

ASSURANCE OF DISCONTINUANCE
LEONARD SMITH

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac Street Centennial, Colorado 80112	
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. HOME MORTGAGE SOLUTIONS, INC.; TOAN Q. ("JAMES") LE, individually and as president thereof; AN T. NGUYEN, individually and as vice-president thereof; and LEONARD D. SMITH, individually Defendants.	▲ COURT USE ONLY ▲
Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General ANDREW P. MCCALLIN, 20909* First Assistant Attorney General OLIVIA C. DEBLASIO, 35867* Assistant Attorney General 1525 Sherman Street Denver, Colorado 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record	Case No.: 08cv1659 Division: 404
ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH LEONARD SMITH	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers, Attorney General, and Defendant Leonard Smith, a mortgage broker licensed by the Colorado Division of Real

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Estate, mortgage broker license number LMB100015732. This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2007), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Defendant for the conduct described below.

I. PARTIES

1. John W. Suthers is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and to prosecute violations of the Colorado Consumer Protection Act ("CCPA"), § 6-1-101, et seq., C.R.S. (2007).

2. Defendant Leonard Smith (hereinafter "Smith") is a licensed mortgage broker with the state of Colorado and former Branch Manager of Home Mortgage Solutions (hereinafter "HMS") which had its principal place of business located at 5990 Greenwood Plaza Blvd., #200, Greenwood Village, Colorado 80111. Defendant served as Branch Manager from 1999 through 2007 and also worked as a subcontracting broker for HMS, doing business as Mortgage Consulting and Credit Services, LLC ("MCCS"). Further, Defendant trained and mentored the mortgage brokers employed by HMS to originate home loans on behalf of HMS. Defendant Smith implemented the policies and procedures at HMS and originated and sold at least 14 Option ARM loans through HMS since 2003.

3. Defendant understands and agrees that this Assurance shall apply to Defendant and any future loan officers he may employ, as well as any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors and any person acting on behalf of Defendant.

II. FACTUAL BACKGROUND

4. Colorado Attorney General John W. Suthers conducted an investigation pursuant to the CCPA and filed a law enforcement action on July 31, 2008 against the above-captioned Defendants, including Defendant Smith. Defendant Smith failed to answer the State's law enforcement action and the Court entered default against him on October 16, 2008. This Assurance is being entered into in lieu of the State seeking a final default judgment against Defendant Smith.

5. The State alleges that Defendant participated in the training and mentoring of HMS brokers to sell "option ARM" loans and other non-traditional or hybrid loan products between 2003 and 2007. Defendant also sold such loans through HMS to consumers. An "option ARM" loan typically allows the borrower to choose from a few monthly payment options, including: a) an amortizing payment of interest and principal, b) an interest-only payment, or c) a minimum payment that is calculated using a low teaser rate.

6. The State alleges that Defendant had knowledge of and capitalized on advertisements in the form of standardized letters on HMS letterhead that marketed option ARM loan products. These letters, which were mass mailed to Colorado consumers between at least 2004 and 2006, would disclose only low introductory rates and the resulting low monthly minimum payments associated with those rates. These letters drew misleading comparisons between a particular consumer's current mortgage payment and the "new monthly payment" based on the "new rate." These letters stated that the advertised loan program would result in a lower interest rate without disclosing the adjustable nature of the

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loan. The advertisements were designed to suggest that the consumer could expect to pay the advertised rates throughout the life of the loan.

7. The State alleges that these letters did not disclose any key features of the advertised loans. Specifically, the letters did not disclose that the “new rate” was really the payment rate or introductory rate. The letters further failed to disclose the reference rate and margin on which the “new rate” was based, any potential for negative amortization, the negative amortization life cap and resulting payment shock, and applicable pre-payment penalties.

8. HMS’ marketing letters did not comply with the Colorado Uniform Commercial Credit Code (“UCCC”) and the Federal Truth in Lending Act (“TILA”). Specifically, the advertisements failed to disclose the Annual Percentage Rate (“APR”) and that the APR may increase after consummation of the loan, the terms of repayment, and the rate at which the interest is in fact accruing.

9. The State alleges that due to the extremely low introductory rates in HMS’ marketing letters, Defendant would receive numerous calls regarding the advertised loan products. Defendant would discourage brokers at HMS from providing to borrowers complete information about the option ARM.

10. The State alleges that Defendant further perpetuated borrowers’ misperceptions of the loan through his sales techniques which included written “proposal letters” and verbal reassurances at the time of application. Defendant’s proposal letters regarding option ARM loans outlined only the benefits of the option ARM loan, and failed to provide information

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about negative amortization and prepayment penalties associated with the loan. Defendant never dissuaded a borrower from purchasing an option ARM loan. Defendant made a habit of outlining only the loan's benefits and, if borrowers asked, would refer borrowers to a lender's marketing brochures.

