

314.444.7600 (phone)  
314.241.6056 (fax)  
www.lewisrice.com

**LEWIS RICE**  
**F I N G E R S H** L.C.  
Attorneys at Law

500 North Broadway  
Suite 2000  
St. Louis, Missouri 63102-  
2147

**MEMORANDUM**

TO: Melissa Garza  
Legislative Counsel to Senator Claire McCaskill

FROM: Sarah Mullen-Dominguez

DATE: June 26, 2009

RE: **Statement Provided by Mrs. Mary Heinzer's Counsel**

First and foremost, Mrs. Mary Heinzer would like to thank Senator McCaskill and her staff, particularly Melissa Garza, for their interest in her story and in the stories of so many American seniors who have been affected by predatory reverse mortgages. Mrs. Heinzer appreciates your attention to these pressing issues and hopes that her story will help you understand the damage that unscrupulous lending practices can cause.<sup>1</sup>

Mrs. Heinzer is a resident of the historic Baden neighborhood in North St. Louis City. She is the mother of eight children and has lived in the neighborhood for more than fifty years. In late 2003, at the age of 73, she faced financial difficulties and considered a reverse mortgage to help make ends meet. Mrs. Heinzer was contacted by several lenders, and in January 2004, obtained a HECM Mortgage on her home from Financial Freedom Senior Funding Corporation d/b/a Financial Freedom ("Financial Freedom").

Under the existing U.S. Department of Housing and Urban Development ("HUD") and Fair Housing Act mortgage guidelines, an existing home must be inspected and appraised to ensure that the home meets minimum property standards.<sup>2</sup> If a home does not meet the minimum standards, appropriate repairs *must* be made.<sup>3</sup> To ensure such minimum repairs are made, HUD regulations require lenders like Financial Freedom to cause one or more inspections of the mortgaged property.<sup>4</sup> These inspections must include documentation showing that all deficiencies have been acceptably corrected and must be completed prior to the final disbursement of funds for the repair work.<sup>5</sup>

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<sup>1</sup> Mrs. Heinzer's story is a matter of public record, and the details of it are set forth in the attached Petition.

<sup>2</sup> See 24 C.F.R. § 206.47(a)

<sup>3</sup> See *id.* at § 206.47(a)-(b)

<sup>4</sup> See *id.* at § 206.47(c)

<sup>5</sup> See *id.* at § 206.47(c).

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Financial Freedom failed to comply with these HUD regulations. A November 2003 inspection of Mrs. Heinzer's home revealed that it did not meet minimum property standards. Specifically, the roof did not have a two-year life expectancy, a portion of the bedroom ceiling had collapsed due to water damage, and the home contained peeling lead paint.

To induce Mrs. Heinzer to sign the Loan Agreement, a representative of Financial Freedom told her that Financial Freedom would find and hire a contractor or contractors to repair the roof and interior damage in her home. When she signed the Loan Agreement, she understood that: (1) her roof would be sufficiently repaired and no further leaking would occur, (2) her bedroom ceiling would be repaired, and (3) portions of her walls and ceiling would be scraped and repainted.

To pay for the repairs it promised to make, Financial Freedom set aside more than \$13,000 of Mrs. Heinzer's mortgage funds. It also charged Mrs. Heinzer a repair administration fee. Financial Freedom assured Mrs. Heinzer that once repairs were complete, her home would satisfy the applicable HUD standards. Mrs. Heinzer reasonably relied on Financial Freedom's representations, and she decided not to hire her own contractors to complete the necessary repairs.

Financial Freedom contacted and hired a few contractors to work on Mrs. Heinzer's home, but the repairs they attempted during the spring and summer of 2004 were unsuccessful and unsatisfactory. Financial Freedom contracted with Kevin's Home Repair to fix Mrs. Heinzer's roof and repair her bedroom ceiling.<sup>6</sup> Rather than completely repairing the defects in Mrs. Heinzer's roof, Kevin's Home Repair merely poured hot asphalt in a few "problem areas." This temporary repair failed to meet the minimum two-year life expectancy both guaranteed by Kevin's Home Repair and required by HUD. Soon thereafter, rainwater again began leaking into the house and, as a result, the repaired portion of Mrs. Heinzer's bedroom ceiling collapsed a second time.

Similarly, Financial Freedom hired Zak Bevins to complete the scraping and repainting in the house. Mrs. Heinzer specifically told Mr. Bevins not to paint the basement, but Mr. Bevins ignored this request and painted the basement walls pink. Soon after, mold began to form on the surface of the basement walls. Further, Mr. Bevins' failure to follow Mrs. Heinzer's instructions lead to the ruin of her antique tin kitchen ceiling.

After Kevin's Home Repair and Mr. Bevins completed their work in Mrs. Heinzer's home, a second HUD inspection was performed. This second report indicated that another roof inspection was to be furnished by Financial Freedom before the house would be considered

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<sup>6</sup> Missouri law implies into every contract to perform work, including the contract between Mrs. Heinzer and Financial Freedom, a promise that the work will be completed in a workmanlike manner, meaning that the work must be completed in a skillful and non-defective manner. *See Jake C. Byers, Inc. v. J.B.C. Investments*, 834 S.W.2d 806, 809-10 (Mo. App. 1992).

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compliant with HUD standards. Financial Freedom neglected to obtain a reinspection of the roof as required.<sup>7</sup> Instead, Financial Freedom released the loan funds to pay for the roof repairs before the work had been properly inspected and, thus, breached its obligations under HUD regulations and the Loan Agreement itself. Despite Financial Freedom's assurances that repairs would be made and its release of thousands of dollars of Mrs. Heinzer's loan money to ineffective contractors, Mrs. Heinzer's home remained in disrepair.

With a leaky roof, water-damaged walls and *no* money left, Mrs. Heinzer sought assistance through Legal Services of Eastern Missouri. Her case was assigned to the attorneys at Lewis, Rice & Fingersh in St. Louis. In late 2006 and 2007, Mrs. Heinzer's legal counsel spent months attempting to resolve this matter with various representatives of Financial Freedom. But, after much delay and many broken promises, Mrs. Heinzer was forced to take legal action. In September 2008, Mrs. Heinzer filed her lawsuit in the Circuit Court of the City of St. Louis. As she awaits her day in court, the condition of Mrs. Heinzer's home continues to deteriorate, and Financial Freedom refuses to consider her reasonable offers of settlement.

Again, Mrs. Heinzer appreciates your time and attention to this issue. She hopes that your efforts will help to reform unscrupulous mortgage practices and will provide American seniors with the information they need to avoid the dangers associated with certain HECM mortgage lenders.

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<sup>7</sup> 24 C.F.R. § 206.47(c)