

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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Stanzer Knox,

Plaintiff,

vs.

**AMENDED  
COMPLAINT**

Case No.: 0:08-CV-00036 PAM-JSM

Homestead Mortgage Corporation,  
HomeComings Financial, LLC.,  
Mortgage Electronic Registration Systems, Inc.,  
Carrington Mortgage Services, LLC, and  
Carrington Capital Management, LLC.

Defendants.

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**I. PRELIMINARY STATEMENT**

1. This action arises in connection with an abusive and predatory home mortgage loan. Defendant Homestead Mortgage Corporation failed to provide a clear and conspicuous disclosure of all material terms related to Plaintiff Stanzer Knox's mortgage loan.<sup>1</sup> Plaintiff Stanzer Knox brings this action to secure declaratory relief, rescission and money damages for violations of the Truth in Lending Act, § 15 U.S.C. 1601, *et seq.*, as well as relief for violations of Minnesota's servicing statute, Minn. Stat. § 47.205 (2006), and the Real Estate Settlement Procedures Act, § 12 U.S.C. 2601, *et seq.*

**II. JURISDICTION AND VENUE**

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1337, and grant relief pursuant to the Truth in Lending Act, § 15 U.S.C. 1601, *et seq.* and Real Estate Settlement Procedures Act, § 12 U.S.C. 2601, *et seq.*

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<sup>1</sup> Unless otherwise specified herein, "mortgage loan" refers to the Mortgage, Adjustable Rate Rider, and Note signed by Mr. Knox on April 14, 2006.

3. This Court has supplemental jurisdiction over the Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

### **III. PARTIES**

4. Plaintiff Stanzer Knox lives in a home he bought in 1972 at 3605 Columbus Avenue South; Minneapolis, Hennepin County, Minnesota. A loan secured by a mortgage on his home is the subject of this lawsuit. Mr. Knox has occupied this home as his principal dwelling for the past 35 years, including all times relevant to this lawsuit. He is a natural person to whom credit was offered or extended and the transaction was primarily for personal, family, or household purposes.

5. Defendant Homestead Mortgage Corporation ("Homestead") is a corporation organized under the laws of Minnesota, with its principal place of business located at 4105 N. Lexington Avenue, Suite 100, Arden Hills, Minnesota. Homestead was a licensed mortgage originator in Minnesota from July, 1999 until October 31, 2007. Its license is now "inactive." At all times relevant to this lawsuit, Homestead regularly extended consumer credit for which a finance charge was imposed. Defendant Homestead's registered agent is at 7300 Metro Boulevard, Suite 630; Minneapolis, Minnesota 55439.

6. Defendant HomeComings Financial, LLC ("HomeComings") is a limited liability company organized under the laws of the State of Delaware, with a Minnesota place of business located at 8400 Normandale Lake Blvd., Suite 250; Minneapolis. HomeComings is licensed as a mortgage originator in the State of Minnesota. HomeComings' registered agent is Corporation Service Company, 300 Jackson Street, Ste. 700; Saint Paul, Minnesota 55101.

7. Defendant Mortgage Electronic Registration Systems, Inc. ("MERS") is a

corporation organized and existing under the laws of the State of Delaware, with its headquarters at 1595 Spring Hill Rd., Ste. 310, Vienna, Virginia 22182. MERS is listed as the “Mortgagee” in the mortgage which is the subject of this lawsuit and MERS is the entity that is foreclosing upon Mr. Knox’s home. Its registered agent is RK Arnold III, 8201 Greensboro Drive, Ste. 350; McLean, VA 22102.

8. Defendant Carrington Mortgage Services, LLC (“CMS”) has its corporate headquarters at 599 West Putnam Avenue Greenwich, CT 06830. CMS is the current servicer of the mortgage which is the subject of this lawsuit. Its registered agent is CT Corporation System Inc., 100 South 5<sup>th</sup> Street, Ste. 1075; Minneapolis, Minnesota 55402.

