

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN HILLSBOROUGH COUNTY, FLORIDA
CIVIL ACTION**

OFFICE OF THE ATTORNEY GENERAL
STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

CASE NO.

v.

MV REALTY PBC, LLC, a Florida limited liability company, AMANDA J. ZACHMAN f/k/a AMANDA ZUCKERMAN, an individual, ANTONY MITCHELL, an individual, DAVID MANCHESTER, an individual,

Defendants.

_____ /

**COMPLAINT FOR INJUNCTIVE
AND OTHER STATUTORY RELIEF**

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs (“Plaintiff” or “Attorney General”), sues defendants, MV REALTY PBC, LLC (“MV Realty” or “MV”), a Florida limited liability company, AMANDA J. ZACHMAN f/k/a AMANDA ZUCKERMAN, an individual, ANTONY MITCHELL, an individual, and DAVID MANCHESTER, an individual (collectively “Defendants”), and alleges:

SUMMARY

1. Defendants engage in a complex and deceptive scheme that attempts to skirt existing Florida law with the goal of swindling consumers out of their home equity.

2. Defendants offer consumers \$300-\$5,000 cash as a “loan alternative” but without requiring consumers to take out a loan. In exchange, consumers enter into a misleading and confusing Homeowner Benefit Program (“HBP”) which includes signing a contract, the “Homeowner Benefit Agreement” (“HBA”), that requires consumers to use MV Realty as their exclusive real estate listing broker for a period of 40 years. During the course of the 40-year term of the HBP, if the consumer lists the property for sale but does not use MV Realty as its listing broker, or if the home is foreclosed upon, heirs try to sell the home, or consumers simply wish to cancel the deal, Defendants will seek to be paid 3% of the property’s value, a value that, pursuant to the terms of the HBA, is determined by Defendants.

3. The HBA contract that consumers must enter into as part of the HBP, is unfair and unconscionable. A lien created by recording a memorandum of the HBA (“Memoranda of HBA”) facilitates Defendants taking a substantial portion of any equity in the home to satisfy contractual penalties. Defendants’ practice of recording liens against homeowners also prevents many consumers from unlocking

the equity in their homes through refinancing, reverse mortgages, home equity lines of credit, and other financial tools.

4. Defendants use deceptive and abusive telemarketing and advertising practices to advertise the HBP and accompanying HBA as a loan alternative. Consumers are told that there is no obligation to return the cash, and they owe MV Realty nothing in return unless and until they sell their home, when in fact, the Defendants encumber the property for 40 years and extract excessive and unconscionable fees from consumers if they try to cancel the HBA or if the home is transferred through foreclosure or other circumstances that are not commonly understood as a sale.

5. Additionally, Defendants routinely place telemarketing calls to prospective customers, including consumers who have registered their phone numbers on the national Do-Not-Call Registry (“DNC Registry”), using a pool of phone numbers that deceptively simulate local calls. When consumers fail to answer the calls, Defendants bombard them with millions of unwanted prerecorded voicemails. Defendants’ telemarketing practices violate the Telemarketing Sales Rule, 16 C.F.R. § 310, *et seq.*, and constitute violations of Chapter 501, Part II, Florida Statutes, the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”).

6. Defendants are harming consumers in Florida and at least 32 other states across the country. Pursuant to FDUTPA, the Attorney General seeks to enjoin enforcement of Defendants' contracts with consumers, enjoin future unfair and deceptive practices, return the money the Defendants have wrongfully taken from homeowners, and impose civil penalties for Defendants' willful violations of the law.

JURISDICTION AND VENUE

7. This is an action for injunctive relief, consumer restitution, civil penalties, attorney's fees and costs, and other statutory and equitable relief against Defendants, in excess of \$30,000, brought pursuant to Section 501.207(1)(b), Florida Statutes.

8. This Court has jurisdiction over the subject matter pursuant to the provisions of FDUTPA. The granting of injunctive and other equitable and statutory relief is within the jurisdiction of the Circuit Court and the amount in controversy satisfies the jurisdictional threshold of the Circuit Court.

9. All actions material to the complaint have occurred within four (4) years of the filing of this action.

10. The statutory violations alleged herein occurred in or affect more than one judicial circuit in the State of Florida, including but not limited to the Thirteenth Judicial Circuit in Hillsborough County.

11. In Hillsborough County alone, Defendant MV Realty has filed at least 440 Memoranda of HBA documents, which affect a consumer's title and ability to sell or refinance their home. Statewide, MV Realty has made more than 9,123 public record filings that cloud homeowners' titles. Hillsborough County appears to be one of the counties with a high number of public record filings.

12. Venue is proper in the Thirteenth Judicial Circuit. The statutory violations alleged herein have occurred, in part, within Hillsborough County, Florida.

13. Prior to the filing of this action, the head of the enforcing authority reviewed this matter and determined in writing that this enforcement action serves the public interest.

14. All conditions precedent to this action have been performed or have occurred.

15. This action is not precluded by Section 501.212, Florida Statutes.

16. At all times material hereto, Defendants have engaged in "trade or commerce" as defined in Section 501.203(8), Florida Statutes.

PLAINTIFF

17. The Attorney General is an enforcing authority of FDUTPA under Section 501.203(2), Florida Statutes, and is authorized to bring this action and to

seek injunctive and other statutory relief pursuant to Sections 501.207 and 501.2075, Florida Statutes.

DEFENDANTS

MV Realty PBC, LLC

18. MV Realty is a limited liability company based in Delray Beach, Florida. MV Realty was formed as a limited liability company in 2014. MV Realty has registered multiple entities that, upon information and belief, contribute to the business that MV Realty conducts in the State of Florida and nationally, and these businesses operate under Defendants' control and through their direct involvement for the continuing purpose of generating proceeds to unfairly, deceptively and unconscionably enrich Defendants at the expense of consumers.

19. MV Realty is a licensed real estate brokerage in the State of Florida with an active license number CQ1046757. MV Realty has been licensed with the Florida DBPR since August 12, 2014, and is managed by Amanda J. Zachman, a licensed real estate broker with an active license number BK3244459.

