

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOANNE BERGEN, ANDREW C. MATTELIANO,
NANCY A. MATTELIANO, KEVIN KARLSON,
BARBARA KARLSON, ROBERT BRADSHAW,
on Behalf of Themselves and Others Similarly Situated,
Plaintiffs,

vs.

WASHINGTON MUTUAL INCORPORATED,
WASHINGTON MUTUAL BANK, F.A.,
Defendants.

Case No. 02-CV-6571CJS(F)

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND SETTLEMENT HEARING

TO: CERTAIN PERSONS WHO HAD RESIDENTIAL MORTGAGE LOANS THAT WERE OWNED OR SERVICED BY WASHINGTON MUTUAL BANK IN 2001 OR 2002 AND THAT HAD ESCROW ACCOUNTS FOR THE PAYMENT OF NEW YORK REAL ESTATE TAXES

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY!

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1. WHY SHOULD I READ THIS NOTICE?

This Notice has been mailed to you because Washington Mutual's records show that you may fall within the proposed class of consumers, as further discussed in Section 3 of this Notice. An automated search of the Bank's records showed that you had a residential mortgage loan with an escrow account for the payment of real estate taxes for property located in the State of New York that was owned by or serviced by Washington Mutual between June 1, 2001 and May 31, 2002 (the "Class Period") and that the loan may have been acquired by Washington Mutual as part of the acquisitions of the loan portfolios of The PNC Financial Services Group, Inc. and Bank United Corporation in 2001. Therefore, you (and any co-borrowers on your loans) may be eligible to receive money from a proposed settlement (the "Settlement") of a class action lawsuit filed against Washington Mutual. Please share this Notice with any co-borrowers on your loans.

This Notice describes the lawsuit against Washington Mutual, your rights under the proposed Settlement, and the date and time of a public Fairness Hearing that will be held by the United States District Court in Rochester, New York to consider the fairness of the proposed Settlement.

2. WHAT IS THE LAWSUIT ABOUT?

On October 28, 2002, several individual borrowers (the “Plaintiffs”) sued Washington Mutual Bank (the “Bank”) and its parent corporation, Washington Mutual, Inc., on their own behalf and as representatives of a class of borrowers, who had escrowed funds for the payment of their real estate taxes and hazard insurance premiums for residential mortgage loans serviced by Washington Mutual. Their Complaint alleged, among other things, that Washington Mutual violated the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. §2605, and breached its agreements with its borrowers by failing to pay real estate taxes in a timely manner on certain residential mortgage loans with escrow accounts and deducted penalties and/or interest out of the escrow accounts for those late taxes. The Complaint seeks monetary damages and other relief from Washington Mutual. Plaintiffs filed an Amended Complaint on or about September 18, 2003, primarily to add another individual plaintiff. Washington Mutual answered the Complaint and the Amended Complaint denying liability to Plaintiffs and asserting that Plaintiffs could not establish the legal requirements for a class action and stating other affirmative defenses.

During 2003 and 2004, the parties conducted extensive discovery relating to the issue of class certification and engaged in related motion practice. On or about July 29, 2005, Plaintiffs filed an Amended Motion for Class Certification seeking certification of a class of persons with residential mortgage loans owned or serviced by Washington Mutual for whom Washington Mutual held escrow funds for the payment of real estate taxes and whose real estate taxes were not timely paid by Washington Mutual on or before the deadline to avoid a penalty.

On or about August 29, 2005, Defendants filed an Opposition to Plaintiffs’ Amended Motion of Class Certification in which it argued that no class should be certified. The Opposition also described the problems resulting from the conversion of the computer records for the mortgage loan portfolios of both The PNC Financial Services Group, Inc. (“PNC”) and Bank United Corporation (“Bank United”) that were acquired and converted in 2001, the steps taken to address those problems, and the reasons why the Bank believed there was no basis for a class action. In summary, following the acquisitions, PNC’s and Bank United’s computerized loan records for the acquired portfolios were converted from their computer systems to Washington Mutual’s computer system. The conversion produced a number of unanticipated problems that delayed the tax payments on some of the converted loans in the Fall of 2001. As a result, some real estate tax payments in New York were not paid in time to avoid a penalty. During this same time period, however, the Bank’s records show that the taxes continued to be paid on a timely basis for the loans not acquired from PNC or Bank United that the Bank was servicing. Therefore, for the purposes of this Settlement, the Settlement Class is limited to those borrowers whose computer records were on that segment of the Bank’s computer system into which the PNC and Bank United records were converted.