11. The State alleges that Defendant ignored borrowers' financial circumstances and instead determined whether an option ARM loan was appropriate for borrowers based solely upon whether (a) they asked for the loan and (b) whether their credit score qualified them. Although Defendant was aware that option ARM loan products were intended for investor borrowers who understood how the loan worked and were comfortable with the risk and able to make more than the minimum payment, Defendant sold the loan to a much broader population, including borrowers who may not have been able to make more than the minimum payment. Further, Defendant did not instruct the HMS brokers he mentored and trained to determine whether the loan was appropriate for a borrower by examining circumstances such as a borrower's impending retirement, fixed income or the borrower's ability to make more than the minimum payment.

12. The State alleges that Defendant would encourage brokers at HMS to focus consumers on introductory rates and corresponding low monthly payments during an introductory period. Defendant passed any responsibility to the lenders who provided information on option ARM loans to borrowers, but only after Defendant and other HMS brokers had already sold the loan to the borrower, collected nonrefundable fees and dismissed any of the borrower's concerns about the loan. Many borrowers did not

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understand that the introductory rate was not their interest rate until they received their first payment notice from the lender.

13. The State alleges that Defendant was aware of consumer complaints regarding the manner in which he and HMS marketed and sold option ARM loans. In fact, in at least two instances consumers complained about option ARM loans that Defendant marketed and brokered using the sales techniques outlined in this Assurance. Those consumers complained directly to Defendant.

14. HMS brokers were paid on each loan they closed according to a graduated commission plan. While HMS brokers earned on average 35 percent of the sale, Defendant, as a subcontractor and Branch Manager, received 85 percent of the net profit earned off of closing a loan that he initiated, and at least 50 percent if the loan was obtained through HMS.

15. These misrepresentations and omissions of material facts caused significant financial harm to Colorado consumers and may continue despite HMS's recent corporate dissolution as Defendant is a licensed mortgage broker living and working in the state of Colorado.

16. The State contends that these advertising and sales practices violate the CCPA, including § 6-1-105(1), C.R.S. (2007) and § 38-40-105, C.R.S. (2007).

III. DEFINITIONS

17. "CHARM Booklet" means the Consumer Handbook on Adjustable-Rate Mortgages published by the Federal Reserve Board.

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18. “Clear and Conspicuous” or “Clearly and Conspicuously” as used herein shall have the same meaning as these terms are used in the advertising standards found in Regulation Z (12 CFR § 226.24) .

19. “Credit score” means a numerical value that ranks a borrower’s credit risk based upon a statistical evaluation of the borrower’s credit history as determined by the Fair Isaac Corporation.

20. “Loan to value ratio” means the relationship between the loan amount and the value of the property (the lower of the appraised value or sales price), expressed as a percentage of the property’s value.

21. “Nontraditional Mortgage” means any residential mortgage loan product that allows the borrower to defer repayment of principal or interest. This includes all interest only products, payment option ARMs and negative amortization mortgages, with the exception of reverse mortgages and home equity lines of credit, other than a simultaneous second-lien loan.

22. “Reference rate” means an interest rate benchmark upon which an adjustable rate mortgage is based, such as the U.S. Treasury Index or the London Interbank Offered Rate (“LIBOR”).

IV. **UNDERTAKINGS**

23. Defendant enters this Assurance as a compromise and settlement of the State’s allegations herein and in the Complaint filed in this case. This Assurance shall not be considered an admission of violation for any purpose. Defendant assures the State that Smith

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and any future loan officers he may employ, as well as any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, assigns and any person acting on his behalf shall comply with the CCPA as now constituted or as may hereafter be amended in conducting business in the state of Colorado.

A. Disclosures Provided to Borrowers Applying for Variable Rate or Non-Traditional Loan Products.

24. In discussing any loan product with a consumer, Defendant shall not represent that the introductory rate is the applicable interest rate for longer than the introductory period. Defendant shall affirmatively disclose the following:

- a) The precise term of any introductory rate;
- b) The interest rate the consumer will likely pay after the expiration of that interest rate;
- c) The consumer's estimated monthly payment for each payment option upon the expiration of that introductory rate; and
- d) The maximum monthly payment the consumer may have to pay under the loan.

Additionally, Defendant shall not represent the introductory rate as the "interest rate" for purposes of the Good Faith Estimate.

25. Defendant shall not provide any consumer with a TILA disclosure based solely on the introductory rate without simultaneously providing the consumer with a TILA disclosure based upon the composite of the rate in effect during the introductory period and

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the rate that is the basis of the loan for the remainder of the term. Copies of both TILA disclosures shall be part of the consumer's loan file.

