrower Date: Borrower Date:</p> <p><u>Not Applicable</u> <u>Not Applicable</u></p> <p>Borrower Date: Borrower Date:</p>                                               |  |                                                       |  |
| <p>2. I (We) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required Homeowner's Insurance in connection with this mortgage transaction.</p> <p>(a) I select State Farm</p> <p><i>C. O. Wilson Jr. 11-7-11</i> <i>Ezekiel T. Wilson 11-7-11</i></p> <p>Borrower: Calvin O. Wilson, Jr. Date: Borrower: Ezekiel T. Wilson Date:</p>                                      |  |                                                       |  |
| Borrower                                                                                                                                                                                                                                                                                                                                                                                                                   |  | Date: Borrower                                        |  |
| Date:                                                                                                                                                                                                                                                                                                                                                                                                                      |  | Borrower                                              |  |
| <p>(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of qualified agents. From that list I select:</p> <p><u>Not Applicable</u> <u>Not Applicable</u></p> <p>Borrower Date: Borrower Date:</p> <p><u>Not Applicable</u> <u>Not Applicable</u></p> <p>Borrower Date: Borrower Date:</p>                                                   |  |                                                       |  |
| Borrower                                                                                                                                                                                                                                                                                                                                                                                                                   |  | Date: Borrower                                        |  |
| Date:                                                                                                                                                                                                                                                                                                                                                                                                                      |  | Borrower                                              |  |

2279146783

VMP MORTGAGE FORMS - (800) 621-7291

9/96



QL(Wilson)\_0057

# **EXHIBIT C**

## **NOTE**

MERS MIN: [REDACTED]  
Company NMLS#: 3030

## NOTE

[REDACTED] 4992  
Wilson, Calvin

December 14, 2011  
[Date]

Williston  
[City]

SC  
[State]

12640 Main St  
Williston, SC 29853  
[Property Address]

### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 126,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Quicken Loans Inc.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

### 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 3.990%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

### 3. PAYMENTS

#### (A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on February 1, 2012. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on January 1, 2027, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 6577, Carol Stream, IL 60197  
or at a different place if required by the Note Holder.

#### (B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 931.38

### 4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
VAP ©  
Wilson River Financial Services  
2291519098



Form 3200 U01  
VAP/SH (0803) 03  
Page 1 of 3  
Initials: C. D. 12/14/11  
ETW

QL(Wilson)\_0560

ROA\_0348

#### 5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

#### 6. BORROWER'S FAILURE TO PAY AS REQUIRED

##### (A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

##### (B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

##### (C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

##### (D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

##### (E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

#### 7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

#### 8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

#### 9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

MULTISTATE FIXED RATE NOTE - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
VAMP ©  
Wolfskill/Kaiser Financial Services

Form 9200 (01)  
VAMP (0003) 00  
Page 2 of 3  
Initials: EFW  
COW



QL(Wilson)\_0561

ROA\_0349

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Calvin O. Wilson, Jr. 12/14/2011 (Seal)  
Calvin O. Wilson, Jr. -Borrower

Ezekiel T. Wilson 12/14/2011 (Seal)  
Ezekiel T. Wilson -Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

[Sign Original Only]

MULTISTATE FIXED RATE NOTE - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
VAP ©  
Volters Kluwer Financial Services

QBAJ Form 3200 1/01  
Initials: ETW VAPB11 (0803) 00  
Page 3 of 3



QL(Wilson)\_0562

ROA\_0350



**EXHIBIT D**

**MORTGAGE**

*Prepared by hand*  
Return To:  
Document Management  
Quicken Loans Inc.  
1050 Woodward Ave  
Detroit, MI 48226-1906

CONFIDENTIAL

Prepared By:  
Heather Tabor

56124738-1137857 [Space Above This Line For Recording Data] 4992  
Company NMLS#: 3030 MORTGAGE  
MIN 49928

#### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated December 14, 2011 together with all Riders to this document.  
(B) "Borrower" is Calvin O. Wilson, Jr. and Ezekiel T. Wilson, husband and wife

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flat, MI 48501-2026, tel. (888) 679-MERS.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3041 1/01

2291519107  
MERS (80) (0011)

Page 1 of 18

YIP Mortgage Solutions, Inc.

*Cow*  
*Ex-11*



QI.(Wilson)\_0522

ROA\_0352

(D) "Lender" is Quicken Loans Inc.

Lender is a Corporation  
organized and existing under the laws of the State of Michigan  
Lender's address is 1050 Woodward Ave, Detroit, MI 48226-1906

(E) "Note" means the promissory note signed by Borrower and dated December 14, 2011.  
The Note states that Borrower owes Lender One Hundred Twenty Six Thousand and 00/100 Dollars

(U.S. \$ 126,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2027

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

|                                                |                                                         |                                                                          |
|------------------------------------------------|---------------------------------------------------------|--------------------------------------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider                               |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider                                |
| <input type="checkbox"/> VA Rider              | <input type="checkbox"/> Biweekly Payment Rider         | <input checked="" type="checkbox"/> Other(s) [specify]<br>Legal Attached |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

SA(SF) (0411)

Page 2 of 15

Initials: Law

Form 3041 1/01

ETW



QL(Wilson)\_0523

ROA\_0353

In this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender; (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County of Barnwell

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.  
SUBJECT TO COVENANTS OF RECORD.

Parcel ID Number: 047-07-08-001 which currently has the address of  
12640 Main St [Street]  
Williston (City), South Carolina 29853 [Zip Code]  
("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

SD-BA(BC) (0311)

Page 3 of 16

Initials: COW

Form 3041 1/01

erw



QL(Wilson)\_0524

ROA\_0354

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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In writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fees, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repair and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - If any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"); (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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Notarized

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21, Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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Initials: Cow

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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Initials:

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Calvin Olin Wilson  
CALVIN OLIN WILSON JR  
WITNESS

Calvin O. Wilson 12/14/2011 (Seal)  
Calvin O. Wilson, Jr. -Borrower

Ezekiel T. Wilson  
Ezekiel T. Wilson

Ezekiel T. Wilson 12/14/2011 (Seal)  
Ezekiel T. Wilson -Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS  
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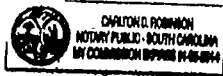
STATE OF SOUTH CAROLINA Barnwell

I, Calvin O. Wilson, Jr. and Ezekiel T. Wilson, husband and wife

County ss:  
do hereby certify that

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 14th day of December, 2011



Carlton D. Robinson  
Notary Public for South Carolina

My Commission Expires: 11/28/2014

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS  
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EXHIBIT A - LEGAL DESCRIPTION

Tax Id Number(s): 047-07-08-001

Land Situated In the City of Williston In the County of Barnwell In the State of SC

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON THE NORTH SIDE OF THE SOUTHERN RAILWAY IN THE WILLISTON SCHOOL DISTRICT, TOWN OF WILLISTON, COUNTY OF BARNWELL, STATE OF SOUTH CAROLINA, CONTAINING TWO (2) ACRES, MORE OR LESS, AND HAVING THE FOLLOWING BOUNDARIES AND MEASUREMENTS, TO-WIT: ON THE NORTH BY DICKS STREET, AND MEASURING THEREON 150 FEET, MORE OR LESS, ON THE EAST BY LOT NOW OR FORMERLY OF G. E. CROUCH, ESTATE OF T. M. WILLIS AND LOT OF NEGRO LODGE, AND MEASURING THEREON 600 FEET, MORE OR LESS; ON THE SOUTH BY EAST MAIN STREET SEPARATING THIS LOT FROM RIGHT-OF-WAY OF SOUTHERN RAILWAY, AND MEASURING THEREON 150 FEET, MORE OR LESS; AND ON THE WEST BY MANSFIELD DRIVE, AND MEASURING THEREON 600 FEET, MORE OR LESS.

Being the same property conveyed to Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson, as joint tenants with rights of survivorship, and not as tenants in common by C.O. Wilson, by deed dated September 29, 1992 and recorded October 7, 1992 of record in Deed Book 205, Page 310, in the County Clerk's Office.

Commonly known as: 12640 Main Street, Williston, SC 29853

QL(Wilson)\_0537

**EXHIBIT E**

**PAYOFF STATEMENT**

708/██████████3953/XP521/1/4



December 19, 2011

877 495.1471  
Ivr

Mortgagor: Calvin O Wilson Jr  
Co-Mortgagor: Ezekiel T Wilson  
Property: 301 E Main Street  
Williston SC 29853

708 Loan Number: ██████████3953  
Loan Type: Conventional

Wells Fargo Home Mortgage recently received an inquiry regarding a payoff of your mortgage. Attached is the payoff statement for your review

The statement indicates your loan interest is calculated on a daily basis. We will collect interest until the day we receive the payoff funds.

Note: We will continue to make disbursements from your escrow account as bills become due. Questions about pending disbursements, please call us.

**BORROWER'S RESPONSIBILITIES:** Please take care of these important items

- \* If you're planning to move, be sure to provide us with your new mailing address on the enclosed Payoff Coupon. We'll send you any remaining balance in your escrow account, year-end interest statements and other documents to your new address.
- \* If your payments are automatically withdrawn by us, please cancel at least 5 business days before your next scheduled withdrawal.
- \* Please do not place a stop payment on any mortgage payment check or electronic withdrawal already made. We'll refund any remaining account balance to you. Figures may be adjusted if a previously credited mortgage payment is rejected by the institution from which it is drawn

If you have questions or need further assistance, please contact us at 1-866-234-8271, Monday - Friday, 6:00 a.m. to 10:00 p.m.; or Saturday, 8:00 a.m. to 2:00 p.m. Central Time.

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708/3953/XP522/2/4/0000009995278

December 19, 2011

Page 2 - 708 Loan Number 3953

877 495 1471

Ivr

Mortgagor: Calvin O Wilson Jr  
Co-Mortgagor: Ezekiel T Wilson  
Property: 301 E Main Street  
Williston SC 29853

708 Loan Number: 3953  
Loan Type: Conventional

The figures in this statement are based on the payoff date provided to us. You must verify all figures 24 hours prior to payoff by calling us and selecting the appropriate payoff quote options. All figures are subject to final verification by the noteholder. Payoff funds must be made by wire, cashier's check or certified funds.

1. TOTAL PRINCIPAL, INTEREST AND OTHER AMOUNTS DUE UNDER NOTE/SECURITY INSTRUMENT

Note: This Note/Security Instrument is due for payment January 01, 2012

Unpaid Principal Balance \$ 99,545.28

Interest at 6.37500% from 12-01-11 to 12-23-11 382.50

TOTAL AMOUNT DUE UNDER NOTE/SECURITY INSTRUMENT \$ 99,927.78

2. ADDITIONAL CONTRACTUAL AND OTHER FEES AND CHARGES DUE

Recording Costs 5.00

Fax Fee 20.00

Property Inspection .00

Obligation Fee .00

Buydown/Corp Subsidy .00

Special Handling .00

TOTAL CONTRACTUAL AND OTHER FEES AND CHARGES DUE \$ 25.00

TOTAL AMOUNT DUE until 12-23-11 \$ 99,952.78

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708/3953/XP522/3/4/0000009995278  
December 19, 2011 Page 3 - 708 Loan Number 3953

**Timing of Loan Payoff:**

The figures are accurate until 12-23-11, or until any activity occurs on the account. Funds received after that date will be subject to an additional \$ 17.39 of interest per Day. If the payoff is made 15 days beyond the current payment due date, a late charge of \$ 33.69 will be assessed and should be added to the total amount due figure.

We may adjust figures in this statement if

- Additional mortgage insurance premiums become due, based on payoff date
- Escrow disbursements occur that require additional funds to payoff
- Any check/electronic withdrawal previously credited is rejected by the financial institution from which it is drawn.

**Recent Escrow Disbursement Amounts & Dates:**

|                      |    |          |          |
|----------------------|----|----------|----------|
| Taxes                | \$ | 553.43   | 12-07-11 |
| Homeowners Insurance | \$ | 1,069.00 | 05-27-11 |

**Important Information:**

- \* If you do not send sufficient funds to pay your mortgage loan in full, we may apply funds from your escrow account to complete the payoff.
- \* We must receive funds to cover any payoff shortage on the following business day. Interest will continue to accrue until we receive full payment.
- \* In order to record the payoff of this loan with your county, any funds previously received may not be rejected by the financial institution from which they are drawn.

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708/3953/XP523/4/4/0000009995278  
December 19, 2011 Page 4 - 708 Loan Number 3953

PAYOFF TRANSMITTAL FORM

Mortgagor: Calvin O Wilson Jr  
Co-Mortgagor: Ezekiel T Wilson  
Property: 301 E Main Street  
Williston SC 29853

708 Loan Number: 3953

WHERE TO SEND PAYOFF FUNDS

By Wire:  
Wells Fargo Bank, N.A.  
Beneficiary Bank ABA: 0248  
San Francisco, CA  
Beneficiary Bank Acct: 0093  
Special Information for Beneficiary:  
Apply funds to: 708 loan 3953  
Mortgagor: Calvin O Wilson Jr  
Sender's Name and Phone Number

By Overnight:  
Wells Fargo Home Mortgage  
Attn: Payoffs, MAC X2302-045  
1 Home Campus  
Des Moines IA 50328

Important Notes:

- We must receive your funds by 2:00 p.m. Central Time for same day processing.
- Payoffs are not posted on weekends or holidays and interest will be added to the account for these days.
- Funds must be made by wire, cashier's check or certified funds
- All figures are subject to final verification by the noteholder
- If you wired funds and your mailing address is changing, please write your new address below and fax this form to 1-866-278-1179.

Please detach and include with payoff funds.

PAYOFF COUPON

708 Loan No: 3953  
Property: 301 E Main Street  
Williston SC 29853

Current mailing address:  
Calvin O Wilson Jr  
Ezekiel T Wilson  
PO Box 411  
Williston SC 29853

NEW mailing address:

Street \_\_\_\_\_

City/State/ZIP \_\_\_\_\_

TOTAL PAYOFF AMOUNT: \$ 99,952.78

THIS FIGURE IS ACCURATE UNTIL 12-23-11

AMOUNT REMITTED \_\_\_\_\_

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**EXHIBIT F**

**SETTLEMENT STATEMENT**



## A. Settlement Statement (HUD-1)

OMB Approval No. 2502-0265

|                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                       |                 |                                                                                                                              |                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> RHS 3. <input checked="" type="checkbox"/> Conv. Unins.                                                                                                                                                                  |  |                                                                                                                                                                       | 6. File Number: | 7. Loan Number:                                                                                                              | 8. Mortgage Insurance Case Number: |
| 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> Conv. Ins.                                                                                                                                                                                                                |  |                                                                                                                                                                       |                 | 4992                                                                                                                         |                                    |
| C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.o.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals. |  |                                                                                                                                                                       |                 |                                                                                                                              |                                    |
| D. Name & Address of Borrower:<br>Calvin O. Wilson, Jr.<br>Ezekiel T. Wilson<br><br>P.O. Box 411<br>Williston, SC 29853                                                                                                                                                              |  | E. Name & Address of Seller:                                                                                                                                          |                 | F. Name & Address of Lender:<br>Quicken Loans Inc.<br>Company #HLSF: 3030<br><br>1050 Woodward Ave<br>Detroit, MI 48226-1906 |                                    |
| G. Property Location:<br>12640 Main St<br>Williston, SC 29853                                                                                                                                                                                                                        |  | H. Settlement Agent:<br>Title Source, Inc.<br>1450 West Long Lake Road #400, Troy, MI<br>(248)312-1200<br>Place of Settlement:<br>12640 Main St., Williston, SC 29853 |                 | I. Settlement Date:<br>December 14, 2011<br>Disbursement Date: 12/19/11                                                      |                                    |

|                                                                                         |              |                                                                            |  |
|-----------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------|--|
| Summary of Borrower's Transaction                                                       |              | Summary of Seller's Transaction                                            |  |
| 100. Gross Amount Due from Borrower                                                     |              | 400. Gross Amount Due to Seller                                            |  |
| 101. Contract sales price                                                               |              | 401. Contract sales price                                                  |  |
| 102. Personal property                                                                  |              | 402. Personal property                                                     |  |
| 103. Settlement charges to borrower (line 1400)                                         | \$3,692.02   | 403.                                                                       |  |
| 104. WELLS FARGO HH MORTGAGE                                                            | \$100,633.39 | 404.                                                                       |  |
| 105. Please see page 5 for additional items                                             | \$8,095.93   | 405.                                                                       |  |
| Adjustment for items paid by seller in advance                                          |              | Adjustments for items paid by seller in advance                            |  |
| 106. City/town taxes to                                                                 |              | 406. City/town taxes to                                                    |  |
| 107. County taxes to                                                                    |              | 407. County taxes to                                                       |  |
| 108. Assessments to                                                                     |              | 408. Assessments to                                                        |  |
| 109.                                                                                    |              | 409.                                                                       |  |
| 110.                                                                                    |              | 410.                                                                       |  |
| 111.                                                                                    |              | 411.                                                                       |  |
| 112.                                                                                    |              | 412.                                                                       |  |
| 120. Gross Amount Due from Borrower                                                     | \$112,321.34 | 420. Gross Amount Due to Seller                                            |  |
| 200. Amounts Paid by or in Behalf of Borrower                                           |              | 600. Reductions in Amount Due to Seller                                    |  |
| 201. Deposit or earnest money                                                           |              | 601. Excess deposit (see instructions)                                     |  |
| 202. Principal amount of new loan(s)                                                    | \$126,000.00 | 602. Settlement charges to seller (line 1400)                              |  |
| 203. Existing loan(s) taken subject to                                                  |              | 603. Existing loan(s) taken subject to                                     |  |
| 204. Good Faith Deposit to Quicken Loans Inc.                                           | \$500.00     | 604. Payoff of first mortgage loan                                         |  |
| 205.                                                                                    |              | 605. Payoff of second mortgage loan                                        |  |
| 206.                                                                                    |              | 606.                                                                       |  |
| 207.                                                                                    |              | 607.                                                                       |  |
| 208.                                                                                    |              | 608.                                                                       |  |
| 209.                                                                                    |              | 609.                                                                       |  |
| Adjustments for items unpaid by seller                                                  |              | Adjustments for items unpaid by seller                                     |  |
| 210. City/town taxes to                                                                 |              | 610. City/town taxes to                                                    |  |
| 211. County taxes to                                                                    |              | 611. County taxes to                                                       |  |
| 212. Assessments to                                                                     |              | 612. Assessments to                                                        |  |
| 213.                                                                                    |              | 613.                                                                       |  |
| 214.                                                                                    |              | 614.                                                                       |  |
| 215.                                                                                    |              | 615.                                                                       |  |
| 216.                                                                                    |              | 616.                                                                       |  |
| 217.                                                                                    |              | 617.                                                                       |  |
| 218.                                                                                    |              | 618.                                                                       |  |
| 219.                                                                                    |              | 619.                                                                       |  |
| 220. Total Paid by/for Borrower                                                         | \$126,500.00 | 620. Total Reduction Amount Due Seller                                     |  |
| 300. Cash at Settlement from/to Borrower                                                |              | 600. Cash at Settlement to/from Seller                                     |  |
| 301. Gross amount due from borrower (line 120)                                          | \$112,321.34 | 601. Gross amount due to seller (line 420)                                 |  |
| 302. Loss amounts paid by/for borrower (line 220)                                       | \$126,500.00 | 602. Less reductions in amount due seller (line 620)                       |  |
| 303. Cash <input type="checkbox"/> From <input checked="" type="checkbox"/> To Borrower | \$14,178.66  | 603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller |  |

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

Settlement Statement  
Voluntary Home Financial Services

VMP 0

Previous editions are obsolete

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HUD-1 (11/1708)  
VMP01FA (0903)00

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| L. Settlement Charges                                                                    |                                         |               |            | Paid From<br>Borrower's<br>Funds at<br>Settlement | Paid From<br>Seller's<br>Funds at<br>Settlement |
|------------------------------------------------------------------------------------------|-----------------------------------------|---------------|------------|---------------------------------------------------|-------------------------------------------------|
| <b>700. Total Real Estate Broker Fees</b>                                                |                                         |               |            |                                                   |                                                 |
| Division of commission (line 700) as follows:                                            |                                         |               |            |                                                   |                                                 |
| 701. \$                                                                                  | to                                      |               |            |                                                   |                                                 |
| 702. \$                                                                                  | to                                      |               |            |                                                   |                                                 |
| 703. Commission paid at settlement                                                       |                                         |               |            |                                                   |                                                 |
| 704.                                                                                     |                                         |               |            |                                                   |                                                 |
| <b>800. Items Payable in Connection with Loan</b>                                        |                                         |               |            |                                                   |                                                 |
| 801. Our origination charge                                                              | \$ 1,045.00                             | (from GFE #1) |            |                                                   |                                                 |
| 802. Your credit or charge (points) for the specific interest rate chosen                | \$ 157.50                               | (from GFE #2) |            |                                                   |                                                 |
| 803. Your adjusted origination charges                                                   |                                         | (from GFE A)  | \$1,202.50 |                                                   |                                                 |
| 804. Appraisal fee to TSI Appraisal Services                                             |                                         | (from GFE #3) | \$430.00   |                                                   |                                                 |
| 805. Credit report to                                                                    |                                         | (from GFE #3) | \$17.80    |                                                   |                                                 |
| 806. Tax service to First American Real Estate Tax Service                               |                                         | (from GFE #3) | \$60.00    |                                                   |                                                 |
| 807. Flood certification CoreLogic Flood Services                                        |                                         | (from GFE #3) | \$5.00     |                                                   |                                                 |
| 805a. Credit Report CredStar                                                             | 9.55                                    |               |            |                                                   |                                                 |
| 808. Flood Determination Fee CoreLogic Flood Services                                    |                                         |               | \$10.50    |                                                   |                                                 |
| 812. Tax Certification Fee Title Source, Inc.                                            |                                         |               | \$18.00    |                                                   |                                                 |
| 819. Credit Monitoring Service Equifax Information Services, LLC                         | 8.25                                    |               |            |                                                   |                                                 |
| <b>900. Items Required by Lender to Be Paid in Advance</b>                               |                                         |               |            |                                                   |                                                 |
| 901. Daily interest charges from 12/19/11 to 01/01/12 @ \$13.97 /day                     | (from GFE #10)                          |               | \$181.61   |                                                   |                                                 |
| 902. Mortgage insurance premium for months to                                            | (from GFE #3)                           |               |            |                                                   |                                                 |
| 903. Homeowner's insurance for years to                                                  | (from GFE #11)                          |               |            |                                                   |                                                 |
| 904. Homeowners Insurance Premium Previously Paid:                                       | \$1,069.00                              |               |            |                                                   |                                                 |
| 905.                                                                                     |                                         |               |            |                                                   |                                                 |
| <b>1000. Reserves Deposited with Lender</b>                                              |                                         |               |            |                                                   |                                                 |
| 1001. Initial deposit for your escrow account                                            | (from GFE #9)                           |               | \$663.41   |                                                   |                                                 |
| 1002. Homeowner's insurance                                                              | 9 months @ \$ 89.08 per month \$ 801.72 |               |            |                                                   |                                                 |
| 1003. Mortgage insurance                                                                 | months @ \$ per month \$                |               |            |                                                   |                                                 |
| 1004. Property taxes BARRELL COUNTY                                                      | 4 months @ \$ 46.12 per month \$ 184.48 |               |            |                                                   |                                                 |
| 1005.                                                                                    | months @ \$ per month \$                |               |            |                                                   |                                                 |
| 1006.                                                                                    | months @ \$ per month \$                |               |            |                                                   |                                                 |
| 1007.                                                                                    | months @ \$ per month \$                |               |            |                                                   |                                                 |
| 1008.                                                                                    | months @ \$ per month \$                |               |            |                                                   |                                                 |
| 1009.                                                                                    | months @ \$ per month \$                |               |            |                                                   |                                                 |
| 1009.                                                                                    | months @ \$ per month \$                |               |            |                                                   |                                                 |
| 1010. Aggregate Adjustment                                                               | \$ -322.79                              |               |            |                                                   |                                                 |
| <b>1100. Title Charges</b>                                                               |                                         |               |            |                                                   |                                                 |
| 1101. Title services and lender's title insurance                                        | (from GFE #4)                           |               | \$981.20   |                                                   |                                                 |
| 1102. Settlement or closing fee Title Source, Inc.                                       | \$ 625.00                               |               |            |                                                   |                                                 |
| 1103. Owner's title insurance                                                            | (from GFE #5)                           |               |            |                                                   |                                                 |
| 1104. Lender's title insurance                                                           | \$ 211.20                               |               |            |                                                   |                                                 |
| 1105. Lender's title policy limit \$                                                     | 126,000.00                              |               |            |                                                   |                                                 |
| 1106. Owner's title policy limit \$                                                      |                                         |               |            |                                                   |                                                 |
| 1107. Agent's portion of the total title insurance premium                               | \$ 156.72                               |               |            |                                                   |                                                 |
| 1108. Underwriter's portion of the total title insurance premium                         | \$ 104.48                               |               |            |                                                   |                                                 |
| 1109. Abstract or Title Search TITLE SOURCE, INC.                                        | \$150.00                                |               |            |                                                   |                                                 |
| 1131. ALTA 9 Restrictions, Encroachments, Minerals TITLE SOURCE, INC.                    | \$50.00                                 |               |            |                                                   |                                                 |
| 1137. Express Mail/Courier Fee                                                           | \$45.00                                 |               |            |                                                   |                                                 |
| <b>1200. Government Recording and Transfer Charges</b>                                   |                                         |               |            |                                                   |                                                 |
| 1201. Government recording charges                                                       | (from GFE #7)                           |               | \$22.00    |                                                   |                                                 |
| 1202. Deed \$ Mortgage \$ 22.00 Releases \$                                              |                                         |               |            |                                                   |                                                 |
| 1203. Transfer taxes                                                                     | (from GFE #8)                           |               |            |                                                   |                                                 |
| 1204. City/County tax/stamps Deed \$ Mortgage \$                                         |                                         |               |            |                                                   |                                                 |
| 1205. State tax/stamps Deed \$ Mortgage \$                                               |                                         |               |            |                                                   |                                                 |
| <b>1300. Additional Settlement Charges</b>                                               |                                         |               |            |                                                   |                                                 |
| 1301. Required services that you can shop for                                            | (from GFE #6)                           |               |            |                                                   |                                                 |
|                                                                                          | \$                                      |               |            |                                                   |                                                 |
|                                                                                          | \$                                      |               |            |                                                   |                                                 |
|                                                                                          | \$                                      |               |            |                                                   |                                                 |
|                                                                                          | \$                                      |               |            |                                                   |                                                 |
|                                                                                          | \$                                      |               |            |                                                   |                                                 |
|                                                                                          | \$                                      |               |            |                                                   |                                                 |
|                                                                                          | \$                                      |               |            |                                                   |                                                 |
|                                                                                          | \$                                      |               |            |                                                   |                                                 |
| <b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b> |                                         |               | \$3,592.02 |                                                   |                                                 |