9. Defendant Carrington Capital Management, LLC (“CCM”) has its corporate headquarters at 599 West Putnam Avenue, 3rd Floor; Greenwich, Connecticut 06830. CCM is the current owner of the mortgage loan, which is the subject of this lawsuit. Its registered agent is National Registered Agents, Inc., 9 East Loockerman Street; Dover, DE 19901.

#### **IV. FACTS**

10. In early 2006, Mr. Knox decided that he wanted to refinance his then-current mortgage so that he could obtain cash to help pay for a family member’s funeral and to make improvements and repairs to his home.

11. He had heard about a mortgage broker named Sylvester Luellen through a friend, and he contacted Mr. Luellen to inquire about obtaining a mortgage loan to meet his needs.

12. Mr. Luellen was employed by International Mortgage Solutions, Inc. (“IMS”).

13. IMS was licensed as a mortgage originator in Minnesota from October 9, 2003 until October 31, 2007, with a place of business at 1704 West Lake Street; Minneapolis. The Department of Commerce has brought enforcement action against IMS.

14. Mr. Knox was seeking a 30 year, fixed rate mortgage when he contacted Mr. Luellen.

15. Mr. Luellen told Mr. Knox the following:

A. That Mr. Knox could not qualify for a fixed rate mortgage, if he wanted to obtain cash from the transaction, but that he could get a 30-year mortgage with an adjustable interest rate.

B. That Mr. Knox's interest rate and monthly payment could increase during the life of the loan, but there was also a possibility that his interest rate and monthly payment would not increase.

C. That his monthly payment would be about \$ 1,250, and that his interest rate would be about 6.75%.

16. Mr. Luellen failed to disclose material information, including, but not limited to, the following:

A. After making monthly payments for thirty years, Mr. Knox would owe a significant balloon payment to fully satisfy the Adjustable Rate Mortgage that Mr. Luellen proposed.

B. The mortgage and Note that he was signing contained no index or description of the specific mathematical formula or method that would be used to calculate the interest rate or monthly payments.

17. As a result of his discussions with Mr. Luellen, Mr. Knox agreed to close on the new mortgage loan that Mr. Luellen and IMS had arranged.

18. The closing was held on April 14, 2006, at "Abstractos, Titulos & Closings, LLC" which had a principal place of business at the same address as IMS, 1704 West Lake Street,

Minneapolis.

19. The loan was secured by a mortgage against Mr. Knox's home and was payable on its face to Homestead Mortgage Corporation. Copies of the Mortgage and Adjustable Rate Rider (collectively referred to herein as Mortgage and the Adjustable Rate Balloon Note ("Note")) are incorporated herein and attached as Exhibits 1 and 2, respectively.

20. According to the Mortgage, while the "lender" was identified as Homestead Mortgage Corporation, a corporation existing under the laws of Minnesota, the "mortgagee" was identified as Mortgage Electronic Registration Systems, Inc. (*See* Ex. 1, p. 1 ¶¶ (C) and (D)).

21. The original principal amount of the new mortgage loan was \$185,500. Of that amount, \$136,019.56 was paid to satisfy Mr. Knox's previous mortgage to Chase Manhattan, \$12,402 was purportedly retained and disbursed by Abstractos, Titulos & Closings, LLC for various settlement charges, and Mr. Knox received \$37,402.72 in cash proceeds. A copy of the Settlement Statement is incorporated herein and attached as Ex. 3.

22. According to the Settlement Statement, IMS received, at least, the following sums from Mr. Knox's settlement proceeds:

Broker fee:	\$2,782.50
APP fee:	\$500
Credit Report:	\$55
Commit:	\$500
<u>Process:</u>	<u>\$500</u>
<b>Total:</b>	<b>\$4,337.50</b>

(*See* Ex. 3.)

