

## **SAMPLE TILA RESCISSION nOTICE (detailed version)**

*This rescission letter is quite detailed. Truth in Lending does not require this type of completeness. Two shorter versions of rescission letters appear under Practice Tools. The Rescission Model Forms in FRB Regulation Z, Appendices H-8 and H-9 are shorter still, merely stating "I wish to cancel," and signed and dated by the consumer. The consumer's attorneys in the case being reprinted chose a detailed rescission letter because they believed it would lead to a quicker and more beneficial settlement of the case -- that it is best to present to the creditor the consumer's case in as much detail and as persuasively as possible as early as possible. Note that this letter was drafted in 1993 and may rely upon outdated caselaw. Statutory and regulatory citations may have changed as well. This notice is for purposes of demonstration only. It must be tailored to a particular case by a professional.*

January 22, 1993

VIA FIRST CLASS MAIL AND CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED  
No. XXXXXXXXXXXXXXX

Susan Black, President  
Street Financial, Inc.  
100 Natick Road  
Worcester MA

Re: *John Homeowner - Rescission of Mortgage Loan Dated November 29, 1990 Pursuant to Massachusetts General Laws, c. 140D, §10*

Dear Ms. White:

I represent John Homeowner, a Street Financial Services, Inc. ("Street") mortgagor. Mr. Homeowner refinanced his principal residence with Street on November 29, 1990. On January 15, 1993, you sent Mr. Homeowner a demand letter informing him that you were to begin foreclosure proceedings next week if he did not immediately pay off the Street loan. Because the refinancing transaction which you base this demand on contained several violations of the state Truth in Lending Act (M.G.L. c.140D, §1 et seq.) ("TILA"), my client has authorized me to rescind the transaction pursuant to c.140D, §10, and the Massachusetts Banking Commissioner's Regulations promulgated thereunder, 209 CMR 32.23.

The following synopsis of the facts and law which outlines Mr. Homeowner's right to rescind incorporates citations to the federal Truth in Lending Act (15 USC §1601, et. seq.), the Federal Reserve Board Regulations promulgated thereunder (12 CFR §226.1 et. seq., "Regulation Z"); the Official Staff Commentary of the Federal Reserve Board; and relevant federal case law. As the Massachusetts TILA and regulations are identical to the federal statutory and regulatory scheme in all substantive aspects, the state courts are guided by this federal law in interpreting the cognate provisions of state law. Therefore, although reference is made to federal

law throughout this letter for illustrative purposes, the rescission claim and all other claims made herein are solely grounded in state law.

### **Truth in Lending: Material Disclosures and Rescission Rights**

The purpose of TILA is to enable consumers to intelligently shop for credit (15 USC §1601(a)). To achieve this purpose, TILA requires that the true "cost" of credit be stated as both an interest rate (annual percentage rate, or APR) and as a dollar amount (Finance Charge). The APR incorporates certain fees and charges imposed as part of the credit transaction, and which Congress has determined to constitute part of the "costs" of obtaining financing. Correspondingly, the finance charge discloses the net effect of such additional costs of credit as a dollar figure. Therefore, the finance charge may equal the sum of any points, broker's fees, credit insurance, and other charges which, in the particular context, TILA requires the disclosure of as credit costs.

As such, a note with a ten percent interest rate, executed as part of a transaction which imposed such additional "finance charges," may have an APR, or "true" interest rate, of 12%. Only when a creditor makes accurate disclosure of the true cost of credit can a consumer compare different lenders' offerings and make the informed credit decision which is TILA's goal. To provide a self-enforcement mechanism which promotes such accurate disclosures, Congress provided that the failure of a creditor to comply with certain of TILA's disclosure requirements (the "material disclosures") gives the borrower an extended right to rescind the transaction. *See*, G.L. c.140D, §10; 209 CMR 32.23; 15 USC §1635; Regulation Z, §226.23.

Here, Street has violated TILA in a number of respects. The violations which give rise to Mr. Homeowner's right to rescind this transaction include, but are not limited to, the following.

### **Unfair and Deceptive Conduct and Disclosure Laws Violations**

In the fall of 1990, Mr. Homeowner responded to Easy Cash Inc. ("Easy Cash") television and print advertisements offering low interest rate loans by visiting the Easy Cash offices seeking information about obtaining a mortgage loan to refinance his home. Mr. Homeowner met with Easy Cash representative Lisa Smith. Ms. Smith informed him that his poor credit precluded a long term, low interest rate loan, but that if he took out a two year loan with a balloon payment and made his payments on time, that the Easy Cash would then provide long term, low interest refinancing as offered in its advertising. Ms. Smith provided Mr. Homeowner with a blank mortgage application and procured his signature on it. Mr. Homeowner was never provided with a copy of either the application form he signed or the completed application. As such, Mr. Homeowner never received the statutorily required notice mandated by Mass. General Laws, c.184, §17B. Mr. Homeowner had no further contact with Easy Cash until he was subsequently informed that he had been given a loan commitment.