| Comparison of Good Faith Estimate (GFE) and HUD-1 Charges            |                   | Good Faith Estimate | HUD-1      |
|----------------------------------------------------------------------|-------------------|---------------------|------------|
| Charges That Cannot Increase                                         |                   |                     |            |
|                                                                      | HUD-1 Line Number |                     |            |
| Our origination charge                                               | #801              | \$1,045.00          | \$1,045.00 |
| Your credit or charge (points) for the specific interest rate chosen | #802              | \$785.63            | \$157.50   |
| Your adjusted origination charges                                    | #803              | \$1,830.63          | \$1,202.50 |
| Transfer taxes                                                       | #1203             | \$0.00              | \$0.00     |

| Charges That in Total Cannot Increase More Than 10% |       | Good Faith Estimate | HUD-1    |
|-----------------------------------------------------|-------|---------------------|----------|
| Government recording charges                        | #1201 | \$22.00             | \$22.00  |
| Title services and lender's title insurance         | #1101 | \$981.20            | \$981.20 |
| Appraisal Fee                                       | #804  | \$430.00            | \$430.00 |
| Credit Report                                       | #805  | \$17.80             | \$17.80  |
| Life of Loan Tax Service                            | #806  | \$60.00             | \$60.00  |
| Flood Life of Loan Coverage                         | #807  | \$5.00              | \$5.00   |
| Flood Determination Fee                             | #808  | \$10.50             | \$10.50  |
| Tax Certification Fee                               | #812  | \$18.00             | \$18.00  |
|                                                     | #     |                     |          |
|                                                     | #     |                     |          |
|                                                     | #     |                     |          |

|                                        |            |            |
|----------------------------------------|------------|------------|
| Total                                  | \$1,544.50 | \$1,544.50 |
| Increase between GFE and HUD-1 Charges | \$         | or %       |

| Charges That Can Change                 |                    | Good Faith Estimate | HUD-1    |
|-----------------------------------------|--------------------|---------------------|----------|
| Initial deposit for your escrow account | #1001              | \$813.94            | \$663.41 |
| Daily interest charges                  | #901 \$ 13.97 /day | \$279.40            | \$181.61 |
| Homeowner's Insurance                   | #903               |                     |          |
|                                         | #                  |                     |          |
|                                         | #                  |                     |          |
|                                         | #                  |                     |          |
|                                         | #                  |                     |          |

#### Loan Terms

|                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Your initial loan amount is                                                                                           | \$ 126,000.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Your loan term is                                                                                                     | 15 years                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Your initial interest rate is                                                                                         | 3.9900 %                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Your initial monthly amount owed for principal, interest, and any mortgage insurance is                               | \$ 931.38 Includes<br><input checked="" type="checkbox"/> Principal<br><input checked="" type="checkbox"/> Interest<br><input type="checkbox"/> Mortgage Insurance                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Can your interest rate rise?                                                                                          | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of % The first change will be on and can change again every after<br>Every change date, your interest rate can increase or decrease by % Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %                                                                                                                                                                                                                                                                               |
| Even if you make payments on time, can your loan balance rise?                                                        | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise? | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, the first increase can be on and the monthly amount owed can rise to \$ The maximum it can ever rise to is \$                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Does your loan have a prepayment penalty?                                                                             | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, your maximum prepayment penalty is \$                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Does your loan have a balloon payment?                                                                                | <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years on                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Total monthly amount owed including escrow account payments                                                           | <input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself.<br><input checked="" type="checkbox"/> You have an additional monthly escrow payment of \$ 135.20 that results in a total initial monthly amount owed of \$ 1,066.58 This includes principal, interest, any mortgage insurance and any items checked below:<br><input checked="" type="checkbox"/> Property taxes <input checked="" type="checkbox"/> Homeowner's Insurance<br><input type="checkbox"/> Flood Insurance <input type="checkbox"/> |

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.



QL(Wilson)\_0502

ROA\_0376

Signatures

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower

Calvin O. Wilson, Jr. 12/14/2011  
Date

Ezekiel T. Wilson 12/14/2011  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent

Debra M. Miller 12/14/11  
Date  
Wells Source Inc

☐ Refer to the attached *Signature Addendum* for additional parties and signatures.



QL(Wilson)\_0503

ROA\_0377

### Parties (Continued)

Calvin O. Wilson, Jr.  
Ezekiel T. Wilson  
P.O. Box 411  
Williston, SC 29853

E. Name &amp; Address of Seller:

Title Source, Inc.  
1450 West Long Lake Road #400, Troy, MI 48068  
(248)312-1200

|                                              |                                    |
|----------------------------------------------|------------------------------------|
| <b>1. Settlement Date:</b> December 14, 2011 | <b>Disbursement Date:</b> 12/19/11 |
|----------------------------------------------|------------------------------------|

### L. Settlement Charges (Continued)

## Borrower

**Seller**

1. CAP ONE IIA
2. Current Taxes Due To BARNWELL COUNTY
3. Duplicate Bill Fee To BARNWELL COUNTY

\$7,542.00  
\$553.43  
\$0.60

Settlement Statement Supplement  
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VMIPO11VF (0908).00  
Page 1 of 2

**ROA 0378**

| Charges That In Total Cannot Increase More Than 10% (Continued) | Good Faith Estimate | HUD-1 |
|-----------------------------------------------------------------|---------------------|-------|
| #                                                               |                     |       |
| #                                                               |                     |       |
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| #                                                               |                     |       |
| #                                                               |                     |       |
| #                                                               |                     |       |

| Charges That Can Change (Continued) | Good Faith Estimate | HUD-1 |
|-------------------------------------|---------------------|-------|
| #                                   |                     |       |
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| #                                   |                     |       |

J. Summary of Borrower's Transaction (Continued from Page 5)

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

Settlement Statement Supplement  
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Page 2 of 2

QL(Wilson)\_0505

ROA\_0379

**EXHIBIT G**

**CLOSING ATTORNEY STATEMENT**

1992

## CLOSING ATTORNEY'S STATEMENT

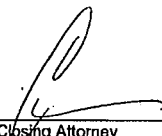
**Borrower(s):** Calvin O. Wilson, Jr.  
Ezekiel T. Wilson

**Property Address:** 12640 Main St  
Williston, SC 29853

**Lender:** Quicken Loans Inc.

**Date of Mortgage Loan:** December 14, 2011

I closed the above mortgage loan on December 14, 2011. Prior to the execution of the Note and Mortgage by the Borrower(s), I reviewed and explained to the Borrower(s) the terms and provisions of the Note and Mortgage. Following my explanation, the Borrower(s) signed the Note, Mortgage and other related closing documents.

  
Closing Attorney

12/14/11

Date

200505\_cha8.pcl  
2291519187



QL(Wilson)\_0540

ROA\_0381

## **EXHIBIT H**

### **12/14/11 LOAN APPLICATION**



## 12/12/11

**If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply for joint credit (sign below):**

X Calvin O. Wilson Jr. Co-Director Calvin O. Wilson, Jr. X Ezekiel T. Wilson Co-Director Ezekiel T. Wilson

|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------|--|
| Mortgage Applied for: <input type="checkbox"/> VA <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> Other (explain):<br><input type="checkbox"/> FHA <input type="checkbox"/> USDA/Rural Housing Service |  |                                        |  | Agency Case Number                                                                                                             |  | Lender Case Number                                                                                          |  |
| Amount                                                                                                                                                                                                                           |  | Interest Rate                          |  | No. of Months                                                                                                                  |  | Amortization Type: <input checked="" type="checkbox"/> Fixed Rate <input type="checkbox"/> Other (explain): |  |
| \$ 126,000.00                                                                                                                                                                                                                    |  | 3.990 %                                |  | 180                                                                                                                            |  | ARM (type): <input type="checkbox"/> GPM <input type="checkbox"/> ARM (type):                               |  |
| PROPERTY INFORMATION AND PURPOSE OF LOAN                                                                                                                                                                                         |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Subject Property Address (street, city, state & ZIP)                                                                                                                                                                             |  |                                        |  |                                                                                                                                |  | No. of Units                                                                                                |  |
| 12640 Main St, Williston, SC 29853                                                                                                                                                                                               |  |                                        |  |                                                                                                                                |  | Barnwell County 1                                                                                           |  |
| Legal Description of Subject Property (attach description if necessary)                                                                                                                                                          |  |                                        |  |                                                                                                                                |  | Year Built                                                                                                  |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  | 1945                                                                                                        |  |
| Purpose of Loan <input type="checkbox"/> Purchase <input type="checkbox"/> Construction <input type="checkbox"/> Other (explain):                                                                                                |  |                                        |  | Property will be:                                                                                                              |  |                                                                                                             |  |
| <input checked="" type="checkbox"/> Refinance <input type="checkbox"/> Construction Permanent                                                                                                                                    |  |                                        |  | <input checked="" type="checkbox"/> Residence <input type="checkbox"/> Secondary Residence <input type="checkbox"/> Investment |  |                                                                                                             |  |
| Complete this line if construction or construction-permanent loan.                                                                                                                                                               |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Year Lot Acquired                                                                                                                                                                                                                |  | Original Cost                          |  | Amount Existing Liens                                                                                                          |  | (a) Present Value of Lot                                                                                    |  |
|                                                                                                                                                                                                                                  |  | \$                                     |  | \$                                                                                                                             |  | (b) Cost of Improvements                                                                                    |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  | Total (a + b)                                                                                               |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  | \$                                                                                                          |  |
| Complete this line if this is a refinance loan.                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Year Acquired                                                                                                                                                                                                                    |  | Original Cost                          |  | Amount Existing Liens                                                                                                          |  | Purpose of Refinance                                                                                        |  |
| 1992                                                                                                                                                                                                                             |  | \$ 60,000.00                           |  | \$ 100,000.00                                                                                                                  |  | Cash Out                                                                                                    |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  | Cost: \$                                                                                                    |  |
| Title will be held in what Name(s)                                                                                                                                                                                               |  |                                        |  | Manner in which Title will be held                                                                                             |  | Estate will be held in:                                                                                     |  |
| Calvin O. Wilson, Jr., Ezekiel T. Wilson                                                                                                                                                                                         |  |                                        |  | JTWROS                                                                                                                         |  | <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (how expiration date)     |  |
| Source of Down Payment, Settlement Charges, and/or Subordinate Financing (explain)                                                                                                                                               |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Borrower(s) III: BORROWER INFORMATION                                                                                                                                                                                            |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Borrower's Name (include Jr. or Sr. if applicable)                                                                                                                                                                               |  |                                        |  | Co-Borrower's Name (include Jr. or Sr. if applicable)                                                                          |  |                                                                                                             |  |
| Calvin O. Wilson, Jr.                                                                                                                                                                                                            |  |                                        |  | Ezekiel T. Wilson                                                                                                              |  |                                                                                                             |  |
| Social Security Number                                                                                                                                                                                                           |  | Home Phone (incl. area code)           |  | DOB (mm/dd/yyyy)                                                                                                               |  | Yrs. School                                                                                                 |  |
| (803) 266-7979                                                                                                                                                                                                                   |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| <input checked="" type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed)                                                                                                               |  | Dependents (not listed by Co-Borrower) |  | <input checked="" type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed)             |  | Dependents (not listed by Borrower)                                                                         |  |
| <input type="checkbox"/> Separated                                                                                                                                                                                               |  | 0                                      |  | <input type="checkbox"/> Separated                                                                                             |  | 0                                                                                                           |  |
| Present Address (street, city, state, ZIP) <input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent 16 No. Yrs.                                                                                                     |  |                                        |  | Present Address (street, city, state, ZIP) <input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent 15 No. Yrs.   |  |                                                                                                             |  |
| 12640 Main St                                                                                                                                                                                                                    |  |                                        |  | 12640 Main St                                                                                                                  |  |                                                                                                             |  |
| Williston, SC 29853                                                                                                                                                                                                              |  |                                        |  | Williston, SC 29853                                                                                                            |  |                                                                                                             |  |
| Mailing Address, if different from Present Address                                                                                                                                                                               |  |                                        |  | Mailing Address, if different from Present Address                                                                             |  |                                                                                                             |  |
| P.O. Box 411                                                                                                                                                                                                                     |  |                                        |  | P.O. Box 411                                                                                                                   |  |                                                                                                             |  |
| Williston, SC 29853                                                                                                                                                                                                              |  |                                        |  | Williston, SC 29853                                                                                                            |  |                                                                                                             |  |
| If residing at present address for less than two years, complete the following:                                                                                                                                                  |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs.                                                                                                                    |  |                                        |  | Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs.                  |  |                                                                                                             |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Borrower(s) IV: EMPLOYMENT INFORMATION                                                                                                                                                                                           |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Name & Address of Employer <input type="checkbox"/> Self Employed                                                                                                                                                                |  |                                        |  | Name & Address of Employer <input type="checkbox"/> Self Employed                                                              |  |                                                                                                             |  |
| Yrs. on this job                                                                                                                                                                                                                 |  |                                        |  | Yrs. on this job                                                                                                               |  |                                                                                                             |  |
| Yrs. employed in this line of work/profession                                                                                                                                                                                    |  |                                        |  | Yrs. employed in this line of work/profession                                                                                  |  |                                                                                                             |  |
| Position/Title/Type of Business                                                                                                                                                                                                  |  | Business Phone (incl. area code)       |  | Position/Title/Type of Business                                                                                                |  | Business Phone (incl. area code)                                                                            |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| If employed in current position for less than two years or if currently employed in more than one position, complete the following:                                                                                              |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Name & Address of Employer <input type="checkbox"/> Self Employed                                                                                                                                                                |  |                                        |  | Name & Address of Employer <input type="checkbox"/> Self Employed                                                              |  |                                                                                                             |  |
| Dates (from - to)                                                                                                                                                                                                                |  |                                        |  | Dates (from - to)                                                                                                              |  |                                                                                                             |  |
| Monthly Income                                                                                                                                                                                                                   |  |                                        |  | Monthly Income                                                                                                                 |  |                                                                                                             |  |
| \$                                                                                                                                                                                                                               |  |                                        |  | \$                                                                                                                             |  |                                                                                                             |  |
| Position/Title/Type of Business                                                                                                                                                                                                  |  | Business Phone (incl. area code)       |  | Position/Title/Type of Business                                                                                                |  | Business Phone (incl. area code)                                                                            |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Name & Address of Employer <input type="checkbox"/> Self Employed                                                                                                                                                                |  |                                        |  | Name & Address of Employer <input type="checkbox"/> Self Employed                                                              |  |                                                                                                             |  |
| Dates (from - to)                                                                                                                                                                                                                |  |                                        |  | Dates (from - to)                                                                                                              |  |                                                                                                             |  |
| Monthly Income                                                                                                                                                                                                                   |  |                                        |  | Monthly Income                                                                                                                 |  |                                                                                                             |  |
| \$                                                                                                                                                                                                                               |  |                                        |  | \$                                                                                                                             |  |                                                                                                             |  |
| Position/Title/Type of Business                                                                                                                                                                                                  |  | Business Phone (incl. area code)       |  | Position/Title/Type of Business                                                                                                |  | Business Phone (incl. area code)                                                                            |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |
| Name & Address of Employer <input type="checkbox"/> Self Employed                                                                                                                                                                |  |                                        |  | Name & Address of Employer <input type="checkbox"/> Self Employed                                                              |  |                                                                                                             |  |
| Dates (from - to)                                                                                                                                                                                                                |  |                                        |  | Dates (from - to)                                                                                                              |  |                                                                                                             |  |
| Monthly Income                                                                                                                                                                                                                   |  |                                        |  | Monthly Income                                                                                                                 |  |                                                                                                             |  |
| \$                                                                                                                                                                                                                               |  |                                        |  | \$                                                                                                                             |  |                                                                                                             |  |
| Position/Title/Type of Business                                                                                                                                                                                                  |  | Business Phone (incl. area code)       |  | Position/Title/Type of Business                                                                                                |  | Business Phone (incl. area code)                                                                            |  |
|                                                                                                                                                                                                                                  |  |                                        |  |                                                                                                                                |  |                                                                                                             |  |

Uniform Residential Loan Application  
Fannie Mae/Freddie Mac  
NMP ©  
Wolters Kluwer Financial Services 2291519163

Fannie Mae Form 1003 7/05 (Rev. 8/05)  
Freddie Mac Form 65 7/05 (Rev. 8/05)  
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**ROA 0383**

| V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION                  |             |             |             |                                  |           |             |
|-----------------------------------------------------------------------------|-------------|-------------|-------------|----------------------------------|-----------|-------------|
| Gross Monthly Income                                                        | Borrower    | Co-Borrower | Total       | Combined Monthly Housing Expense | Practical | Proposed    |
| Base Empl. Income*                                                          | \$          | \$          | \$          | Rent                             | \$        |             |
| Overtime                                                                    |             |             |             | First Mortgage (P&I)             | 807.00    | 931.38      |
| Bonuses                                                                     |             |             |             | Other Financing (P&I)            |           |             |
| Commissions                                                                 |             |             |             | Hazard Insurance                 |           | 89.08       |
| Dividends/Interest                                                          |             |             |             | Real Estate Taxes                |           | 46.12       |
| Net Rental Income                                                           |             |             |             | Mortgage Insurance               |           |             |
| Other (before completing, see the notice in "Describe Other Income," below) | 3,793.50    | 737.50      | 4,531.00    | Homeowner Assn. Dues             |           |             |
| Total                                                                       | \$ 3,793.50 | \$ 737.50   | \$ 4,531.00 | Other:                           |           |             |
|                                                                             |             |             |             | Total                            | \$ 807.00 | \$ 1,066.58 |

\* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

| Describe Other Income Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan. |                 |  | Monthly Amount |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--|----------------|
| B                                                                                                                                                                                                              | Social Security |  | \$ 1,758.50    |
| B                                                                                                                                                                                                              | Pension         |  | 2,035.00       |
| ** See Attached **                                                                                                                                                                                             |                 |  |                |

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a non-applicant spouse or other person, this Statement and supporting schedules must be completed about that spouse or other person also.

| ASSETS                                                                    |  | Cash or Market Value | LIABILITIES                                        |  |                                      |
|---------------------------------------------------------------------------|--|----------------------|----------------------------------------------------|--|--------------------------------------|
| Description                                                               |  |                      | Name and address of Company                        |  | Monthly Payment & Months Left to Pay |
| Cash deposit toward purchase held by: (Earnest Money Deposit)             |  | \$                   | Application Deposit                                |  | \$ 25.00/ 20                         |
| Credit for Application Deposit                                            |  | 500.00               | Revolving                                          |  |                                      |
| List checking and savings accounts below                                  |  |                      | Acct. no. [REDACTED]                               |  |                                      |
| Name and address of Bank, S&L, or Credit Union                            |  |                      | Name and address of Company                        |  | \$ Payment/Months                    |
| Enterprise Bank                                                           |  |                      | WELLS FARGO HM MORTGAG                             |  | 807.00/124*                          |
| Acct. no. 1041063561                                                      |  | \$ 748.00            | Single Family                                      |  | (100% owned)                         |
| Name and address of Bank, S&L, or Credit Union                            |  |                      | Acct. no. [REDACTED]                               |  |                                      |
| First Citizens                                                            |  |                      | Name and address of Company                        |  | \$ Payment/Months                    |
| Acct. no. 766513280409                                                    |  | \$ 4,575.45          | CHASE                                              |  | 436.00/ 51                           |
| Name and address of Bank, S&L, or Credit Union                            |  |                      | Revolving                                          |  |                                      |
| Acct. no. [REDACTED]                                                      |  |                      | Acct. no. [REDACTED]                               |  |                                      |
| Name and address of Bank, S&L, or Credit Union                            |  |                      | Name and address of Company                        |  | \$ Payment/Months                    |
| CAP ONE NA                                                                |  |                      | CAP ONE NA                                         |  | 608.00/ 12*                          |
| Acct. no. [REDACTED]                                                      |  |                      | Installment                                        |  |                                      |
| Name and address of Bank, S&L, or Credit Union                            |  |                      | Acct. no. [REDACTED]                               |  |                                      |
| SRP FEDERAL CREDIT UNIT                                                   |  |                      | Name and address of Company                        |  | \$ Payment/Months                    |
| Acct. no. [REDACTED]                                                      |  |                      | SRP FEDERAL CREDIT UNIT                            |  | 171.00/ 28                           |
| Stocks & Bonds (Company name/number & description)                        |  | \$                   | Revolving                                          |  |                                      |
| See Attached                                                              |  |                      | Acct. no. [REDACTED]                               |  |                                      |
| Name and address of Company                                               |  |                      | \$ Payment/Months                                  |  | \$                                   |
| Life insurance not cash value                                             |  | \$                   | Name and address of Company                        |  | \$                                   |
| Face amount: \$                                                           |  |                      | Acct. no. [REDACTED]                               |  |                                      |
| Subtotal Liquid Assets                                                    |  | \$ 5,823.45          | Name and address of Company                        |  | \$                                   |
| Real estate owned (enter market value from schedule of real estate owned) |  | \$ 164,000.00        | Acct. no. [REDACTED]                               |  |                                      |
| Vested interest in retirement fund                                        |  | \$                   | Name and address of Company                        |  | \$ Payment/Months                    |
| Net worth of business(es) owned (attach financial statement)              |  | \$                   | Acct. no. [REDACTED]                               |  |                                      |
| Automobiles owned (make and year)                                         |  | \$                   | Name and address of Company                        |  | \$                                   |
| Other Assets (itemize)                                                    |  | \$                   | Acct. no. [REDACTED]                               |  |                                      |
| Alimony/Child Support/Separate Maintenance Payments Owed to:              |  | \$                   | Job-Related Expense (child care, union dues, etc.) |  | \$                                   |
| Total Assets a.                                                           |  | \$ 169,823.45        | Total Monthly Payments                             |  | \$ 2,047.00                          |
| Net Worth (Estimate)                                                      |  | \$ 334,271.06        | Total Liabilities b.                               |  | \$ 135,552.39                        |