20. MV Realty has described itself as a niche real estate company that uses data and digital marketing to help connect prospective customers with MV's real estate agents. MV Realty has described itself as having made a major investment to develop a proprietary strategy and develop substantial relationships with specific prospective and existing customers.

21. The “MV” in MV Realty’s name is an abbreviation of Mad Valorem, which was a website Defendants started in approximately 2013 and used to connect real estate buyers and sellers. The proprietary strategy developed by Defendants was first known as the OptListing Agreement, which began in 2018, and has now morphed into the Homeowner Benefit Program (“HBP”) and accompanying Homeowner Benefit Agreement (“HBA”).

Individual Defendants

22. Amanda J. Zachman f/k/a Amanda Zuckerman is an individual residing in Florida. At all times material to this action, she was the manager and lead broker of MV Realty and directly participated in, managed, operated, controlled, and had the ability to control the operations of MV Realty and its subsidiaries.

23. Antony Mitchell is an individual residing in Florida. At all times material to this action, he was the Chief Executive Officer of MV Realty and directly participated in, managed, operated, controlled, and had the ability to control the operations of MV Realty and its subsidiaries.

24. David Manchester is an individual residing in Florida. At all times material to this action, he was the Managing Director and Chief Operating Officer of MV Realty and directly participated in, managed, operated, controlled, and had the ability to control the operations of MV Realty and its subsidiaries. Further,

David Manchester advertises himself on LinkedIn as Founder and Broker of MV Realty.

25. All three individual defendants take part in and control the daily business affairs of MV Realty and its subsidiaries. Mr. Mitchell and Mr. Manchester are bank account signers on MV Realty's escrow, operating, and payroll bank accounts. Amanda J. Zachman, under the name Amanda Zuckerman, is a bank account signer on MV Realty's operating bank account.

26. Amanda J. Zachman has signed many of the HBAs that are the subject of consumer complaints and has engaged in communications with consumers.

27. David Manchester handles operations, including working with MV Realty's telemarketing vendors and handling investor relationships. On information and belief, he is responsible for securitizing MV Realty's interests in contracts with consumers.

28. Antony Mitchell is intimately aware of the terms of the HBA and HBP and the operations of MV Realty. As the Chief Executive Officer, he is aware of the complaints made by consumers and has the authority to control the business practices of MV Realty.

29. At all times relevant to this action, Amanda Zachman, Antony Mitchell, and David Manchester either directly controlled, had the authority to control, or were aware of and failed to halt the unfair and deceptive acts referenced in this Complaint.

Because Amanda Zachman, Antony Mitchell, and David Manchester either directly controlled or had the authority to directly control and participated in the unfair and deceptive business practices of MV Realty, each of them can be held individually liable under FDUTPA.

DEFENDANTS' UNFAIR, DECEPTIVE, AND UNCONSCIONABLE ACTS AND PRACTICES

I. MV Realty's OptListing Agreements

30. Starting on or before November 2018 until at least early 2019, Defendants marketed an OptListing Agreement for MV Realty (hereinafter "OptListing Agreement") to consumers in Florida.

31. The OptListing Agreement offered consumers a small payment in exchange for MV Realty's exclusive right to sell the consumers' home for a 3-6% sales commission. The OptListing Agreement had a three-year term with automatic, perpetual renewals. Once every three years the Optlisting Agreements purport to allow for cancellation in a 60-day window that precedes automatic renewal; however, to cancel the consumer would have to pay back all of the small payment they received from MV Realty, plus 1.5% of the market value of their home.

32. The OptListing Agreement unconscionably and unfairly attempts to shorten the limitations period for a homeowner claim in connection with the agreement to one year in contravention of Florida Statutes.

33. Additionally, in or before 2019, Defendants began the practice of recording an Affidavit and Notice of Interest in Real Estate, Memorandum of OptListing Agreement, or an instrument of a similar title, in the public records of the county in which the home was located for the purpose of advising the public of compensation purportedly due to MV Realty, as the listing broker. However, the practice and consequences of recording the notice were either not disclosed at all or were not clearly and conspicuously disclosed in Defendants' advertising, contracts, and other interactions with the homeowners. On information and belief, hundreds of consumers are still subject to continuously renewing OptListing Agreements.

II. The Homeowner Benefit Program

34. In or around 2019, Defendants stopped offering the OptListing Agreement and started marketing the HBP and the accompanying agreement sometimes called the Homeowner Advantage Agreement or, more frequently the HBA. Despite the name change, many of the same unfair and unconscionable terms of the OptListing Agreement remained or became even more onerous, including increasing the penalties to 3% of the market value (as determined by Defendants) if the home's title transfers through foreclosure or death or if the home is sold by owner or another agent/broker; an excessively long forty-year term; a selective, one-sided arbitration provision that benefits only MV Realty; and the purported right for MV Realty to enforce the agreement as a covenant that runs with the land. Defendants

also recorded documents that act as liens on consumers' properties in conjunction with both the OptListing Agreements and the HBA.

35. Based on information and belief, many of the consumers who have entered into the HBA are seniors and some have limited cognitive capacity; others speak English as a second language. Consumer complaints reviewed by Plaintiff include allegations of Defendants' aggressive marketing; insufficient disclosures or misrepresentations concerning the terms and conditions of the HBA; dishonest sales practices including misrepresentations of what documents consumers were signing; inability to refinance or transfer their homes without facing exorbitant penalties; and general confusion as to what they were signing and why. Some homeowner complaints allege that Defendants have forged signatures or procured the signatures of vulnerable or mentally incompetent individuals who were solicited in their homes.

A. Defendants' Practice of Recording Liens is Unfair and Deceptive

36. Defendants' Memoranda of HBA, and similar documents filed in the public record, limit consumers' right to sell or refinance their properties. Many consumers complain that they are not aware that these documents will be recorded and that they were unaware they would be restricted from refinancing their homes or otherwise accessing their home equity.

37. Defendants record the HBA, or a Memorandum of HBA, in the public record, and Defendants' website has acknowledged these recorded documents act as

a lien benefitting MV Realty for 3% (or up to 6% if the house is sold with a cooperating broker) of the value of the homeowner's property at the time of any sale or transfer.