Mr. Homeowner was led to believe and did believe that Easy Cash was a lender. In fact, Easy Cash does not provide financing, but instead arranges or "brokers" financing with Street and other lenders. Easy Cash did not inform Mr. Homeowner either that it was a broker and not

a lender, or that it would impose a broker's fee for the purported service of arranging the Street loan.

Easy Cash is owned, operated and controlled by William Black. Mr. Black is Easy Cash's sole shareholder, officer and director. Street is owned, operated and controlled by Susan Black, William Black's sister. Ms. Black is Street' sole shareholder, officer and director. At all times relevant to this matter, Easy Cash and Street shared the same office address, 100 Natick Road Worcester, Massachusetts. Street indirectly imposed the broker's fee by informally requiring that all borrowers be channelled to it through Easy Cash or other brokers. This practice was a device to accomplish three goals: to increase not only Easy Cash's profit, but Street' as well; to avoid the application of Massachusetts points and fees statute, c.183, §63, which prohibits lenders from charging more than two points on any consumer mortgage loan; and to circumvent the application of TILA, which requires such conduit "broker's fees" to be disclosed as components of the finance charge.

On November 29, 1990 Mr. Homeowner drove to the loan closing location, the office of attorney Larry Lawyer. Mr. Lawyer's office, like the offices of Street and Easy Cash, was also located at 100 Natick Road, Worcester, Massachusetts. Mr. Lawyer was the closing attorney for Street. However, it was not until Mr. Lawyer provided him with loan papers indicating that Street was the lender that Mr. Homeowner learned that Easy Cash was not directly providing the financing. Without Mr. Homeowner's consent or knowledge Easy Cash acted either through a correspondent lender contract, as broker, or as Street' agent. In any event, Easy Cash did not act pursuant to any agreement with Mr. Homeowner, either written or verbal. Easy Cash did not act in Mr. Homeowners' best interests, but rather as agent for Street, in violation of G.L., c.271, §39.

### **TILA: Material Disclosure Violations**

The conduct described above leading up to the consummation of the loan, in addition to the specific statutory violations cited, is rife with violations of c.93A. In addition, this conduct, as well as that which took place at the closing, violated TILA and gave rise to Mr. Homeowner's right to rescind this transaction. The independent bases on which this rescission right is based are detailed below.

#### *1. Failure to Disclose Broker Fees as Finance Charges*

One of the documents Mr. Lawyer required Mr. Homeowner to sign as a condition of obtaining the loan was a so-called "Consulting Agreement" purporting to authorize the payment of almost ten percent of the loan proceeds, two thousand nine hundred fifty-four (\$2,954.00) dollars, to Easy Cash. Mr. Homeowner had never seen this agreement before, and had no idea that Easy Cash was a broker, much less that it would charge this amount as a fee. (A copy of this "Consulting Agreement" is attached to this correspondence as Exhibit "A") [not reprinted *infra*]. Nevertheless, Mr. Homeowner signed the agreement because he was led to believe that execution of the "consulting" agreement authorizing Easy Cash's fee of almost ten points was a condition of obtaining the financing.

In accordance with the purported agreement, Mr. Lawyer subsequently paid a \$2,954.00 broker's fee to Easy Cash. However, this fee was not disclosed to Mr. Homeowner as a finance charge. Only the additional one point which Street' charged was disclosed as a finance charge. This failure to disclose the broker's fee as a finance charge violates TILA. Where the lender requires the payment of a fee to a broker as a condition of or incident to the granting of a loan, the broker's fee must be included in the finance charge, and therefore also factored into the calculation of the annual percentage rate. 209 CMR 32.4(b)(3); Regulation Z, §226.4(b)(3). See, *In re Dukes*, 24 B.R. 404 (Bankr. E.D. Mich. 1982); *Johnson v. Fleet Finance, Inc.* 1992 WL 37648 (S.D. Ga., Feb. 21, 1992). See, e.g. G.L. c.255, §12F (where relative acts as conduit in credit transaction the creditor is subject to all claims and defenses borrower may assert against the related party "arranger" of credit). Street failed to so disclose the broker's fee as a finance charge and therefore understated both the finance charge and the APR in amounts exceeding TILA's error tolerance. In so doing Street also misstated the amount financed, which is overstated by the amount of the broker's fee.

