DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

In the Matter of: **FIRST FINANCIAL & REAL ESTATE SERVICES;** **CASEY LeBLANC; AND** **MASUD SARWARY;** **Respondents.**	**M-08-0028** **ORDER TO CEASE AND DESIST;** **ORDER ACCEPTING VOLUNTARY SURRENDER OF OREGON MORTGAGE LENDER LICENSE;** **ORDER ASSESSING CIVIL PENALTIES;** **AND** **CONSENT TO ENTRY OF ORDER**

WHEREAS the Director of the Department of Consumer and Business Services (hereinafter, the "Director") has conducted an investigation into certain business activities of First Financial & Real Estate Services, Casey LeBlanc, and Masud Sarwary;

WHEREAS on August 29, 2008, the Director filed an ORDER TO CEASE AND DESIST, ORDER ASSESSING CIVIL PENALTIES, AND NOTICE OF RIGHT TO A PUBLIC HEARING against First Financial & Real Estate Services ("First Financial"), Casey LeBlanc ("LeBlanc"), and Masud Sarwary ("Sarwary" and collectively with First Financial and LeBlanc the "Respondents") having determined that they engaged in activities constituting violations of ORS 59.840 through 59.980 and administrative rules promulgated thereunder (the "Oregon Mortgage Lender Law")[1];

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350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

[1] In 2009 the Oregon Mortgage Lender Law was renumbered to ORS 86A to 86A.198.

WHEREAS on September 22, 2008 the Respondents filed a written request for a contested case hearing;

WHEREAS without admitting or denying the Findings of Fact or Conclusions of Law described in Sections I and II herein, the Respondents wish to resolve and settle this matter with the Director by withdrawing their request for a hearing and entering into a Consent to Entry of Order, which is evidenced by their signatures on their Consents; and

WHEREAS the Director in consideration for the Respondents' agreement to enter into this Order hereby withdraws the Notice Order against them.

NOW THEREFORE, the Director enters the following Findings of Fact, Conclusions of Law, and Orders.

I. FINDINGS OF FACT

The Director **FINDS** that:

A. The Respondents

1. First Financial is a California corporation authorized to do business in Oregon. Its principal place of business is 2020 Camino Del Rio North #1000, San Diego, California 92108. At all times material herein, Sarwary was its President and 51% owner and LeBlanc was its Vice President and 49% owner.

First Financial has continuously been licensed as a residential mortgage lender in the State of Oregon since May 1, 2006 and all times material herein, First Financial regularly solicited new mortgages from existing mortgage holders by means

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of direct mail advertising. The Oregon mortgage lender license number for First Financial is ML-4096. In April 2009 First Financial attempted to voluntarily surrender its Oregon mortgage lender license. That surrender was not accepted by the Director given that there was a pending investigation and Notice Order. First Financial's license remains active as of the date of this Order.

B. Advertisement #1

2. During the week of November 25 through December 1, 2007, First Financial sent direct mail solicitations to consumers – including Oregon consumers – with existing mortgages at institutions in which it had no association, affiliation or cooperative agreement by means of direct mail materials that offered a new mortgage loan at a lower monthly payment than their existing mortgage loan.

3. The solicitation was in letter format with three main sections: Address, Main Body, and Disclaimer.

4. The Address section occupied approximately the first 1/3rd of the page. The upper right hand corner of the Address section contained an eight digit parcel number, which is encased by a box (the "Parcel Number"). The first three digits indicated the week in which the solicitation was mailed. The Parcel Number's font is slightly smaller than what is typical for other fonts on the advertisement.

5. Approximately two (2) lines below the Parcel Number on the left hand corner of the page, the Address section referenced

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the consumer's existing mortgage lender (the "Subject Line"). The Subject Line was in bold and all capital letters. The font size was larger than what is typical for other fonts on the page.

6. Approximately five (5) lines below the Subject Line, the Address section referenced the consumer's name and address information (the "Address Information").

7. The Address section also served as the front page of the envelope, such that the only printing a recipient sees when receiving the Advertisement is the Parcel Number, Subject Heading, and Address Information.