In response to the conversion problems and before this lawsuit was filed, Washington Mutual immediately and voluntarily took steps to make sure that all borrowers’ taxes were paid without any additional cost to the borrower, to correct the converted computer records, and to make sure that similar problems did not occur in future conversions. The Bank paid unpaid taxes as soon as possible and paid any penalties or interest charges out of corporate funds (either directly or by reimbursing the escrow account). By the end of 2001, Washington Mutual corrected most late tax payments in New York and was paying New York taxes on a timely basis for all its loans. Washington Mutual also instituted new policies and procedures to prevent any recurrence of the conversion problems, including developing a new conversion and audit team, developing new protocols for future conversions and database management, and restructuring its tax payment organization. In total, more than \$15 million was paid to deal with the conversion problems.

Plaintiffs and Washington Mutual have agreed to settle this Action on certain terms that are summarized in this Notice. On February 2, 2006, Plaintiffs and Washington Mutual submitted to the Court a Stipulation of Settlement outlining the terms of a proposed settlement. The complete details of the proposed settlement of this Action are contained in a Stipulation of Settlement on file with the Court. The proposed Settlement of this Action must be finally approved by the Court.

The Court has preliminarily approved the proposed Settlement as fair, reasonable and adequate. At the Fairness Hearing on **July 13, 2006**, the Court will consider whether the proposed Settlement should be finally approved.

3. WHO IS COVERED BY THE PROPOSED SETTLEMENT?

The Class includes all persons whose residential mortgage loan(s) was owned by or serviced by Washington Mutual and for which Washington Mutual managed an escrow account for the payment of real estate taxes during the Class Period that meet the following criteria: (a) the loan was for property located in the State of New York; (b) the computer records for the loan were maintained on the part of the Bank’s computer system that contains the

records converted from the PNC or Bank United loan portfolios acquired by Washington Mutual in 2001; and (c) the real estate taxes were not paid by Washington Mutual on or before the deadline to avoid a penalty during the Class Period, which is June 1, 2001 to May 31, 2002. Certain borrowers, such as those whose loans were more than thirty days past due at the time the tax payments were due, are excluded from the Class. The actual class definition may be found in the Stipulation of Settlement.

4. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

The following is only a summary of the terms and conditions of the Settlement. For more information, you may obtain a copy of the Stipulation of Settlement by writing to the Claims Administration Center, whose name and address is listed in Section 6 of this Notice.

The Settlement establishes a Settlement Fund of up to \$500,000 for the benefit of certain members of the Class (the "Settlement Fund"). Complete Claim Solutions, Inc. ("Claims Administrator") will be in charge of administering the Settlement Fund. Under the Stipulation of Settlement, the Settlement Fund will be distributed among eligible members of the Class after paying certain expenses of administering the Settlement. Section 5 of this Notice describes in more detail how the Settlement Fund is to be distributed.

The Stipulation of Settlement will only become effective if approved by the Court. If the Stipulation of Settlement is approved, the Court will enter a judgment that releases and discharges Washington Mutual from certain claims which were or could have been asserted against it. The release is further discussed in Section 12 of this Notice.

5. HOW WILL THE SETTLEMENT FUND BE DISTRIBUTED?

The Settlement Fund will be distributed to members of the Class who make timely, valid claims and do not timely exclude themselves from the Settlement. The formula for distribution will be determined by the Claims Administrator.

The Settlement Fund will be paid out as follows: If you are a member of the Class whose escrow account (1) was charged penalties and/or interest because Washington Mutual failed to pay real estate taxes on or before the deadline to avoid a penalty during the Class Period and (2) was not already reimbursed by Washington Mutual, you may be eligible to receive money from the Settlement Fund in proportion to the amount of any penalties or interest that you improperly paid or had assessed to your escrow account.