38. Yet, this lien has no legal basis in Florida law.

39. Florida recognizes three types of liens, which can be secured or unsecured. These liens are statutory liens, consensual liens, and judgment liens.

40. Defendants do not, because they cannot, maintain that they have a statutory lien or a judgment lien under Chapter 713, Florida Statutes.

41. Defendants can only, at best, claim they have a consensual lien permitted by contractual agreement.

42. In the FAQ section of the HBP website, Defendants have described this lien as “the commission amount MV Realty would earn if it would have sold your home.” Under Florida law, it is a crime for *a real estate broker or associate* to place or cause to be placed upon the public records of any county “*any contract, assignment, deed, will, mortgage, affidavit, or other writing which purports to affect the title of, or encumber, any real property ... for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person, or for any unlawful purpose*” Section 475.42(1)(i), Florida Statutes (emphasis added). The statute further provides that “nothing in this paragraph shall be construed to prohibit a broker or a sales associate from recording a judgment

rendered by a court of this state or to prohibit a broker from placing a lien on a property where expressly permitted by contractual agreement or otherwise allowed by law.”¹

43. Defendants record the Memoranda of HBA without obtaining a court judgment and do not obtain express permission from consumers to place a lien on their property. In fact, at the time of this filing, the FAQ’s on Defendants’ website expressly state that no lien is being placed on the consumer’s property. Furthermore, the language in the HBA relating to the recording of the Memorandum is confusing and does not explicitly state that a lien is being recorded:

- b. Company reserves the right to record a memorandum of this Agreement, in form and substance similar to the Memorandum of MVR Homeowner Benefit Agreement attached hereto as Exhibit B (the “Memorandum”), to provide constructive notice of Company’s rights hereunder. Upon Company’s request from time to time, Property Owner shall provide Company with a written certificate or recordable amendment to the Memorandum confirming the existence of this Agreement and that this Agreement remains in full force and effect.

44. This language does not reflect express consumer permission for a broker lien on the property, but even if the consumer had provided express consent to the lien, this type of personal contract is not enforceable as a lien on property. In fact, MV Realty’s website markets the HBP as a “personal loan alternative.” The HBA contains language that purports to establish a covenant that runs with the land.

¹ Despite identifying the lien as covering real estate commissions in the FAQ’s posted on Defendants’ website, Defendants have otherwise asserted that their HBA is not a real estate listing agreement subject to Chapter 475. Nevertheless, the statutory framework provides an important backdrop that illustrates the scope of Defendants’ unfair and deceptive practices and attempts to circumvent Florida law.

However, the agreement does not meet the standard for a covenant running with the land.

45. A covenant running with the land is a covenant that applies not only to the original parties but also to all their successors with an interest in the land. For a covenant running with the land to be enforceable, Florida case law and statutory law establishes that it must touch and involve the land, such that it alters the use of the land, and that the parties agree to be bound by the terms of the covenant. The lien purportedly established by the HBA does not touch or involve the land. The HBA is a small loan in exchange for an agreement to agree to a real estate listing contract, and it does nothing to enhance the value or enjoyment of consumers' homes.

46. The real estate listing agreement is not executed by the consumer when the HBA is entered into. In some instances, the HBA does not include even a blank listing agreement and instead instructs the consumer to go online to view a sample:

(i) Acknowledgment of Online Listing Agreement. By executing this Agreement, Property Owner affirms that Property Owner has reviewed or has had sufficient opportunity to review the Listing Agreement referenced herein as Exhibit A, which is accessible for review and download online at <https://homesatmv.com/landing/exhibits/FL-ExhibitA.docx>.

47. Therefore, the only aspect that might possibly have some impact on the land, the listing agreement that may govern the sale of the home, is incomplete, unexecuted, and may not be available for the consumer to review at the time he or she is asked to execute the HBA. The listing agreement is not agreed to by the

consumer and does not contain essential terms such as the price the homeowner wishes to set for his or her home.

48. Defendants have only very recently (in late September 2022), started marketing what it calls “residential real estate title monitoring service.” Defendants state that this service is “to be provided at no cost” to HBP clients, but this service is what MV Realty uses to monitor its own rights to trigger consumer penalties and this service is of no value or benefit to any consumers.

49. Despite these infirmities, many lenders consider the liens filed under the HBA to be an outright disqualification when consumers attempt to refinance their homes or otherwise tap into their home equity through a financial product like a line of credit or a reverse mortgage.

50. Although in some instances Defendants have relayed to homeowners that they will work with lenders to either subordinate MV Realty’s liens or lift and then reinstate the liens so that consumers can refinance their homes, many lenders refuse to work with MV Realty, and the consumer is unable to refinance. In some instances, Defendants have also refused consumers’ requests to work with potential lenders to enter into other financial arrangements such as home equity lines of credit or reverse mortgages due to the risk that MV Realty will not be able to foreclose on its liens if these financial products are present.

51. Consumers are unfairly injured by the burden Defendants' liens place on their ability to access their home equity. Also, Defendants do not disclose the impact of recording the Memoranda of HBA on consumers' ability to access their home equity. This omission of material information is deceptive and prevents consumers from making an informed decision about whether to enter into the HBA with MV Realty. Moreover, the HBA requires the homeowner's heirs and devisees, who often have no knowledge of the HBA, to enter an assumption of the HBA in a form satisfactory to the company within 10 days of the homeowner's death (this is impracticable in many instances) or pay the early termination fee.

52. Thus, Defendants' practice of recording Memoranda of HBA, or similar documents, in the public record in attempt to impose a lien on the consumer's property without the consumer's express knowledge and consent and in contravention of Florida law is unfair and deceptive.