23. In addition to the foregoing sums, IMS also received a "ysp" payment directly

from Homestead Mortgage Corporation in the amount of \$927.00. “YSP” is an acronym for “yield spread premium,” a bonus which is typically paid by a lender to a mortgage broker who has sold a loan to a borrower at a higher interest rate than the lender would have provided to the borrower, and thus the lender splits the excess interest rate yield with the broker by paying a “yield spread premium.” (*See Ex. 3*).

24. According to the Note, the principal amount of the loan was \$185,500, payable at an annual interest rate of 7.875% for the first two years. (*See Ex. 2, Section 2*). The Note provides that Mr. Knox’s interest rate and monthly payment could adjust according to the terms outlined in Section 4 of the Note. (*See Ex. 2, Sections 2 and 3 (C)*).

25. According to the Note, the amount of Mr. Knox’s monthly payment is \$1272.43 for the first two years.

26. Section 4 of the Note states that the interest rate and monthly payment will change on May 1, 2008, and every six months thereafter. It further provides that the “Note Holder” will calculate the new interest rate by adding a margin of 4.875 to the “Current Index” on each change date. (*See Ex. 2, Sections 4(A) and 4(C)*).

27. The Note does not identify the “Current Index” or any index that will be used to calculate Mr. Knox’s interest rate. (*See Exhibit 2, Section 4(B)*).

28. Section 4(B) is titled “The Index,” but it contains only a blank space followed by this statement: “If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.” (*See Ex. 2, Section 4(B)*).

29. Similarly, the Adjustable Rate Rider does not identify the “Index.” It contains only a blank space followed by this statement: “If the Index is no longer available, the Note

Holder will choose a new index that is based upon comparable information. (*See* Exhibit 1, Adjustable Rate Rider, 4(B)).

30. The Note further provides that the amount of Mr. Knox's monthly payments may change on the same dates that his interest rate is subject to change, and that his new payments will be set based on the amount needed to repay the loan in substantially equal installments by May 1, 2046 at the newly calculated interest rate.

31. In other words, the new loan payments will be calculated based upon a 40 year amortization schedule, even though the loan matures after 30 years. Thus, Mr. Knox will be required to make a balloon payment after making monthly payments of principal and interest for 30 years.

32. The actual terms of the mortgage loan are substantially different than the terms that Mr. Luellen had led Mr. Knox to believe were the terms of the mortgage and note.

33. Mr. Luellen had led Mr. Knox to believe that the mortgage and note were simply an adjustable rate mortgage with no balloon payment.

34. The closing occurred at the offices of IMS, and consisted of a person simply putting documents in front of Mr. Knox and telling him where to sign. He trusted everyone involved that he was being given the mortgage loan that had been previously described.

35. At the closing, Mr. Knox also received three materially different documents entitled "Federal Truth-in-Lending Disclosure Statement." Copies of these disclosures are incorporated and attached hereto as Exhibits 4, 5, and 6.

36. According to the first disclosure statement, Mr. Knox's Annual Percentage Rate was 9.910%, and he would pay-off the loan in 360 months (30 years) on a fully amortizing repayment schedule with an adjustable interest rate. (*See* Ex. 4)

37. According to the second disclosure statement, Mr. Knox would pay-off the loan in 480 months (40 years) on a fully amortizing repayment schedule with an adjustable interest rate. (*See Ex. 5*).

38. According to the third disclosure statement, Mr. Knox would make monthly payments of principal and interest for 359 months, and on the 360<sup>th</sup> month he would be required to make a balloon payment in the amount of \$121,062.58. (*See Ex. 6*).

39. Each of these disclosure statements, Exhibits 4, 5, and 6, were presented to and signed by Mr. Knox at the closing on April 14, 2006.

40. When presented together by Defendants or its affiliates, subsidiaries or agents, Mr. Knox did not receive a clear and conspicuous disclosure of the material terms of his mortgage loan. The information in the various documents provided to Mr. Knox materially conflicted.

41. Furthermore, none of the disclosure statements, Exhibits 4, 5, and 6, accurately or meaningfully reflect the terms of the Mortgage and Note, including the Annual Percentage Rate, Finance Charge, Amount Financed, or Total of Payments, because the Note does not contain an Index upon which such calculations would be made.