The amount of money you receive from the Settlement Fund will depend on the amount of the penalties and/or interest that was improperly paid or charged to you and not reimbursed, and on the number of consumers who participate in the Settlement Fund. Unless otherwise excluded from the Class pursuant to the terms of the Stipulation of Settlement, members of the Class who file a timely, valid claim will receive at least some distribution from the Settlement Fund. If the total amount improperly paid by or charged to eligible members of the Class does not exceed the amount in the Settlement Fund, each eligible Class Member will receive the amount improperly paid by or charged to his or her escrow account that was not subsequently reimbursed. The total amount improperly paid by or charged to members of the Class who choose to participate in the Settlement Fund, however, may exceed the amount in the Settlement Fund. In that case, members of the Class will be paid on a *pro rata* basis; that is, the money you receive will be equal to only a portion of the penalties and/or interest improperly paid from your escrow account. For example, if the penalties and interest paid or assessed for all consumers who participate in the Settlement Fund totals twice the size of the Settlement Fund, a member of the Class who was improperly charged \$10.00 in penalties would expect to receive a settlement payment of only \$5.00, or 50% of the full amount. (This is only an example; the amount you receive from the Settlement Fund could be greater or smaller).

In order to receive any money from the Settlement Fund, you may not exclude yourself from the Settlement and you will need to submit a Claim Form as enclosed in this mailing. Further details on how to make a claim are in Section 6 of this Notice. Joint borrowers, such as a husband and wife, will both have to sign the Claim Form and will receive only a single settlement payment per loan. Borrowers who had more than one loan with unreimbursed penalties or interest paid from the escrow account will be eligible for a settlement payment for each such loan.

Ultimately, eligible members of the Class who make timely, valid claims will receive their money by check. The check will come from the Settlement Fund and not Washington Mutual directly.

6. WHAT DO I NEED TO DO TO PARTICIPATE IN THE SETTLEMENT?

If you want to apply for a share of the Settlement Fund, you need to complete the Claim Form attached to this Notice, including providing the documentation establishing your eligibility as required by the Claim Form, and mail

it to the Claims Administration Center, Washington Mutual Bank Litigation Settlement, c/o Complete Claim Solutions, Inc., P.O. Box 24701, West Palm Beach, FL 33416. All Claim Forms must be postmarked no later than **October 21, 2006**; if you submit a Claim Form that is postmarked after **October 21, 2006**, it will be denied but you will still be bound by the Settlement, if it is approved by the Court.

If you believe you are eligible to participate in the Settlement Fund and you did not receive a Claim Form and wish to make a claim, contact the Claims Administration Center by writing to them at Washington Mutual Bank Litigation Settlement, c/o Complete Claim Solutions, Inc., P.O. Box 24701, West Palm Beach, FL 33416, and they will provide you a Claim Form to submit.

If you change your address, please notify the Claims Administration Center by writing to them at Washington Mutual Bank Litigation Settlement, c/o Complete Claim Solutions, Inc., P.O. Box 24701, West Palm Beach, FL 33416.

NOTE: YOUR OBLIGATION TO MAKE PAYMENTS ON YOUR CURRENT LOAN IS NOT AFFECTED BY THIS SETTLEMENT.

7. CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

Yes. If you exclude yourself from the Class, you will not receive any payment from the Settlement Fund and you will not be bound by the Final Approval Order and Judgment which may be entered in this case. You will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Washington Mutual at your own risk and expense.

To exclude yourself from the Class, you must send a Request for Exclusion by first-class mail, postage prepaid, to the Claims Administrator at Washington Mutual Bank Litigation Settlement, c/o Complete Claim Solutions, Inc., P.O. Box 24701, West Palm Beach, FL 33416. Your Request for Exclusion must be in writing and postmarked no later than **June 9, 2006**. The Request for Exclusion must include: (a) your full name, current address, current telephone number and the last four digits of your social security number; (b) your Washington Mutual loan number(s); (c) a statement that you and all other borrowers named on your promissory note are seeking exclusion; and (d) your signature and the signature of all other borrowers named on the promissory note. If you are acting on behalf of another person or entity, your Request for Exclusion also needs to include documentation (such as a power of attorney) sufficient to show your authority to act on behalf of that person or entity. If the Request for Exclusion is not timely submitted, you will be included in the Class and you will be eligible to receive settlement benefits. You also will be legally bound by the proposed Settlement (if it is approved), including the provisions releasing Washington Mutual and certain parties, as more fully described in the Stipulation of Settlement.

