



housing and
economic
rights advocates

Exemplar TILA Rescission/ Cancellation Letter

[Month, Date & Year]

Sent by 1st class certified mail & by facsimile _____

[Name], Legal Counsel
[LENDER]
[Street, City, etc. address]

Re: [Name of Homeowner / borrower]
Property: [address]

Dear _____:

Pursuant to the provisions of the Truth and Lending Act (“TILA”), 15 U.S.C. Section 1635, the above-captioned homeowner hereby rescinds the above-referenced loan, due to violations of TILA, including but not limited to the unlawful failure to give timely and proper notices required under TILA.

This rescission is based on the provisions of TILA, including but not limited to 15 U.S.C. 1635(a) and 12 C.F.R. 226.23(b)(5).

Please contact me at (408) 280-2402 regarding this matter. Thank you.

Sincerely,

[Homeowner]

phone 510.271.8443
fax 510.868.4521

Exemplar TILA Tender Offer Letter

[Month, Date & Year]

Sent by 1st class certified mail & by facsimile _____

[Name], Legal Counsel
[LENDER]
[Street, City, etc. address]

Re: [Name of Homeowner / borrower]
Property: [address]

Dear _____:

This serves to present [homeowner's name] tender offer to [Lender] based on her statutory right to cancel her present mortgage loan (no. _____). See [homeowner's] prior letter dated _____ which provides you with notice of rescission/cancellation of said loan.

Pursuant to this rescission letter, Ms. [homeowner] is legally entitled to cancel her [Lender name] loan given that the TILA Notices of Right to Cancel given to her last year at the time of the closing of her refinance mortgage loan on the [list here address of the subject real] property were legally deficient as they failed to contain one or more required material terms. See Truth and Lending Act ("TILA"), 15 U.S.C. Section 1635, and 12 C.F.R. 226.23(b)(5). Specifically, a broker or lender's failure to state a date certain on the notices to cancel which identifies the exact date the borrower can cancel the loan constitutes a clear technical violation of TILA. Semar v. Platte Valley Fed. Sav. & Loan Ass'n 791 F.2d 699.

Based on the foregoing, Ms. [homeowner] has authorized [list your agency name here] to cancel her Long Beach refinance loan under the provisions of the Truth in Lending Act and present a **tender offer of \$295,626.79** to [list Lender], as the current holder of her mortgage loan.

Consistent with the formula used by the Ninth Circuit in Semar v. Platte Valley Fed. Sav. & Loan Ass'n, we proposes that Ms. [homeowner]'s original principal loan amount of \$332,500 be reduced to the tender offer amount of \$295,626.79. See Semar at 703 –704.

This \$295,626.79 tender offer is based on the following formula and calculations: principal loan amount minus: a) all payments made; b) loan expenses; and c) statutory civil penalty for violation of TILA. Id. Applying this formula, first, a reduction in the \$332,500

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principal tender amount provides for a \$ 27,993.57 credit for the 11 months of monthly mortgage payments Ms. [homeowner] has made since the inception of her loan (Oct. 2002 – Aug. 2003 = 11 mos. x \$2,544.87 = total \$27,993.57). Second, for tender offer purposes, Ms. [homeowner]'s principal loan amount can further be reduced by \$7,879.64 which represents the total loan expenses ("closing costs and fees") she incurred to take out her [Lender] loan no. _____. Third, Ms. [homeowner] is entitled to include a \$1,000 statutory penalty reduction in her present tender offer due to [Lender]'s violation of TILA in failing to provide her with proper rescission notices. Finally, Ms. [homeowner] is entitled statutory attorneys fees recovery under TILA. Attached for your reference and convenience is an itemized listing of all the loan expenses incurred by Ms. [homeowner]. At present, Ms. [homeowner] has also incurred attorneys fees in excess of \$1,500.

Based on the foregoing calculations, Ms. [homeowner]'s presents to [Lender] a tender offer of **\$295,626.79**. Ms. Barbella will continue to make her monthly payments to [Lender] until this loan dispute is resolved.¹ However, any and all such additional payments Ms. [homeowner] makes presently shall be factored in as a credit reduction toward any final tender payment offer.

Please let me know by no later than August 15, 2003 if you [Lender] will agree to resolve Ms. [homeowner]'s TILA claim and release its security for this loan by accepting in writing the herein proposed \$295,626.79 tender offer. Be advised, Ms. [homeowner] has already obtained pre-approval for refinancing with another lender and is in a position to present full tender payment within 30 days of [Lender]'s release.

Please call me at _____ to discuss this matter once you have had opportunity to fully review this letter. Thank you.

Sincerely,

[Legal Service attorney]

cc: [homeowner]

Encl. Itemized List of [homeowner] loan expenses

¹ NOTE: August 1, 2003 payment by check no. 7117 in the amount of \$2,500 has been made by Ms. [homeowner]

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[HOMEOWNER]
Calculation of Tender Offer to [Lender]

LOAN AMOUNT: \$332,500
Less ALL PAYMENTS: From 10/1/02 - 8/1/03 (11 mos. @ \$2,544.87) = \$27,993.57

Less LOAN EXPENSES: \$7,879.64
 (Expenses listed below taken directly from [name] Title Co.'s Estimated Buyer's/Borrower's Settlement Statement dated 8/15/02)

Loan Expense	Fee
Loan Origination Fee [mortgage broker]	\$3,325.00
Interest from 8/14/02-9/1/02	\$1,385.64
Tax Service Fee to [Lender]	\$71.00
Doc Prep Fee to [Lender]	\$200.00
Processing fee to [mortgage broker]	\$450.00
Flood Search Fee to [Lender]	\$13.00
Underwriting Fee to [Lender]	\$299.00
Hazard Ins. Premium to Est Only	\$557.00
Settlement or Closing Fee to [xxx] Title Co.	\$350.00
Notary Fees to [xxx] Title Co.	\$30.00
Title Insurance to Chicago Title	\$894.00
Endorsement Fee to [xxx] Title Co.	\$50.00
Delivery and Overnight to [xxx] Title Co.	\$60.00
Recon Fee to [xxx] Title Co.	\$45.00
Recording Fees	\$150.00
Total Loan Expenses:	\$7,879.64

Less TILA VIOLATION PENALTY: \$1,000

TOTAL TENDER OFFER AMOUNT DUE: \$298,171.66

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