

**IN THE UNITED STATES
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

NATIONAL COMMUNITY)
REINVESTMENT COALITION,)
)
Complainant,)
)
v.)
)
GUARANTEED RATE,)
)
Respondent.)
_____)

**STATEMENT IN SUPPORT OF COMPLAINT
OF THE NATIONAL COMMUNITY REINVESTMENT COALITION**

I. NATURE OF THE COMPLAINT

1. This complaint brought by the National Community Reinvestment Coalition (the “NCRC” or “Complainant”) arises out of discriminatory lending policies and practices maintained by Respondent Guaranteed Rate. NCRC seeks a declaratory judgment, permanent injunctive relief, and damages for Guaranteed Rate’s unlawful behavior. This action is brought under the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601 et seq. (the “FHA”).

2. Complainant NCRC is a national non-profit organization with the mission and purpose of increasing fair and equal access to credit, capital, and banking services and products for all Americans, regardless of race or disability. Guaranteed Rate’s discriminatory policies and practices have frustrated the NCRC’s mission of increasing the flow of private capital into underserved communities and have caused the NCRC to expend its scarce resources on educational programs, investigations, and litigation to

identify and combat such practices.

3. Guaranteed Rate's loan programs consist of fixed interest and adjustable rate mortgage (ARM) loans for prime and subprime borrowers.

4. Guaranteed Rate has engaged in a pattern and practice of discrimination against people with disabilities in the policies and practices it uses to determine eligibility for its mortgage lending products. Guaranteed Rate's Guidelines prohibits lending on adult residential care facilities, elderly care homes or group homes (collectively, "group homes") (hereinafter referred to as the "no group home policy"). *See* Excerpt of Guaranteed Rate's Underwriting Guidelines, attached as Exh. A at 3. This prohibition on lending on properties to be used as group homes has both the purpose and effect of discriminating against people with disabilities by limiting the supply of housing for such individuals. This policy intentionally treats dwellings that house people with disabilities differently from dwellings that do not house such persons, and has a disproportionate adverse impact on people with disabilities.

5. There is no business justification for Guaranteed Rate's discriminatory no group home policy. Under this policy, applicants who meet traditional lending criteria, such as a strong FICO credit score, steady income, significant assets, and low loan-to-value (LTV) and debt-to-income (DTI) ratios, would still be excluded from consideration for a mortgage based solely on their intention to use the property to provide housing for those in adult care facilities, elderly homes, and group homes. If Guaranteed Rate employed traditional lending criteria, it would significantly reduce the adverse impact that its lending criteria have on people with disabilities without increasing the company's risk exposure.

6. Guaranteed Rate's discriminatory lending guidelines have caused, and continue to cause, direct injury to the NCRC and people with disabilities across the nation.

II. PARTIES

7. Complainant NCRC is a national non-profit corporation organized under the laws of the District of Columbia, with its principal place of business located at 727 15th Street N.W., Suite 900, Washington, D.C. 20005. NCRC was formed in 1990 by national, regional, and local organizations to develop and harness the collective energies of community reinvestment organizations from across the country. NCRC members represent and protect traditionally underserved and vulnerable populations. Members include community development corporations, civil rights groups, community reinvestment advocates, local and state government agencies, and churches. One of the NCRC's primary missions is to increase fair and equal access to credit, capital, and banking services and products to individuals, regardless of disability.

8. Respondent Guaranteed Rate, a mortgage banking company, lends in twenty states and is the largest independent residential mortgage lender in the Midwest. Guaranteed Rate's headquarters is located at 3940 North Ravenswood, Chicago, IL 60613.

III. FACTUAL BACKGROUND

A. Group Homes Provide Needed Housing for Elderly Adults and the Disabled

9. Group homes are single-family residential homes for elderly adults and adults with disabilities. Group homes provide a residence to adults with disabilities in

which they can receive personal and/or medical care in a family-like setting and as members of the larger community. Although group homes vary in size, they typically house between two and six residents.

10. Group homes play a critical role in the lives of many people with disabilities because these homes provide an alternative to institutional care and promote independence, dignity, and choice. Such homes are typically located in conventional residential neighborhoods, allowing people with disabilities to be a part of community life, rather than living in geographic and social isolation. Living in a group home is the functional equivalent of living with a family.