42. Mr. Knox made his regularly scheduled monthly payments on the mortgage loan, in the amount of \$1,272.43, from May, 2006 through April, 2007 (approximately 12 payments).

43. Mr. Knox fell behind in the late spring of 2007 when he was forced to take time off of work to care for his sick uncle. In addition to this family emergency, the monthly mortgage loan payments increased.

44. HomeComings is the current servicer of the subject mortgage and is either the assignee of the subject mortgage or is acting on behalf of the assignee of the subject mortgage.

45. HomeComings and/or MERS commenced non-judicial foreclosure proceedings and, pursuant thereto, scheduled a foreclosure sale for October 23, 2007.

46. MERS remains the mortgagee of record with Hennepin County, and is the mortgagee listed on the published notice of foreclosure sale. A copy of the notice of foreclosure sale is incorporated and attached hereto as Exhibit 7.

47. On October 12, 2007 Mr. Knox, through his attorney, sent a qualified written request to Homecomings pursuant to the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e) and request for information under Minnesota law, asking Homecomings to provide certain information about his mortgage loan, including but not limited to a complete history of all charges against Mr. Knox's account and all payments made by Mr. Knox, and the identity of the current holder of Mr. Knox's mortgage. A copy of the qualified written request and request for information is attached as Exhibit 8.

48. As of the date of this Complaint, Homecomings has failed to respond to Mr. Knox's letter, dated October 12, 2007, or even to acknowledge receipt of the same.

49. On October 15, 2007, Mr. Knox, through his attorney, sent notice to MERS, HomeComings, and Homestead rescinding the mortgage loan transaction based on the failure to provide Mr. Knox material disclosures in compliance with the Truth in Lending Act. A copy of the notice is incorporated herein and attached as Exhibit 9.

50. On October 19, 2007, Mr. Knox, through his attorney, received a letter from MERS, through its attorney, informing Mr. Knox that the foreclosure sale had been postponed for 60 days, until December 11, 2007 to analyze Mr. Knox's claim for rescission. A copy of the letter and the attached notice of postponement of mortgage foreclosure sale are incorporated herein and attached as Exhibit 10.

51. On November 12, 2007, Mr. Knox, through his attorney, received a notice from MERS, through its attorney, informing Mr. Knox that his notice of rescission would not be honored and that MERS would proceed to sell his home at a mortgage foreclosure sale on December 11, 2007. A copy of the letter is incorporated herein and attached as Exhibit 11.

52. As of the date of this Complaint, neither Homestead, MERS, nor HomeComings has taken any action to reflect the termination of the mortgage of record or to return any payments made under the mortgage loan as required under the Truth in Lending Act, 15 U.S.C. § 1635.

## **V. LEGAL CLAIMS**

### **COUNT I VIOLATIONS OF THE TRUTH IN LENDING ACT 15 U.S.C. § 1601, *et. seq.***

53. Mr. Knox incorporates the above paragraphs by reference herein.

54. The Truth in Lending Act, 15 U.S.C. § 1601, *et seq.* (“TILA”), requires lenders who regularly extend consumer credit for which a finance charge is imposed to disclose certain key loan terms, such as the annual percentage rate, finance charge, amount financed and payment schedule, prior to the consummation of a consumer credit transaction. 15 U.S.C. §§ 1602(f)-(h) and 1638.

55. When it made the mortgage loan to Mr. Knox, Defendant Homestead regularly extended consumer credit for which a finance charge was imposed and the loan was for personal, family or household purposes. 15 U.S.C. §§ 1602(f) and (g).

56. The TILA allows consumers to rescind a loan transaction where certain “material disclosures” are not given as required under the Act and its implementing regulations, collectively referred to as Regulation Z, 12 C.F.R. Part 226. 15 U.S.C. §§ 1635(a) and (f); 12

C.F.R. § 226.23.