8. The Main Body appeared approximately seven (7) lines below the Address Information and took up 1/3rd of the page. After the initial greeting, the first line of the Main Body stated: "We have good news for you about your loan with".

9. Approximately three (3) lines below the initial sentence fragment the Main Body then referenced the consumer's existing mortgage lender (the "Consumer's Mortgage Lender"). The font used to reference the Consumer's Mortgage Lender was the same as the one used in the Subject Line.

10. Approximately two (2) lines below the line that referenced the Consumer's Mortgage Lender, the Main Body contained three paragraphs, which stated as follows:

> "After reviewing your loan history, we are pleased to inform you that you have been selected for a new loan at a lower monthly payment. If you are currently in an

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adjustable loan, this offer makes you eligible to convert to our fixed rate mortgage products. Don't let a pre-payment penalty stop you from obtaining the lowest rates in 40 years."

"Please reference your parcel # located at the top right hand corner of this letter when you call."

"This is a time sensitive matter, so please contact us immediately."

11. The Main Body utilized a standard sized font except for the font referencing the Consumer's Mortgage Lender.

12. Approximately three (3) lines after the Main Body was a signature block (the "Signature Block"). The Signature Block contained Casey LeBlanc's name, title,[2] signature, toll free phone number, and the words "Se Habla Espanol."

13. The information contained in the Signature Block is in a standard sized font, except for the phone number and words "Se Habla Espanol," which were in bold and slightly larger than what is typical for other fonts on the page.

14. The Subject Line, the Consumer's Mortgage Lender and the phone number and words "Se Habla Espanol" were the most prominent words in the advertisement. The Consumer's Mortgage Lender appears centered on the page from left to right and bottom to top.

15. The Disclaimer was approximately on the bottom 1/10th of the page and utilized a font that was significantly smaller

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[2] Stated to be President.

than any other font in the advertisement. Among other things, the Disclaimer stated: "This letter is from First Financial & Real Estate Services." The Disclaimer also stated in the same sized font, but in bold print "First Financial is not sponsored by or affiliated with [Consumer's Mortgage Lender] and this solicitation is not authorized or approved by [Consumer's Mortgage Lender]. Your loan information was not provided to us by [Consumer's Mortgage Lender]. Information regarding your current mortgage was obtained from public records."

16. The Disclaimer was the only place in the advertisement that referenced the fact that the mailing was from First Financial and was not authorized or approved by the Consumer's Mortgage Lender.

17. On December 12, 2007, the Oregon Department of Justice ("DOJ") received a complaint from a consumer who had an existing loan from Bank of America and had received First Financial's advertisement. (See Exhibit 1) The consumer complained that he had been misled into believing the solicitation was from Bank of America among other things. That complaint was forwarded to the Division of Finance and Corporate Securities ("DFCS") on December 24, 2007. DFCS is a division of the Department of Consumer and Business Services.

18. By letter dated December 28, 2007, DFCS instructed First Financial to change their advertisements so that it was clear that First Financial had no affiliation with the Consumer's Mortgage Lender and requested proof of compliance by

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January 18, 2008. On January 11, 2008, First Financial indicated that it had intended to comply with that request.

C. Promulgation of Oregon Administrative Rule 441-870-0080.

19. On May 7, 2008, the Director promulgated OAR 441-870-0080 which describes what constitutes advertisements that are false, misleading, or deceptive under then existing ORS 59.865, 59.930, and 59.945[3,4]. OAR 441-870-0080(1)(n) made clear that any company soliciting a mortgage loan must disclose at least as prominently as the reference to the financial institution or lien holder its name and the following statements: a) "This is an advertisement," b) "This is an offer for a new loan," and c) "This offer is not related to your existing mortgage lender or holder of your loan."

D. Advertisement #2

20. During the week of May 18 through May 25, 2008, First Financial again solicited consumers – including Oregon consumers – with existing mortgages at institutions in which it had no association, affiliation or cooperative agreement by means of direct mail materials that offered a new mortgage loan at a lower monthly payment than their existing mortgage loan.

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[3] Presently renumbered to ORS 86A.115, ORS 86A.154,and ORS 86A.163, respectively.