11. Group homes are also an important source of housing for seniors with disabilities. Health issues increase significantly for seniors with the result that many need housing that offers varying degrees of assistance like that available in group homes. *See*, Lawrence A. Frolik, *Residence Options for Older or Disabled Clients* 1-12 (1997 & Supp. 2002). According to the 2000 Census, 42% of the population over 65 have a disability (14 million people), compared with only 16% for the 5-64 age group. Robert G. Schwemm & Michael Allen, *For the Rest of Their Lives: Seniors and the Fair Housing Act*, 90 Iowa Law Review 121, 130 (2004). Seniors are much more likely to have the following disabilities than persons 16-64 years old: sensory disability (14.2% versus 2.3%); limitations on basic physical activity (28.6% versus 6.2%); difficulty learning, remembering or concentrating (10.8% versus 3.8%); difficulty dressing, bathing or moving around the house (9.5% versus 1.8%); and difficulty traveling outside the home to visit a doctor (20.4% versus 6.4%). *Id.* As the percentage of the population 65 and older increases, the number of people with disabilities will increase as well, making

even greater the need for loans for properties used by or for group homes. *See* www.census.gov/population/projections/nation/summary/np-t3-c.pdf.

12. Group homes are a frequent choice for seniors with disabilities because such homes offer residents services on an individualized basis in a residential setting with the added resource of caregivers specifically trained to care for adults with disabilities. Group homes provide a range of services to residents, including meals, assistance with dressing, assistance with grooming and hygiene, bowel and bladder care, assistance with walking and getting in and out of bed, assistance with bathing, assistance with medications, and social and recreational activities.

13. Group homes are an important part of the nation's long-term care system. Typically, these homes are licensed by the state in which they operate and are subject to minimum standards regarding training, care-giving, and safety. Group homes provide more individualized and personal care than is possible in institutional settings such as nursing homes. In addition, group homes are generally more affordable to residents than facilities such as nursing homes. For all of these reasons, group homes play a critical role in meeting the housing needs of people with disabilities, including many in the nation's growing senior population.

B. Guaranteed Rate's Discriminatory No Group Home Policy

14. Under its no group home policy, Guaranteed Rate maintains a discriminatory policy of automatically denying its subprime loan products to applicants attempting to obtain a loan where the collateral is property used to provide housing for those in adult residential care facilities, elderly care homes, or group homes. By excluding group homes, Guaranteed Rate is operating without regard to traditional

lending criteria. Thus, for example, an applicant for a loan on a property to be used for a group home, despite having substantial assets, a strong FICO score, a low LTV and/or DTI ratio, and steady income, would not qualify for a loan of any size. This policy intentionally treats dwellings that house people with disabilities differently from dwellings that do not house such persons, and has a disproportionate adverse impact on people with disabilities.

15. There is no business justification for Guaranteed Rate's no group home policy. Whether people with disabilities use or live in a property does not, in and of itself, bear a relationship to the credit risk involved in extending the loan. If Guaranteed Rate employed traditional lending criteria, it would significantly reduce the adverse impact that its lending criteria have on people with disabilities without increasing the company's risk exposure.

IV. INJURY CAUSED BY GUARANTEED RATE

16. Through numerous workshops, conferences, systemic testing, reports, education and outreach, and "best practice" compliance initiatives, the NCRC has provided education, training, and technical assistance to its members, community organizations, and advocates at the local, regional, and national level to promote fair lending and access to capital in low-income and minority communities across the country. The unlawful discriminatory actions of Guaranteed Rate have injured and continue to injure the NCRC by: (a) interfering with those efforts and programs of the NCRC intended to promote fair lending; (b) requiring the NCRC to commit scarce resources, including substantial staff time, to investigate complaints and review Guaranteed Rate's lending practices, engage in an education and outreach campaign, and

develop educational materials to identify and counteract the unlawful actions of Guaranteed Rate, thus diverting those resources from other testing, education, counseling, and capacity-building services; and (c) frustrating the NCRC's mission and purpose of increasing fair and equal access to credit, capital, and banking services and products for all Americans, regardless of race or disability. The discriminatory actions of Guaranteed Rate has required, and will require the NCRC in the future, to spend additional resources to counteract Guaranteed Rate's discriminatory conduct.

17. As a result of Guaranteed Rate's discriminatory conduct, individuals in the communities served by the NCRC have been and continue to be: (a) discouraged from applying for loans; and (b) deprived of equal access to credit, capital, and banking services and products. As a result of Guaranteed Rate's discriminatory conduct, communities served by the NCRC and its member organizations have been and continue to be denied access to capital, banking services, and the economic growth that accompanies capital and banking services. In response, the NCRC has made substantial efforts and expended considerable resources to investigate the existence and effects of Guaranteed Rate's lending policies and to ensure equal lending opportunities for potential borrowers.

18. NCRC has been, and continues to be, adversely affected by the acts, policies, and practices of Guaranteed Rate and its directors, officers, agents and employees.

19. Unless ordered to cease and desist, Guaranteed Rate will continue in the unlawful acts and practices described above.