B. The Payment Required under the HBP is Deceptive, Unfair and Unconscionable

53. Defendants advertise the HBP as a "loan alternative" with "no obligation to sell" the home and "no need to borrow or make payments." However, what is not clearly and conspicuously disclosed is that the consumer will be obligated to pay 3% of the value of the home to Defendants even if the home is not voluntarily sold. By calling the HBP a "loan alternative," Defendants are attempting to avoid the legal limitations on lending. If the small, up-front payment from

Defendants were a loan, it would only entitle the Defendants to the amount of money paid (or value of services rendered), plus potential interest. However, as is further detailed below, Defendants are attempting to take tens of thousands of dollars from homeowners in exchange for a \$300-\$5,000 up-front payment, which amounts to a usurious demand for repayment.

54. Defendants purport to be offering a service to consumers under the HBA in exchange for 3% of the value of the home. However, Defendants demand full payment under the HBA regardless of whether the Defendants perform the actual listing services that they purport to offer consumers.

55. The 3% payment also does not reflect a fair payment for breach of contract. In instances where the consumer does not enlist the services of Defendants and the Defendants want to seek a remedy for breach of contract, Defendants should seek a judgment on the breach, which would reflect their damages. Instead, the Defendants unfairly demand that consumers pay the full value of the contract, without adjudication of the breach and even though no services have been provided by Defendants.

56. Defendants are imposing an unenforceable penalty as against homeowners and they are receiving a remedy that is not available to any creditor nor any provider of services under Florida law.

57. If Defendants properly sought a judgment for an alleged breach of contract, received such judgment, and properly recorded it in the county records pursuant to Section 55.10, Florida Statutes, their lien would only be in force for a period of 7 years from the date of the recording. And such lien would expire after 20 years from the date of such judgment in accordance with Section 55.081, Florida Statutes. Therefore, not only are Defendants avoiding a proper adjudication in court for what can at best be a breach of contract claim, they are doubling the amount of time that a lien would be recognized against Florida real property.

58. Indeed, Section 475.25(1)(r), Florida Statutes requires that real estate listing agreements include a definite expiration date, further supporting the Attorney General's position that the length of the HBA is unfair and unconscionable.

59. Although essential terms are missing from the purported proposed listing agreement and the agreement is not executed with the signing of the HBA, the HBA binds a consumer to pay MV Realty 3% of the value of his or her home as determined by MV Realty *regardless of whether any real estate services are ever rendered to the consumer or the consumer's heirs or assigns*. This penalty under the HBA is unreasonable and excessive and not reflective of any damages incurred by the Defendants.

60. Defendants' early termination fees are penalties rather than liquidated damages. The amount of these penalties is in no way related to Defendants' losses

due to a breach of the HBA and instead represent the full contract value Defendants hope to realize.

III. Deceptive and Unfair Home Solicitation

61. The execution of the HBA typically takes place in the consumer's home. Frequently, a notary arrives at the home with only one copy of the HBA paperwork. Consumers state that they were not able to see the HBA or have it explained to them during the home visit. Further, notaries who have notarized the HBAs signed by consumers state that they were advised not to explain the HBA to consumers before they sign.

62. Also, consumers complain they did not receive copies of the executed agreements in a timely fashion. Some consumers aver that they waited months to receive a copy and some never received a copy until they requested one, often long after the documents were executed. The MV Realty documents that Defendants prepare contain a provision that allows MV Realty to provide email copies of the documents executed, thereby attempting to legitimize withholding a copy of the documents the consumer executed before the notary unless and until Defendants email them to the consumer. Defendants' failure to provide a copy of the HBA at execution interferes with consumers' ability to exercise their right to cancel within three days, because the right of cancellation period begins to run as soon as the HBA is executed and not upon receipt of the executed HBA by the consumer.

63. From 2019 to sometime in 2021, MV Realty’s HBA did not contain the required notice of the three-day right to cancel. Section 501.025 Florida Statutes, provides “In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase. . . Notice of a buyer’s right to cancel must appear on every note or other evidence of indebtedness given pursuant to any home solicitation sale.” Sometime in 2021, a “rescission” provision was added to the terms of the HBA and later appeared in an ancillary customer satisfaction form that Defendants began disseminating with the HBA. However, the “rescission” provision in the HBA is not clearly identified as a “right to cancel” in the plain terms of the statute. In fact, the word “cancel” is not used at all in the HBA rescission paragraph. Furthermore, thousands of consumers signed HBAs that did not include the three-day right to cancel notice and Defendants have neither remediated the consumer complaints to the Attorney General that were made on this basis, nor notified consumers of their rights under the Florida Statute.

IV. Defendants’ Deceptive and Unfair Advertising Practices

64. Defendants target their advertising of the HBP to homeowners who need immediate cash or small loans, or homeowners seeking to refinance, often advertising a link to its social media platforms on Facebook or Instagram.

65. Defendants have created and continue to maintain a website, <https://homeownerbenefit.com>, which has marketed the HBA as a loan alternative. Specifically, the website included the following statements: **“Homeowners Receive Cash Quickly with this Loan Alternative!! MV Realty’s Homeowner Benefit Program® offers between \$300-\$5000 cash without taking out a loan. Text us your address and well get you a CASH OFFER in less than 5 minutes! The website further represented:**

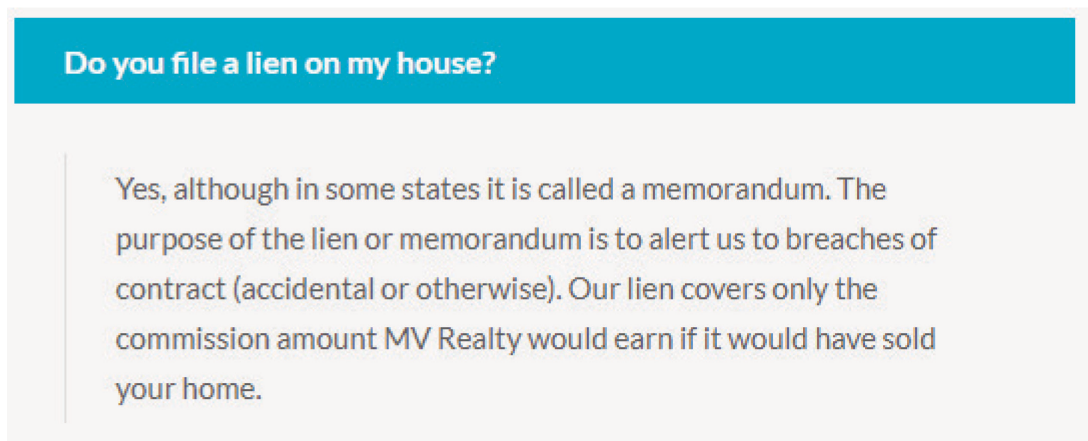
- **Homeowners Pre-Qualify**
- **No Obligation to Sell Your Home**
- **Personal Loan Alternative**
- **No Need to Borrow or make payments**
- **Absolutely NO Credit Check**
- **Call or Text Us Now 866-919-7851**

66. In some instances, Defendants conduct hard credit checks on potential consumers in contradiction of their representation on their website that a credit check is unnecessary and will not be performed.