[4] In addition to complying with the rulemaking procedures under Oregon's Administrative Procedures Act, the Director mailed notice of the new rule to all licensees both when they were proposed and finalized. DFCS has no record that these notices were either not delivered to or returned from First Financial.

21. This solicitation was nearly identical to Advertisement #1 in terms of configuration, wording, and layout except that 1) the Disclaimer utilized a slightly larger font. (that font, however, was still much smaller than any other font on the page); 2) the Disclaimer provided fewer disclosures in that the Disclaimer only referenced First Financial by name, but did not indicate that the mailing was from First Financial; and 3) the bold portion of the Disclaimer only stated: "This solicitation is not sponsored by, affiliated with or authorized by [Consumer's Mortgage Lender]." The solicitation did not mention that First Financial specifically was not sponsored by or affiliated with the Consumer's Mortgage Lender and it did not state that the solicitation was not approved by the Consumer's Mortgage Lender.

22. On June 3, 2008, DFCS received a complaint from an Oregon consumer who had an existing loan with Washington Federal Savings that had received Advertisement #2 from First Financial (see Exhibit #2). In response, on June 6, 2008 DFCS again instructed First Financial by letter to change its advertisements so that it was clear that First Financial had no affiliation with a Consumer's Mortgage Lender and requested proof of compliance by June 27, 2008. DFCS never received a response to that letter.

E. Advertisement #3

23. During the week of June 1 through June 7, 2008 First Financial again solicited consumers – including Oregon consumers

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– with existing mortgages at institutions in which it had no association, affiliation or cooperative agreement by means of direct mail materials that offered a new mortgage loan at a lower monthly payment than their existing mortgage loan. This solicitation was nearly identical to Advertisement #2 in terms of configuration, wording, and layout.

24. On or about July 8, 2008, DFCS received a complaint from an Oregon consumer who had an existing loan with Wells Fargo Home Mortgage, Inc. that had received Advertisement #3 from First Financial (see Exhibit #3) because he had called First Financial and provided them personal and financial information before realizing that they were not speaking to their existing mortgage lender.

25. In response, on July 21, 2008 DFCS by letter described the specific requirements of OAR 441-870-0080(1)(n) and possible penalties for non-compliance. The letter further instructed change their advertisements and requested proof of compliance by July 27, 2008.

26. In response, on August 7, 2008 Masud Sarwary faxed to DFCS a copy of a new advertisement that was purportedly in compliance with OAR 441-870-0080(1)(n). In reality, Masud Sarwary had submitted a solicitation that had been sent to residents of Florida with existing mortgages at competing Mortgage Lenders during the week of January 6 though January 12, 2008 (i.e. closer in time to when Advertisement #1 was sent) and was not in compliance with OAR 441-870-0080(1)(n).

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F. Summary

27. None of the advertisements mentioned in this Order displayed First Financial's name at least as prominently as the Consumer's Mortgage Lender. None of the advertisements mentioned in this Order displayed the following statements on the advertisement at least as prominently as the Consumer's Mortgage Lender: 1) "This is an advertisement;" 2) "This is an offer for a new loan"; and 3) "This offer is not related to your existing mortgage lender or holder of your loan."

28. First Financial has no association, affiliation, or cooperative agreement with Bank of America, Washington Federal Savings, or Wells Fargo Home Mortgage Inc.

29. First Financial states that on or about June 2008 it stopped soliciting Oregon investors through advertisements and that its last solicitation in Oregon was the week of June 1 – 7, 2008.

II. CONCLUSION OF LAW

The Director **CONCLUDES:**

30. Advertisements #1, #2, and #3 are "advertising" as that term is used in 59.865(2), 59.945(1), and OAR 441-860-0010(1) promulgated thereunder because they were distributions of information regarding loan products under the direction of a mortgage banker or mortgage broker to members of the public that appeared in direct mail literature.

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31. First Financial violated 59.865(2)[5], 59.945(1)[6], the then in effect OAR 441-870-0020 promulgated thereunder during the week of November 25 through December 1, 2007 by using a direct mail advertisement that was false, misleading, or deceptive by referring to a financial institution or the holder of an existing loan indicating an approved association, affiliation or cooperation agreement with such lender when none existed. Specifically, First Financial sent Advertisement #1 to an Oregon resident on or about December 11, 2007 that suggested an approved association with Bank of America.