20. Guaranteed Rate's unlawful practice constitutes discrimination in the

terms, conditions, or privileges of the provision of services or facilities in connection with the sale or rental of dwellings in violation of 42 U.S.C. § 3604(c) and (f) and discrimination in the making of real estate-related transactions in violation of 42 U.S.C. § 3605.

21. Guaranteed Rate's unlawful actions described above were, and are, intentional and willful, and/or have been, and are, implemented with callous and reckless disregard for the federally protected rights of the NCRC, its constituent members, and the individuals and communities it serves.

V. PRAYER FOR RELIEF

22. NCRC prays that HUD enter a declaratory judgment finding that the foregoing actions of the Guaranteed Rate violate the FHA; permanently enjoin Guaranteed Rate, its directors, officers, agents and employees from continuing to publish, implement and enforce the illegal, discriminatory conduct described herein and directing Guaranteed Rate, its officers, agents and employees to take all affirmative steps necessary to remedy the effect of Guaranteed Rate's illegal, discriminatory conduct described herein; and to prevent similar occurrences in the future, award compensatory damages that would fully compensate the NCRC for the frustration of mission and diversion of resources that have been caused by the conduct of Guaranteed Rate alleged herein; award a civil penalty against Guaranteed Rate; and direct the payment of reasonable attorneys' fees to counsel for the NCRC.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, recollection and belief pursuant to 28 U.S.C. § 1746.

Executed on 5/16/07

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EXHIBIT A

Overview

Introduction

Properties eligible for subprime loans must be easily marketable and free of major adverse conditions. When determining property eligibility, Brokers should keep in mind that certain property conditions might not be acceptable to Guaranteed Rate. Properties listed by an appraiser as being in “fair condition” are not eligible for purchase by Guaranteed Rate.

Status of Property

The status of the property must be noted when evaluating a subprime loan. Properties that are listed for sale at the time of underwriting or were listed for sale within the last 6 months are generally not eligible for purchase by Guaranteed Rate.

General Requirements

The following general requirements apply for subprime loans:

- The appraisal may not include comparable sales from other properties owned by the borrowers.
- Loans may not be closed with a provision for escrow holdbacks, with the exception of new construction. Refer to Section 1.5, Subprime Loan Mortgage Eligibility, for complete information on the eligibility of escrow holdbacks.
- All properties must contain a minimum of 750 square feet gross living area, with the exception of Hawaii, where the minimum is 600 square feet.
- The property must be readily accessible by roads that meet local standards and have adequate utilities that are in service.

Overview, Continued

Acceptable Property Types

Subprime loans may be made on the following types of properties:

- Single family residences (SFRs) ^{1,2}
- Condominiums
- PUDs
- Townhouses
- Rural Housing ³
- 2 to 4 unit multi-residential

¹ Includes modular, panelized and prefabricated classifications of factory-built housing. **Note:** Guaranteed Rate will **not** close subprime loans secured by factory-built housing that is not classified as modular, panelized or prefabricated (for example, manufactured or mobile home classifications are not allowed).

² An attached SFR consists of at least two units joined by a common wall, and may be called twin home, halfplex, half-duplex, zero lot line, semi-detached, or row house.

³ Restrictions Apply – See Rural Housing for details..

Overview, Continued

Ineligible Properties

The following property types are **not** acceptable as collateral for subprime lending:

- Manufactured or Mobile Homes
- Non-Warrantable Condominium's
- Unique properties such as a geodesic dome, earth home, or a working farm with a single family residence
- **Adult residential care facilities, elderly care homes or group homes**
- Bed and breakfast inns, hotels, motels, small owner inns or boarding/rooming houses
- Condotels
- Cooperatives
- Timeshares
- Studio condos. A condo must have a separate bedroom with four permanent walls
- Water properties (houseboats, man-made islands)
- Churches
- Motel conversions
- Agricultural use properties
- Mixed use properties except in high-rise condominiums
- Commercial properties
- Vacant, raw or unimproved land
- Property in which the highest and best use is not the same as present use
- Properties zoned for industrial, manufacturing, exclusive farm use or forest commercial
- Mobile homes and pre-fabricated homes, except log homes
- Mobile home parks or converted mobile home parks
- Properties located on or near hazardous waste sites
- Multi-family properties with more than four dwelling units
- Properties located in flood hazard areas which are not eligible for participation in the National Flood Insurance Program
- Properties located in projects currently involved in litigation
- Any properties currently for sale (or listed for sale within the last six months)
- Properties or individual units with less than 750 square feet **Note:** Hawaii properties or individual units with less than 600 square feet
- Properties rated less than average condition
- Properties with deed restrictions that limit transferability of title, or contain a "first right of refusal" provision