8. WHY, WHEN AND WHERE WILL THE FAIRNESS HEARING BE HELD?

A hearing on whether to grant final approval of the Settlement will be held before the Honorable Charles J. Siragusa of the United States District Court for the Western District of New York, on **July 13, 2006 at 3:00 P.M.** at 1360 United States Courthouse, 100 State Street, Rochester, NY 14614 (the "Fairness Hearing"). There is no need for you to attend the Fairness Hearing if you simply wish to benefit from the proposed Settlement. The purpose of the Fairness Hearing shall be to determine, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable and adequate, (b) whether the lawsuit should be certified as a class action for purposes of settlement only and the individual representative Plaintiffs in the lawsuit are adequate representatives of the Class, (c) whether Class Counsel are entitled to attorneys' fees and, if so, how much, and (d) whether the Final Approval Order and Judgment should be entered dismissing the lawsuit with prejudice and on the merits against the Plaintiffs and all members of the Class (except for those persons who timely and properly request to be excluded from the Settlement).

The Court has the power to adjourn or reschedule the Fairness Hearing from time to time without further notice of any kind.

At the Fairness Hearing, the Court will consider the statements of the parties and any objections that have been made. Any member of the Class who has not filed a timely written Request for Exclusion has the right to object to the proposed Settlement. If you want to object, you must send a written objection to Class Counsel and to Defendants' Counsel (at the addresses listed below) not later than **June 9, 2006**. The objection must contain your full name, current address and telephone number; a statement that you object; a specific statement explaining why you object to the proposed Settlement; and copies of all documents you wish the Court to consider.

Any member of the Class or attorney representing a member of the Class intending to appear at the Fairness

Hearing must (i) file a Notice of Appearance with the Clerk of the Court no later than **June 9, 2006**, and (ii) serve same on both Class Counsel and Defendants' Counsel (at the addresses listed below). Any subjects to be raised at the Fairness Hearing must be contained in a written objection that also is filed with the Court and served on both Class Counsel and Defendants' Counsel.

The pertinent addresses for those lawyers who need to receive copies from you of anything you are directed to send to Class Counsel and/or Defendants' Counsel or that you file with the Court are as follows:

Class Counsel:

Michael R. Law, Esq.
Edmund C. Baird, Esq.
PHILLIPS LYTTLE LLP
1400 First Federal Plaza
Rochester, NY 14614

Defendants' Counsel:

Richard J. Burdge, Jr., Esq.
Michael J. McGaughey, Esq.
HOWREY LLP
550 S. Hope Street, Suite 1100
Los Angeles, CA 90071

Any member of the Class who does not comply with these requirements shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the proposed Settlement.

9. WHO REPRESENTS THE PLAINTIFFS?

The Class is represented by Class Counsel.

10. WHAT ARE THE COUNSELS' REASONS FOR SETTLEMENT?

Class Counsel has agreed to the proposed Settlement after considering, among other things, (i) the substantial benefits available to the Class under the terms of the Stipulation of Settlement; (ii) the attendant risks and uncertainty of litigation, especially in complex litigation such as this, as well as the difficulties and delays inherent in such litigation; and (iii) the desirability of consummating the proposed Settlement promptly to provide effective relief to the Class.

The Court has not ruled on the merits of the claims or defenses in this case, and Washington Mutual has denied and continues to deny each and all of the claims and contentions alleged by Plaintiffs. Washington Mutual has denied and continues to deny all charges of wrongdoing or liability against it arising out of or relating to the 2001 acquisition and conversion of residential mortgage loans from The PNC Financial Services Group, Inc. and Bank United Corporation. Nonetheless, Washington Mutual has concluded that further litigation would be protracted and expensive and would not be in the best interest of Washington Mutual, and that it is desirable that this Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation of Settlement.