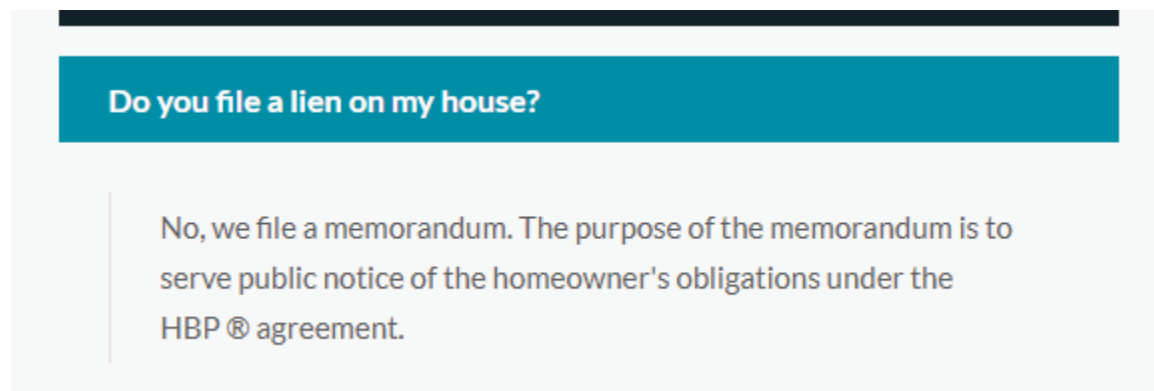
67. The claim that there is “no obligation to sell your home” is misleading because it omits onerous obligations that accompany the HBA, including that if the consumer does not sell their home, they are bound to a 40-year agreement with the Defendants and subject to an excessive penalty for accepting a small, one-time payment from the Defendants.

68. Until recently, the website did not contain much information about the HBP or HBA. Prior to the Fall of 2022, Defendants did not disclose on the MV

Realty website that it places liens on consumer homes. Early in the Fall of 2022, Defendants added a disclosure in the FAQ section that it does place a lien on the homes of consumers who sign an HBA. A screenshot of Defendants' website is snipped below.



69. After a short time, MV Realty changed its FAQ to once again in late 2022 read:



70. The current language falsely suggests that the memorandum is something other than a lien. But the fact that the Memorandum does operate as a lien is revealed in the very next FAQ:

What if I want to refinance my home?

No problem! We have a department strictly dedicated to these situations so that we can facilitate them. In these cases, we will lift the notice or subordinate our notice's position, and after the refinance is complete, we will put the memorandum or lien back on. The refinancing department can be reached at (561) 486-9355

71. The Defendants seek to confuse and mislead consumers about the full impact of entering the HBA and the fact that the Defendants do place liens on the consumer's home for 40 years.

72. Facts previously not disclosed on Defendants' website, <https://homeownerbenefit.com> and often not disclosed in oral sales pitches, include that 1) the HBA binds the consumer for 40 years, but MV Realty can cancel it at any time for any reason; 2) that a lien in the form of a Memorandum of HBA, or a similar instrument, will be recorded in the public record, and 3) that by either failing to use MV Realty as a realtor or for other reasons such as a foreclosure or passing of property due to death, the cost to exit the HBP will be 3% of the value of the home as determined by MV Realty. The HBP has been marketed as a loan alternative, but the rate to pay it back, 3% of the value of the home, is usurious.

73. Additionally, many consumers complain that they were misled about the 40-year term of the HBA. Some say they never learned the length of the term

until after they received a copy of the executed HBA, while others say that they were told the listing agreement is one year or less and did not understand or were not told that the 40-year HBA is separate from the one-year listing agreement that is sometimes attached to the HBA but is not agreed to until the home is listed for sale.

V. Telemarketing Violations

74. Defendants collect consumer contact information and purported consumer consent to receive telemarketing calls on the MV Realty website, if consumers are directed there, or, more commonly, Defendants collect sales leads from data partners that do not always clearly and conspicuously disclose their relationships with MV Realty. In a few known instances the data partners did not clearly and conspicuously disclose their relationship with MV Realty to consumers or did not clearly and conspicuously disclose that MV Realty would target them with telemarketing calls including prerecorded or artificially voiced messages.

75. Consumers are called on the telephone or texted by representatives of Defendants. Call records associated with MV Realty's telemarketing indicate that the Defendants use a variety of prerecorded messages left as voicemails that tout the money consumers could receive through the HBP, and deceptively assert that consumers would not have to pay MV Realty back.

76. Records provided by one service used by Defendants to place automated phone calls indicate that in 2021 and 2022 MV Realty left approximately

6,834,554 prerecorded voicemails marketing the HBA. This includes 896,435 prerecorded voicemails to phone numbers with Florida area codes.

77. Defendants make relatively limited use of print or digital advertising, and most of the marketing communications between a consumer and Defendants are oral communications from telemarketing sales representatives. Consumers complain of high-pressure sales tactics in connection with their communication with the sales representative during the sale of the HBA.

78. In communications from Defendants, consumers are advised that the HBA is a loan alternative that provides the homeowner with hundreds or thousands of dollars in exchange for the consumer's agreement to the HBA. Consumers are told that there is no obligation to return the cash, and they owe MV Realty nothing in return unless and until they sell their home. Consumers are often misled because they are not told that a foreclosure or the passing of the property through death is considered selling a home under the HBA; however, these events in fact trigger penalties of 3% of the value of consumers' homes, as determined by Defendants, under the HBA.