26. Defendant shall provide every borrower with whom an ARM loan product is discussed a copy of the ARM Illustration & Loan Comparison Worksheet, which is attached hereto as **Exhibit A**.

27. Defendant shall provide every borrower with whom an interest-only or an option ARM loan product is discussed a copy of the Nontraditional ARM Illustration & Loan Comparison Worksheet, which is attached hereto as **Exhibit B**.

28. Defendant must fill in all information accurately in the ARM and/or Nontraditional Mortgage Illustrations & Loan Comparison Worksheets.

29. The ARM or Nontraditional Mortgage Illustrations & Loan Comparison Worksheets must be provided to the borrower before the borrower's loan application is completed and submitted to any lender. A copy of the executed ARM or Nontraditional Mortgage Illustrations & Loan Comparison Worksheets shall be the borrower's to keep.

30. The borrower must keep the ARM and/or Nontraditional Mortgage Illustrations & Loan Comparison Worksheets for 24 hours before the borrower's loan application is filled out and submitted to any lender.

31. The completed and signed ARM and/or Nontraditional Mortgage Illustrations & Loan Comparison Worksheets must be part of the borrower's loan file maintained by Defendant.

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32. Defendant shall give a copy of a current CHARM Booklet to every borrower to which Defendant attempts to sell any ARM loan product. A current copy of the CHARM Booklet is attached hereto as **Exhibit C**. Defendant shall go to www.FederalReserve.Gov to obtain the most current copy of the CHARM Booklet.

33. Defendant shall provide the CHARM Booklet to the borrower before the borrower's loan application is filled out and submitted to any lender. The CHARM Booklet will be the borrower's to keep. The borrower must keep the CHARM Booklet for at least 24 hours before the borrower's loan application is filled out and submitted to any lender.

34. When the borrower has received the ARM Illustrations, Nontraditional Mortgage Illustrations, and the CHARM booklet and has kept them for at least 24 hours, the borrower and Defendant shall sign and date a Confirmation of Receipt Form, attached hereto as **Exhibit D**.

35. Defendant shall adhere to the duty of good faith and fair dealing found at § 12-61-904.5, CRS (2007), follow the reasonable inquiry standards set forth at § 12-61-904.5(1)(b), CRS, the reasonable, tangible net benefit standards set forth at § 12-61-904.5(1)(a), CRS and any rules adopted by the Division of Real Estate pertaining to these standards.

B. Advertising of Mortgage Loan Products.

36. When creating any advertisement, marketing or promotional material for any mortgage loan products, Defendant shall follow the advertising standards set forth in Regulation Z, 12 CFR § 226.24 (including the most recent rule changes adopted and implemented in October 2009).

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37. Defendant shall also follow the Official Staff Interpretations for any proposed revisions to Regulation Z's advertising standards (12 CFR § 226.24).

38. In the event the Federal Reserve Board adopts any provisions to Regulation Z's advertising standards that are different than those that exist now, then Defendant must follow the advertising standards as adopted.

39. Any advertisements Defendant runs that include an interest rate, including an annual percentage rate shall, in addition to complying with the above requirements as well as TILA and the UCCC, include Clear and Conspicuous disclosures regarding any qualifications a borrower must have to obtain the advertised interest rate, including, but not limited to, credit score, minimum down payment, and loan-to-value ratio and the period during which the advertised interest rate will be in effect (*i.e.*, if advertising an interest rate that is fixed for the first two years of the loan, the advertisement shall state this fact.)

40. Advertisements for loans featuring no closing costs, no payments for a set time period, no document loans or reduced documentation or that income need not be verified shall also contain Clear and Conspicuous disclosures that such features will cause the borrower to finance a greater amount or pay a higher interest rate.

41. Any advertisements that Defendant runs which offer free or no appraisal fees must Clearly and Conspicuously state the conditions for receiving the free appraisal. For example, if the borrower must pay for the appraisal at the time of appraisal and the Defendant reimburses or credits the appraisal fee to the borrower at a later time, and only if the loan closes, then the advertisement must state as such.

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42. The advertising standards set forth in this subsection IV(B) shall apply to all advertisements, marketing or promotional materials issued by Defendant, including but not limited to, newspaper and magazine advertisements, direct mail, flyers, brochures, emails, faxes, websites, telemarketing, billboards and banner or pop-up advertising that is disseminated electronically. In this regard 12 CFR § 226.24(f)(4) (excluding envelopes, banner advertising and pop-up advertising) shall not apply to exclude this form of advertising from the requirements found in this subsection IV(B).