11. WILL CLASS COUNSEL OR OTHER BORROWERS RECEIVE COMPENSATION?

Class Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in the Action. The Court will decide what amount of attorneys' fees and costs are warranted, but Class Counsel has agreed that the attorneys' fees will be no more than \$500,000, plus reimbursement of certain expenses estimated to be no more than \$50,000. The attorneys' fees and expenses will be paid by Washington Mutual separately and not from the Settlement Fund. The attorneys' fees and expenses will in no way reduce the money available to the Class.

A portion of the Settlement Fund will be used for the administration of the Settlement, including the cost of this Notice, processing Claim Forms and distributing payments to eligible members of the Class, and reasonable incentive awards also will be paid out of the Settlement Fund to the Named Plaintiffs, in an amount not to exceed \$35,000 collectively.

12. WHAT CLAIMS WILL BE RELEASED UNDER THE SETTLEMENT?

If approved by the Court, the Settlement will be legally binding upon all members of the Class who did not timely request exclusion from the Class. The Settlement will release all known and unknown claims for damages and other relief as to any member of the Class for acts in connection with Washington Mutual's servicing of the members' residential mortgage loans as alleged in the Amended Class Action Complaint filed in this Action on or about September 18, 2003, and as set forth in the Stipulation of Settlement. The Settlement will release and discharge Washington Mutual; related persons and entities; the owners of the loans; persons and companies that assisted Washington Mutual or were hired by Washington Mutual in connection with servicing the loans; and certain others. The release will not affect your ability to defend against a pending or future individual foreclosure action,

and, even if you participate in the Settlement, you will retain all rights you have today to defend yourself and your home from an improper foreclosure. The release also will not affect any claims you may have against Washington Mutual relating to tax payments or other escrowed payments that were due outside the Class Period, June 1, 2001 to May 31, 2002, or with respect to other loans you may have with Washington Mutual.

If you or someone acting on your behalf are currently litigating similar claims against Washington Mutual, either individually or as part of a class, you may be barred from pursuing such claims if you do not timely exclude yourself from the Class. You should consult with an attorney concerning your rights.

13. WHAT IF THE SETTLEMENT IS NOT APPROVED BY THE COURT?

If the proposed Settlement is not approved by the Court as being fair, reasonable, and adequate, the Stipulation of Settlement will be null and void and Plaintiffs will proceed with their lawsuit. In that event, your rights will not be affected in any way, and no claim payments will be issued. Washington Mutual and the Plaintiffs could also attempt to enter into another settlement.

14. WHERE DO I GET ADDITIONAL INFORMATION?

This Notice is only a summary of the proposed Settlement and does not describe all of the details of the Stipulation of Settlement. Accordingly, members of the Class are referred to the Stipulation of Settlement and the other documents filed with the Court in this Action, all of which are available for inspection at the Civil Clerk's Office, United States District Court for the Western District of New York, 1360 United States Courthouse, 100 State Street, Rochester, NY 14614. The Stipulation of Settlement and Plaintiffs' Amended Complaint also are available at www.CompleteClaimSolutions.com/WashingtonMutualBankSettlement/.

15. WHAT ARE THE RELEVANT DATES?

If you wish to participate in the proposed Settlement, please fill out and return the enclosed Claim Form as soon as possible. It must be postmarked no later than **October 21, 2006**. If you submit a claim, you will receive further communication (probably within the next eight months) if the proposed Settlement is approved and the Settlement Fund is to be distributed. If you wish to request exclusion from the Class or appear at the Fairness Hearing, these are the relevant dates:

- **Deadline for mailing Request for Exclusion (must be postmarked no later than): *June 9, 2006***
- **Deadline for filing and serving Notice of Appearance and/or objection (must be received by the Court and served by): *June 9, 2006***
- **Date of Fairness Hearing: *July 13, 2006***
- **Deadline for filing a claim (must be postmarked no later than): *October 21, 2006***

PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE OR WASHINGTON MUTUAL FOR INFORMATION. This Notice provides only a summary of matters about this Action. You may seek the advice and guidance of your own private attorney, at your own expense, if you wish. You may also contact Class Counsel at the address listed in Section 8 of this Notice.

Dated: March 10, 2006

BY ORDER OF THE COURT
The Honorable Charles J. Siragusa
United States District Judge
Rochester, New York