32. First Financial twice violated ORS 59.865(2), ORS 59.945(1), and OAR 441-870-0080(1)(n) promulgated thereunder, and ORS 59.930(3) during the weeks of May 18 – 25, 2008 and June 1 – June 7, 2008 by using a direct mail advertisement that was false, misleading or deceptive. Specifically, First Financial solicited consumers with existing mortgages by using direct mail advertisements that contained the name of the consumers existing mortgage lender without displaying at least as prominently as the existing mortgage lender's name the following: 1) "This is an advertisement;" 2) "This is an offer for a new loan"; and 3) "This offer is not related to your existing mortgage lender or holder of your loan."

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[5] Presently ORS 86A.115
[6] Presently ORS 86A.163

III. ORDER

NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:

33. The Director, pursuant to the authority under ORS 86A.127[7] and ORS 86A.118[8], hereby **ORDERS** that the Respondents, and any successor business or corporation, shall **CEASE and DESIST** from violating any provision of the Oregon Mortgage Lender Law, ORS 86A.095 to 86A.198 and any rule, order, or policy issued by the Director.

34. The Director, pursuant to the authority under ORS 86A.118 and ORS 86A.992[9], hereby **ORDERS** that the Respondents pay jointly and severally a **CIVIL PENALTY** of $5,000 for the violations of the Oregon Mortgage Lender Law described herein. The Director further **SUSPENDS** $3,500 of the **CIVIL PENALTY** so long as the Respondents remain in full compliance with the terms of this order and commit no further violations of the Oregon Mortgage Lender Law.

35. The Director **ACCEPTS** the voluntary surrender of the First Financial's Oregon mortgage lender license effective as of May 1, 2009.

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[7] Formerly ORS 59.885
[8] Formerly ORS 59.870
[9] Formerly ORS 59.996

36. First Financial agrees that it will not apply for or hold an Oregon Mortgage Lender License for a period of 3 years from May 1, 2009.

The entry of this Order in no way limits further remedies which may be available to the Director under Oregon law.

IT IS SO ORDERED.

Dated this 30th day of June, 2010 at Salem, Oregon.

CORY STREISINGER, Director
Department of Consumer and Business Services

/s/ David Tatman
David Tatman, Administrator
Division of Finance and Corporate Securities

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CORPORATE CONSENT TO ENTRY OF ORDER

For First Financial and Real Estate Services

I, Masud Sarwary, state that I am an officer of First Financial and Real Estate Services ("First Financial") and I am authorized to act on its behalf; that I have read the foregoing Order and that I know and fully understand the contents hereof; that I and this entity have been advised of the right to a hearing and of the right to be represented by counsel in this matter; that First Financial voluntarily and without any force or duress, consents to the entry of this Order, without admitting or denying the factual allegations and conclusions of law stated herein, expressly waiving any right to a hearing in this matter; that First Financial understands that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Mortgage Lender Law; and that First Financial will fully comply with the terms and conditions stated herein.

First Financial further assures the Director that neither First Financial nor its officers, directors, employees or agents will engage in residential mortgage activity in Oregon unless such activities are in full compliance with Oregon Mortgage Lender Law and administrative rules promulgated thereunder.

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First Financial understands that this Consent Order is a public document.

Dated this 15 day of June, 2010.

First Financial and Real Estate Services

By /s/ Masud Sarwary
Masud Sarwary
President

CORPORATE ACKNOWLEDGMENT

There appeared before me this 16th day of June, 2010, Masud Sarwary, who was first duly sworn on oath, and stated that he was and is the President of First Financial and Real Estate Services and that he is authorized and empowered to sign this Consent to Entry of Order on behalf of First Financial and Real Estate Services, and to bind First Financial and Real Estate Services to the terms hereof.