Uniform Residential Loan Application  
Fannie Mae/Freddie Mac  
VAP ©  
Wells-Knowler Financial Services



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Freddie Mac Form 65 7/05 (Rev. 6/03)  
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## Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

| Property Address (enter S if sold, PS if pending sale or R if rental being held for income) | Type of Property | Present Market Value | Amount of Mortgages & Liens | Gross Rental Income | Mortgage Payments | Insurance, Maintenance, Taxes & Misc. | Net Rental Income |
|---------------------------------------------------------------------------------------------|------------------|----------------------|-----------------------------|---------------------|-------------------|---------------------------------------|-------------------|
| 12640 Main St (100X)                                                                        | Single           | \$ 164,000.00        | \$ 100,633.39               | \$                  | \$ 807.00         | \$                                    | \$                |
|                                                                                             |                  |                      |                             |                     |                   |                                       |                   |
|                                                                                             |                  |                      |                             |                     |                   |                                       |                   |
|                                                                                             |                  |                      |                             |                     |                   |                                       |                   |
|                                                                                             | Totals           | \$ 164,000.00        | \$ 100,633.39               | \$                  | \$ 807.00         | \$                                    | \$                |

| Attorney Name | Creditor Name | Account Number |
|---------------|---------------|----------------|
|               |               |                |

## VII. DETAILS OF TRANSACTION

## WIND DEGRADATIONS

| a. Purchase price                                          |            | \$ | If you answer "Yes" to any questions a through i, please use continuation sheet for explanation.                                                                                                                                                                                                                                                                                                                                                                                                  |    | Borrower |    | Co-Borrower |    |
|------------------------------------------------------------|------------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----------|----|-------------|----|
|                                                            |            |    | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | No | Yes      | No | Yes         | No |
| b. Alterations, improvements, repairs                      |            |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| c. Land (if acquired separately)                           |            |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| d. Refinance (incl. debts to be paid off)                  | 108,175.39 |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| e. Estimated prepaid items                                 | 845.02     |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| f. Estimated closing costs                                 | 3,143.43   |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| g. PMI, MIP, Funding Fee                                   |            |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| h. Discount (if Borrower will pay)                         | 157.50     |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| i. Total costs (add items a through h)                     | 112,321.34 |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| j. Subordinate financing                                   |            |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| k. Borrower's closing costs paid by Seller                 | 0.00       |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| l. Other Credits (explain)                                 |            |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| Credit for Application Deposit                             | 500.00     |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| m. Loan amount<br>(exclude PMI, MIP, Funding Fee financed) | 126,000.00 |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| n. PMI, MIP, Funding Fee financed                          |            |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| o. Loan amount (add m & n)                                 | 126,000.00 |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
| p. Cash from Borrower<br>(subtract j, k, l & o from i)     | -14,178.65 |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |          |    |             |    |
|                                                            |            |    | a. Are there any outstanding judgments against you?                                                                                                                                                                                                                                                                                                                                                                                                                                               |    |          |    |             |    |
|                                                            |            |    | b. Have you been declared bankrupt within the past 7 years?                                                                                                                                                                                                                                                                                                                                                                                                                                       |    |          |    |             |    |
|                                                            |            |    | c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?                                                                                                                                                                                                                                                                                                                                                                                              |    |          |    |             |    |
|                                                            |            |    | d. Are you a party in a lawsuit?                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |    |          |    |             |    |
|                                                            |            |    | e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, educational (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name, and address of Lender, FHA or VA case number, if any, and reasons for the action.) |    |          |    |             |    |
|                                                            |            |    | f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.                                                                                                                                                                                                                                                                                      |    |          |    |             |    |
|                                                            |            |    | g. Are you obligated to pay alimony, child support, or separate maintenance?                                                                                                                                                                                                                                                                                                                                                                                                                      |    |          |    |             |    |
|                                                            |            |    | h. Is any part of the down payment borrowed?                                                                                                                                                                                                                                                                                                                                                                                                                                                      |    |          |    |             |    |
|                                                            |            |    | i. Are you a co-maker or endorser on a note?                                                                                                                                                                                                                                                                                                                                                                                                                                                      |    |          |    |             |    |
|                                                            |            |    | j. Are you a U.S. citizen?                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |    |          |    |             |    |
|                                                            |            |    | k. Are you a permanent resident alien?                                                                                                                                                                                                                                                                                                                                                                                                                                                            |    |          |    |             |    |
|                                                            |            |    | l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.                                                                                                                                                                                                                                                                                                                                                                                           |    |          |    |             |    |
|                                                            |            |    | m. Have you had an ownership interest in a property in the last five years?                                                                                                                                                                                                                                                                                                                                                                                                                       |    |          |    |             |    |
|                                                            |            |    | (1) What type of property did you own - a. principal residence (PR), second home (SH), or investment property (IP)?                                                                                                                                                                                                                                                                                                                                                                               |    | PR       |    | PR          |    |
|                                                            |            |    | (2) How did you hold title to the home - solely by yourself (S), jointly with your spouse (SP), or jointly with another person (JO)?                                                                                                                                                                                                                                                                                                                                                              |    | SP       |    | SP          |    |

## IX. ACKNOWLEDGEMENT AND AGREEMENT

[illegible]

**Acknowledgment.** Each of the undersigned hereby acknowledges that any owner of the Loan, its servicers, successors and assigns, may verify or reverify any information contained in this application or obtain any information or data relating to the Loan, for any legitimate business purpose through any source, including a source named in this application or a consumer reporting agency.

| Borrower's Signature | Date       | Co-Borrower's Signature | Date       |
|----------------------|------------|-------------------------|------------|
| X [Signature]        | 12/14/2011 | X [Signature]           | 12/14/2011 |

\*\*\*\*\* INFORMATION FOR GOVERNMENT MONITORING PURPOSES \*\*\*\*\*

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate either on the basis of race or ethnicity, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For privacy, you may check more than one designation. If you do not furnish the information, please check the "Other" box. If you are a Federal government employee, this lender is required to note the information on the basis of visual observation and surname if you have made this application in person. If you do not wish to provide the information, please check the "Other" box. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable laws.)

**BORROWER** ☐ I do not wish to furnish this information. **CO-BORROWER** ☐ I do not wish to furnish this information.

|            |                                             |                                                            |            |                                             |                                                            |
|------------|---------------------------------------------|------------------------------------------------------------|------------|---------------------------------------------|------------------------------------------------------------|
| Ethnicity: | <input type="checkbox"/> Hispanic or Latino | <input checked="" type="checkbox"/> Not Hispanic or Latino | Ethnicity: | <input type="checkbox"/> Hispanic or Latino | <input checked="" type="checkbox"/> Not Hispanic or Latino |
|------------|---------------------------------------------|------------------------------------------------------------|------------|---------------------------------------------|------------------------------------------------------------|

Race: ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American

☐ Native Hawaiian or Other Pacific Islander ☒ White

Sex: ☐ Female ☒ Male Sex: ☒ Female ☐ Male

**To be Completed by Loan Originator:**  
This information was provided: ☐ In a face-to-face interview ☐ By the applicant and submitted by fax or mail

☐ In a face-to-face interview ☐ By the applicant and submitted by fax or mail

☒ In a telephone interview ☐ By the applicant and submitted via e-mail or the Internet

|                             |      |
|-----------------------------|------|
| Loan Originator's Signature | Date |
|-----------------------------|------|

|   |            |
|---|------------|
| X | 12/14/2011 |
|---|------------|

|                                        |                                                                    |                                                                                  |
|----------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------------------------------|
| Loan Originator's Name (print or type) | Loan Originator Identifier<br>SC license # HN - 32669 / Nationwide | Loan Originator's Phone Number (including area code)<br>(800) 225-6308 ext 31727 |
|----------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------------------------------|

|                                             |                                                                         |                                                        |
|---------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------|
| Guy Brusca                                  | SC Licenser N.C. 32669 / Nationwide<br>Mortgage Licensing System# 32669 | (800) 228-8300 ext. 3177<br>GuyBrusca@quickenloans.com |
| Don G. Galloway, Don Galloway, Don Galloway | Don Galloway, Don Galloway, Don Galloway                                | Don Galloway, Don Galloway, Don Galloway               |

|                                        |                                            |                                           |
|----------------------------------------|--------------------------------------------|-------------------------------------------|
| <b>Loan Origination Company's Name</b> | <b>Loan Origination Company Identifier</b> | <b>Loan Origination Company's Address</b> |
|                                        |                                            | 1050 Woodward Ave                         |

Quicken Loans Inc.      Nationwide Mortgage Licensing System # 3030      2000-2001      Detroit, MI 48226-1906

Continued on next page

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 11-19-2013 BY 60322 UCBAW/STW

Uniform Residential Loan Application  
Fannie Mae/Freddie Mac

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CONTINUATION SHEET RESIDENTIAL LOAN APPLICATION

|                                                                                                                                            |                   |                     |
|--------------------------------------------------------------------------------------------------------------------------------------------|-------------------|---------------------|
| Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower. | Borrower:         | Agency Case Number: |
|                                                                                                                                            | Calvin O. Wilson  |                     |
|                                                                                                                                            | Co-Borrower:      | Lender Case Number: |
|                                                                                                                                            | Ezekiel T. Wilson | 4992                |

--- Borrower Preferences ---

Legal Counsel:

*Calvin O. Wilson*

Insurance Agent:

*STATE FARM*

--- Stocks and Bonds ---

\$0.00 NV  
\$0.00 NV

--- Co-Borrower's Other Income ---

Social Security \$737.50

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

|                           |            |                            |            |
|---------------------------|------------|----------------------------|------------|
| Borrower's Signature:     | Date       | Co-Borrower's Signature:   | Date       |
| X <i>Calvin O. Wilson</i> | 12/14/2011 | X <i>Ezekiel T. Wilson</i> | 12/14/2011 |

Uniform Residential Loan Application  
Fannie Mae/Freddie Mac  
VAIP ©  
Waller-Kilmer Financial Services



Fannie Mae Form 1003 7/05 (Rev. 8/05)  
Freddie Mac Form 65 7/05 (Rev. 8/05)  
VAP/21/14 (0007) 00  
Page 4 of 4

QL(Wilson)\_0548

ROA\_0386

**EXHIBIT I**

**CLIENT SURVEY**



## Client Survey

Company NMLS#: 3030

Loan #: 4992  
Client: Calvin O. Wilson, Jr.  
Ezekiel T. Wilson

Mortgage Banker: Guy Brusca  
Closing Agent: Title Source Inc - Notary

Date: December 14, 2011

To assist us in providing an excellent customer experience, please provide us with your feedback.

1. How likely is it that you would recommend Quicken Loans to a friend or colleague?

Not At All Likely  
1 2 3 4 5 6 7 8 9 10  
Extremely Likely

2. Please rate the overall service provided by your Mortgage Banker, Guy Brusca:  
\*Your Mortgage Banker was the team member that gathered your income, asset, and credit information. Then based on your needs and goals, he/she advised you of the loan options available to you. Your Mortgage Banker will also be your main point of contact for future transactions and he/she will manage your mortgage for life.

Poor Below Average Average Above Average Excellent  
1 2 3 4 5

3. Please rate the overall service provided by your Loan Processing Team:  
\*This team was responsible for communicating with you from the point you were conditionally approved until your loan was scheduled to close. They should have contacted you several times throughout the process to status you on the progress and ask for any additional documentation required. Your Loan Processing Team should have also called you prior to your closing being set to ensure that your loan was meeting your expectations and goals.

Poor Below Average Average Above Average Excellent  
1 2 3 4 5

4. Please share any additional comments or suggestions that you have regarding your experience with Quicken Loans and describe how well we met your expectations:

*I was treated to outstanding service by Quicken personnel. All questions I asked were answered effectively and very helpful.*

5. Do you have a specific friend, relative or colleague who may be interested in our services or want to review their options?

If Yes, you may provide their contact information below (name, phone number with area code or email address) or we will have your Mortgage Banker contact you for more information:

*I am talking to some family members about Quicken loans.*

6. Please Tell Others About Your Quicken Loans Experience!

☒ By checking this box, I grant Quicken Loans permission to publish my responses on [quickenloansreviews.com](http://quickenloansreviews.com) and share them with other Quicken Loans clients.

Thanks again for allowing us to provide your home financing. We are committed to being your lender for life and are always available to answer any mortgage-related questions. We look forward to talking with you again soon.



2291519261

QL(Wilson)\_0499

ROA\_0388

**EXHIBIT J**

**ATTORNEY/INSURANCE PREFERENCE  
FORM**

## Attorney/Insurance Preference Form

Date \_\_\_\_\_

1. I (we) have been informed by the lender that I (we) have a right to select legal counsel to represent me (us) in all matters of this transaction relating to the closing of the loan.

(a) I select \_\_\_\_\_  
Attorney's Name Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

- (b) Having been informed of this right, and having no preference, I asked for assistance from (the lender/mortgage broker) and was referred to a list of acceptable attorneys. From that list I select

\_\_\_\_\_  
Attorney's Name

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

2. I (we) have been informed by (the lender/mortgage broker) that I (we) have a right to select an insurance agent to furnish required \_\_\_\_\_ insurance in connection with this mortgage transaction.

(a) I select \_\_\_\_\_  
Agent's Name Borrower's Signature

\_\_\_\_\_  
Borrower's Signature

- (b) Having been informed of this right, and having no preference, I asked for assistance from (the lender/mortgage broker) and was referred to a list of qualified agents. From that list I select

\_\_\_\_\_  
Agent's Name

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Borrower's Signature



STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BARNWELL ) SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc.,<sup>1</sup> ) Civil Action No. 2015-CP-06-070  
 )

Plaintiff, )  
 )

vs. )  
 )

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or Devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and Assigns, )  
and all other persons entitled to claim )  
through them; all unknown persons with )  
any right, title or interests in the real )  
estate described herein; also any persons )  
who may be in the military service of the )  
United States of America, being a class )  
designated as John Doe; and any )  
unknown minors or persons under a )  
disability being a class designated as )  
Richard Roe; Park Sterling Bank, )

Defendants. )

**PLAINTIFF'S MOTION TO AMEND**  
**PLEADINGS**

FILED FOR RECORD  
2016 MAR 11 PM 1:49

NOW COMES Plaintiff Quicken Loans Inc. ("Quicken Loans") pursuant to Rules 15 and 38 of the South Carolina Rules of Civil Procedure, and hereby moves this Honorable Court for an Order allowing Quicken Loans to amend its Amended Complaint and its Reply to the Estate of Ellen Wilson's (the "Estate") Seconded Amended Answer and Counterclaims. This motion is in response to the Estate's ever evolving theory of the case as well as recent events that occurred after the filing of Quicken Loans' first Amended Complaint.

Regarding its Amended Complaint, Quicken Loans seeks to add two breach of contract claims and claims for reformation and foreclosure of equitable lien. One breach of contract

<sup>1</sup> Plaintiff should have been identified as Quicken Loans Inc. in the caption. The proposed Second Amended Complaint's caption correctly identifies Plaintiff.

claim arises from the Estate's recent breach of a Compliance Agreement that Ellen Wilson executed in conjunction with the closing of the subject loan. The other breach of contract claim arises from the decedent Ellen Wilson's breach of her payment obligations under the note at issue in this action. Pursuant to Rule 8(a) of the South Carolina Rules of Civil Procedure, this claim is being pled as an alternative basis for relief in light of the Estate's allegation that Quicken Loans is barred from pursuing an equitable claim for foreclosure. (Second Am. Answer & Countercls. ¶¶ 20-34.) The reformation and foreclosure on equitable lien claims are also being asserted as alternative claims due to the Estate's allegation that the original mortgage is unconscionable. The proposed Second Amended Complaint includes a jury demand for both breach of contract claims.

Regarding its Reply to the Estate's Second Amended Answer and Counterclaim, Quicken Loans seeks to amend its pleading to add a demand for a jury trial on the Estate's counterclaims. A proposed Second Amended Complaint is attached hereto as Exhibit A and a proposed Amended Reply is attached hereto as Exhibit B. In further support of this Motion, Quicken Loans states as follows:

#### **FACTUAL AND PROCEDURAL BACKGROUND**

This case arises from a mortgage loan given by Quicken Loans to Mrs. Wilson on December 14, 2011 (the "Loan"). Quicken Loans filed this foreclosure action on March 3, 2015, against Defendant Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson. Mrs. Wilson's estate answered the Complaint on May 21, 2015, without pleading any counterclaims or affirmative defenses. Upon learning of Mrs. Wilson's death, Quicken Loans filed a First Amended Complaint on May 29, 2015, naming as parties the Estate, Mrs. Wilson's sons Wayne D. Wilson and Calvin O. Wilson, III, and any other heirs or assigns having an interest in the subject

property (hereinafter Wayne D. Wilson and Calvin O. Wilson, in their individual capacities, may be referred to as "the Sons") (collectively the Estate and the Sons may be referred to as the "Defendants").

The Estate answered the First Amended Complaint on June 19, 2015, and this time, asserted one counterclaim for violation of the South Carolina Consumer Protection Code. The Estate did not plead any affirmative defenses to the First Amended Complaint. By consent motion, the parties had this case referred to J. Martin Harvey, Jr., Special Referee for Barnwell County, on August 27, 2015.

On October 22, 2015, the Estate filed a Second Amended Answer and Counterclaims.<sup>2</sup> This pleading added a second counterclaim for violation of the South Carolina Consumer Protection Code. The Estate's counterclaims allege that Quicken Loans violated various provisions of the South Carolina Consumer Protection Code by not complying with the "Attorney-Preference Statute," S.C. Code Ann. § 37-10-102. Additionally, for the first time, the Estate raised an affirmative defense alleging that Quicken Loans engaged in the unauthorized practice of law when it closed the Loan and is, therefore, barred by Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011) ("Matrix") from pursuing an equitable claim for foreclosure. (Second Amended Answer and Counterclaims ¶¶ 20-34.) Quicken Loans answered the Estate's Second Amended Answer and Counterclaims on November 10, 2015.

Despite being in default, the Sons filed an Answer and Counterclaims on October 22, 2015, which asserted the same counterclaims and affirmative defenses as the Estate's Second Amended Answer and Counterclaims. On November 24, 2015, Quicken Loans filed a motion to strike the Sons' pleading on the grounds that it is untimely.

---

<sup>2</sup> Although it is captioned as a Second Amended Answer and Counterclaims, this pleading is actually the first amended pleading that the Estate filed in response to the Amended Complaint.

On January 25, 2016, Quicken Loans filed a Jury Trial Demand pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure and filed a Motion to Transfer this case to the General Docket for an eventual jury trial. In response, the Sons withdrew their responsive pleading. Quicken Loans' Motion to Transfer is still pending.

Although Quicken Loans denies that the allegations of the Estate's Second Amended Answer and Counterclaims have any merit, those allegations triggered the Estate's obligations under the Compliance Agreement signed by Mrs. Wilson during the Loan's closing. (See Ex. C, 2/12/16 Ltr.) The Compliance Agreement requires the Estate to "(i) amend, sign, and/or re-sign any . . . application, underwriting or closing documentation; and/or (ii) provide additional information, documentation and/or clarification in writing to Lender after the closing of [the] mortgage loan" for the purpose of correcting errors or omissions and complying with federal or state laws. (*Id.*) On February 12, 2016, Quicken Loans made a written demand that the Estate fulfill its obligations under the Compliance Agreement by re-signing any closing documents that it contends were improperly executed. (*Id.*) The Estate breached the Compliance Agreement by failing to re-execute the relevant documents within seven days of Quicken Loans' demand. (See *id.*)

#### **STANDARD OF REVIEW**

Rule 15 of the South Carolina Rules of Civil Procedure allows for liberal amendment of the pleadings. Rule 15(a) provides that, upon request of a party, leave to amend "shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRPC. Additionally, Rule 15(d) allows a party, with leave of court, to serve a supplemental pleading based on events that occur after the filing of an initial pleading. Rule 15(d), SCRPC. "Even though a supplemental pleading is technically different than a motion to amend the pleadings

under Rule 15(a), the standard for granting or denying these motions is the same.” Tanner v. Florence Cnty. Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999).

South Carolina appellate courts have held that Rule 15 “strongly favors amendments and the court is encouraged to freely grant leave to amend.” Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987). “[T]he party opposing the motion has the burden of establishing prejudice.” Stanley v. Kirkpatrick, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004). “The prejudice Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it.” Id. An amendment or supplemental pleading is, therefore, appropriate “where the moving party has not been guilty of bad faith and is not acting for the purpose of delay, the opposing party will not be unduly prejudiced, and the trial of the issues will not be unduly delayed.” Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 506, 369 S.E.2d 156, 158 (Ct. App. 1988).

Rule 38 of the South Carolina Rules of Civil Procedure “preserves inviolate” the right of a trial by jury as declared by the Constitution or as given by a statute of South Carolina. Rule 38(a), SCRPC. Rule 38 explains that “[a]ny party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue.” Rule 38(b), SCRPC. Pursuant to Rule 53(b), after a case has been referred to a special referee, [a]ny party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury, and upon the filing of a jury demand, the matter shall be returned to the circuit court.” Rule 53(b), SCRPC.

## ARGUMENT

### **I. Allowing Quicken Loans to amend its Amended Complaint will not prejudice the Estate or cause undue delay.**

Quicken Loans requests leave to assert two breach of contract claims and claims for reformation and foreclosure of equitable lien against the Estate. This request stems from recent events and, therefore, is not untimely or made in bad faith and will not prejudice the Estate. As such, the liberal policy in favor of allowing amendments dictates that the Court should grant Quicken Loans' request. See Jarrell, 294 S.C. at 186, 363 S.E.2d at 399 (stating that trial courses are "encouraged to freely grant leave to amend").

The first claim Quicken Loans seeks to add is a breach of contract claim on the Loan's note. The Estate admits that Ellen Wilson executed a note in the amount of \$126,000.00 in favor of Quicken Loans. (Second Am. Answer & Countercls. ¶ 8.) The Estate also admits that Ellen Wilson executed a mortgage to secure the note. (*Id.* at ¶ 9.) For the first time, however, the Estate's Second Amended Answer and Counterclaims raises an affirmative defense based on the South Carolina Supreme Court's decision in Matrix. (*Id.* at ¶¶ 20-34.) Specifically, the Estate alleges that during the Loan's closing, Quicken Loans engaged in the unauthorized practice of law and, therefore, it has unclean hands that prevent it from pursuing an equitable foreclosure claim. (*Id.*) Matrix, however, does not impact Quicken Loans' ability to bring a legal cause of action based on the Estate's breach of its payment obligations. See Matrix, 394 S.C. at 140, 714 S.E.2d at 535 (stating that holding applies to "equitable remedies"); see also R&G Const., Inc. v. Lowcountry Reg'l Trasp. Authority, 343 S.C. 424, 431, 540 S.E.2d 113, 117 (Ct. App. 2000) ("An action for breach of contract seeking money damages is an action at law."). Although Quicken Loans denies that the Estate's Matrix defense has any merit, it has the right under Rule

8 to bring a breach of contract claim as an alternative theory of relief. See Rule 8(a), SCRCF (“Relief in the alternative or of several different types may be demanded.”).

Quicken Loans also has the right under Rule 8 to assert claims for reformation and foreclosure of equitable lien. Quicken Loans seeks to assert these claims because, in its Second Amended Answer and Counterclaims, the Estate alleges that the loan transaction is unconscionable due to the manner in which the loan was closed. While Quicken Loans’ denies that the Estate’s allegations have any merit, it seeks to have the loan documents reformed to provide the first lien mortgage the parties intended to provide Quicken Loans in the mortgage. In the second alternative, Quicken Loans seeks a declaration that it has an equitable lien on the property and a foreclosure judgment on that equitable lien.

