

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

The Mortgage Specialists, Inc.

v.

Implode-Explode Heavy Industries, Inc.

Docket No. 08-E-0572

PETITIONER'S REPLY TO RESPONDENT'S OBJECTION TO VERIFIED PETITION FOR TEMPORARY, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF BY REASON OF LACK OF *IN PERSONAM* JURISDICTION

NOW COMES the Petitioner, The Mortgage Specialists, Inc. ("MSI"), by and through its attorneys, Devine, Millimet & Branch, Professional Association, and hereby submits this Reply to Objection to Verified Petition for Temporary, Preliminary and Permanent Injunctive Relief by Reason of Lack of Personal Jurisdiction. In support of its Reply, MSI states as follows:

1. This action arises from Respondent's unauthorized and unlawful posting of Petitioner's confidential financial information, including a confidential loan summary document, on Respondent's website, www.ml-implode.com, and Respondent's posting of false and defamatory statements about MSI, and its Present, on its website. MSI seeks an injunction prohibiting Respondent from posting its confidential records, and the information derived from those records, and from posting the false and defamatory statements previously found on its website. MSI also seeks an order requiring Respondent to produce the source of the confidential documents and the identity of the individual who posted the false and defamatory statements on its website.

2. Respondent has filed an Objection to Verified Petition for Temporary, Preliminary and Permanent Injunctive Relief by Reason of Lack of *In Personam* Jurisdiction

("Respondent's Objection"), arguing, in essence, that the Court lacks personal jurisdiction over Respondent and that the action must be dismissed for lack of personal jurisdiction.

3. Contrary to Respondent's assertions, this Court has personal jurisdiction over Respondent. MSI's claim for injunctive relief arises out of a document and information contained in an article written by Respondent and published on Respondent's website (the "Article"). The Article is about MSI, a New Hampshire corporation that operates primarily in New Hampshire. Indeed, the Article states that MSI is "based in Plaistow, NH," repeatedly refers to New Hampshire, and is based on New Hampshire sources, including unionleader.com and seacoastonline.com. Respondent, therefore, intentionally aimed the Article at a New Hampshire audience and certainly understood that any harm caused by the Article would be felt in New Hampshire. As a result, Respondent is subject to personal jurisdiction in New Hampshire.

4. MSI's claims based on the false and defamatory comments posted on Respondent's website by "Brianbattersby" similarly create personal jurisdiction. New Hampshire has long recognized that defamatory statements by an out-of-state defendant that are published in New Hampshire are sufficient to create personal jurisdiction -- even where the defamatory statements are the defendant's only contacts with New Hampshire. The false and defamatory statements by "Brianbattersby" published on Respondent's website are more than sufficient to subject Respondent to personal jurisdiction in New Hampshire.

5. In further support of this Reply, MSI submits herewith and incorporates herein by reference, Petitioner's Memorandum of Law in Support of Reply to Objection to Verified Petition for Temporary, Preliminary and Permanent Injunctive Relief by Reason of Lack of *In Personam* Jurisdiction.

WHEREFORE, MSI respectfully requests that this Honorable Court:

- A. Deny Respondent's request for dismissal based on lack of personal jurisdiction;
and
- B. Grant MSI such other and further relief as this Court deems just and equitable.

Respectfully submitted,

THE MORTGAGE SPECIALISTS, INC.

By its attorneys,

DEVINE, MILLIMET & BRANCH
PROFESSIONAL ASSOCIATION

Date: December 8, 2008

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CERTIFICATE OF SERVICE

I certify that a copy of the forgoing has this day been forwarded to Jeremy D. Eggleton, Esquire, and William L. Chapman, Esquire, counsel of record for Respondent.

Donald L. Smith
Donald L. Smith, Esquire

THE STATE OF NEW HAMPSHIRE

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**MEMORANDUM OF LAW IN SUPPORT OF REPLY TO OBJECTION TO VERIFIED
PETITION FOR TEMPORARY, PRELIMINARY AND PERMANENT INJUNCTIVE
RELIEF BY REASON OF LACK OF *IN PERSONAM* JURISDICTION**

Petitioner The Mortgage Specialists, Inc. ("MSI") submits the following Memorandum of Law in Support of Reply to Objection to Verified Petition for Temporary, Preliminary and Permanent Injunctive Relief by Reason of Lack of Personal Jurisdiction and respectfully requests that the court find that Respondent is subject to personal jurisdiction.

I. Introduction

MSI filed a Verified Petition for Temporary, Preliminary and Permanent Injunctive Relief ("Verified Petition") against Respondent Implode-Explode Heavy Industries, Inc. ("Respondent") on November 12, 2008. A Temporary Hearing was scheduled for November 24, 2008. Prior to the Temporary Hearing, Respondent filed an Objection to the Verified Petition asserting that the Court lacks personal jurisdiction over Respondent ("Objection"). The Court postponed the Temporary Hearing pending resolution of the personal jurisdiction issue.