79. Defendants also pay consumers to enter into testimonial and branding agreements that require consumers to provide MV Realty with contact information for other potential customers. Defendants then target the potential customer with

unsolicited telemarketing calls and prerecorded voicemails, even if the referred consumers' phone numbers are on the DNC Registry.

80. On information and belief, Defendants do not purchase access to the DNC Registry and Defendants routinely make telemarketing calls without prior express written consent to phone numbers listed on the DNC Registry. Defendants placed approximately 4.5 million telemarketing calls to phone numbers on the DNC Registry in the period from March 2021 to August 2022 using automated calling services provided by one vendor. This includes 596,884 calls to phone numbers on the DNC Registry with Florida area codes.

81. MV Realty has also placed at least 929 telemarketing calls to individuals who requested that they be added to MV Realty's internal do not call list.

82. MV Realty places telemarketing calls using caller IDs that that deceptively appear to be local calls by matching the area code of the phone number called.

83. Out of approximately 11,959,140 telemarketing calls MV Realty placed nationally through one vendor providing automated calling services, approximately 8,350,535, or 69.83%, of the calling phone numbers matched the area code of the called number. Defendants purchase access to the phone numbers they use to place these calls for only a short time, so consumers are often unable to use these phone numbers to call MV Realty back.

84. Defendants' practice of using a pool of local phone numbers prevents any one phone number from being associated with a high volume of MV Realty's calls. This hides Defendants' illegal calling patterns from consumers' phone carriers and call blocking apps, effectively shielding these unwanted calls from algorithms that block or label spam calls.

85. Defendants control the MV Realty telemarketing operation from their headquarters in Florida. Defendants provide their telemarketers with sales scripts and monitor and control their calls using a customer relations management ("CRM") software platform. Defendants' telemarketers are located throughout the United States but call consumers and leave prerecorded voice messages using this centralized CRM system which Defendants control from their offices in Florida.

**THE FLORIDA DECEPTIVE
AND UNFAIR TRADE PRACTICES ACT**

86. Section 501.204(1), Florida Statutes states that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

87. The provisions of FDUTPA are to be construed liberally to promote the protection of the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices. § 501.202, Florida Statutes.

88. Section 501.203(8), Florida Statutes, defines "[t]rade or commerce" as:

...[T]he advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.

89. A person that willfully engages in a deceptive or unfair act or practice is liable for a civil penalty of Ten Thousand Dollars (\$10,000) for each such violation, pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000) for each violation victimizing a senior citizen or person with a disability, pursuant to Section 501.2077, Florida Statutes. Willful violations occur when the person knew or should have known that the conduct in question was deceptive or unfair or prohibited by rule, pursuant to Section 501.2075, Florida Statutes.

90. Under FDUTPA, once corporate liability is established, an individual defendant may be individually liable if he or she participated directly in the deceptive or unfair practices or acts, or possessed the authority to control them.

COUNT I
AGAINST MV REALTY PBC, LLC
(Violation of Chapter 501, Part II Florida Statutes)

91. Plaintiff incorporates and realleges paragraphs 1 to 73 and 86 to 90 as if fully set forth herein.

92. Through unfair and deceptive business practices and through misrepresentations or omissions, MV Realty has violated and continues to violate FDUTPA by:

- a. the use of deceptive or unfair business practices to prey upon consumers looking for small loans;
- b. failing to timely disclose the 40-year term of the HBA on the MV Realty's website and its marketing materials or sales pitches,
- c. failing to clearly and conspicuously disclose that the HBA Memorandum would be recorded as a lien against the consumer's property;
- d. failing to disclose or misleading consumers about how the HBA will likely slow down, hamper or prevent a consumer from being able to refinance their home or otherwise liquidate home equity;
- e. failing to disclose or misleading consumers about how the promotion fee would never have to be paid back until a consumer "sells" his or her home, when in reality, the early termination fee could be invoked for any transfer of title, refinance transaction or even upon the consumer's death;
- f. having consumers agree to the HBA that includes recording of a lien for services that would not improve, touch, benefit or enhance the

consumers' real property or render it more convenient and beneficial to the landowner;

- g. having consumers sign an unfair and unconscionable 40-year exclusive right to list agreement for transaction broker only services, which lacks essential terms, refers to a blank listing agreement and has the consumer agree to services that may never be rendered or even agreed upon;
- h. having some consumers sign an agreement that did not contain a Three Day Right To Cancel as required in section 501.031, Florida Statutes, and in those agreements that do refer to a consumer's right to cancel, using language that is confusing and does not clearly convey a consumer's right to cancel;
- i. requiring usurious payments from consumers to pay back money received under the HBA "loan alternative"; and
- j. charging consumers the exorbitant cost of 3% of the value of their home, as determined by MV Realty, to exit the Homeowner Benefit Program regardless of whether MV Realty ever provides the consumer any real estate services or whether the consumer ever actually enters into a listing agreement with MV Realty, which

constitutes an unfair penalty rather than a true liquidated damages provision.

93. Through the actions and related business practices set forth in this Complaint, MV Realty is engaging in representations, acts, practices, or omissions that are material, and that are likely to mislead consumers acting reasonably under the circumstances.

94. The actions and related business practices of MV Realty as set forth in this complaint shock the conscience.

95. Through the actions and related business practices set forth in this Complaint, MV Realty is committing acts or practices in trade or commerce that offend established public policy and are unethical, oppressive, unscrupulous, or substantially injurious to consumers.

96. Through the actions and related business practices set forth in this Complaint, MV Realty is engaging in acts or practices that are likely to cause substantial injury to consumers. This substantial injury is not reasonably avoidable by the consumers themselves and is not outweighed by countervailing benefits to consumers or competition.

97. Thus, MV Realty engaged in unfair or deceptive or unconscionable acts or practices in the conduct of any trade or commerce in violation of Section 501.204(1), Florida Statutes.