The second proposed breach of contract claim is based upon the Estate’s recent breach of the Compliance Agreement. (See 2/12/16 Ltr.) As explained above, Quicken Loans sent written notice pursuant to the Compliance Agreement demanding that the Estate correct any documents it contends were improperly executed during the Loan’s closing. (See id.) The Estate refused Quicken Loans’ demand, thereby breaching the Compliance Agreement. As such, Quicken Loans seeks to add this supplemental claim to its pleading pursuant to Rule 15(d), SCRCF.

Because proposed breach of contract claims are actions in law, the proposed Amended Complaint also includes a jury demand on those claims. See R&G Const., Inc., 343 S.C. at 431, 540 S.E.2d at 117 (noting right to jury on breach of contract claim). Pursuant to Rules 38 and 53(b), therefore, the Court, if it grants this motion, should transfer this case to the General Docket so that the amended claims may be tried by jury in due course.

Quicken Loans has timely sought leave to assert these claims. Indeed, the need for a breach of contract action on the note and the reformation and foreclosure on equitable lien claims

did not arise until October 22, 2015, when the Estate pled its Matrix defense and also alleged that the loan was unconscionable. Quicken Loans' claim under the Compliance Agreement did not ripen until the Estate recently breached the Compliance Agreement. While the need and basis for asserting these claims has only recently arisen, they concern the same underlying issues raised by the Estate's counterclaims, i.e. did Quicken Loans comply with the Attorney-Preference Statute before closing the Loan. (See Second Am. Answer & Counterclaims ¶¶ 35-49.) Further, because these claims do not alter the issues to be tried or the scope of discovery, the fact that the breach of contract claims must be decided by a jury will not cause undue delay or prejudice. Thus, the Court should grant Quicken Loans leave to assert these claims and to demand that they be tried by jury.

**II. Allowing Quicken Loans to amend its Reply will not prejudice the Estate or cause undue delay.**

Quicken Loans also seeks leave to add a jury demand in its Reply to the Estates' counterclaims. Those counterclaims allege that Quicken Loans violated various provisions of the South Carolina Consumer Protection Code by not complying with the Attorney-Preference Statute. (Second Am. Answer & Countercls. ¶¶ 35-49.) The relief the Estate seeks under both of its counterclaims includes requests for monetary damages, civil penalties, and attorneys' fees. (Id.) The Estate's counterclaims, therefore, are legal, and Quicken Loans is entitled to a jury trial on those counts. See Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) (holding legal actions create right to a jury trial); see also Wells Fargo Bank, N.A. v. Smith, No. 2009-125666, 2012 WL 10987189, at \*6 (S.C. Ct. App. June 13, 2012) (treating attorney-preference claim as legal in nature); Freeman v. A. & M. Mobile Home Sales, Inc., 293 S.C. 255, 257, 359 S.E.2d 532, 533-34 (Ct. App. 1987) (using jury to determine whether defendant violated the South Carolina Consumer Protection Code); Dorell v. Florence Dist. No. One of Florence Cnty.,



288 S.C. 246, 250, 341 S.E.2d 797, 799 (Ct. App. 1986) (recognizing that money damages are a legal remedy).

A jury trial on the Estate's counterclaims will not cause delay or prejudice. Indeed, the Estate filed its current counterclaims only four months ago. Those counterclaims and Quicken Loans' proposed amended claims arise from the same loan closing and concern the same issue—did Quicken Loans comply with the Attorney-Preference Statute. Allowing a jury, rather than a judge, to decide these claims does not alter the issues and will not necessitate any additional discovery. As such, there will be no undue delay and the Estate will not be prejudiced by the amendments. The Court, therefore, should grant Quicken Loans' motion and allow it to file the Amended Reply attached as **Exhibit B**. See Stanley, at 175, 592 S.E.2d at 299 (holding amendment of the pleadings is proper where respondent to motion to amend cannot demonstrate prejudice).

#### **CONCLUSION**

For the reasons set forth above, Quicken Loans respectfully requests leave to file the Second Amended Complaint and Amended Reply attached hereto respectively as **Exhibits A and B**. The undersigned certifies that he has consulted with opposing counsel and was unable to resolve the issues raised in this motion.

***[SIGNATURE ON FOLLOWING PAGE]***

Respectfully Submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

*Attorneys for Quicken Loans Inc.*

Columbia, South Carolina

March 8, 2016

# Exhibit A

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BARNWELL ) SECOND JUDICIAL CIRCUIT

Quicken Loans Inc., ) Civil Action No. 2015-CP-06-070  
 )

Plaintiff, )  
 )

vs. )  
 )

**SECOND AMENDED COMPLAINT**  
**(JURY TRIAL DEMANDED)**

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and Assigns, )  
and all other persons entitled to claim )  
through them; all unknown persons with )  
any right, title or interests in the real )  
estate described herein; also any persons )  
who may be in the military service of the )  
United States of America, being a class )  
designated as John Doe; and any )  
unknown minors or persons under a )  
disability being a class designated as )  
Richard Roe; Park Sterling Bank, )  
 )

Defendants. )

Plaintiff Quicken Loans Inc. ("Quicken Loans" or "Plaintiff") alleges as follows:

**First Cause of Action – Foreclosure of Real Estate Mortgage**

1. This is an action for the foreclosure of a mortgage upon certain real estate in Barnwell County, South Carolina.
2. Pursuant to S.C. Code Ann § 33-15-101(b)(8) Quicken Loans is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.

3. Quicken Loans has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. Quicken Loans' servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the loan did not originate before January 1, 2009.

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendants herein.

6. The Defendants herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of S.C. Code Ann. § 15-35-840.

7. Heretofore, on or about December 14, 2011, Calvin O. Wilson, Jr. and Ezekiel T. Wilson made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$126,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Calvin O. Wilson, Jr. and Ezekiel T. Wilson made, executed and delivered unto Mortgage Electronic Registration Systems, Inc. as nominee for Quicken Loan, Inc. its successors and assigns a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on the North side of the Southern Railway in the Williston School District, Town of Williston, County of Barnwell, State of South Carolina, containing Two (2)

acres, more or less, and having the following boundaries and measurements, to wit: on the North by Dicks Street, and measuring thereon 150 feet, more or less, on the East by lot now or formerly of G. E. Crouch, Estate of T. M. Willis and Lot of Negro Lodge and measuring thereon 600 feet, more or less; on the South by East Main Street separating this lot from right-of-way of Southern Railway, and measuring thereon 150 feet, more or less; and on the West by Mansfield Drive, and measuring thereon 600 feet, more or less.

This being the same property conveyed to Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson, as joint tenants with the right of survivorship, by deed of C. O. Wilson dated September 29, 1992 and recorded on September 30, 1992 in Book 205 at Page 310; subsequently, Calvin O. Wilson, Jr. died September 20, 2013 as evidenced by Barnwell County Probate Case No. 2013-ES-06-214 leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson, remaining surviving tenant; subsequently Ezekiel (Ellen) T. Wilson died intestate on November 17, 2014, leaving her interest in the subject property to her heirs/devisees, namely, Wayne D. Wilson and Calvin O. Wilson, III

Property Address:  
12640 Main St  
Williston, SC 29853  
TMS# 047-07-08-001

9. The Mortgage was signed, witnessed and probated December 14, 2011; thereafter the Mortgage was recorded in the Office of the Clerk Of Court for Barnwell County on December 30, 2011, in Mortgage Book 979 at Page 50. This Mortgage was subsequently assigned to Quicken Loans by assignment dated February 6, 2015 and recorded on February 26, 2015 in Book 1088 at Page 120.

10. The Mortgage evidences and secures the repayment of money advanced by Quicken Loans or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Subsequently, Calvin O. Wilson, Jr. died September 20, 2013 leaving his interest in the subject property to Ezekiel (Ellen) T. Wilson, remaining surviving tenant.

12. Thereafter, Ezekiel (Ellen) T. Wilson died intestate on November 17, 2014, leaving her interest in the subject property to her heirs/devisees, namely, Wayne D. Wilson and Calvin O. Wilson, III.

13. After all payments received by Quicken Loans have been credited to the subject loan, the loan is in default and due for October 1, 2014, and the conditions of the Note and Mortgage have been broken. Quicken Loans elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of October 1, 2014, the principal sum of \$108,728.34, with interest from September 1, 2014, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

14. Pursuant to the terms of the Mortgage, Quicken Loans has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

15. Quicken Loans may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

16. Pursuant to the terms of the Mortgage and applicable state law, Quicken Loans requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Quicken Loans' Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the

subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Park Sterling Bank, by virtue of a mortgage given by Calvin O. Wilson, Jr. and Ezekiel (Ellen) T. Wilson to Community Bank & Trust in the amount of \$46,000.00, dated February 11, 2000, and recorded February 18, 2000 in Book 451 at Page 322 also including any other liens they may have. The Plaintiff is informed and believes that this mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released from the subject real estate. Park Sterling Bank is successor in interest to Community Bank and Trust.

B. Wayne D. Wilson and Calvin O. Wilson, III and any unknown heirs or devisees of the Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson, including any persons who may be in the military service of the United States of America, being a class designated as John Doe, and any unknown minors or persons under a disability being a class designated as Richard Roe, by virtue of any interest claimed under the law of intestate succession (S.C. Code Ann. § 62-2-109) or under decedent's will.

**Second Cause of Action – Breach of Contract as to the  
Estate of Ezekiel (Ellen) T. Wilson Only**

18. Quicken Loans incorporates the previous paragraphs by reference as if fully set forth herein.

19. To the extent the Estate of Ezekiel (Ellen) T. Wilson (the "Estate") contends that Quicken Loans is barred from pursuing an equitable foreclosure claim, which is denied, Quicken Loans asserts this legal breach of contract claim as an alternative basis for relief.

20. On December 14, 2011, Mrs. Wilson and her husband, who predeceased Mrs. Wilson, executed the Note in favor of Quicken Loans.



21. When Mrs. Wilson executed the Note, she promised to repay the principal sum of \$126,000 plus interest.

22. On or before October 1, 2014, Mrs. Wilson and/or the Estate breached the terms of the Note by failing to make one or more of the required monthly payments.

23. As a direct and proximate result of this breach, Quicken Loans has incurred actual damages in the amount of the principal, interest, and all other costs and fees owed under the Note.

24. Quicken Loans is also entitled to the attorneys' fees it has incurred in enforcing the Note.

**Third Cause of Action – Reformation as to the  
Estate Only**

25. Quicken Loans incorporates the previous paragraphs by reference as if fully set forth herein.

26. To the extent the Estate contends that any of the loan documents are unconscionable, which is denied, Quicken Loans asserts this claim for reformation as an alternative basis for relief.

27. The parties intended to provide Quicken Loans with a note secured by a first lien mortgage on the subject property.

28. Through its counterclaims, the Estate claims the loan was improperly closed and seeks relief declaring the transaction unconscionable.

29. If, as alleged in the Estate's counterclaims, the transaction was improperly closed, it was due to a mutual mistake of the parties or the unilateral mistake caused by the concealment or misrepresentation of Mrs. Wilson in the closing process.

30. Quicken Loans, therefore, seeks to have loan documents reformed to provide the first lien mortgage the parties intended to provide Quicken Loans in the mortgage.

31. If the Estate's counterclaims are resolved in its favor, Quicken Loans would suffer irreparable harm and prejudice if the loan documents are not reformed to give it the first lien mortgage that the parties intended.

32. Upon reformation of the loan documents, Quicken Loans seeks an order from this Court quieting title and declaring that Quicken Loans' lien is a first lien mortgage on the property with priority over any other liens or interests, known or unknown, which may have arisen after the recording date of the above-described mortgage, which was recorded in the Office of the Clerk Of Court for Barnwell County on December 30, 2011, in Mortgage Book 979 at Page 50.

33. Quicken Loans seeks, should reformation be deemed necessary, to have this Court foreclose upon the subject property and sell the property at judicial sale providing Quicken Loans with the monies from the foreclosure sale and a deficiency judgment, should any amount owed remain, following the sale.

**Fourth Cause of Action – Foreclosure of Equitable Lien as to the  
Estate Only**

34. Quicken Loans incorporates the previous paragraphs by reference as if fully set forth herein.

35. To the extent the Estate contends that the Mortgage is unenforceable, which is denied, Quicken Loans asserts this claim for foreclosure on an equitable lien as an alternative basis for relief.

36. There is a debt owed under the Note.

37. That debt attached to the subject property.

did not arise until October 22, 2015, when the Estate pled its Matrix defense and also alleged that the loan was unconscionable. Quicken Loans' claim under the Compliance Agreement did not ripen until the Estate recently breached the Compliance Agreement. While the need and basis for asserting these claims has only recently arisen, they concern the same underlying issues raised by the Estate's counterclaims, i.e. did Quicken Loans comply with the Attorney-Preference Statute before closing the Loan. (See Second Am. Answer & Counterclaims ¶¶ 35-49.) Further, because these claims do not alter the issues to be tried or the scope of discovery, the fact that the breach of contract claims must be decided by a jury will not cause undue delay or prejudice. Thus, the Court should grant Quicken Loans leave to assert these claims and to demand that they be tried by jury.

**II. Allowing Quicken Loans to amend its Reply will not prejudice the Estate or cause undue delay.**

Quicken Loans also seeks leave to add a jury demand in its Reply to the Estates' counterclaims. Those counterclaims allege that Quicken Loans violated various provisions of the South Carolina Consumer Protection Code by not complying with the Attorney-Preference Statute. (Second Am. Answer & Countercls. ¶¶ 35-49.) The relief the Estate seeks under both of its counterclaims includes requests for monetary damages, civil penalties, and attorneys' fees. (Id.) The Estate's counterclaims, therefore, are legal, and Quicken Loans is entitled to a jury trial on those counts. See Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) (holding legal actions create right to a jury trial); see also Wells Fargo Bank, N.A. v. Smith, No. 2009-125666, 2012 WL 10987189, at \*6 (S.C. Ct. App. June 13, 2012) (treating attorney-preference claim as legal in nature); Freeman v. A. & M. Mobile Home Sales, Inc., 293 S.C. 255, 257, 359 S.E.2d 532, 533-34 (Ct. App. 1987) (using jury to determine whether defendant violated the South Carolina Consumer Protection Code); Dorell v. Florence Dist. No. One of Florence Cnty.,

48. The Compliance Agreement imposes on the Estate an obligation to “fully cooperate” and use “best efforts” to comply with a request to re-sign or sign documents.

49. On February 12, 2016, Quicken Loans made a written demand that the Estate fulfill its obligations under the Compliance Agreement by re-signing any closing documents that it contends were improperly executed.

50. On February 17, 2016, the Estate responded to Quicken Loans’ demand letter by asking it to send the documents it wished to be re-executed.

51. Quicken Loans believes the loan was properly closed, and any need to re-execute documents arises solely from the Estate’s allegations in the Second Amended Answer and Counterclaims.

52. Therefore, on February 24, 2016, Quicken Loans asked the Estate once more to identify the documents that it believes need to be re-signed in order to resolve the Estate’s allegations and the lawyer that will supervise the preparation and re-signing of those documents.

53. On March 7, 2016, the Estate responded to Quicken Loans’ February 24th letter stating that no documents could be re-executed to resolve its counterclaims.

54. The Estate breached the Compliance Agreement.

55. As a direct and proximate result of the Estates’ breach, Quicken Loans has incurred and will incur actual and consequential damages in an amount to be determined by a jury.

**WHEREFORE**, having fully set forth its Complaint, Quicken Loans prays that this Honorable Court inquire into the matters as set forth herein and:

A. As to its First, Third, and Fourth Causes of Action:

- 1) Ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney’s fees and costs of this action.

- 2) Determine that the mortgage held by Park Sterling Bank, recorded February 18, 2000 in Book 451 at Page 322 has been paid in full, and direct the Clerk of Court and Register of Deeds for Barnwell County to release the lien of the mortgage from the subject property.
- 3) Declare Quicken Loans' Mortgage a valid first lien, and if necessary, reform the loan documents so that Quicken Loans has a valid first lien on the property, or, in the second alternative, declare that Quicken Loans has an equitable first priority lien on the subject property, and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Quicken Loans, with reasonable attorney's fees, and for the costs of this action.
- 4) Order the reimbursement of all costs for inspecting and securing the property incurred by Quicken Loans as a result of the delinquency.
- 5) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.
- 6) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:
  - i. First, to the costs and expenses of the within action and sale;
  - ii. Second, to the payment and discharge of the amount due on Quicken Loans' Note and Mortgage, together with attorney's fees as aforesaid; and
  - iii. Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;
- 7) Issue an order directing the Sheriff of Barnwell County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and
- 8) Other relief as may be just and proper.

B. As to its Second and Fifth Causes of Action:

- 1) Award Quicken Loans its actual and consequential damages in the amount determined by a jury;
- 2) Award Quicken Loans its attorneys fees and costs; and

- 3) Award Quicken Loans any such further relief as may be just and proper.
- 4) Quicken Loans demands a jury trial on its Second and Fifth Causes of Action.

Respectfully Submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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*Attorneys for Quicken Loans Inc.*

Columbia, South Carolina

March \_\_, 2016

# Exhibit B

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BARNWELL ) SECOND JUDICIAL CIRCUIT

Quicken Loans Inc., ) Civil Action No. 2015-CP-06-070  
 )

Plaintiff, )

vs. )

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and Assigns, )  
and all other persons entitled to claim )  
through them; all unknown persons with )  
any right, title or interests in the real )  
estate described herein; also any persons )  
who may be in the military service of the )  
United States of America, being a class )  
designated as John Doe; and any )  
unknown minors or persons under a )  
disability being a class designated as )  
Richard Roe; Park Sterling Bank, )

Defendant. )  
)  
)  
)

**PLAINTIFF QUICKEN LOANS  
INC.'S AMENDED ANSWER TO  
ESTATE OF EZEKIEL T. WILSON  
PERSONAL REPRESENTATIVE'S  
SECOND AMENDED ANSWER AND  
COUNTER-CLAIMS IN RESPONSE  
TO AMENDED COMPLAINT**

**(JURY TRIAL DEMANDED)**

Reserving all rights and remedies available to it, Plaintiff Quicken Loans Inc. ("Quicken Loans") hereby responds to Defendant Wayne D. Wilson, as Personal Representative of the Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson's ("Estate" or "Defendant"), Second Amended Answer and Counter-Claims in Response to First Amended Complaint ("Counterclaims") as follows<sup>1</sup>:

<sup>1</sup> Although it is captioned as a Second Amended Answer and Counterclaims, this pleading is actually the first amended pleading that the Estate filed in response to the Amended Complaint.



### **GENERAL DENIAL**

Each and every allegation of the Counterclaims is expressly denied unless specifically admitted, qualified, or explained herein.

### **FOR A FIRST DEFENSE**

1. Paragraphs 1 through 19 respond to Quicken Loans' Complaint, and therefore, no response is required. To the extent a response is required, Quicken Loans denies every allegation in Paragraphs 1 through 19 that does not admit the allegations contained in Quicken Loans' Complaint.

2. Responding to Paragraph 20, Quicken Loans incorporates its responses to the preceding paragraphs as if repeated verbatim herein.

3. Quicken Loans admits Paragraph 21.

4. Responding to Paragraph 22, Quicken Loans admits that it conducts business concerning residential real estate loans in South Carolina. Quicken Loans further admits that Quicken Loans Inc. is not an individual licensed to practice law in South Carolina and denies any allegation that it has engaged in the unauthorized practice of law.

5. Quicken Loans admits Paragraph 23.

6. Responding to Paragraph 24, Quicken Loans craves reference to the loan agreement referenced therein and denies any allegation inconsistent therewith.

7. Responding to Paragraph 25, Quicken Loans craves reference to the statute referenced therein and denies any allegation inconsistent therewith.

8. Quicken Loans admits that it provided Calvin O. Wilson, Jr. and Ezekiel T. Wilson with an attorney preference form. Responding to the remaining allegations contained in

Paragraph 26, Quicken Loans craves reference to the attorney preference form referenced therein and denies any allegation inconsistent therewith.

9. Quicken Loans denies Paragraph 27.
10. Quicken Loans denies Paragraph 28.
11. Quicken Loans denies Paragraph 29.
12. Quicken Loans denies Paragraph 30.
13. Quicken Loans denies Paragraph 31.
14. Quicken Loans denies Paragraph 32.
15. Quicken Loans denies Paragraph 33.
16. Quicken Loans denies Paragraph 34.
17. Responding to Paragraph 35, Quicken Loans incorporates its responses to the preceding paragraphs as if repeated verbatim herein.
18. Quicken Loans denies Paragraph 36.
19. Quicken Loans denies Paragraph 37.
20. Quicken Loans denies Paragraph 38.
21. Quicken Loans denies Paragraph 39.
22. Responding to Paragraph 40, Quicken Loans incorporates its responses to the preceding paragraphs as if repeated verbatim herein.
23. Quicken Loans denies Paragraph 41.
24. Quicken Loans denies Paragraph 42.
25. Quicken Loans denies Paragraph 43.
26. Quicken Loans admits Paragraph 44.
27. Quicken Loans denies Paragraph 45.

28. Quicken Loans denies Paragraph 46.
29. Quicken Loans denies Paragraph 47.
30. Quicken Loans denies Paragraph 48.
31. Quicken Loans denies Paragraph 49.
32. Responding to the Estate's prayer for relief beginning with "WHEREFORE," Quicken Loans denies that the Estate is entitled to the requested relief or any relief whatsoever.

**FOR A SECOND DEFENSE**

The Estate's Counterclaims fail to state a claim for relief against Quicken Loans upon which relief may be granted and, therefore, should be dismissed.

**FOR A THIRD DEFENSE**

The Estate is comparatively or contributorily at fault for its damages, if any.

**FOR A FOURTH DEFENSE**

The Estate failed to mitigate its damages, if any exist and are proven at trial.

**FOR A FIFTH DEFENSE**

Quicken Loans pleads the defense of set off. To the extent the Estate obtains any monetary recovery against Quicken Loans, such recovery should be set off by the amounts owed by the Estate, including, but not necessarily limited to, amounts owed on the loan referenced in Quicken Loans' Complaint.

**FOR A SIXTH DEFENSE**

The Estate's claims in equity are barred because it has an adequate remedy at law.

**FOR A SEVENTH DEFENSE**

To the extent the Estate seeks punitive or exemplary damages, those claims violate Quicken Loans' rights to procedural and substantive due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

**FOR AN EIGHTH DEFENSE**

The Estate's damages, to the extent it has any, were proximately caused by the acts or omissions of third parties and not by the acts or omissions of Quicken Loans.

**FOR A NINTH DEFENSE**

Quicken Loans would show that the Estate's claims are barred by the doctrines of waiver, estoppel, laches, and unclean hands.

**FOR A TENTH DEFENSE**

The Estate's claims are barred by the plain terms of the applicable contracts, loan documents, and mortgage.

**FOR AN ELEVENTH DEFENSE**

The Estate's claims are barred, in whole or in part, by the doctrines of release, waiver, and/or accord and satisfaction.

**FOR A TWELFTH DEFENSE**

The Estate's damages, to the extent they are proved, were caused by the intervening acts of third parties.

**FOR A THIRTEENTH DEFENSE**

The Estate's claims are barred by the applicable statute of limitations.

**FOR A FOURTEENTH DEFENSE**

The Estate's claims under the South Carolina Consumer Protection Code are barred because any alleged violation by Quicken Loans was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

**FOR A FIFTEENTH DEFENSE**

There is no private right of action for the unauthorized practice law. Furthermore, there is no basis in the law for allowing the Estate to use allegations of unauthorized practice of law to avoid its legal obligations to repay loans that were made to Calvin and Ezekiel Wilson, to take back the mortgages that the Wilsons gave as security for the loans, or to exact from the Quicken Loans a penalty in the form of disgorgement of the fees that the Wilsons paid in consideration of certain goods and services in connection with their mortgage loans. Therefore, the Counterclaims should be dismissed.

**FOR A SIXTEENTH DEFENSE**

The Estate's claims for disgorgement are barred by the voluntary payment doctrine because the Wilsons paid the fees and charges the Estate now seeks to recover with knowledge of all the facts now alleged in the Counterclaims.

**FOR A SEVENTEENTH DEFENSE**

The Estate's claims are barred, in whole or in part, because the Estate would be unjustly enriched by the relief sought in the Counterclaims.