V. ENFORCEMENT

43. Violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2007). Upon any violation of this Assurance by Defendant, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

44. In addition to any remedies provided under the CCPA, the Attorney General will also be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Defendant as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General's Office of a violation by Defendant of this Assurance. In such event, Defendant agrees to waive any and all defenses and counterclaims it may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

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45. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2007), or under any other statutes through claims or actions in common law.

46. Nothing in this Assurance shall be construed to release claims held by any other government authority.

47. Pursuant to § 6-1-110(2), C.R.S. (2007), this Assurance shall be a matter of public record.

48. Defendant acknowledges that he has had a full opportunity to review this Assurance and consult with legal counsel regarding same. Defendant agrees and represents that he has read and understands this Assurance, that he accepts the legal consequences involved in signing it and that there are no other representations, agreements or understandings between Defendant and the State that are not stated in writing herein.

49. Defendant and his principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, loan officers, contractors and any person acting on behalf of Defendant agree to cooperate with all investigations and other proceedings that the State may bring to enforce the terms of this Assurance or to enforce the CCPA against any other entity. Included within this cooperation agreement is the obligation to:

- a) Appear for hearings, deposition or provide testimony in any form (including affidavits). All such testimony shall be truthful;

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- b) Produce documents, records, electronic records or any other tangible things in response to a subpoena or other written request issued by the State; or
- c) Accept a subpoena from the State without the need for service of process.

50. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

To Defendant at:

Email: _____
Fax: _____
Phone: _____

To The State at:

Olivia C. DeBlasio
Assistant Attorney General
Consumer Fraud Unit
Consumer Protection Section
1525 Sherman Street – 7th Floor
Denver, CO 80203
Email: libby.deblasio@State.CO.US
Fax: (303) 866-4916
Phone: (303) 866-5079

VI. MONETARY PROVISIONS

51. Smith agrees to pay to the State \$10,000.00 in accordance with the payment schedule and subject to the conditions set forth below in order to cover the amount necessary, at the discretion of the Attorney General, to restore to any person any money that may have

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been acquired by the violations discussed herein and to the Attorney General, which shall be used first for the reimbursement of the State's actual costs and attorney fees and, second, to be held along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud or antitrust enforcement efforts. § 6-1-110, C.R.S. (2007).

52. Smith shall make monthly payments of no less than \$200.00 beginning May 1, 2010 and on the twentieth business day of every month thereafter for one calendar year. Beginning May 1, 2011, Smith shall increase the monthly payments to \$316.67 each month until the entire \$10,000 amount is satisfied, but in no less than two years, or May 1, 2013. In the event Smith can pay \$7,500 to the State no later than May 1, 2011, he will have satisfied the entire monetary obligation to the State. In the event Smith can pay \$8,500 to the State no later than May 1, 2012, he will have satisfied the entire monetary obligation to the State.

53. For each of the above payments, a check shall be made payable to the "Colorado Department of Law," reference "State v. Smith settlement," and be delivered to:

Olivia C. DeBlasio
Assistant Attorney General
Consumer Protection Section
1525 Sherman Street
Denver, Colorado 80203

54. Smith may increase the payment amounts at any time without penalty. If Smith fails to make a payment pursuant to this Assurance and fails to demonstrate to the State good cause for his inability to make the payment, the State may accelerate all payments due hereunder and collect the entire amount due. In such event, the State shall be entitled to recover its costs and attorney fees in collecting such amounts.

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55. If Smith cannot make any scheduled payment required by this Assurance, he agrees to voluntarily provide to the State within 20 days any and all financial information and documents requested by the State, and allows the State to inspect his personal records and inspect the business records of any entity in which Smith is a member, shareholder, officer, partner, investor, or owner.

56. Any failure by Smith to provide the financial information and documents requested by the State or to allow the State to inspect his personal records and inspect the business records of any entity in which Smith is a member, shareholder, officer, partner, investor, or owner pursuant to paragraph 55 herein shall constitute a material breach of this Assurance.

Dated: 3-5-10.

DEFENDANT LEONARD SMITH

By: Leonard Smith
(Signature)

Leonard Smith
(Please print name)

STATE OF COLORADO)

) ss.

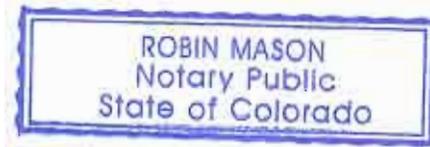
CITY AND COUNTY OF DENVER)

SUBSCRIBED and sworn to before me this 5th day of March, 2010 by Leonard Smith.
Witness my hand and official seal.

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My commission expires: 05/05/2011


Notary Public



Dated: 3/5/10

JOHN W. SUTHERS
Attorney General



OLIVIA C. DEBLASIO
Assistant Attorney General
Consumer Protection Section