98. Pursuant to Section 501.207(3), Florida Statutes, this Court should strike or limit the application of clauses of the HBA to avoid unconscionable results, should order MV Realty to divest itself and its subsidiaries of ill-gotten gains, and should impose reasonable restrictions upon the future activities of Defendants to prevent them from engaging in the same type of endeavor, and grant equitable or other appropriate relief.

99. MV Realty is subject to equitable disgorgement of ill-gotten gains, civil penalties for willful violations of FDUTPA in the amount of Ten Thousand Dollars (\$10,000) for each violation pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize, a senior citizen or person with a disability pursuant to Section 501.2077, Florida Statutes. Moreover, MV Realty is subject to paying Plaintiff's attorney's fees as set forth in Section 501.2105, Florida Statutes and/or Section 501.2075, Florida Statutes.

100. MV Realty willfully engaged in and is continuing to engage in deceptive and unfair acts and practices in that MV Realty knew or should have known that the methods, acts, or practices alleged herein were and are unfair, deceptive, unconscionable, and prohibited by law.

101. These above-described acts and practices of MV Realty have caused substantial injury to the public and will likely continue to cause injury and prejudice the public.

102. Unless MV Realty is temporarily and permanently enjoined from engaging further in the acts and practices complained of herein, MV Realty's actions will continue to result in irreparable injury to the public for which there is no adequate remedy at law.

Count II
Violations of the Telemarketing Sales Rule,
16 CFR §§ 310.3-310.4 as Per Se Violations of FDUTPA

103. Plaintiff incorporates and realleges the paragraphs 1 through 29 and 74 through 90 as if fully set forth herein.

104. Congress directed the Federal Trade Commission ("FTC") to enact rules prohibiting abusive and deceptive telemarketing acts or practices. 15 U.S.C. §§ 6101-6108.

105. The FTC adopted the Telemarketing Sales Rule ("TSR"), 16 C.F.R. §§ 310.1-310.9, pursuant to Congress's grant of rulemaking authority. The TSR prohibits abusive and deceptive acts or practices by sellers² or telemarketers³ and

² 16 C.F.R. § 310.2(dd) defines "seller" as "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration."

³ 16 C.F.R. § 310.2(gg) defines "telemarketing," in relevant part, as "a plan, program, or campaign which is conducted to induce the purchase of goods or

further prohibits other persons from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates the TSR.

106. MV Realty is a “seller” or “telemarketer” engaged in “telemarketing,” and has initiated, or has caused others to initiate “outbound telephone calls” to consumers to induce the purchase of goods or services, as those terms are defined in the TSR, 16 C.F.R. § 310.2(x), (dd), (ff), and (gg).

107. MV Realty routinely places telemarketing calls which:

- a. Violate 16 C.F.R. § 310.3(a)(2)(i) by misrepresenting the total costs of the HBP;
- b. Violate 16 C.F.R. § 310.3(a)(2)(iii) by misrepresenting material aspects of the HBP;
- c. Violate 16 C.F.R. § 310.4(a)(8) by failing to transmit, or cause to be transmitted, MV Realty’s telephone number and name to caller identification services used by call recipients;

services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.” 16 C.F.R. § 310.2(ff) defines “telemarketer” as “any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.”

- d. Violate 16 C.F.R. § 310.4(b)(1)(iii)(A) by calling consumers that have previously stated that they do not wish to receive outbound telephone calls from MV Realty;
- e. Violate 16 C.F.R. § 310.4(b)(1)(iii)(B) by calling telephone numbers on the DNC Registry without obtaining an express agreement to be called;
- f. Violate 16 C.F.R. § 310.4(b)(1)(v) by initiating Outbound Telephone Calls that delivered prerecorded messages to consumers who did not consent to receive such calls; and,
- g. Violate 16 C.F.R. § 310.8(a)(1) by failing to purchase access to the DNC Registry for area codes into which MV Realty placed Outbound Telephone Calls.

108. FDUTPA defines a “violation of this part” to include violations of the Act based on “[a]ny rules promulgated pursuant to the Federal Trade Commission Act” or “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.” § 501.203(3), Florida Statutes.

109. “A violation of the TSR constitutes an unfair and deceptive act or practice in violation of § 5(a) of the [Federal Trade Commission] Act.” *United States v. Dish Network, L.L.C.*, 75 F. Supp. 3d 942, 1004 (C.D. Ill. 2014).

110. Under 15 U.S.C. § 6102(c)(1) violations of the TSR are treated as violations of rules passed under the Federal Trade Commission Act (15 U.S.C. § 57a).

111. Violations of rules passed under the FTC Act are unfair and deceptive within the scope of 15 U.S.C. § 45 under 15 U.S.C. § 57a(d)(3).

112. MV Realty's violations of the TSR constitute violations of FDUTPA.

113. MV Realty routinely transmits calls to consumers which misrepresent the identity of the caller and the nature of goods and services offered through the calls.

114. Particularly when MV Realty hides its identity using phone numbers that appear to be local numbers, consumers acting reasonably in the circumstances are likely to be deceived to their detriment when receiving many of the calls caused by MV Realty.

115. Furthermore, the calls MV Realty made or caused to be made injured consumers by misleading them about MV Realty's services or otherwise wasting their time, could not reasonably be avoided, and were without offsetting benefits to consumers or competition.

116. MV Realty's practices complained of herein are unfair or deceptive or both and constitute violations of § 501.204, Florida Statutes; therefore, MV Realty is liable for injunctive, other equitable, legal, or statutory relief under FDUTPA.

117. MV Realty is also liable for civil penalties, as prescribed above by Sections 501.2075 and 501.2077, Florida Statutes for each unfair act or practice it willfully engaged in, as set forth above, found to be in violation of FDUTPA.

118. Finally, MV Realty is subject to attorney's fees and costs pursuant to Section 501.2075, Florida Statutes.

COUNT III
AGAINST AMANDA J. ZACHMAN,
ANTHONY MITCHELL, AND DAVID MANCHESTER
(Violation of Chapter 501, Part II Florida Statutes)

119. Plaintiff adopts, incorporates, and re-alleges the general allegations in paragraphs 1 through 90, as if fully set forth herein.