**FOR AN EIGHTEENTH DEFENSE**

The Estate's claims are barred, in whole or in part, by any or all of the doctrines of waiver, *in pari delicto*, accord and satisfaction, estoppel, consent, or ratification, because the

Wilsons willingly entered into, participated in, and benefited from the loan transactions in question.

**FOR A NINETEENTH DEFENSE**

The Estate's claims fail as a matter of law because they did not survive Calvin and Ezekiel Wilsons' death.

**FOR A TWENTIETH DEFENSE**

The Estate's claims fail as a matter of law because the Estate lacks standing to assert its claims.

**ADDITIONAL DEFENSES**

Quicken Loans reserves the right to amend and supplement its affirmative defenses to include any applicable defense of law or fact.

**Quicken Loans demands a jury trial on all claims so triable.**

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Columbia, South Carolina  
March \_\_, 2016

# Exhibit C

# Nelson Mullins

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February 12, 2016

Daniel W. Williams, Esquire  
Bedingfield & Williams, LLC  
40 Wall Street  
Barnwell, SC 29812

RE: Quicken Loans, Inc. v. Wayne D. Wilson, et al.  
Civil Action No. 2015-CP-06-00070  
Our File No. 42677/01510

Dear Dan,

On behalf of Quicken Loans Inc. ("Quicken Loans"), we request that the Estate of Ezekiel T. Wilson (the "Estate") fulfill its contractual obligations pursuant to the Compliance Agreement that Mrs. Wilson executed in connection with the December 14, 2011, mortgage given on the property located at 12640 Main St, Williston, SC 29853 (the "Mortgage"). The Estate has filed an Answer and Counterclaims (the "Counterclaims") against Quicken Loans in the foreclosure action that is currently pending in the Court of Common Pleas for Barnwell County, South Carolina Case No. 2015-CP-06-070. Although Quicken Loans denies the substance of the Counterclaims' allegations, those allegations trigger the Estate's mandatory obligations under the Compliance Agreement signed by Mrs. Wilson.

The Compliance Agreement, enclosed herewith for reference, requires that the Estate "(i) amend, sign, and/or re-sign any of your application, underwriting or closing documentation; and/or (ii) provide additional information, documentation and/or clarification in writing to Lender after the closing of your mortgage loan" for the purpose of correcting errors or omissions and complying with federal or state laws, among other reasons.

Although Quicken Loans believes that Mrs. Wilson's mortgage closing was properly supervised by a South Carolina attorney and was conducted in full compliance with South Carolina law, Quicken Loans nonetheless makes the instant demand in order to resolve any allegations to the contrary asserted by the Estate and to avoid wasting significant time, expense, and resources in protracted litigation. In light of the Estate's allegations, which

*With offices in the District of Columbia, Florida, Georgia, Massachusetts, New York, North Carolina, South Carolina, Tennessee and West Virginia*



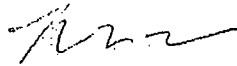
Daniel W. Williams, Esquire  
February 12, 2016  
Page 2

Quicken Loans denies in full, this letter shall serve as a formal demand by Quicken Loans that the Estate re-sign all of the loan documents in the presence and under the supervision of a South Carolina attorney within seven days of the date of this letter in accord with the terms of the Compliance Agreement executed by Mrs. Wilson. The South Carolina attorney who will be supervising the preparation and re-signing of the loan documentation will be selected by the Estate.

Please respond in writing within seven day of your receipt of this letter to indicate whether the Estate will comply with its contractual obligations under the Compliance Agreement and to specify the name of the lawyer who will supervise the preparation and re-signing of the documents. If the Estate declines to fulfill its obligations under the Compliance Agreement or fails to respond to this letter within seven days, Quicken Loans will seek appropriate relief against it.

If you have any questions or would like to discuss this further, please do not hesitate to contact us.

Very truly yours,



Brian M. Barnwell

Enclosures

cc: Steven W. Hamm, Esquire  
Charles L. Dibble, Esquire  
C. Bradley Hutto, Esquire

STATE OF SOUTH CAROLINA )

COUNTY OF BARNWELL )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc.,<sup>1</sup>

Civil Action No. 2015-CP-06-070

Plaintiff,

vs.

**PLAINTIFF QUICKEN LOANS  
INC.'S RESPONSE TO  
DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Wayne D. Wilson; Calvin O. Wilson,  
III; Any other Heirs-at-law or Devisees  
of Ezekiel (Ellen) T. Wilson, Deceased,  
their heirs, Personal Representatives,  
Administrators, Successors and Assigns,  
and all other persons entitled to claim  
through them; all unknown persons with  
any right, title or interests in the real  
estate described herein; also any persons  
who may be in the military service of the  
United States of America, being a class  
designated as John Doe; and any  
unknown minors or persons under a  
disability being a class designated as  
Richard Roe; Park Sterling Bank,  
Defendants.

FILED FOR RECORD  
2016 MAR 21 PM 1:46  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

The only question before the Special Referee in deciding Defendant Wayne D. Wilson, as Personal Representative of the Estate of Ezekiel T. Wilson a/k/a Ezekiel (Ellen) T. Wilson's ("Defendant") motion for partial summary judgment is whether there is any question of material fact, or a "mere scintilla of evidence," to show that Plaintiff Quicken Loans Inc. ("Quicken Loans") ascertained Ezekiel Wilson's preferred attorney prior to the closing of her mortgage loan. See *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Quicken Loans has offered far more than a scintilla of evidence to show that it properly ascertained Mrs. Wilson's preferred

<sup>1</sup> Plaintiff should have been identified as Quicken Loans Inc. in the caption.

attorney, and Defendant is unable to offer any admissible, non-speculative evidence to the contrary.

Quicken Loans respectfully submits this Response to Defendant's motion for partial summary judgment. New claims and counterclaims have arisen since this case was originally filed as a foreclosure action, and Quicken Loans is entitled to demand a jury trial on those claims and counterclaims. Accordingly, the Special Referee must first address Quicken Loans' motion to amend and motion to transfer this case to the general docket, and it is inappropriate for the Special Referee to decide Defendant's motion for partial summary judgment on its attorney preference counterclaim. However, should the Special Referee reach Defendant's motion, it should be denied. Further, Quicken Loans respectfully moves for the Special Referee to strike Defendant's motion, memorandum, and appendix from the public record because they improperly quote and file confidential materials that are protected from public disclosure and use in this litigation.

#### INTRODUCTION

Despite arguing that there are no outstanding factual questions, Defendant has offered *no* evidence which supports its claim that Quicken Loans failed to ascertain *Mrs. Wilson's* preferred attorney prior to her closing. Instead, Defendant offers only a single piece of admissible evidence—an attorney preference form signed by Mrs. Wilson during her loan application *confirming* that she had no preference of attorney—along with pages of inadmissible transcript excerpts from *Vance Boone et al. v. Quicken Loans* (hereinafter "*Boone* action"), an ongoing proceeding in the original jurisdiction of the South Carolina Supreme Court regarding whether Quicken Loans engaged in the unauthorized practice of law in four mortgage closings not involving Mrs. Wilson. Defendant suggests that

Quicken Loans' procedures cause it to always fail to ascertain any South Carolina borrower's preferred attorney, including Mrs. Wilson's, even though there is no evidence before the Special Referee regarding communications that occurred during Mrs. Wilson's loan application process regarding her preference for a lawyer to close her loan. Defendant's arguments regarding the unauthorized practice of law and Quicken Loans' processes are irrelevant to the action before the Special Referee as to whether Quicken Loans complied with the attorney preference statute.

The only admissible evidence demonstrates that Quicken Loans properly ascertained Mrs. Wilson's lack of preference of attorney, and to the extent any factual questions remain regarding what actually occurred during the Wilsons' loan application and closing, further discovery is appropriate. The evidence from the *Boone* action offered by Defendant in support of its motion is inadmissible in this action and must be disregarded and stricken from the public record. Finally, Defendant's interpretation of the unconscionability statute is illogical and not supported by the evidence. For these reasons, the Special Referee must deny Defendant's motion for partial summary judgment and strike Defendant's filings from the record..

#### **ARGUMENT**

**I. Defendant's motion for partial summary judgment must be denied based on the admissible evidence before the Special Referee.**

**A. Quicken Loans ascertained Mrs. Wilson's lack of attorney preference.**

Rather than offering evidence regarding what actually occurred in the Wilsons' closing, Defendant relied nearly entirely on the inadmissible anecdotes about Quicken Loans' general processes from the *Boone* action. The only evidence that Defendant

offered to the Special Referee about the Wilsons' closing indicates that Quicken Loans ascertained and fully complied with Mrs. Wilson's lack of preference of an attorney.

On November 7, 2011, the Wilsons signed a form confirming that they did not have a preferred attorney to close their loan. (*See* Ex. 1, Affidavit of Eric Andino, at Ex. A, Attorney Preference Form.) On December 9, 2011, Shannon Kirtley, a representative of Quicken Loans, called Mr. Wilson to confirm that the Wilsons would be personally present at the closing, and Mr. Wilson told her that they wanted the closing to take place at their home. (*See id.* at Ex. B, Journal Notes.) Ms. Kirtley noted that Mr. Wilson was "good with all of the preliminary [numbers] and is very pleased with the process." On December 12, 2011, Quicken Loans sent a bound package containing the closing documents to the Wilsons' home and posted a copy online so the Wilsons could log in and review the documents prior to the closing. (*Id.*)

The Wilsons' loan was closed by Carlton Robinson, a licensed South Carolina attorney in good standing, on December 14, 2011. (*See* Ex. 2, Affidavit of Carlton Robinson.) Attorney Robinson's policy is to explain all documents before the borrower signs them, including the requirements of South Carolina Code Section 37-10-102. (*Id.* ¶ 6.) Attorney Robinson would not have proceeded with the closing if the Wilsons had expressed any dissatisfaction with him representing them during the closing. (*Id.* ¶ 7.) Attorney Robinson explains all of the documents of legal significance to the borrower to discharge his legal and ethical duties under South Carolina law. (*Id.* ¶ 6.) Defendant can offer no evidence that the Wilsons had a preference for an attorney other than Attorney Robinson or that he failed to sufficiently represent the Wilsons.

The Wilsons also signed a disclosure form confirming that Attorney Robinson explained the legal effect of the documents at the closing, that his representation was limited to the closing, and that he dually represented the Wilsons and Quicken Loans at the closing. (*Id.* at Ex. A, Real Estate Closing Disclosure Form.) They also signed to confirm that Attorney Robinson answered any questions they had during the closing. (*Id.*)

After the closing, the Wilsons answered a survey to give feedback about their experience, and they gave Quicken Loans perfect marks on every question. (*See* Ex. 1, Affidavit of Eric Andino, at Ex. C, Client Survey.) They wrote that they were "treated to outstanding service by Quicken personnel. All questions I asked was answered effectively and very helpful." (*Id.*) The Wilsons wrote that they referred family members to Quicken Loans. (*Id.*)

The documents signed by the Wilsons and Attorney Robinson's affidavit are the only admissible evidence before the Special Referee regarding the Wilsons' preferences, and no evidence supports Defendant's claim that Quicken Loans failed to ascertain the Wilson's preference of legal counsel. The attorney preference statute requires Quicken Loans to learn or find out the borrower's preference as to the legal counsel for the closing, and the only evidence before the Special Referee is that Quicken Loans determined that Mrs. Wilson had no preference for counsel. Accordingly, Defendant's motion for partial summary judgment should be denied.

**B. Defendant cannot meet his burden to show there are no genuine issues of material fact that Quicken Loans failed to ascertain Mrs. Wilson's preferred attorney.**

To the extent the attorney preference form, Attorney Robinson's affidavit, and the arguments raised in Quicken Loans' motion for summary judgment do not foreclose Defendant's attorney preference counterclaim, the lack of evidence in the record regarding what actually occurred during the Wilsons' application process raises genuine issues of material fact and renders Defendant's partial summary judgment motion speculative. Defendant cannot meet its burden to show that there is no genuine issue of material fact that Quicken Loans failed to ascertain Mrs. Wilson's attorney preference and that there is and no scintilla of evidence to the contrary.

South Carolina Code Ann. § 37-10-102 requires that the creditor "ascertain" the borrower's preferred legal counsel. S.C. Code Ann. § 37-10-102(a). The statute, however, does not establish any requirements for the method through which a creditor must "ascertain" whether the borrower has a preference as to legal counsel, nor is "ascertain" defined by the statute.<sup>2</sup>

Defendant relies heavily on the Department of Consumer Affairs' Administrative Interpretation 10.102(a)-8302, and the form it promulgates, as the correct way for a creditor to satisfy the attorney preference statute. Defendant goes further and claims that Quicken Loans violates S.C. Code Ann. § 37-1-107 by "misus[ing] the form promulgated

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<sup>2</sup> The South Carolina Supreme Court has found, when interpreting the use of the word "ascertain" in an unrelated statute, that the General Assembly intended the dictionary definition. See *Etiwan Fertilizer Co. v. S. Carolina Tax Comm'n*, 217 S.C. 354, 360, 60 S.E.2d 682, 684 (1950); see also *M. Lowenstein & Sons, Inc. v. S. Carolina Tax Comm'n*, 277 S.C. 561, 566, 290 S.E.2d 812, 815 (1982) (relying on *Etiwan*). Merriam-Webster defines ascertain as "to learn or find out (something, such as information or the truth)." Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/ascertain>.

by the department.” (See Memorandum in Support of Defendant’s Motion for Partial Summary Judgment p. 10.) Defendant ignores the plain language of the attorney preference statute, which explicitly does not require the use of the Department of Consumer Affairs’ form and does not incorporate the Administrative Interpretation.

Although compliance with the attorney preference statute can be conclusively established through the use of a written form, the statute does not mandate the use of a form to ascertain the preference information. See S.C. Code Ann. § 37-10-102(a). A creditor can fully comply with the statute by asking the borrower’s preference during a phone call or an informal written or electronic communication without using a form at all. Had the General Assembly found it appropriate to require a conspicuous written disclaimer on the front page of the loan application or otherwise incorporate any of the language of Administrative Interpretation 10.102(a)-8302 into the attorney preference statute, it had the opportunity to do so; the General Assembly amended the attorney preference statute in 1996, thirteen years after the Administrative Interpretation was promulgated. See *State v. King*, 412 S.C. 403, 409, 772 S.E.2d 189, 192 (Ct. App. 2015) (“The Legislature is presumed to know how the terms and phrases it uses in a statute have been interpreted in the past.”). However, the General Assembly declined to incorporate any of the language of the Administrative Interpretation in any way into the 1996 amendment, and the Special Referee must follow the plain language of the statute over an interpretation by an administrative agency.<sup>3</sup>

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<sup>3</sup> The two Supreme Court cases Defendant cites as giving added weight to the Administrative Interpretation actually demonstrate that the Supreme Court is undecided on its value. In *King*, the Supreme Court only relied on the Administrative Interpretation in evaluating the timing of the attorney preference disclosure, which is not at issue under the current statute. *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 90, 687 S.E.2d 321, 325



Furthermore, even when a creditor uses a form to conclusively establish compliance, the attorney preference statute still does not require the use of the form promulgated by the Department of Consumer Affairs. Instead, a lender can comply with the attorney preference statute by using “a form *substantially similar* to a form distributed by the administrator.” S.C. Code Ann. § 37-10-102(a) (emphasis added). Defendant’s emphasis on Quicken Loans’ decision not to use the exact form distributed by the Department of Consumer Affairs thus emphasizes form over the substance of the attorney preference statute; Quicken Loans can fully satisfy the statute without using the Department of Consumer Affairs’ form or any form at all.

Defendant has not, and cannot, offer any evidence to prove that Quicken Loans did not ascertain Mrs. Wilson’s preference via oral, written, or electronic communication. To the contrary, Defendant admits its motion is based entirely off of speculation based on Quicken Loans’ prior allegedly wrongful acts in other loan closings and failure to use the Department’s form. (See Memorandum in Support of Defendant’s Motion for Partial Summary Judgment p. 6 (“There is nothing in the record nor has there been any allegation that Quicken Loans deviated from its standard procedures as outlined above.”).)

The burden is on Defendant to prove that there is no issue of material fact that Quicken Loans failed to ascertain Ezekiel Wilson’s preference of attorney, and Defendant cannot meet that burden. The only two surviving witnesses to the closing, Attorney

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(2009). On the other hand, in *Davis*, the Supreme Court determined that an attorney preference disclosure on a separate sheet of paper satisfied the statute *without considering the Administrative Interpretation*—even though the Administrative Interpretation is on that exact issue and the lender relied on the Administrative Interpretation. *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 87, 484 S.E.2d 471, 473 (1997).

Robinson and the Wilsons' son, Calvin Wilson III, have not been deposed. Defendant has not offered an affidavit from Mr. Wilson to support its motion for partial summary judgment, despite his personal economic interest as a co-defendant and heir of the Estate in offering a favorable affidavit. Both Mr. and Mrs. Wilson are deceased, and no known statements exist regarding Mrs. Wilson's preferred attorney to represent them in the closing. Other than the signed attorney preference forms confirming that the Wilsons had no preferred attorney, there is no non-speculative evidence before the Special Referee regarding Mrs. Wilson's intent or the loan application process. As a result, summary judgment is inappropriate.

**II. The Special Referee may not consider the evidence from the *Boone* action.**

In order to be considered, materials offered in support of a motion for summary judgment "must set forth facts which would be admissible in evidence." Rule 56(e), SCRCP; *see also Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 543, 608 S.E.2d 440, 447 (Ct. App. 2004) ("Our appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence."). In support of its motion for partial summary judgment, Defendant relied nearly entirely on deposition and transcript excerpts from the *Boone* action, purportedly supporting Defendant's theory that Quicken Loans' process violates the attorney preference statute for *every* South Carolina borrower, including Mrs. Wilson. The offered evidence must be disregarded and stricken because it violates the Confidentiality Protective Order entered in the *Boone* action and because it is inadmissible under the South Carolina Rules of Evidence, Rules of Civil Procedure, and common law.

**A. The evidence from the *Boone* action is confidential and cannot be used in other proceedings.**

The Special Referee must disregard Defendant's offered testimony from the *Boone* action because it has been protected from disclosure by order of Judge Diane Goodstein, the Special Referee appointed by the South Carolina Supreme Court to take evidence and make a report and recommendation of findings of fact and conclusions of law in the *Boone* action. Defendant's counsel has blatantly disregarded Judge Goodstein's order by relying on confidential testimony in this action—and has invited the Special Referee to make the same violation.

In the *Boone* action, Judge Goodstein entered a Confidentiality Protective Order recognizing the confidential and commercially sensitive nature of the testimony and documents at issue. (See Ex. 7 to Defendant's Appendix to Motion for Partial Summary Judgment, Confidentiality Protective Order, *Boone et al. v. Quicken Loans*.) The Confidentiality Protective Order allows either party in the *Boone* action to designate any documents or deposition portions that the attorney believes in good faith to be confidential. (*Id.* ¶ 3.) The Confidentiality Protective Order provides that "[d]ocuments designated confidential under this Order shall not be used or disclosed by the parties or counsel or any other persons identified below (¶ 5.b.) *for any purposes whatsoever* other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation)." (*Id.* ¶ 5(a) (emphasis added).) The Confidentiality Protective Order is binding on counsel for both Quicken Loans and the plaintiffs in the *Boone* action, and counsel is bound to take reasonable efforts to prevent the unauthorized disclosure of confidential information. (*Id.* ¶¶ 1, 5(c), 12.)

Pursuant to the Confidentiality Protective Order, Quicken Loans designated as confidential pages 10-53 of the transcript of the deposition of Jeffrey Campbell and pages 11-43 of the transcript of the deposition of Jenna Randall, both of whom were Quicken Loans corporate representatives. (See Ex. 3, Letter dated June 22, 2015.) At the evidentiary hearing in the *Boone* action, counsel for Defendant, who represents the *Boone* plaintiffs, read into the record excerpts from those depositions, including some excerpts designated confidential.

Despite being bound by the Confidentiality Protective Order, counsel for Defendant has now filed into the public record excerpts from the transcript from the *Boone* evidentiary hearing which reproduces the confidential deposition testimony word-for-word. (See Ex. 8 to Defendant's Appendix to Motion for Partial Summary Judgment.) Defendant filed excerpts reproducing some or all of pages 10-11, 13-29, and 32-35 of the deposition of Jeffrey Campbell and pages 14, 24, 33-36, and 41 of the deposition of Jenna Randall, all of which were designated Confidential. Quicken Loans also designated a Master Services Agreement between Quicken Loans and Title Source, Inc. as Confidential, yet Defendant reproduced the terms of the confidential document in Defendant's motion and filed the testimony of Brian Hughes discussing the terms—even though the contract was not drafted or executed until over two years after Mrs. Wilson's loan closing. (*Id.*)

Defendant's counsel did not merely forget about the Confidentiality Protective Order; to the contrary, they affirmatively included the Confidentiality Protective Order as Exhibit 7 to the Appendix to its Motion for Partial Summary Judgment. It is unclear whether Defendant's counsel, by attaching the Confidentiality Protective Order,

implicitly recommends that the Special Referee follow the Order where they have not, or if attaching the Order to the Appendix somehow binds all potential readers of the public record to silence. Whatever the reason for its inclusion, counsel for Defendant chose not to explain the Confidentiality Protective Order's inclusion in the Appendix, failed to justify why they have disregarded Paragraph 5 barring the use of the testimony in unrelated litigation, and did not inform the Special Referee that he would be in breach of Judge Goodstein's order by relying on the confidential testimony—even though Defendant has asked the Referee to do precisely that by granting partial summary judgment based on the confidential testimony.

The confidential deposition testimony does not lose its protection merely because it was read into the record by the same attorneys during the evidentiary hearing in the *Boone* action. All extracts of documents designated Confidential also become Confidential and are afforded the full protection of the Confidentiality Protective Order. (Ex. 7 to Defendant's Appendix to Motion for Partial Summary Judgment ¶ 5(d).) Evidence designated Confidential remains subject to the full protections of the Order, including the restrictions on disclosure and use in other litigation, until the Confidential designation is withdrawn, waived after a challenge, or ordered by Judge Goodstein to no longer be applicable. (*Id.* ¶ 8(c).) None of those have occurred. The Confidentiality Protective Order states that it remains in effect in the *Boone* action through the final decision and after the conclusion of the litigation. (*Id.* ¶ 9(a).)

The Confidential testimony offered by Defendant in support of its motion for partial summary judgment must be disregarded by the Special Referee and stricken from the public record. The evidence should not have been used in this action. Judge

Goodstein entered an Order establishing that the evidence was not to be used in unrelated litigation, and unlike Defendant's counsel has done, the Special Referee should not disregard that Order.

Defendant's motion relies almost completely on the confidential testimony from the *Boone* action as the only evidence Defendant can offer that Quicken Loans failed to ascertain the Wilsons' preference of attorney. The only other document that Defendant offers in support of its attorney preference argument is the Wilsons' attorney preference form from their application, which was signed in ink by both Mr. and Mrs. Wilson *confirming they had no attorney preference*. Without the improper evidence from the *Boone* action, Defendant's motion for partial summary judgment has no support whatsoever and must be denied. Further, Defendant's motion, memorandum, and appendix must be stricken from the record in order to prevent further dissemination of these protected materials.

**B. The evidence offered from the *Boone* action is inadmissible under the South Carolina Rules of Evidence, Rules of Civil Procedure, and common law.**

Even if the evidence from the *Boone* action were not barred from use in this action, it would still be inadmissible under the South Carolina Rules of Evidence, South Carolina Rules of Civil Procedure, and South Carolina common law. Accordingly, it should be disregarded for these reasons as well.

The evidence is inadmissible under the South Carolina Rules of Civil Procedure and common law. South Carolina common law does not allow the use of deposition testimony taken in one proceeding to be offered as evidence in unrelated proceedings between different parties. *Holden v. Cantrell*, 88 S.C. 281, 70 S.E. 815 (1911). South

Carolina Rule of Civil Procedure 32, which governs the use of deposition transcripts as evidence at hearings and trial, does not have a provision allowing the use of deposition testimony as substantive evidence in unrelated proceedings. *See* Rule 32, SCRPC.