57. “Material disclosures” include the disclosure of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of the consumer’s payments, and the due dates or periods of payments scheduled to repay the indebtedness. 15 U.S.C. § 1602(u).

58. To be effective, “material disclosures” must be provided to the consumer “clearly and conspicuously” 12 C.F.R. § 226.17(a)(1).

59. Where the material disclosures are not given in conformity with TILA or Regulation Z, a consumer has a continuing right to rescind the transaction for up to three years unless the property has been earlier sold or transferred 15 U.S.C. § 1635(f); 12 C.F.R. §§ 226.17, 226.18, 226.32.

60. Mr. Knox has a continuing right to rescind the mortgage loan as provided under 15 U.S.C. § 1635(f) because, among other things, Defendant Homestead or its subsidiaries, affiliates or agents:

A. Failed to clearly, accurately, and conspicuously disclose the “Amount Financed,” using that term, in violation of Regulation Z, pt. 226.18(b) and 15 U.S.C. § 1638(a)(2)(A).

B. Failed to clearly, accurately, and conspicuously disclose the “finance charge,” using that term, in violation of Regulation Z, pt. 226.4 and 226.18(d) and 15 U.S.C. § 1638(a)(3).

C. Failed to clearly, accurately, and conspicuously disclose the “annual percentage rate,” using that term, in violation of Regulation Z § 226.18(e) and 15 U.S.C. §

1638(a)(4).

D. Failed to clearly, accurately, and conspicuously disclose the method of determining the finance charge and/or Index, which is a “material disclosure” that has not been delivered as provided by Reg. Z, pt. 226(a)(3).

61. Defendant Homestead or its subsidiaries, affiliates or agents presented and required Mr. Knox to sign three materially different Truth-In-Lending Disclosure Statements at the closing. The disclosures obscured the real terms of the mortgage loan and were materially different and conflicting.

62. On October 15, 2007, Mr. Knox effectively rescinded his mortgage loan as against Homestead, MERS, and HomeComings by sending a notice of his rescission as provided under Regulation Z, pt. 226.23(a)(2).

63. Under TILA, a consumer is entitled to rescind a mortgage loan as against an assignee of the original lender. 15 U.S.C. § 1641(c).

64. Upon rescission, a consumer is not liable for any finance or other charge under the mortgage loan and any security interest given by the consumer is void. 15 U.S.C. § 1635(b); Regulation Z, pt. 226.23(d).

65. Within 20 days of receiving the consumer’s notice of rescission, the lender must return to the consumer any money that has been given to anyone in connection with the mortgage loan and must take any action necessary or appropriate to reflect the termination of the security interest taken in connection with the transaction. 15 U.S.C. § 1635(b); Regulation Z, pt. 226.23(d).

66. On February 14, 2007, Mr. Knox directly rescinded his mortgage loan as against Carrington Mortgage Services, LLC and Carrington Capital Management, LLC as provided

under Regulation Z, pt. 226.23(a)(2).

67. As a result of Mr. Knox's exercise of his right to rescind the transaction: the mortgage is void; Mr. Knox is not liable for any finance or other charge; Defendants must return all payments made under the loan; and Defendants must release the mortgage of record as provided under 15 U.S.C. § 1635(b) and Regulation Z, pt. 226.23(d).

68. Defendants Homestead, MERS, Carrington Mortgage Services, LLC, Carrington Capital Management, LLC, and HomeComings have failed to return to the Plaintiff any money or property given by Mr. Knox to anyone, including the Defendants, as required by 15 U.S.C. § 1635(b) and Regulation Z, pt. 226.23(d)(2).

69. As a result of the aforesaid violations of the Act and Regulation Z, pursuant to 15 U.S.C. §§ 1635(a), 1640(a), and 1641(c), Defendants are liable to Mr. Knox for:

A. Enforcement of his rescission rights, including: a declaration that the security interest in his home created under the transaction is void and that he is not liable for any finance or other charges imposed in connection with the mortgage loan transaction; an order requiring Defendants to reflect the termination of the mortgage of record; and an order requiring Defendants to return any money or property given by Mr. Knox to anyone, including Defendants, in connection with the transaction.