120. Under FDUTPA, once corporate liability is established, an individual defendant may be individually liable if he or she participated directly in the deceptive acts or practices, or he or she possessed the authority to control them.

121. During all times relevant to this action, Amanda J. Zachman has been the Manager of MV Realty and controlled, or had the ability to control, the operations and business practices of MV Realty.

122. During all times relevant to this action, Antony Mitchell has been the Chief Executive Officer of MV Realty and controlled, or had the ability to control, the operations and business practices of MV Realty.

123. During all times relevant to this action, David Manchester has been the Managing Director and Chief Operating Officer of MV Realty and controlled, or had ability to control, the operations and business practices of MV Realty.

124. Amanda J. Zachman, Antony Mitchell, and David Manchester have personal knowledge and control of MV Realty's sales practices, including its telemarketing practices, have personal knowledge and control over its business practices related to consumer obligations under the HBP and HBA, and have personal knowledge and control over MV Realty's financial assets and bank accounts

125. As further set forth above in paragraphs 22 through 29, Defendants Amanda J. Zachman, Antony Mitchell, and David Manchester each control and participate in the day-to-day activities of MV Realty, including establishing and maintaining the business practices as set forth in this Complaint.

126. Defendants Amanda J. Zachman, Antony Mitchell and David Manchester are each aware of incoming consumer complaints alleging all of the problems set forth in this Complaint, including, but not limited to, that MV Realty makes deceptive statements, including (1) material misrepresentations related to the HBP and HBA, (2) complaints about telemarketing, (2) complaints about the liens, and (3) complaints about the lack of a right to cancel.

127. Therefore, Defendants Amanda J. Zachman, Antony Mitchell, and David Manchester each possess the authority to control the unfair and deceptive acts referenced above. Because Amanda J. Zachman, Antony Mitchell, and David Manchester each directly controls and participates in the unfair and deceptive business practices of MV Realty, each is to be held individually liable under FDUTPA.

128. Through the actions and related business practices set forth in this Complaint, Amanda J. Zachman, Antony Mitchell and David Manchester are each engaging in representations, acts, practices, or omissions that are material, and that are likely to mislead consumers, several of whom are senior citizens, acting reasonably under the circumstances.

129. Through the actions and related business practices set forth in this Complaint, Defendants Amanda J. Zachman, Antony Mitchell and David Manchester are each committing acts or practices in trade or commerce that offend established public policy and are unethical, oppressive, unscrupulous, or substantially injurious to consumers.

130. Through the actions and related business practices set forth in this Complaint, Amanda J. Zachman, Antony Mitchell, and David Manchester are each engaging in acts or practices that are likely to cause substantial injury to consumers.

This substantial injury is not reasonably avoidable by the consumers themselves and is not outweighed by countervailing benefits to consumers or competition.

131. Thus, Amanda J. Zachman, Antony Mitchell and David Manchester are each engaged in unfair, deceptive, or unconscionable acts or practices in the conduct of trade or commerce in violation of Section 501.204(1), Florida Statutes.

132. Defendants Amanda J. Zachman, Antony Mitchell, and David Manchester are each, and jointly and severally, subject to equitable disgorgement of ill-gotten gains, civil penalties for willful violations of FDUTPA in the amount of Ten Thousand Dollars (\$10,000) for each violation pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize, a senior citizen pursuant to Section 501.2077, Florida Statutes. Moreover, Defendants Amanda Zachman, Antony Mitchell and David Manchester are each subject to paying Plaintiff's attorney's fees, jointly and severally with MV Realty, as set forth in Section 501.2105, Florida Statutes and/or Section 501.2075, Florida Statutes.

133. At all times material to this action, Amanda J. Zachman, Antony Mitchell, and David Manchester have each willfully engaged in and continued to engage in deceptive and unfair acts and practices in that each of them knew or should have known that the methods, acts, or practices alleged herein were and are unfair, deceptive, unconscionable and prohibited by law.

134. Unless Amanda J. Zachman, Antony Mitchell, and David Manchester are each permanently enjoined from engaging further in the acts and practices complained of herein, their actions will continue to result in irreparable injury to the public for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs, respectfully requests this Court to:

- A. Enter judgment in favor of Plaintiff and against the Defendants, jointly and severally, for the violations as alleged herein;
- B. Temporarily and permanently enjoin Defendants from enforcing existing agreements with consumers, or offering the HBP and HBA using deceptive and unfair sales practices, or containing deceptive, unfair or unconscionable contract terms;
- C. Temporarily and permanently enjoin Defendants from making outbound telephone calls in violation of the TSR, as complained of herein, to consumers in Florida and elsewhere in the United States;
- D. Award such legal, equitable, or other relief as is just and appropriate pursuant to Section 501.207(3), Florida Statutes, including, but not limited to, restitution to consumers and disgorgement of all ill-gotten gains;

- E. Award civil penalties, attorney's fees, and costs against Defendants pursuant to Sections 501.2075 and 501.2077, Florida Statutes, or as otherwise authorized by law; and
- F. Grant such other legal or equitable relief as this Honorable Court deems just and proper, including all equitable relief allowed pursuant to Section 501.207(3), Florida Statutes.

Dated: November 29, 2022

Respectfully Submitted,
ASHLEY MOODY
ATTORNEY GENERAL

/s/ Ellen K. Lyons

Ellen K. Lyons, FBN 57819
Special Counsel, Asst. Attorney General
Email: Ellen.Lyons@myfloridalegal.com

Patrick C. Crotty, FBN 122814
Senior Assistant Attorney General
Email: Patrick.Crotty@myfloridalegal.com

Miles W. Vaughn, FBN 1032235
Assistant Attorney General
Email: Miles.Vaughn@myfloridalegal.com

Office of the Attorney General,
State of Florida
Department of Legal Affairs
Consumer Protection Division
3507 E. Frontage Road, Suite 325
Tampa, Florida 33607
Telephone (813) 287-7950
Facsimile (813) 281-5515