Even under Federal Rule 32(a)(8), a deposition taken in an earlier action may only be used in a later action if it involves “the same subject matter between the same parties.” The *Boone* action and this action have neither the same issues nor the same parties.

The issue in the *Boone* action is whether Quicken Loans engaged in the unauthorized practice of law in the four loan transactions at issue in that action. The plaintiffs in the *Boone* action are not asserting an attorney preference violation claim, and the statutory attorney preference requirement is not part of the South Carolina Supreme Court’s unauthorized practice of law jurisprudence. The parties in the *Boone* action did not conduct discovery to prosecute or defense any attorney preference claims. Moreover, the parties to the *Boone* action did not conduct discovery on the Wilson transaction, much less regarding any attorney preference concerns in the Wilson transaction.

Whether Quicken Loans ascertained the Wilsons’ preferred attorney to close their loan is not at issue in the *Boone* action and the Wilsons are not parties to the *Boone* action, so Quicken Loans had no reason to develop testimony regarding the Wilsons’ loan application in the *Boone* action. Federal courts have consistently held that evidence of occurrences in other lawsuits containing different factual circumstances, parties, and issues is inadmissible for its merits in unrelated litigation. *See, e.g., Edwards v. Atro S.P.A.*, 891 F. Supp. 1074, 1082 (E.D.N.C. 1995) (excluding evidence of other lawsuits on grounds that they concerned “a different phenomenon from that described in plaintiff’s allegations”); *Vukadinovich v. Zentz*, 995 F.2d 750, 756 (7th Cir. 1993) (affirming

exclusion of evidence of prior complaints and actions because they “arose from dissimilar events and were filed for a number of different reasons”); *Brewer v. Jeep Corp.*, 546 F. Supp. 1147, 1149 (W.D. Ark. 1982) (excluding testimony of plaintiff’s experts about lawsuits which “did not arguably occur under similar facts or situations”). All of the testimony from the *Boone* action offered to prove as a matter of law that Quicken Loans failed to ascertain the Wilsons’ preference of attorney is inadmissible and cannot be considered.

**III. There is no evidence of unconscionability in the record.**

The offered testimony is inadmissible pursuant to Rule 404(b) of the South Carolina Rules of Evidence, which states that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” Rule 404(b), SCRE. Rather, evidence of prior acts may only be admitted for the purpose of proving “motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” Rule 404(b), SCRE. Defendant is attempting to offer evidence about unlitigated allegations of attorney preference violations by Quicken Loans for three sets borrowers unrelated to the Wilsons in order to substantively establish that Quicken Loans must have acted in conformity therewith to violate the attorney preference statute during the Wilsons’ loan application—without offering substantive evidence regarding the circumstances of the Wilsons’ transaction. This is the precise use of prior act evidence that Rule 404(b) excludes. *See, e.g., Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 483, 609 S.E.2d 286, 300 (2005) (“Because evidence of other accidents may be highly prejudicial, [a] plaintiff must present a factual foundation for the court to determine that the other accidents were substantially similar to the accident at



issue.” (internal quotation omitted)). The evidence from the *Boone* action is inadmissible and cannot support Defendant’s motion for partial summary judgment, so the motion must be denied.

For the reasons stated in Quicken Loans’ cross-motion for summary judgment, relief under S.C. Code Ann. § 37-10-105(c) is unavailable for an attorney preference violation. In addition to those reasons, Defendant’s motion for partial summary judgment should be denied because any finding of unconscionability would be improperly based on speculation or an incorrect interpretation of the law. Other than its general argument that all attorney preference violations are necessarily unconscionable, Defendant offers no evidence that Mrs. Wilson’s particular transaction was unconscionable. There is no evidence that the mortgaged property was worthless; that Quicken Loans’ loan was grossly more expensive compared to other loans; that Quicken Loans obtained separate charges for insurance that provided no potential benefit to Mrs. Wilson; that Mrs. Wilson was infirm or incapable of understanding the mortgage or that Quicken Loans took advantage of her; or that Quicken Loans took a security interest in Mrs. Wilson’s personal property. S.C. Code Ann. § 37-10-105 requires a finding of unconscionability pursuant to S.C. Code Ann. § 37-5-108, and Defendant has not even attempted to demonstrate that any of the enumerated factors are present in Mrs. Wilson’s transaction.

Defendant argues that, by mailing the Wilsons a typed form confirming their expressed preferences, Quicken Loans “ensured that borrowers would be unable to protect their interests” and “caused the borrowers to attempt to waive their rights under the Consumer Protection Code,” in “callous disregard” of S.C. Code Ann. § 37-1-107. (Memorandum in Support of Defendant’s Motion for Partial Summary Judgment p. 12.)

Defendant again rephrases its theory that the attorney preference violation itself is unconscionable by stating that “[t]he conduct of using the form is oppressive and one-sided and is unconscionable” and “the pre-populated Attorney/Insurance Preference Form is in and of itself unconscionable.” (*Id.* p. 13.) Although Defendant also claims that purported violations of S.C. Code Ann. §§ 37-1-107 and 40-5-320 are further bases for a finding of unconscionability, these alleged violations are based on the same underlying conduct—that Quicken Loans allegedly failed to ascertain Mrs. Wilson’s preferred attorney. Other than the alleged failure to ascertain Mrs. Wilson’s preferred attorney, Defendant does not argue that Quicken Loans engaged in *any* other conduct that was unconscionable.

Defendant’s theory that Quicken Loans’ failure to ascertain Mrs. Wilson’s attorney preference was unconscionable standing alone is untenable. If Defendant’s theory were true, then *every* failure to ascertain a borrower’s preferred attorney is a “callous disregard” of the borrower’s rights and is *necessarily* unconscionable.

The result proposed by Defendant contradicts the law. The plain language of S.C. Code Ann. § 37-10-105 requires a judicial finding of unconscionability pursuant to S.C. Code Ann. § 37-5-108, which establishes five transaction-specific factors for a court to consider. Had the General Assembly considered every attorney preference violation to be unconscionable standing alone, it would have included such language—and it could have in 1997 when it amended S.C. Code Ann. § 37-10-105 to add remedies for unconscionability. The General Assembly did not include the attorney preference requirement as an enumerated basis for unconscionability, however, and the Special Referee should not attribute an illogical interpretation of S.C. Code Ann. § 37-10-102 not

intended by the General Assembly. *See Peake v. S. Carolina Dep't of Motor Vehicles*, 375 S.C. 589, 599, 654 S.E.2d 284, 289 (Ct. App. 2007) ("Courts will reject statutory interpretations that lead to results so plainly absurd they could not have been intended by the legislature or that defeat the plain legislative intention.").

Further, had the Supreme Court determined that a failure to ascertain a borrower's preferred attorney rendered the transaction unconscionable, it could refuse to enforce mortgages closed without any attorney involvement at all. To the contrary, the Supreme Court has expressly refused to invalidate a mortgage closed without an attorney or declare it unconscionable. *See Matrix Fin. Serv. Corp. v. Frazer*, 394 S.C. 134, 140, 714 S.E.2d 532, 535 (2011). The Supreme Court should not accept a result that the Supreme Court has also implicitly rejected.

Defendant analogizes to *Green Tree Financial Corp. v. Fleming*, a class action under the pre-1997 version of the attorney preference statute, for the position that the failure to advise borrowers of their right to an attorney, standing alone, is unconscionable. (Memorandum in Support of Defendant's Motion for Partial Summary Judgment p. 11.) In *Fleming*, however, the lender affirmatively admitted that it had no policy or procedure to attempt to comply with S.C. Code Ann. § 37-10-102 and made no effort to introduce such a policy even after settling an earlier attorney preference action. (See Ex. 4, Green Tree's Responses to Defendant's Requests for Admission, *Green Tree v. Fleming*.) Defendant does not claim, and cannot show, that Quicken Loans has engaged in such willfully negligent conduct here. Moreover, the lender in *Fleming* did not raise the issue of whether Section 37-10-105(C) applied to alleged attorney preference claims, and the South Carolina Supreme Court has sense recognized that it does not. *See Tilley v.*

*Pacesetter Corp.*, 355 S.C. 361, 370, 585 S.E.2d 292, 296 (2003) (stating that for violations of the Attorney Preference Statute, subsection (A) was the only “relevant part” of Section 37-10-105 to consider). Regardless, *Fleming* is one circuit court attorney preference case and has no binding precedential value.

The statutes cited by Defendant as additional rationale for a finding of unconscionability based on the same conduct by Quicken Loans do not support such a finding. Defendant first claims that a creditor’s failure to ascertain a borrower’s preferred attorney constitutes a borrower’s waiver of rights under the Consumer Protection Code in violation of S.C. Code Ann. § 37-1-107.<sup>4</sup> However, Section 37-1-107 is only intended to bar attempts by creditors to force a borrower to waive a right under the Consumer Protection Code as a condition of an agreement or settlement. It is not a duplicative, superfluous protection of the attorney preference right already guaranteed by S.C. Code Ann. § 37-10-102. *See State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” (quotation omitted)). Similarly, Defendant claims that Quicken Loans’ conduct was more unconscionable because it violated S.C. Code Ann. § 40-5-320, which bars corporations from furnishing legal advice, practicing as an attorney at law, or holding themselves out to the public as being able to do either. *See State v. Buyers Serv. Co.*, 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987) (stating that

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<sup>4</sup> Defendant also claims that Quicken Loans demonstrated a “total indifference and disregard” for S.C. Code Ann. § 37-1-107 by preserving its legal defense of waiver in its Answer. Defendant’s contention is nonsensical; Quicken Loans’ refusal to abandon a legal defense does not cause a borrower to forego rights under the Consumer Protection Code. Although the terms are the same, the legal defense of waiver has broader significance than waiver under S.C. Code Ann. § 37-1-107. Regardless, pleadings in the current litigation are not relevant to whether Quicken Loans unconscionably failed to ascertain Mrs. Wilson’s preferred attorney prior to closing.

S.C. Code Ann. § 40-5-320 prohibits corporations from the practice of law). However, S.C. Code Ann. § 40-5-320 is not intended to provide criminal enforcement for an attorney preference violation where it is not allowed by S.C. Code Ann. § 37-10-105, and there is no textual support for an argument that S.C. Code Ann. § 40-5-320 provides civil protection for an attorney preference violation.

Quicken Loans did not engage in any unconscionable conduct. The same attorney preference form that Defendant claims is unconscionable demonstrates that Mrs. Wilson had meaningful choices during the ascertainment phase of the application; Mrs. Wilson selected State Farm as her preferred insurer, and Quicken Loans honored that preference. Moreover, there is no evidence that the attorney who closed the loan, Carlton Robinson, was employed or furnished by Quicken Loans. To the contrary, Attorney Robinson has been a solo practitioner since 2003, and he fully advised the Wilsons of his dual representation of borrower and lender. (Ex. 2, Affidavit of Carlton Robinson ¶¶ 2, 8.) Defendant also does not claim that any terms of the note or mortgage are unconscionable or oppressive, and the Wilsons never refinanced their loan in an attempt to resolve any purported unconscionability. Although Defendant believes that the transaction was induced by unconscionable conduct, the Wilsons believed that Attorney Robinson and the Quicken Loans employees provided “outstanding service.” (See Ex. 1, Affidavit of Eric Andino, at Ex. C, Client Survey.)

Defendant’s argument that Mrs. Wilson’s transaction is unconscionable as a matter of law similarly impermissibly relies on speculation based on Quicken Loans’ procedures from the *Boone* action rather than evidence of what actually occurred in the Wilsons’ transaction. Defendant’s theory that all attorney preference violations are

inherently unconscionable fails, and the Special Referee should deny Defendant's motion for partial summary judgment based on the lack of evidence of unconscionability in the record.

**IV. Quicken Loans should be allowed to engage in discovery.**

If the Special Referee does not find that Quicken Loans has provided evidence to demonstrate that Quicken Loans ascertained that Mrs. Wilson had no preference as to her choice of attorney, Quicken Loans should be granted leave to engage in discovery. (*See* Ex. 5, Affidavit of Brian M. Barnwell.) The parties have not engaged in significant discovery before Defendant filed its motion for partial summary judgment, which is premised almost entirely on out-of-context statements from the depositions of Quicken Loans representatives on the issue of the unauthorized practice of law. As stated above, Quicken Loans had no reason to examine its witnesses in the *Boone* action regarding whether Quicken Loans ascertained Mrs. Wilson's attorney preference. As a result, deciding this action on the basis of discovery in an unrelated action, with different parties and different issues, is inappropriate.

Neither party has taken any depositions. Quicken Loans has not deposed Calvin Wilson III or Attorney Robinson, and their testimony will be necessary to determine the Wilsons' expressed intent and what occurred immediately prior to and at the closing. Defendant has only served a single request for production of the Wilsons' loan file, four form interrogatories, and three requests for admission regarding admissibility of business records at trial. (*See* Ex. 6, Letter Serving Defendant's Request for Production to Plaintiff, Defendant's Interrogatories to Plaintiff, and Defendant's Requests for Admission to Plaintiff.) Moreover, in response to Quicken Loans' discovery requests,

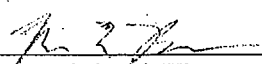
Defendant only produced documents already in Quicken Loans' possession. Quicken Loans should be allowed to engage in such discovery if the Special Referee is unable to make the determination that Quicken Loans ascertained Mrs. Wilson's lack of preference of attorney.

### CONCLUSION

For the foregoing reasons, Quicken Loans respectfully requests that the Special Referee deny Defendant's motion for partial summary judgment and strike Defendant's motion, memorandum, and appendix from the record.

Respectfully submitted,

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*Attorneys for Quicken Loans Inc.*

Columbia, South Carolina  
March 16, 2016

# **EXHIBIT 1**

**(Affidavit of Eric Andino)**



STATE OF SOUTH CAROLINA )

COUNTY OF BARNWELL )

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc., )

Plaintiff, )

vs. )

Civil Action No. 2015-CP-06-070

**AFFIDAVIT OF**  
**ERIC ANDINO**

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and Assigns, )  
and all other persons entitled to claim )  
through them; all unknown persons with )  
any right, title or interests in the real )  
estate described herein; also any persons )  
who may be in the military service of the )  
United States of America, being a class )  
designated as John Doe; and any )  
unknown minors or persons under a )  
disability being a class designated as )  
Richard Roe; Park Sterling Bank, )  
Defendants. )

PERSONALLY APPEARED BEFORE ME, Eric Andino, being duly sworn,  
deposes and says as follows:

1. My name is Eric Andino. I am over eighteen years of age and am  
competent to give this affidavit. Unless otherwise stated, the facts set forth in this  
affidavit are based upon my personal knowledge.

2. I am a duly authorized custodian of records of Quicken Loans Inc.  
("Quicken Loans"). As custodian of records, I have knowledge of Quicken Loans'  
computer systems, files, and the customer data stored in these systems and files, and I am  
familiar with how Quicken Loans maintains its loan files. The statements made in this

affidavit are based on my personal knowledge after reviewing selected business data compiled from records of Quicken Loans.

3. Attached hereto are the following records from Quicken Loans' loan file for the mortgage loan executed by Calvin O. Wilson, Jr. and Ezekiel T. Wilson on property located at 12640 Main Street, Williston, South Carolina, 29853, and given loan number ending 4992:

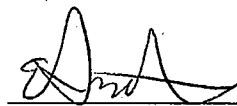
- a. Attorney/Insurance Preference form (Nov. 7, 2011)
- b. Journal Notes
- c. Client Survey

4. The records attached hereto were made at or near the time of the act, event, or condition reported therein by or from information transmitted by a person with knowledge of the act, event, or condition reported therein.

5. It is the regular practice of Quicken Loans to record and keep as business records information regarding its origination and servicing of loans. The records attached hereto were recorded and kept as business records in the regular course of Quicken Loans' regularly conducted business of originating and servicing mortgage loans.

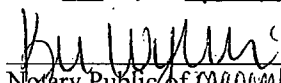
6. The records attached hereto are true and correct copies of the original business records.

FURTHER AFFIANT SAYETH NOT.



Eric Andino

Sworn to and subscribed before me  
This 15 day of March, 2016



Notary Public of Macomb Co. MI Acting in

My commission Expires: 5/24/17

KRISTIN WYKOWSKI

Notary Public, State of Michigan

County of Macomb

My Commission Expires May 24, 2017  
Acting in the County of Wayne

# **ATTACHMENT A**

**Attorney/Insurance Preference form  
(November 7, 2011)**

## ATTORNEY/INSURANCE PREFERENCE CHECK LIST

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                      |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------|--|
| Borrower Name(s):<br>Calvin O. Wilson, Jr.<br>Ezekiel T. Wilson                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  | Lender:<br>Quicken Loans Inc.<br>Company MMLS#: 3030 |  |
| Property Address:<br>12640 Main St<br>Williston, SC 29853                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | Date:<br>November 4, 2011                            |  |
| <p>1. I (We) have been informed by the lender that I (we) have a right to select legal counsel to represent me(us) in all matters of this transaction relating to the closing of the loan.</p> <p>(a) I select I/We will not use the services of legal counsel.</p> <p><u>C O Wilson Jr</u> <u>11-7-11</u> <u>Ezekiel T Wilson</u> <u>11-7-11</u></p> <p>Borrower Calvin O. Wilson, Jr. Date Borrower Ezekiel T. Wilson Date</p> <p>Borrower Date Borrower Date</p> <p>(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of acceptable attorneys. From that list I select.</p> <p>Not Applicable Not Applicable</p> <p>Borrower Date Borrower Date</p> <p>Not Applicable Not Applicable</p> <p>Borrower Date Borrower Date</p> |  |                                                      |  |
| <p>2. I (We) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required Homeowner's insurance in connection with this mortgage transaction.</p> <p>(a) I select State Farm</p> <p><u>C O Wilson Jr</u> <u>11-7-11</u> <u>Ezekiel T Wilson</u> <u>11-7-11</u></p> <p>Borrower Calvin O. Wilson, Jr. Date Borrower Ezekiel T. Wilson Date</p> <p>Borrower Date Borrower Date</p> <p>(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of qualified agents. From that list I select.</p> <p>Not Applicable Not Applicable</p> <p>Borrower Date Borrower Date</p> <p>Not Applicable Not Applicable</p> <p>Borrower Date Borrower Date</p>                                          |  |                                                      |  |

VMP-1065(SC) (9809)

VMP MORTGAGE FORMS • (800)521-7291

9/96



QL(Wilson)\_0057

ROA\_0450

# **ATTACHMENT B**

## **Journal Notes**

|                                             |                |                                    |
|---------------------------------------------|----------------|------------------------------------|
| 02/02/2015<br>4:05:31 PM                    | PRODUCTION     | Amika Thornton                     |
| Loan# [REDACTED] 4992                       | Wilson, Calvin |                                    |
| 330 - 15 yr Conforming<br>Fixed / Refinance |                | Funded by Investor -<br>01/10/2012 |

|                    |                                          |
|--------------------|------------------------------------------|
| Loan Journal Notes | Client Time: 4:05:31 PM<br>Calvin Wilson |
| [REDACTED]         | [REDACTED]                               |

| Priority                   | LJ# | Loan Status             | Subject                  | Loan Journal Notes                                                                                                                                                                                                                                                       | Team Member     | Extension | Date/Time           |
|----------------------------|-----|-------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------|---------------------|
| Regular Loan Journal Notes |     |                         |                          |                                                                                                                                                                                                                                                                          |                 |           |                     |
| <input type="checkbox"/>   | 26  | Funded by Investor      | AMP Note                 | Recalled Loan - Other "legal"                                                                                                                                                                                                                                            | Amika Thornton  | ☎ 34852   | 02/02/2015 12:16:26 |
| <input type="checkbox"/>   | 25  | Funded by Investor      | AMP Note                 | Client calling to see if he made his payment for last month. Got over to servicing.-Cassandra Soblo-33764                                                                                                                                                                | Cassandra Soblo | ☎ 33764   | 02/01/2013 10:26:02 |
| <input type="checkbox"/>   | 24  | Closing Input Completed | Closing Refi Fulfillment | - Client Pkg Tracking# 1ZX660X8NT50890973<br>- Return Pkg Tracking# 1ZX660X88450486581<br>- Client package posted to MyQL and Sent Client a bound package.                                                                                                               | Lamar Robinson  | ☎ 39701   | 12/12/2011 18:49:14 |
| <input type="checkbox"/>   | 23  | HUD Review Complete     | REFI Call                | - Person Contacted: Calvin<br>- Confirmed: Client/Spouse Names<br>- Confirmed: All parties to attend closing<br>- Client agrees with Terms and Structure.<br>- Bottom Line: Client approved<br>- Cash To: \$14,178.66<br>- Settlement Location: Home<br>- Client wants a | Heather Tabor   | ☎ 39745   | 12/09/2011 14:34:46 |

<http://ampapp/cgi-bin/lkw/com/control.w?qq-appNum=10037929&qq-user=athorn01&qq-r...> 2/2/2015