## 2. Overstated Fees

Charges which would otherwise be excludable pursuant to Regulation Z must be disclosed as components of the finance charge if they are not bona fide and reasonable. By failing to disclose the following charges as components of the finance charge, Street has violated Regulation Z, §226.4(c)(7), and 209 CMR 32.4(c)(7). (All of the following charges are shown on the copy of Street' "Loan Accounting and Disbursement Authorization" attached to this correspondence as Exhibit "B")

### *Legal and associated fees paid to Larry Lawyer*

Attorney's Fees	\$1,040
Document Preparation	\$195
Amortization Schedules	\$25
Total	\$1,260

The \$1,040 charge alone for attorney's fees for closing the loan far exceeds the range of charges normally imposed by experienced lender's counsel on loans of this type. As such, the excessive portion is an undisclosed finance charge. See *R. Rohner, The Law of Truth in Lending* §3.03(2)(a) (1984). In addition, the \$195 charge for document preparation and \$25 amortization schedules charge are merely disguised as separate costs in order to make the actual \$1,260 legal fee appear lower. Mr. Homeowner, in fact, neither requested nor received the amortization schedules for which he was charged, nor is the \$25 charge the bona fide and reasonable cost of producing such computer generated schedules on a two year note. Finally, to the extent that the attorney's fees charged actually conceal additional lender profit, they constitute an undisclosed finance charge. See *Therrien v. Resource Financial Group*, 704 F.Supp. 322 (D.N.H. 1989).

### *Title and Recording Fees*

Full Title Examination	\$250
Updating of Title; Recording of Documents	\$ 50

Mortgage Recording	\$ 25
Assignment of Mortgage	\$ 10
Discharge of Mortgage and Liens	N/A

The two hundred fifty (\$250.00) dollar charge for full title examination precludes any need to "update" the title. In addition, the only document recorded was the mortgage, for which a separate \$25 fee was imposed. Nevertheless, Street charged Mr. Homeowner fifty dollars for its purported "Updating of Title; Recording of Documents." Some portion of the \$50 fee was presumably allocated to the cost of the unnecessary "title update" and the remainder to the contrived cost of recording non-existent documents. To the extent that these "costs" were not fees paid to public officials as indicated, they are finance charges. Regulation Z, §226.4(e)(1); 209 CMR 32.4(e)(1); *Abbey v. Columbus Dodge* 607 F.2d 85 (5th Cir. 1979) (where, contrary to disclosures, creditor retained and did not pay to public officials an itemized \$37.50 "filing fee," the fee was a finance charge).

Finally, the \$10 fee for the "assignment of mortgage" is also a finance charge. Regulation Z, §226.4(b)(6); 209 CMR 32.4(b)(6); *In re Brown*, 106 B.R. 852, 858-859 (Bankr. E.D. Pa. 1989); *Cheshire Mortgage Service v. Montes*, 223 Conn. 80 (1992).

### **Inaccurate Material Disclosures**

Accordingly, the Truth in Lending Disclosure Statement misstates at least three of the material disclosures mandated by law, by its:

- failure to accurately disclose the finance charge, in violation of Regulation Z, §226.18(d) and 209 CMR 32.18(d);
- failure to accurately disclose the amount financed, in violation of Regulation Z, §226.18(b) and 209 CMR 32.18(b); and
- failure to accurately disclose the annual percentage rate, in violation of Regulation Z, §226.18(e) and 209 CMR 32.18(e).

Street' failure to accurately make these material disclosures resulted in a misstated amount financed and an understated finance charge and APR in amounts exceeding TILA's error tolerance, all in violation of Regulation Z, §226.18(b)(d) and (e), and 209 CMR 32.18(b)(d) and (e).

### **Demand for Relief**

The failure to accurately make the above-noted material disclosures tolls Mr. Homeowner's rescission right until the earlier of Street' provision of such rescission right notices and corrected material disclosures, or the passage of four years subsequent to consummation of the transaction. G.L. c.140D, §10, 209 CMR 32.23(a)(3). Cf., 15 USC 1635, Regulation Z, §226.23(a)(3).

Accordingly, please be advised that by this correspondence Mr. Homeowner rescinds Street' security interest in his property pursuant to c.140D, §10. As a result of this rescission notice Street' security interest is void (209 CMR 32.23(d)(1); Regulation Z, §226.23(d)(1)) and Street is bound to immediately terminate such security interest. 209 CMR 32.23(d)(2); Regulation Z, §226.23(d)(2). In addition, Street has twenty days from its receipt of this notice to return to my client all monies paid in connection with the terms of the mortgage loan which is the subject of this letter. *Id.* My client hereby requests an itemization of such monies. Upon Street' discharge of its statutory duties, my client will perform all necessary actions required by G.L. c. 140D, §10.

Failure to cancel the security interest and return to my client all monies due may subject Street to actual and statutory damages, pursuant to G.L. c.140D, §32, as well as multiple damages for corresponding violations of c.93A. *See*, G.L. c.140D, §34.

Sincerely,  
Attorney for Homeowner

cc: John Homeowner  
State Attorney General