/s/ Crystal Kelly
(Individual)

Crystal Kelly
(Printed Name of Notary Public)
Notary Public for the
State of: California
My commission expires: 2/23/13

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CONSENT TO ENTRY OF ORDER

For Masud Sarwary

I, Masud Sarwary, state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of the right to a hearing and of the right to be represented by counsel in this matter; that I voluntarily and without any force or duress, consent to the entry of this Order, without admitting or denying the factual allegations and conclusions of law stated herein, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Mortgage Lender Law; and that I will fully comply with the terms and conditions stated herein.

I further assure the Director that I will not effect mortgage transactions in Oregon unless such activities are in full compliance with Oregon Mortgage Lender Law and administrative rules promulgated thereunder.

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I understand that this Consent Order is a public document.

Dated this 15 day of June, 2010.

By /s/ Masud Sarwary

Masud Sarwary

ACKNOWLEDGMENT

Signed before me this 16th day of June, 2010 by Masud Sarwary, who was first duly sworn on oath.

/s/ Crystal Kelly
(Individual)

Crystal Kelly
(Printed Name of Notary Public)
Notary Public for the
State of: California
My commission expires: 2/23/13

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CONSENT TO ENTRY OF ORDER

For Casey LeBlanc

I, Casey LeBlanc, state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of the right to a hearing and of the right to be represented by counsel in this matter; that I voluntarily and without any force or duress, consent to the entry of this Order, without admitting or denying the factual allegations and conclusions of law stated herein, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Mortgage Lender Law; and that I will fully comply with the terms and conditions stated herein.

I further assure the Director that I will not effect mortgage transactions in Oregon unless such activities are in full compliance with Oregon Mortgage Lender Law and administrative rules promulgated thereunder.

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I understand that this Consent Order is a public document.

Dated this 16 day of June, 2010.

By /s/ Casey LeBlanc

Casey LeBlanc

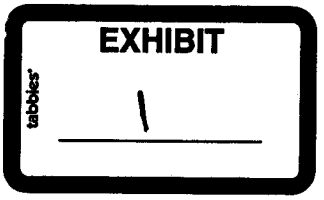
ACKNOWLEDGMENT

Signed before me this 16th day of June, 2010 by Casey LeBlanc, who was first duly sworn on oath.

/s/ Crystal Kelly
(Individual)

Crystal Kelly
(Printed Name of Notary Public)
Notary Public for the
State of: California
My commission expires: 2/23/13

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Telephone: (503) 378-4387



REDACTED

Parcel #049-86628

RE: BANK OF AMERICA

**********AUTO**5-DIGIT 97225

Portland OR

Dear

We have good news about your loan originally funded with:

BANK OF AMERICA

After reviewing your loan history, we are pleased to inform you that you have been selected for a new loan at a lower monthly payment. If you are currently in an adjustable loan, this offer makes you eligible to convert to our fixed rate mortgage products. Don't let a pre-payment penalty stop you from obtaining the lowest rates in 40 years.

Please reference your parcel # located in the top right-hand corner of this letter when you call.

This is a time sensitive matter, so please contact us immediately.

Sincerely,

Casey LeBlanc

Casey LeBlanc
President

TOLL FREE: (888) 256-4162
Se Habla Español

Equal Housing Opportunity Lender. This letter is from First Financial & Real Estate Services. Licensed and supervised by the CA Dept. of Real Estate, Broker License # 01511109, FL Office of Financial Regulation MBB License # 0602309, WA Dept. of Financial Institutions Mortgage Broker License # 510-MB-30112, OR Dept. of Consumer & Business Services Division of Finance & Corporate Securities License # ML -4096, CO Dept. of Law Uniform Consumer Credit Code Supervised Lender's License # 989361, UT Dept of Commerce Division of Real Estate Mortgage Lender License # 6578365-MLCO, Texas Department of Savings & Mortgage Lending Mortgage Broker License #70247. **First Financial is not sponsored by or affiliated with BANK OF AMERICA and this solicitation is not authorized or approved by BANK OF AMERICA. Your loan information was not provided to us by BANK OF AMERICA. Information regarding your current mortgage was obtained from public records.** The effective date of this offer is 4/5/07 and this offer may terminate at any time without notice. Our loan programs may require an appraisal and income verification and or credit guidelines to qualify. Loan programs are available only for first mortgages. Other restrictions may apply. Rate and terms are subject to change without notice. All rights reserved. Subject to approval. We act only as a broker.