QL(Wilson)\_0003

ROA\_0452

|                          |    |                                      |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                    |         |                        |
|--------------------------|----|--------------------------------------|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|---------|------------------------|
| <input type="checkbox"/> | 22 | Final Signoff<br>- Pending<br>Action | Final Goals<br>Call              | <p>package on MySQL and<br/>a bound package<br/>delivered.<br/>- Client DOES NOT<br/>Want to Sign for<br/>Package.<br/>- Comments: SCD<br/>12/14/11 12:30PM</p> <p>- Person Contacted:<br/>Calvin<br/>- Will all parties be at<br/>Closing? Yes<br/>- Cash To Goal:<br/>\$14,178.66<br/>- Client's Preferred<br/>Closing Date: No<br/>Preference<br/>- Comments: Client<br/>would prefer to close<br/>ASAP. He is good with<br/>all of the<br/>preliminary #s and is<br/>very pleased with the<br/>process.</p> | Shannon<br>Kirtley | ☎ 39723 | 12/09/2011<br>14:04:43 |
| <input type="checkbox"/> | 21 | Final Signoff<br>- Pending<br>Action | Attempted<br>Final Goals<br>Call | <p>- Person Attempted:<br/>Ezekiel<br/>- Method of Contact:<br/>Contacted - Unable To<br/>Complete Call<br/>- Comments: Spoke to<br/>co-client, she would<br/>like me to call back<br/>later when<br/>Calvin is home.</p>                                                                                                                                                                                                                                                                                       | Shannon<br>Kirtley | ☎ 39723 | 12/09/2011<br>09:34:18 |
| <input type="checkbox"/> | 20 | Conditionally<br>Approved            | AMP Note                         | <p>The ACD was updated<br/>on the loan by the<br/>System because<br/>the previous ACD date<br/>was in the past.</p> <p>- Person Contacted:<br/>Calvin<br/>- Method of Contact:<br/>Conversation<br/>- Delivery of<br/>Conditions: No<br/>Conditions<br/>- Reason for Contact:<br/>Called Calvin to let<br/>him know that we did<br/>receive<br/>his 4506-T form that he<br/>sent in, no other docs<br/>needed.</p>                                                                                              | System             |         | 12/08/2011<br>02:25:09 |
| <input type="checkbox"/> | 19 | Conditionally<br>Approved            | Follow-Up<br>Call                | <p>- Person Contacted:<br/>Calvin<br/>- Method of Contact:<br/>Conversation<br/>- Delivery of<br/>Conditions: No<br/>Conditions<br/>- Reason for Contact:<br/>Called Calvin to let<br/>him know that we did<br/>receive<br/>his 4506-T form that he<br/>sent in, no other docs<br/>needed.</p>                                                                                                                                                                                                                  | Shannon<br>Kirtley | ☎ 39723 | 12/05/2011<br>14:53:53 |
|                          | 18 | Conditionally                        | AMP Note                         | <p>The ACD was updated<br/>on the loan by the<br/>System because</p>                                                                                                                                                                                                                                                                                                                                                                                                                                            | System             |         | 12/02/2011             |

|                          |    |                        |                |                                                                                                                                                                                                                                                                                                                                                                                                  |                        |                           |
|--------------------------|----|------------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|---------------------------|
| <input type="checkbox"/> |    | Approved               |                | the previous ACD date was in the past.                                                                                                                                                                                                                                                                                                                                                           |                        | 02:23:25                  |
|                          |    |                        |                | - Person Contacted:<br>Calvin<br>- Method of Contact:<br>Conversation<br>- Delivery of<br>Conditions: No<br>Conditions<br>- Reason for Contact:<br>Client has not received his 4506-T forms as of yet,<br>I mailed them out on friday, so he should have received them today, I have scheduled the follow up for friday to make sure he did get them. When he gets them he will sign and return. |                        |                           |
| <input type="checkbox"/> | 17 | Conditionally Approved | Follow-Up Call |                                                                                                                                                                                                                                                                                                                                                                                                  | Shannon Kirtley        | 39723 11/30/2011 18:07:27 |
| <input type="checkbox"/> | 16 | Conditionally Approved | AMP Note       | Respa re-disclosure sent via Workflow Automation, due to Respa related change. See Re-disclosure history or Control-O for specifics of what changed to cause the re-disclosure.                                                                                                                                                                                                                  | Redislosure3 Tidal Job | 11/29/2011 20:43:22       |
| <input type="checkbox"/> | 15 | Conditionally Approved | AMP Note       | The ACD was updated on the loan by the System because the previous ACD date was in the past.                                                                                                                                                                                                                                                                                                     | System                 | 11/26/2011 01:45:51       |
| <input type="checkbox"/> | 14 | Conditionally Approved | Follow-Up Call | - Person Contacted:<br>Calvin<br>- Method of Contact:<br>Conversation<br>- Conditions Due:<br>Wednesday, November 30, 2011<br>- Delivery of<br>Conditions: Mail<br>- Reason for Contact:<br>Client will be signing 4506-T forms with updated address of PO box 411, instead of 12640 Main St Williston SC 29853. He will be mailing it back when he receives it. He                              | Shannon Kirtley        | 39723 11/25/2011 12:34:29 |



|   |    |                           |                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                           |         |                        |
|---|----|---------------------------|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|---------|------------------------|
| □ | 13 | Conditionally<br>Approved | Attempted<br>Follow-Up<br>Call | cannot send in the 911<br>documentation because<br>he doesnt have it and is<br>unable to obtain it.<br><br>- Person Attempted:<br>Calvin<br>- Method of Contact:<br>Phone - Left Message<br>- Comments: left vm<br>for a call back                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Shannon<br>Kirtley        | ☎ 39723 | 11/22/2011<br>13:08:52 |
| □ | 12 | Conditionally<br>Approved | AMP Note                       | Respa re-disclosure<br>sent via Workflow<br>Automation, due to<br>Respa related<br>change. See Re-<br>disclosure history or<br>Control-O for specifics<br>of what<br>changed to cause the<br>re-disclosure.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Redislosure3<br>Tidal Job |         | 11/19/2011<br>20:52:00 |
| □ | 11 | Conditionally<br>Approved | Follow-Up<br>Call              | - Person Contacted:<br>Calvin<br>- Method of Contact:<br>Conversation<br>- Delivery of<br>Conditions: No<br>Conditions<br>- Reason for Contact:<br>Spoke with client, he<br>says he used a check to<br>pay<br>for the \$500 deposit.<br>He does not have a<br>bank statement<br>showing it clear<br>the account because it<br>hasnt been sent in the<br>mail yet. TI are asking<br>for<br>written verification<br>froim application<br>deposit for account<br>number ending<br>in 4992 when the<br>account has been<br>closed, however this<br>came out of his<br>checking account and<br>does not want to close<br>it. Marked all the TI<br>pertaining to this<br>account a problem<br>because client stated he<br>does not<br>know what that is.<br><br>Respa re-disclosure<br>sent via Workflow | Shannon<br>Kirtley        | ☎ 39723 | 11/17/2011<br>19:14:03 |

|                          |    |                        |                        |                                                                                                                                                                                                                                    |                        |                     |
|--------------------------|----|------------------------|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|---------------------|
| <input type="checkbox"/> | 10 | Conditionally Approved | AMP Note               | Automation, due to Respa related change. See Re-disclosure history or Control-O for specifics of what changed to cause the re-disclosure.                                                                                          | Redislosure4 Tidal Job | 11/15/2011 20:41:59 |
|                          |    |                        |                        | - Person Contacted: Calvin<br>- Taxes/Insurance are included in Monthly Payment<br>- Terms & Structure ok? Yes<br>- Cash To: \$2.63<br>- Conditions Due: Tuesday, November 15, 2011                                                |                        |                     |
| <input type="checkbox"/> | 9  | Conditionally Approved | Initial Call           | - Delivery of Conditions: Mail<br>- Comments: 803-300-1930 is his cell phone. Client will be sending over a LOX regarding the address's not matching. He also indicated that his mailing address is PO box 411 Williston SC 29853. | Shannon Kirtley 39723  | 11/15/2011 15:31:10 |
| <input type="checkbox"/> | 8  | Conditionally Approved | Attempted Initial Call | - Person Attempted: Calvin<br>- Method of Contact: Phone - Left Message<br>- Comments: left vm for a call back.                                                                                                                    | Shannon Kirtley 39723  | 11/15/2011 13:26:42 |
| <input type="checkbox"/> | 7  | Folder Received        | AMP Note               | Folder Received Call has automatically been received by Qvoice.                                                                                                                                                                    | Qvoice                 | 11/10/2011 09:33:01 |
| <input type="checkbox"/> | 6  | Loan Setup Complete    | AMP Note               | Respa re-disclosure sent via Workflow Automation, due to Respa related change. See Re-disclosure history or Control-O for specifics of what changed to cause the re-disclosure.                                                    | Redislosure4 Tidal Job | 11/07/2011 21:04:59 |
| <input type="checkbox"/> | 5  | Loan Setup Complete    | AMP Note               | sent loan ups docs.                                                                                                                                                                                                                | Gaetano Brusca 31727   | 11/04/2011 16:22:00 |
|                          |    |                        |                        | ACD has been updated                                                                                                                                                                                                               |                        |                     |

|                          |   |                    |                                                                                |                                                                                                                           |                   |       |                        |
|--------------------------|---|--------------------|--------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|-------------------|-------|------------------------|
| <input type="checkbox"/> | 4 | Initial<br>Contact | AMP Note                                                                       | from blank to<br>11/25/11 by Guy<br>Brusca                                                                                | Gaetano<br>Brusca | 31727 | 11/04/2011<br>15:07:44 |
| <input type="checkbox"/> | 3 | Initial<br>Contact | At New<br>Credit<br>Order -<br>Quick<br>Installment<br>& Rev<br>Debt<br>Screen | Creditor Name Balance<br>Payment P/O 1 2 Incl 1<br>2 Verified<br>Application Deposit<br>500.00 25.00 No No Yes<br>Yes Yes | LOLA<br>Import    |       | 11/04/2011<br>15:06:23 |
| <input type="checkbox"/> | 2 | Initial<br>Contact | At New<br>Credit<br>Order -<br>Quick<br>Installment<br>& Rev<br>Debt<br>Screen | Creditor Name Balance<br>Payment P/O 1 2 Incl 1<br>2 Verified<br>Application Deposit<br>500.00 25.00 No No Yes<br>Yes Yes | LOLA<br>Import    |       | 11/04/2011<br>15:06:23 |
| <input type="checkbox"/> | 1 | Initial<br>Contact | LOLA<br>Note                                                                   | Change Term to<br>(years) 15                                                                                              | LOLA              |       | 11/04/2011<br>15:06:22 |

# **ATTACHMENT C**

## **Client Survey**



## Client Survey

Company NMLS#: 3030

Loan #: 4992  
Client: Calvin O. Wilson, Jr.  
Ezekiel T. Wilson

Mortgage Banker:  
Closing Agent:

Guy Brusca  
Title Source Inc - Notary

Date: December 14, 2011

To assist us in providing an excellent customer experience, please provide us with your feedback.

1. How likely is it that you would recommend Quicken Loans to a friend or colleague?

Not At All Likely  
1 2 3 4 5 6 7 8 9 10  
Extremely Likely

2. Please rate the overall service provided by your Mortgage Banker, Guy Brusca:

\*Your Mortgage Banker was the team member that gathered your income, asset, and credit information. Then based on your needs and goals, he/she advised you of the loan options available to you. Your Mortgage Banker will also be your main point of contact for future transactions and he/she will manage your mortgage for life.

Poor Below Average Average Above Average Excellent  
1 2 3 4 5

3. Please rate the overall service provided by your Loan Processing Team:

\*This team was responsible for communicating with you from the point you were conditionally approved until your loan was scheduled to close. They should have contacted you several times throughout the process to status you on the progress and ask for any additional documentation required. Your Loan Processing Team should have also called you prior to your closing being set to ensure that your loan was meeting your expectations and goals.

Poor Below Average Average Above Average Excellent  
1 2 3 4 5

4. Please share any additional comments or suggestions that you have regarding your experience with Quicken Loans and describe how well we met your expectations:

*I was treated to outstanding service by Quicken personnel. All questions I asked was answered effectively and very helpful.*

5. Do you have a specific friend, relative or colleague who may be interested in our services or want to review their options?

If Yes, you may provide their contact information below (name, phone number with area code or email address) or we will have your Mortgage Banker contact you for more information:

*I am talking to some family members about Quicken loans.*

6. Please Tell Others About Your Quicken Loans Experience!

☒ By checking this box, I grant Quicken Loans permission to publish my responses on [quickenloansreviews.com](http://quickenloansreviews.com) and share them with other Quicken Loans clients.

Thanks again for allowing us to provide your home financing. We are committed to being your lender for life and are always available to answer any mortgage-related questions. We look forward to talking with you again soon.



QL(Wilson)\_0499

ROA\_0459

**EXHIBIT 2**  
**(Affidavit of Carlton Robinson)**

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BARNWELL ) SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc., ) Civil Action No. 2015-CP-06-070  
 )

Plaintiff, )  
 )

vs. )  
 )

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or Devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and Assigns, )  
and all other persons entitled to claim )  
through them; all unknown persons with )  
any right, title or interests in the real )  
estate described herein; also any persons )  
who may be in the military service of the )  
United States of America, being a class )  
designated as John Doe; and any )  
unknown minors or persons under a )  
disability being a class designated as )  
Richard Roe; Park Sterling Bank, )  
Defendants. )

**AFFIDAVIT OF**  
**CARLTON D. ROBINSON, ESQ.**

PERSONALLY APPEARED BEFORE ME, Carlton D. Robinson, Esq., being  
duly sworn, deposes and says as follows:

1. My name is Carlton Robinson. I am over eighteen years of age and am  
competent to give this affidavit. Unless otherwise stated, the facts set forth in this  
affidavit are based upon my personal knowledge.

2. I am a licensed South Carolina attorney in good standing, having been  
admitted to the Bar in 1999. I have been in solo practice since 2003, and my practice is  
now transitioned to mostly real estate transactions. I am also a title insurance agent.

3. It is my regular practice to record and keep information, files, and records regarding the loans I close as part of my business records. Such records, including the information on which this affidavit is based, are made at or near the time of the act, event, or condition reported therein. The statements made in this affidavit are based on my personal knowledge after reviewing my records maintained in the ordinary course of business.

4. I have been asked to provide this affidavit to explain the nature and extent of my involvement as closing attorney in a transaction completed on behalf of Calvin O. Wilson, Jr. and Ezekiel T. Wilson on property located at 12640 Main Street, Williston, South Carolina, 29853, and given mortgage identification number xxxxxx4992.

5. Based on my knowledge and experience in real estate transactions generally, and my knowledge about this transaction in particular, I am informed and believe that this real estate transaction was completed in accordance with all applicable South Carolina law. I would not have participated in any aspect of this closing if I had believed otherwise.

6. It is my practice to explain the legal effect of every document at the closing to the borrower before the borrower signs the document. In accordance with this practice, I explain the legal effect of the Attorney/Insurance Preference Checklist and the requirements of South Carolina Code Section 37-10-102.

7. I would not have proceeded with this closing if I believed the Wilsons had any dissatisfaction with me representing them as their attorney during the closing.

8. It is my practice to explain to borrowers that I also represent the lender in the transaction and that my representation is limited to reviewing and approving the



content of the legal documents, supervising execution of the documents related to the transaction, supervising the disbursement of applicable loan proceeds from the transaction, and supervising the recording of certain documents from the closing to complete the transaction and secure the lender's interests in the mortgage.

9. It is also my practice to acquire the borrower's express consent to the above-described joint representation and limited representation. Attached as Exhibit A to this affidavit is the Real Estate Closing Disclosure Form signed by Calvin O. Wilson, Jr. and Ezekiel T. Wilson acknowledging this disclosure.

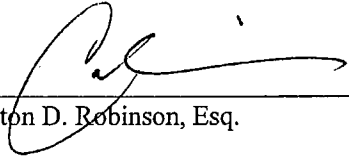
10. By signing the Real Estate Closing Disclosure Form, the Wilsons also confirmed that the documents were executed and witnessed in their presence and that I explained the legal effect of the documents at the closing.

11. The Real Estate Closing Disclosure Form was made at or near the time of the act, event, or condition reported therein by or from information transmitted by a person with knowledge of the act, event, or condition reported therein. I recorded and kept the attached Real Estate Closing Disclosure Form as a business record in the regular course of business of closing real estate transactions. The attached Real Estate Closing Disclosure Form is a true and correct copy of the original business record.

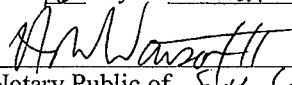
12. During the closing, I fully explained each document that was part of the closing package and answered any questions that the Wilsons had. The executed closing package was returned to Title Source, Inc., and I retained a copy for my records.

***[SIGNATURE ON FOLLOWING PAGE]***

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Carlton D. Robinson, Esq.

Sworn to and subscribed before me  
This 16<sup>th</sup> day of March, 2016

  
\_\_\_\_\_  
Notary Public of South Carolina

My commission Expires: 2-17-26

THE  
CARLTON D. ROBINSON

LAW FIRM, L.L.C.

CARLTON D. ROBINSON, JD, MBA

ALSO ADMITTED TO PRACTICE  
IN NORTH CAROLINA

**Real Estate Closing Disclosure Form**

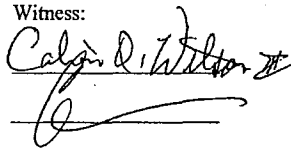
Borrower(s), whose signature(s) appears below, acknowledges that the law firm which is closing the instant real estate closing transaction also represents the lender in this transaction, and borrower(s) expressly consents to joint representation for this purpose. It is understood and agreed that law firm's representation is limited to reviewing and approving the content of the legal documents, supervising execution of the documents related to the transaction, supervising the disbursement of applicable loan proceeds from this transaction, and supervising the recording of certain documents from the closing to complete the transaction and secure the lender's interests in the mortgage. I/we understand that the law firm's representation is limited to the matters stated, and the law firm has not represented me/us in connection with the decision to enter the loan transaction. I/we understand that law firm also represents the lender in this transaction.

I/we affirm that an attorney from the law firm was present at the time of the execution of the closing documents and that s/he explained the legal effect of the documents and answered any questions that I/we had regarding this matter. The lawyer identified her/himself to me/us and spoke directly to me/us regarding the documents and any questions that arose.

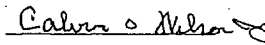
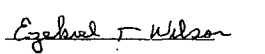
I/we affirm that the witness and notary whose signatures appear on the loan documents were present at the time the documents were executed and personally witnessed that signature of the borrower(s) affixed thereto.

This 14 day of Dec, 2011.

Witness:



Borrower(s)

PO BOX 833 • LEXINGTON, SC 29071 • PHONE: 803.256.6935 / 888.417.5230 • FAX: 803.741.5135  
EMAIL: CARLTON@CDROBLAW.COM

ROA\_0465

**EXHIBIT 3**  
**(Letter dated June 22, 2015)**

# Nelson Mullins

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
1320 Main Street / 17th Floor / Columbia, SC 29201  
Tel: 803.799.2000 Fax: 803.255.5932  
www.nelsonmullins.com

Carmen Harper Thomas  
Tel: 803.255.9385  
Fax: 803.255.5932  
carmen.thomas@nelsonmullins.com

June 22, 2015

## Via Email & US Mail

Steven W. Hamm  
Richardson Plowden & Robinson, P.A.  
1900 Barnwell Street  
Columbia, SC 29201  
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C. Bradley Hutto  
Williams & Williams  
P.O. Box 1084  
Orangeburg, SC 29116-1084  
cbhutto@williamsattys.com

RE: Vance L. Boone, Thelma Boone, Travis G. Messex, Teresa S. Messex, Brian Johnson, and Kelli Johnson, on behalf of themselves and all others similarly situated v. Quicken Loans, Inc. and Title Source, Inc.  
Original Jurisdiction Case No. 2013-002288  
Our File No. 42677/01500

## Counselors:

Pursuant to the Confidentiality Protective Order, please allow this letter to serve as Defendants' designation of the following deposition testimony as "Confidential":

1. Brian D. Hughes: page 12, line 23 to page 111, line 16, and exhibits 1-8, 13, and 15-20.
2. Jeffrey S. Campbell: page 10, line 22 to page 53, line 22, and exhibits 24 and 26.
3. Jennifer L. Randall: page 11, line 21 to page 43, line 7, and exhibits 29, 33, and 34.

Defendants also maintain their designation as Confidential of all materials produced in discovery where those documents are used as exhibits to these depositions. Please let us know if you have any questions. Thank you.

Very truly yours,

  
Carmen Harper Thomas

*With offices in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, Tennessee and West Virginia*

## **EXHIBIT 4**

(Green Tree's Responses to Defendant's Requests for Admission, *Green Tree v. Fleming*)

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Green Tree Financial Corporation, )  
Plaintiff, )

Civil Action No. 96-CP-40-4282

v. )

Andre C. Flemmings, a/ka Andre )  
C. Flemming, a/k/a Andre Fleming, )  
Defendants. )

**GREEN TREE FINANCIAL  
CORPORATION'S RESPONSES TO  
DEFENDANT'S REQUEST FOR ADMISSION**

The Plaintiff Green Tree Financial Corporation (Green Tree), hereby responds to the Defendants' Request for Admission as follows:

1. Plaintiff Green Tree enters into transactions granting credit as a seller of goods and services to individuals in South Carolina on a regular basis.

**RESPONSE:** Deny.

2. The goods and services the Plaintiff sells and finances in South Carolina are provided for personal, family, or household purposes.

**RESPONSE:** Deny.

3. Plaintiff Green Tree takes liens on land in South Carolina on some of the sales it transacts in South Carolina.

**RESPONSE:** Deny.

4. Plaintiff Green Tree requires its South Carolina customers to purchase and maintain property insurance pursuant to its installment contract and mortgage.

**RESPONSE:** Plaintiff admits that property insurance is required in certain transactions for Plaintiff's to accept assignment.

5. Plaintiff Green Tree does not have an attorney preference form signed by the Defendant at any time during the process of securing its credit sales transaction with the Defendant.

0117070.01  
LJB:

**RESPONSE:** Plaintiff admits that prior to September of 1995 an attorney preference form was not signed. Plaintiff denies that an attorney preference form was not signed after September 1995.

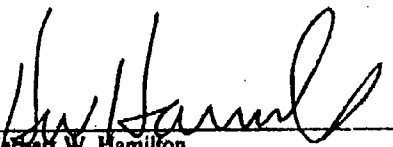
6. Plaintiff Green Tree does not have an attorney preference form signed by any of the putative class members at any time during the process of securing its real estate secured credit transactions.

**RESPONSE:** Plaintiff admits that prior to September of 1995 an attorney preference form was not signed. Plaintiff denies that an attorney preference form was not signed after September 1995.

7. Plaintiff Green Tree did not have a policy or procedure for ascertaining the preference of borrowers for the purpose of securing real estate secured credit transactions on mobile homes until September 25, 1995.

**RESPONSE:** Admit.

March 3, 2000

  
Herbert W. Hamilton  
W. Keith Martens  
KENNEDY COVINGTON LOBDELL  
& HICKMAN, LLP  
P.O. Box 11429  
Rock Hill, South Carolina 29731-1429

ATTORNEYS FOR PLAINTIFF



**CERTIFICATION OF MAILING**

The undersigned hereby certifies that the within **RESPONSE TO DEFENDANT'S REQUEST FOR ADMISSION** was served upon the Attorneys for Plaintiffs by depositing a copy of same in the United States mail, with sufficient postage annexed thereto, addressed as follows:

Bradford P. Simpson, Esquire  
Suggs & Kelly Lawyers, P.A.  
P.O. Box 8113  
Columbia, SC 29202

Steven W. Hamm, Esquire  
Richardson, Plowden, Carpenter & Robinson, P.A.  
P.O. Drawer 7788  
Columbia, SC 29202

This 3<sup>rd</sup> day of March, 2000.

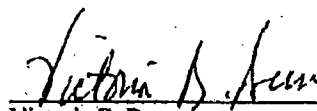
  
\_\_\_\_\_  
Victoria B. Burn

**EXHIBIT 5**  
**(Affidavit of Brian M. Barnwell)**

STATE OF SOUTH CAROLINA )

COUNTY OF BARNWELL )

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Quicken Loans, Inc., )

Plaintiff, )

vs. )

Wayne D. Wilson; Calvin O. Wilson, )  
III; Any other Heirs-at-law or Devisees )  
of Ezekiel (Ellen) T. Wilson, Deceased, )  
their heirs, Personal Representatives, )  
Administrators, Successors and Assigns, )  
and all other persons entitled to claim )  
through them; all unknown persons with )  
any right, title or interests in the real )  
estate described herein; also any persons )  
who may be in the military service of the )  
United States of America, being a class )  
designated as John Doe; and any )  
unknown minors or persons under a )  
disability being a class designated as )  
Richard Roe; Park Sterling Bank, )  
Defendants. )

Civil Action No. 2015-CP-06-070

**AFFIDAVIT OF**  
**BRIAN M. BARNWELL, ESQ.**

PERSONALLY APPEARED BEFORE ME, Brian M. Barnwell, Esq., being duly  
sworn, deposes and says as follows:

1. My name is Brian Barnwell. I am over eighteen years of age and am  
competent to give this affidavit. Unless otherwise stated, the facts set forth in this  
affidavit are based upon my personal knowledge.

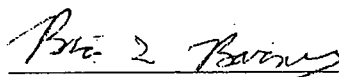
2. I am counsel for Plaintiff Quicken Loans Inc. ("Quicken Loans"). I  
submit this affidavit under the provisions of Rule 56(f) of the South Carolina Rules of  
Civil Procedure and in opposition to Defendant's Motion for Partial Summary Judgment.

3. In its pending Motion, Defendant requests that this Court grant summary judgment in its favor. Defendant's Motion should be denied because Quicken Loans cannot present by affidavit facts essential to justify its opposition.

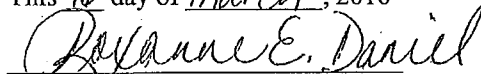
4. Practically no meaningful discovery has been conducted at this early juncture. Additional discovery is believed to be necessary to afford Quicken Loans an opportunity to present evidence as to the agreement or transaction at issue and the effect thereof. Both of the borrowers on the loan at issue, Calvin O. Wilson, Jr. and Ezekiel T. Wilson, are deceased. Calvin O. Wilson III, the Wilsons' son and one of the two surviving individuals who attended the closing, has not been deposed. Calvin O. Wilson III is expected to have knowledge regarding Ezekiel T. Wilson's preference or lack of preference for an attorney to close the loan at issue, as well as the events at and immediately prior to the closing. Moreover, Carlton Robinson, the attorney who closed the Wilsons' loan, has not been deposed in this action on these topics. Finally, a representative of Quicken Loans is expected to testify about the subject matter of this action, including, but not limited to the agreement or transaction at issue.

5. Quicken Loans cannot fully and properly oppose Defendant's Motion without an opportunity to conduct such discovery.

FURTHER AFFIANT SAYETH NOT.

  
Brian M. Barnwell, Esq.