B. Statutory damages of \$2,000 as a result of the failure by Defendants to effectuate Mr. Knox's rescission as required under 15 U.S.C. § 1635(b) and Regulation Z, pt. 226.23(d);

C. Actual damages in an amount to be determined at trial;

D. Costs of this action, including reasonable attorney fees as provided under 15 U.S.C. § 1640(a)(3); and

E. Such other and further relief as this Court deems appropriate.

**COUNT II**  
**REAL ESTATE SETTLEMENT PROCEDURES ACT**  
**12 U.S.C. § 2605(e)**

70. Mr. Knox incorporates the above paragraphs by reference herein.

71. 12 U.S.C. § 2605(e) provides that:

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

72. Mr. Knox sent HomeComings a Qualified Written Request containing information that allowed HomeComings to identify Mr. Knox and his account. The letter was signed by Mr. Knox's attorney, and placed in the United States Mail by a legal assistant at the Housing Preservation Project, Inc.

73. The letter that Mr. Knox sent HomeComings also included a statement providing sufficient detail to the servicer regarding the information sought by Mr. Knox.

74. Defendant HomeComings failed to acknowledge receipt of the Qualified Written Request within twenty (20) days, failed to take requested action, and has not provided Mr. Knox with the information requested or an explanation related to why that information is not available.

75. Defendant HomeComings' actions represent multiple, separate violations of 12 U.S.C. § 2605(e) and its related regulations.

76. Defendant HomeComings' conduct, as alleged in this Complaint, is part of a pattern and practice of violating 12 U.S.C. § 2605(e).

77. As a result of the aforesaid violations of the Act and Regulation Z, pursuant to 15

U.S.C. §§ 1635(a), 1640(a), and 1641(c), Defendant HomeComing is liable to Mr. Knox for:

- A. Actual damages in an amount to be determined at trial, 12 U.S.C. § 2605 (f)(1)(A);
- B. Statutory damages in the amount of \$1,000 per violation, because such conduct was part of a pattern and practice of noncompliance, 12 U.S.C. § 2605 (f)(1)(B);
- C. Costs of this action, including reasonable attorney fees as provided under 12 U.S.C. § 2605 (f)(3); and
- D. Such other and further relief as this Court deems appropriate.

**COUNT III  
MINNESOTA MORTGAGE SERVICING STATUTE  
MINN. STAT. § 47.205**

78. Mr. Knox incorporates the above paragraphs by reference herein.

79. Minnesota Statute § 47.205, subd. 2(3) provides that a servicer:  
[R]espond within 15 business days to a written request for information from a mortgagor. A written response must include the telephone number of the company representative who can assist the mortgagor.

80. The letter requesting information was signed by Mr. Knox's attorney, and placed in the United States Mail by a legal assistant at the Housing Preservation Project, Inc.

81. Defendant HomeComings failed to acknowledge receipt of Mr. Knox's written request for information within fifteen (15) days or provide the name and telephone number of the person who could provide the requested information.

82. Defendant HomeComings actions represent a violation of Minn. Statute § 47.205, subd. 2(3), and were due to its failure to exercise reasonable care.

83. As a result of the aforesaid violations, Defendant HomeComings is liable to Mr.

Knox for:

- A. Statutory damages in the amount of \$ 500, Minn. Stat. § 47.205, subd. 4;
- B. Actual damages in an amount to be determined at trial, Minn. Stat. § 47.205, subd. 4;
- C. Costs of this action, including reasonable attorney fees as provided under Minn. Stat. § 58.13, subd. 1(a)(8) and Minn. Stat. § 58.18; and
- D. Such other and further relief as this Court deems appropriate.

Dated: February 19, 2008

/s/ Mark Ireland

Mark Ireland

Attorney. Reg. No. 303690

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