REDACTED

Parcel #[redacted]

RE: WASHINGTON FEDERAL SAVINGS

[redacted]
**********AUTO**3-DIGIT 970

Dear [redacted]

We have good news about your loan originally funded with:

WASHINGTON FEDERAL SAVINGS

After reviewing your loan history, we are pleased to inform you that you have been selected for a new loan at a lower monthly payment. This offer makes you eligible to convert to our fixed rate mortgage products. Call today to confirm your eligibility for the lowest rates in 40 years.

Please reference your parcel # located in the top right-hand corner of this letter when you call.

This is a time sensitive matter, so please contact us immediately.

Sincerely

Casey LeBlanc

Casey LeBlanc
President

TOLL FREE: 888-262-4706
Se Habla Español

Equal Housing Opportunity Lender. First Financial and Real Estate Services Licensed OR Dept. of Consumer & Business Services Division of Finance & Corporate Securities License # ML-4096. **This solicitation is not sponsored by, affiliated with or authorized by WASHINGTON FEDERAL SAVINGS.** Information regarding your current mortgage was obtained from public records. Rate and terms are subject to change without notice. All rights reserved. Subject to approval. We act only as a broker.

EXHIBIT
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EXHIBIT
tabbies
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Parcel #023-0851479

RE: WELLS FARGO HOME MORTGAGE INC

AUTO**5-DIGIT 97123

REDACTED

Dear

We have good news about your loan originally funded with:

WELLS FARGO HOME MORTGAGE INC

After reviewing your loan history, we are pleased to inform you that you have been selected for a new loan at a lower monthly payment. This offer makes you eligible to convert to our fixed rate mortgage products. Call today to confirm your eligibility for the lowest rates in 40 years.

Please reference your parcel # located in the top right-hand corner of this letter when you call.

This is a time sensitive matter, so please contact us immediately.

Sincerely

Casey LeBlanc

Casey LeBlanc
President

TOLL FREE: 866-682-0565
Se Habla Español

Equal Housing Opportunity Lender. First Financial and Real Estate Services Licensed OR Dept. of Consumer & Business Services Division of Finance & Corporate Securities License # ML -4096. **This solicitation is not sponsored by, affiliated with or authorized by WELLS FARGO HOME MORTGAGE INC.** Information regarding your current mortgage was obtained from public records. Rate and terms are subject to change without notice. All rights reserved. Subject to approval. We act only as a broker.

REDACTED

Parcel #002-32281

AUTO**5-DIGIT 3303397401

Dear

We have good news about your loan originally funded with:

COLDWELL BANKER MORTGAGE

After reviewing your loan history, we are pleased to inform you that you have been selected for a new loan at a lower monthly payment. If you are currently in an adjustable loan, this offer makes you eligible to convert to our fixed rate mortgage products. Don't let a pre-payment penalty stop you from obtaining the lowest rates in 40 years.

Please reference your parcel # located in the top right-hand corner of this letter when you call.

This is a time sensitive matter, so please contact us immediately.

Sincerely,

Casey LeBlanc

Casey LeBlanc

TOLL FREE: (888) 256-4162
Se Habla Español

Equal Housing Opportunity Lender. This letter is from First Financial & Real Estate Services. Licensed and supervised by the OR Dept. of Consumer & Business Services Division of Finance & Corporate Securities License # ML -4096. **First Financial is not sponsored by or affiliated with «LENDER_NAME» and this solicitation is not authorized or approved by «LENDER_NAME». Your loan information was not provided to us by «LENDER_NAME». Information regarding your current mortgage was obtained from public records.** The effective date of this offer is 4/5/07 and this offer may terminate at any time without notice. Our loan programs may require an appraisal and income verification and or credit guidelines to qualify. Loan programs are available only for first mortgages. Other restrictions may apply. Rate and terms are subject to change without notice. All rights reserved. Subject to approval. We act only as a broker.

EXHIBIT
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