Sworn to and subscribed before me  
This 16<sup>th</sup> day of march, 2016

  
Notary Public of South Carolina  
My commission Expires: 2/11/2021

## **EXHIBIT 6**

**(Letter Serving Defendant's Request for Production to Plaintiff, Defendant's Interrogatories to Plaintiff, and Defendant's Requests for Admission to Plaintiff)**

LAW OFFICES  
*Bedingfield &*  
**WILLIAMS, LLC**

WALTER BEDINGFIELD  
(1938-2002)

DANIEL W. WILLIAMS

August 27, 2015

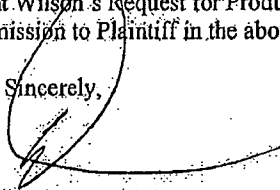
Ashley Wheeling-Goodson, Esquire  
Rogers Townsend & Thomas, PC  
P. O. Box 10200  
Columbia, SC 29202-3200.

Re: Quicken Loans, Inc. vs Ezekiel T. Wilson, etal  
Case No. 2015-CP-06-070

Dear Ashley:

Enclosed please find served upon you by Certificate of Mailing, Defendant Wilson's Interrogatories to Plaintiff, Defendant Wilson's Request for Production to Plaintiff, and Defendant Wilson's Request for Admission to Plaintiff in the above referenced matter.

Sincerely,



Daniel W. Williams

DWW:as  
enc

PHONE (803) 259-2759 • FAX (803) 259-5922  
POST OFFICE BOX 616 • 40 WALL STREET • BARNWELL, SOUTH CAROLINA 29812

ROA\_0476

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL  
QUICKEN LOANS, INC.,

Plaintiff,

vs.

EZEKIEL T. WILSON A/K/A EZEKIEL  
(ELLEN) T. WILSON, AND PARK  
STERLING BANK,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) SECOND JUDICIAL CIRCUIT

) C/A #2015-CP-06-070

) DEFENDANT WILSON'S  
) INTERROGATORIES TO PLAINTIFF

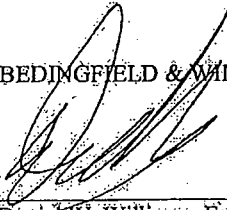
TO: PLAINTIFF ABOVE NAMED

YOU ARE HEREBY SERVED the following written Interrogatories on behalf of the Defendant Wilson to be answered separately and in writing by the said Defendant, within thirty (30) days after the service hereof under the provisions of Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. For each person known to the party or counsel to be a witness concerning the facts of this case set forth either a summary sufficient to inform the party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.
3. List the names and addresses of any expert witnesses whom you propose to use as witnesses at the trial of the case.

4. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

BEDINGFIELD & WILLIAMS, LLC

  
Daniel W. Williams, Esquire  
Attorney for Defendant Wilson  
Post Office Box 616  
Barnwell, South Carolina 29812  
803-259-2759

August 27, 2015  
Barnwell, South Carolina

**CERTIFICATE OF SERVICE**

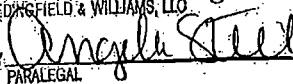
This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

☐ handing counsel a copy thereof.

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 27th day of August, 2015  
BEDINGFIELD & WILLIAMS, LLC

BY   
PARALEGAL



STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

QUICKEN LOANS, INC.,

Plaintiff,

vs.

EZEKIEL T. WILSON A/K/A EZEKIEL  
(ELLEN) T. WILSON, AND PARK  
STERLING BANK,

Defendants,

) IN THE COURT OF COMMON PLEAS  
) SECOND JUDICIAL CIRCUIT

) C/A #2015-CP-06-070

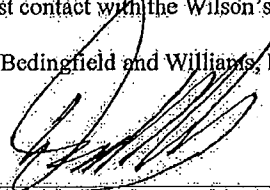
) DEFENDANT WILSON'S  
) REQUEST FOR PRODUCTION  
) TO PLAINTIFF

TO: PLAINTIFF ABOVE NAMED

YOU ARE HEREBY SERVED the following written Request for Production on behalf of Defendant Wilson to be answered separately and in writing by the Plaintiff, within thirty (30) days after the service hereof under the provisions of Rule 34 of the South Carolina Rules of Civil Procedure.

1. Plaintiff's complete loan file from first contact with the Wilson's through present.

Bedingfield and Williams, LLC

  
Daniel W. Williams, Esquire  
Attorney for Defendant Wilson  
Post Office Box 616  
Barnwell, South Carolina 29812  
803-259-2759

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

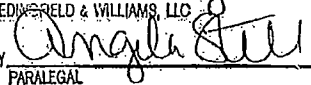
☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

☐ handing counsel a copy thereof.

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 27th day of August, 2015

BEDINGFIELD & WILLIAMS, LLC

BY   
PARALEGAL

August 27, 2015  
Barnwell, South Carolina

ROA\_0479

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL  
QUICKEN LOANS, INC.,

Plaintiff,

vs.

EZEKIEL T. WILSON A/K/A EZEKIEL  
(ELLEN) T. WILSON, AND PARK  
STERLING BANK,

Defendants.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

C/A #2015-GP-06-070

DEFENDANT WILSON'S  
REQUEST FOR ADMISSIONS  
TO PLAINTIFF

TO: PLAINTIFF ABOVE NAMED

YOU ARE HEREBY SERVED the following written Request for Admissions on behalf of Defendant Wilson to be answered separately and in writing by the Plaintiff, within thirty (30) days after the service hereof under the provisions of Rule 36 of the South Carolina Rules of Civil Procedure.

1. Admit that all documents produced pursuant to Defendant's Request for Production are authentic.
2. Admit that all documents produced pursuant to Defendant's Request for Production are kept in the ordinary course of business.
3. Admit all documents produced pursuant to Defendant's Request for Production are admissible into evidence without the necessity of a records custodian or

**CERTIFICATE OF SERVICE**  
This is to certify that I have served a copy of this pleading by:

☒ depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon;

☐ handing counsel a copy thereof.

☐ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 27th day of August, 2015  
BEDINGFIELD & WILLIAMS, LLC

By Angela Steu  
PARALEGAL

August 27, 2015  
Barnwell, South Carolina

Bedingfield and Williams, LLC

Daniel W. Williams, Esquire  
Attorney for Defendant Wilson  
Post Office Box 616  
Barnwell, South Carolina 29812  
803-259-2759

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Vance L. Boone, Thelma Boone, Travis G. Messex,  
Teresa S. Messex, Brian Johnson, and Kelli Johnson, on  
behalf of themselves and all others similarly situated, .....

Petitioners/  
Plaintiffs,

v.

Quicken Loans Inc. and Title Source, Inc., .....

Respondents/  
Defendants.

Appellate Case No: 2013-002288

Honorable Diane S. Goodstein, Special Referee

**CONFIDENTIALITY PROTECTIVE ORDER**

Whereas the parties to this Confidentiality Protective Order ("parties"), have stipulated that certain discovery material is and should be treated as confidential, and have agreed to the terms of this Order; accordingly, it is this 11 day of January, ~~2015~~ 2014 ORDERED:

1. **Scope.** All documents produced in the course of discovery, all responses to discovery requests and all deposition testimony and deposition exhibits and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order to the extent they contain confidential information as set forth below. This Order is binding upon the parties and their attorneys and all persons who receive confidential information in this action.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a

manner which will not interfere with the legibility of the document and which will permit complete removal of the confidential designation. Except as otherwise provided herein, documents shall be designated confidential prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential as otherwise allowed by this Order.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information. Documents produced by a non-party pursuant to subpoena are subject to this Order and may be designated confidential within seven business days after receipt of the documents. Information or documents which are available in the public sector may not be designated as confidential.

4. **Depositions.** Portions of depositions shall be deemed confidential only if designated as such when the deposition is taken or within seven business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected.

5. **Protection of Confidential Material.**

a. **General Protections.** Documents designated confidential under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below (¶ 5.b.) for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed

(including any appeal of that litigation). The parties shall not disclose documents designated as confidential to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes have been certified, or unless the documents designated as confidential are about the putative class member's loan.

b. **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated confidential under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated confidential pursuant to this Order:

- (1) counsel and employees of counsel for the parties who have responsibility for the preparation and conduct of the lawsuit;
- (2) parties and employees of a party to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed;
- (3) witnesses and deponents;
- (4) third-party contractors specifically engaged on behalf of a party or employee of a party to this Order for the limited purpose of making photocopies of documents or performing similar document services;

(5) court reporters and videographers engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

(6) court personnel;

(7) consultants, investigators, or experts (hereinafter referred to collectively as "consultants") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and

(8) other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

c. **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the documents along with the originals of the forms signed by those persons acknowledging their obligations under this Order.

d. **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies"), of documents designated as Confidential under this Order or any portion of such a document, shall be immediately affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

e. **Ordinary Course of Business.** The producing party may continue to use and disclose documents designated confidential in this litigation within the scope of its ordinary course of business without violating confidentiality or this Order.

6. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the Special Referee, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in Rule 41.1, South Carolina Rules of Civil Procedure, or such other rule or procedure as may apply in the relevant jurisdiction. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that documents may be filed under seal only with the permission of the court after proper motion pursuant to Rule 41.1, South Carolina Rules of Civil Procedure.

7. **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection.

8. **Challenges to Designation as Confidential.** Any confidential designation is subject to challenge. The following procedures shall apply to any such challenge.

a. The burden of proving the necessity of a confidential designation remains with the party asserting confidentiality.

b. A party who contends that documents designated confidential are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the confidential designation.

c. Notwithstanding any challenge to the designation of documents as confidential, all material previously designated confidential shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

- (1) the party who claims that the documents are confidential withdraws such designation in writing;
- (2) the party who claims that the documents are confidential fails to move timely for an Order designating the documents as confidential as set forth in paragraph 8.b. above; or
- (3) the court rules that the documents should no longer be designated as confidential information.



d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

9. **Treatment on Conclusion of Litigation.**

a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated confidential shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

b. **Return of Confidential Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above (¶5.d.) shall be returned to the producing party unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product including an index which refers or relates to information designated confidential so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be confidential under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the confidential documents.

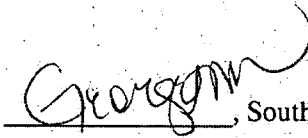
10. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this

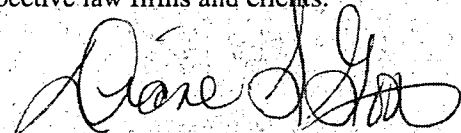
Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

11. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as confidential by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

12. **Persons Bound.** This Order shall take effect when entered and shall be binding upon all counsel in this action and their respective law firms and clients.

**IT IS SO ORDERED.**

  
\_\_\_\_\_, South Carolina  
This 11 day of Jan, 2015.

  
\_\_\_\_\_  
The Honorable Diane S. Goodstein  
Circuit Court Judge, Special Referee

**ATTACHMENT A  
ACKNOWLEDGMENT OF UNDERSTANDING  
AND  
AGREEMENT TO BE BOUND**

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

**IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT**

Vance L. Boone, Thelma Boone, Travis G. Messex,  
Teresa S. Messex, Brian Johnson, and Kelli Johnson, on  
behalf of themselves and all others similarly situated,.....

Petitioners/  
Plaintiffs,

v.

Quicken Loans Inc. and Title Source, Inc., .....

Respondents/  
Defendants.

Appellate Case No. 2013-002288

Honorable Diane S. Goodstein, Special Referee

The undersigned hereby acknowledges that he or she has read the Protective Order dated [confidentiality order date], in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the South Carolina Supreme Court in matters relating to the Protective Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Name: [undersigned name [att A]]

Job Title: [Job Title [att A]]

Employer: [Employer [att A]]

Business Address: [Business Address [att A]]

Date: [date attachment A signed]

[Signature [attachment A]]  
Signature

DIBBLE LAW OFFICES  
POST OFFICE DRAWER 1240  
COLUMBIA, SOUTH CAROLINA 29202-1240

TELEPHONE 803.254.0307

911 GREGG STREET  
COLUMBIA, SOUTH CAROLINA 29201-3928

TELECOPIER: 866.253.0458  
E-MAIL: CDIBBLE@DIBBLELAWOFFC.COM

March 28, 2016

Via email and USPS

The Honorable J. Martin Harvey, Jr.  
Special Referee for Barnwell County  
P.O. Box 705  
Barnwell, SC 29812-0705

[jmh@hkattorney.net](mailto:jmh@hkattorney.net)

re: Quicken Loans, Inc. v. Wilson et al.  
Civil Action 2015-CP-06-00070

Dear Mr. Harvey:

Thank you for the courtesies extended to counsel at the hearing before you on Friday, March 18. Thank you too for your willingness to receiving supplemental memoranda.

There were four motions before you on March 18 – three by the Plaintiff Quicken Loans and one by our Defendant. We believe Plaintiff's Motion to Amend the Pleadings and Plaintiff's Motion to Transfer to General Docket were adequately addressed during the hearing. Unless requested by you, we do not intend to submit additional briefing as to those two motions.

Rather our focus is on the motion for summary judgment, which if granted would be dispositive. Initially, we note that pending before you and argued on March 18 are competing motions for summary judgment. This is significant. Both the Plaintiff and our Defendant have argued by way of their respective motions that there is "no genuine issue of material fact." Stated otherwise, both the Plaintiff and our Defendant agree that there is "no genuine issue of material fact."

It might be helpful to summarize Defendant's position regarding summary judgment:

1. Quicken Loans' standard procedure for taking loan applications from South Carolina has been established.

There is no genuine issue of material fact as to Quicken Loans' standard procedure for addressing South Carolina's attorney preference requirements. Quicken's procedure was clearly set forth by its own employees, who had been offered as Rule 30(b)(6) deponents in *Boone et al. vs Quicken Loans, Inc. et al.* See *Testimony of Jeffrey Campbell*, TAB 8, *Jennifer Randall*, TAB 9<sup>1</sup> which is discussed in *Def. Memo* at pages 4-6. The testimony forms part of

---

1. References to "TAB" are to materials collected in *Appendix to Motion for Partial Summary Judgment* ("Appendix"), which accompanied *Memorandum in Support of Defendant's Motion for Partial Summary Judgment* ("Def. Memo"), dated March 8, 2016.

DIBBLE LAW OFFICES

Special Referee Harvey  
March 28, 2016  
Page 2

the record developed in open court in Boone over a period of several weeks. At no time did either party move to close the courtroom or otherwise act to exclude the public from attendance.

2. Quicken Loans' standard procedure was followed when the Wilson loan application was taken.

This is evinced by prepopulated form, dated November 7, 2011 that the Wilsons' signed in connection with the application for their December 14, 2011 loan. In fact, as Quicken's Jeffrey Campbell testified, this text is not entered by the Quicken employee taking the application. Rather it is programmatically filled in by Quicken's AMP software. TAB 8, TR 337:17-19.

3. The application procedure utilized by Quicken Loans violated South Carolina law.

As discussed in greater detail in *Def. Memo*, the procedure employed by Quicken resulted in no meaningful choice being presented to Calvin and Ezekiel Wilson. This was not an inadvertent mistake – a slip-up where the lender could avail itself of the “safe harbor” protection of S.C. Code § 37-10-105(B). No, as demonstrated by the testimony of Quicken's 30(b)(6) witnesses, this violation was embedded in its loan application software so that even Quicken's employees could not alter the result.

\* \* \*

Our summary judgment motion was filed on January 19, 2016 – two months prior to the hearing before you. On March 16, Plaintiff's counsel mailed to Defendant's counsel Quicken Loans' *Response to Defendants' Motion for Partial Summary Judgment* (“*Response*”). As you will recall, none of the four counsel for Defendants had received the Plaintiff's *Response* at the time of the hearing before you: we were handed a copy of the 58-page *Response* immediately prior to the March 18 hearing.

Many of the arguments advance by Quicken Loans in the *Response* were addressed at the hearing before you. Several are addressed here.

In *King v American General Finance, Inc.*, 386 S.C. 82, 687 S.E.2d 321 (2009) TAB 16, the Supreme Court in a unanimous opinion ruled:

Timing is the central issue in this case. . . . we construe section 37-10-102(a) as requiring the attorney preference disclosure to occur contemporaneously with the credit application. Our construction of legislative intent flows from the clear language of the statute - “the credit application on the first page thereof must contain information as is necessary to ascertain these preferences of the borrower” - and from the 1983 interpretation by the Department of Consumer Affairs.”

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The Court then added the following Footnote 3:

As noted, section 37-10-102 was amended on May 30, 1996. Notably, the amendment affects causes of action accruing on or after May 30, 1996. Act No. 355, 1996 S.C. Acts 2187. The amended statute requires that “[t]he creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction.” The amended statute allows creditors to comply by “including the preference information on or with the credit application ... or [by] providing written notice to the borrower ... no later than three business days after the application is received or prepared.” The three day post-credit application option under the 1996 amendment is not present in the prior version of the statute which is before us today.

The importance of timing is conspicuously absent from the Plaintiff’s *Response*. S.C. Code § 37-10-102 requires that the lender must ascertain the Borrower’s preference as to the attorney to represent the Borrower in all matters of the transaction related to the closing. Ignoring *King*, Quicken appears to assert this can be done at any time before closing. Indeed, by offering the affidavit of Carlton Robinson, the lawyer selected by its affiliate, Quicken suggests that the preference may be ascertained on the day of closing. *King* found this contention “borders on frivolity.” Notwithstanding the “bright-line” language and clear message in *King*, Quicken even attempted to have the Wilsons “select” Carlton Robinson by executing an attorney preference form as part of an “application” dated 12/14/2011 – the day of the closing. *Exh. H* to Plaintiff’s *Cross Motion for Summary Judgment*. Although *King* dealt with the pre-1996 version of § 37-10-102(a), the Court also discussed the current statute in Footnote 1 of the *King* opinion:

Effective May 30, 1996, the Legislature amended section 37-10-102(a). See Act No. 355, § 1, 1996 S.C. Acts 2187. Following this amendment, a lender was required to notify the borrower prior to closing of the borrower’s attorney preference rights by either: (1) including the information on or with the credit application, or (2) providing the borrower written notice of the preference information that is “delivered or mailed no later than three business days after the application is received or prepared.” S.C. Code Ann. § 37-10-102(a) (1989 & Supp. 1996).

In other words, “prior to closing” must be satisfied either at the time of application or within a three-day period after application.

\* \* \*

*King* does not contemplate that § 37-10-102(a) permits oral preference disclosures. However, even if oral disclosures were permitted, there is no evidence presented by Quicken that it timely ascertained Wilson’s selection of legal counsel. Moreover, the only evidence of any written attempt to ascertain the Wilsons’ attorney preference prior to closing is the November 7, 2011

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preference form pre-populated by Quicken upon which both parties rely. TAB 2 and *Attachment A to Exh 1 of Response*.

Attached to Plaintiff's *Response* are the following:

- Exhibit 1      Affidavit of Eric Andino.
- Exhibit 2      Affidavit of Carlton Robinson.
- Exhibit 3      Letter of Carmen Harper Thomas, dated June 22, 2015
- Exhibit 4      Green Tree Responses in *Green Tree v. Fleming* case.
- Exhibit 5      Affidavit of Brian M. Barnwell.

None of these Exhibits is responsive to Defendant's contentions:

1. That Quicken Loans failed to ascertain Wilson's preference as to the legal counsel that would be employed to represent Wilson in all matters of the transaction relating to the closing of the transaction, in violation of § 37-10-105(A); and
2. That Quicken Loans' procedures rise to the level of unconscionability, in violation of § 37-10-105(C), in that the pre-populated Attorney Preference Form:
  - a) deprived Wilson of a meaningful choice;
  - b) was oppressive;
  - c) advised Wilson incorrectly as to her rights to select her own attorney under South Carolina law pursuant to S.C. Code Ann. § 37-10-102.
  - d) advised Wilson incorrectly as to the necessity to have an attorney close this loan as required by *Buyers Service*<sup>2</sup>;
  - e) aided and abetted in the unauthorized practice of law;
  - f) took advantage of the inability of the debtor to reasonably protect her interests in the transaction;
  - g) attempted to effectuate a waiver of her rights under the Code in violation of S.C. Code Ann. § 37-5-108; and,
  - h) allowed Quicken to send the loan to its sister company, Title Source, in violation of S.C. Code Ann. § 40-5-320.

Each factor listed is unconscionable in and of itself. When viewed in combination, the totality compels a finding of unconscionability.

As noted above, the attachments to Plaintiff's *Response* fail to address the essence of Defendant's summary judgment motion:

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2. *State v. Buyers Service Company, Inc.*, 292 S.C. 426, 357 S.E.2d 15 (1987). TAB 18.

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- Exhibit 1      The Andino affidavit is that of a Quicken Loans records custodian with no indication of personal knowledge of the transaction. The attached preference form is the same as that appearing at TAB 2 of the Defendant's Appendix. The Journal Notes do not conflict with or alter any of Defendant's contentions. Finally, the "Client Survey" is merely a self-serving form contained in the closing package and executed at the behest of a lawyer selected by Quicken Loans' affiliate.
- Exhibit 2      The Carlton Robinson affidavit contains no reference to the loan application process in early November 2011. Robinson was the lawyer selected by Quicken Loans' affiliate to attend the closing in December 2011.
- Exhibit 3      The letter of Carmen Harper Thomas, dated June 22, 2015, apparently is offered to support Plaintiff's contention that the references to the Boone transcript are improper. As noted above, no motion was made during the course of the public trial in July 2015 before Judge Goodstein to close the court room or to exclude any member of the public from attendance.
- Exhibit 4      Green Tree Responses in Green Tree v. Fleming case. The discovery responses do not alter or explain away the ruling of Judge Newman. TAB 15. Nor do these responses address Defendant's contentions (above).
- Exhibit 5      The affidavit of Mr. Barnwell, Quicken's counsel, appears to be a brief in support of discovery, a position at odds with Plaintiff's summary judgment motion. One year after the Complaint is filed and two months after Defendant's motion for summary judgment, this argument of counsel is without merit.

S.C. Code § 37-5-108(4)(a) provides "...consideration must be given to applicable factors, such as, but without limitation . . . ." In other words, § 37-5-108 clearly contemplate the court consider any factor it deems appropriate to determine whether a transaction is unconscionable or induced by unconscionable conduct.

While the items enumerated are not controlling, § 37-5-108(4)(a)(iv) is applicable: "the fact that the seller, lessor, or lender knowingly has taken advantage of the inability of the consumer or debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement, or similar factors." Quicken's programmatic pre-populating of the preference form to state "I/We will not use the services of legal counsel" knowingly steered the borrower from selecting a lawyer of her own choosing to protect her interests.

\* \* \*

In conclusion, Quicken's affidavits and other submittals raise no question of material fact. The issues of compliance with § 37-10-102(a) and whether the pre-populated form is unconscionable turn upon the Court's legal review and legal interpretation of the materials provided.

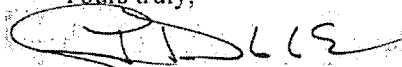


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Again, thank you for your consideration. If further submittals by Defendant's counsel would be helpful or if there are particular questions that should be addressed in greater detail, we stand ready to respond. For your reference, I am attaching a copy of the transcript of the March 18, hearing.

Yours truly,



Charles L. Dibble  
Co-counsel for Defendant

7744:CLD:me

enc: copy of March 18, 2016 transcript

cc: *via USPS*  
Hon. Rhonda Dale McElveen

*via email only (as PDF attachment)*

B. Rush Smith, Esquire  
A. Mattison Bogan, Esquire  
Brian M. Barnwell, Esquire  
Steven W. Hamm, Esquire  
C. Bradley Hutto, Esquire  
Daniel W. Williams, Esquire

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

J. Martin Harvey, Special Referee

Case No. 2015-CP-06-00070  
Appellate Case No. 2016-001214

Quicken Loans, Inc., ..... Appellant,

v.

Wayne D. Wilson; Calvin O. Wilson, III; Any other  
Heirs-at-law or Devisees of Ezekiel (Ellen) T. Wilson,  
Deceased, their heirs, Personal Representatives,  
Administrators, Successors and Assigns, and all other  
persons entitled to claim through them; all unknown  
persons with any right, title or interests in the real estate  
described herein; also any persons who may be in the  
military service of the United States of America, being a  
class designated as John Doe; and any unknown minors  
or persons under a disability being a class designated as  
Richard Roe; Park Sterling Bank.....

Respondents.

**RECEIVED**

JAN 10 2017

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material  
proposed to be included by any of the parties and not any other material.

*[Signature on following page]*

Respectfully submitted,

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Columbia, South Carolina  
December 22, 2016