Contrary to Respondent's assertions, this Court has personal jurisdiction over Respondent. MSI's claim for injunctive relief arises out of a document and information contained in an article written by Respondent and published on Respondent's website (the "Article"). The Article is about MSI, a New Hampshire corporation that operates primarily in New Hampshire. Indeed, the Article states that MSI is "based in Plaistow, NH," repeatedly

refers to New Hampshire, and is based on New Hampshire sources, including unionleader.com and seacoastonline.com. Respondent, therefore, intentionally aimed the Article at a New Hampshire audience and certainly understood that any harm caused by the Article would be felt in New Hampshire. As a result, Respondent is subject to personal jurisdiction in New Hampshire.

MSI's claims based on the false and defamatory comments posted on Respondent's website by "Brianbattersby" similarly create personal jurisdiction. New Hampshire has long recognized that defamatory statements by an out-of-state defendant that are published in New Hampshire are sufficient to create personal jurisdiction -- even where the defamatory statements are the defendant's only contacts with New Hampshire. The false and defamatory statements by "Brianbattersby" published on Respondent's website are more than sufficient to subject Respondent to personal jurisdiction in New Hampshire.

II. Factual Background

Respondent is a Nevada corporation with a principal place of business in Las Vegas, Nevada. Respondent operates a website, www.ml-implode.com, which ranks various businesses in the mortgage industry, including MSI, on a ranking device that Respondent calls "The Mortgage Lender Implode-O-Meter." Verified Petition at ¶ 5. The website identifies mortgage companies that it claims are "at risk" and places them on one of two lists: the "Imploded Lenders" or the "Ailing/Watch List Lenders." *Id.* at ¶ 11. The website also includes articles written by Respondent about the businesses identified on the lists. *Id.* Each article is reached by clicking on the business's name. *Id.* The website, the lists, and the articles linked to the list may be accessed by anyone with Internet access. According to Respondent's website, as of the end of 2007, the website had a core daily audience of about 100,000 visitors. See Exhibit A.

Respondent's website also includes a feature that allows visitors to post comments about the various lenders identified on the website. Verified Petition at ¶ 15. A user who wants to post a comment must register on the website and create a username. Id. Comments posted on the website may be viewed by anyone who visits the website.

The website includes numerous other examples of interactivity. Users may submit feedback and information to Respondent by clicking on the website's "Email a Tip" link. See Exhibit B. Once registered, in addition to the comments feature noted above, users may send and receive private messages, see Exhibit C, and create and vote in online polls. See Exhibit D. Moreover, the website solicits advertisements and includes an advertisement inquiry form. See Exhibit E. Respondent's website also allows users to search "Non-Imploded" mortgage lenders by State by either clicking on a map of the United States or using a drop-down text box containing the names of all 50 states, including New Hampshire. See Exhibit F. Companies interested in being included on the Non-Imploded lender listings may submit an online application. See Exhibit G. Lastly, the website offers a "premium" information Internet service. See Exhibit H. Users may sign up for this service by completing an online application form and paying a monthly fee of ten dollars to Respondent. See id.

Petitioner is a New Hampshire corporation with a principal place of business in Plaistow, New Hampshire. Verified Petition at ¶ 4. Petitioner is licensed by the New Hampshire Banking Department ("NHBD") and the Massachusetts Division of Banking ("MDB") to provide mortgage brokering and mortgage banking services in New Hampshire and Massachusetts and is subject to the rules and regulations of the NHBD and the MDB. Id. at ¶¶ 1, 4. In 2008, Petitioner submitted numerous documents to the NHBD and the MDB as part of the regulatory examination process in New Hampshire and Massachusetts. Id. at ¶ 8. Among the documents

Petitioner submitted to the NHBD and the MDB was a chart with a breakdown of the number and monetary value of Petitioner's 2007 loan transactions (the "2007 Loan Chart"). Id. at ¶ 9.

The documents that Petitioner submitted to the NHBD and the MDB, including the 2007 Loan Chart, are confidential and privileged documents, and New Hampshire and Massachusetts law specifically provide that these documents shall not be made public. RSA 383:10-b; RSA 397-A:12; M.G.L. c. 255E § 8. Id. at ¶ 10.

MSI is currently listed on Respondent's "Ailing/Watch List Lender." See Exhibit I. MSI's name is linked to the Article written by Respondent. See Exhibit J. The Article specifically notes that the company is "based in Plaistow, NH." Id. In addition, the Article repeatedly refers to New Hampshire and relies upon New Hampshire sources such as unionleader.com and seacoastonline.com within the Article. Id.

Prior to receiving notice of this lawsuit, the Article stated that it was based, at least in part, on an "unverified report" Respondent received concerning MSI's 2007 loan production.¹ See id. The Article included a link to the "unverified report." Id. The "unverified report" previously found on Respondent's website is a scanned image that is in the exact same format and includes virtually identical information to that found in the confidential 2007 Loan Chart that MSI submitted to the NHBD and the MDB. Verified Petition at ¶ 13. In fact, the only difference between the 2007 Loan Chart and the "unverified report" on Respondent's website is that in the "unverified report" the two zeros following the decimal point in the second loan column have been whited out. Id.

MSI did not provide the 2007 Loan Chart, or the information contained therein, to Respondent and, to the best of its knowledge, has only provided this confidential information to

¹ Respondent "temporarily" removed the "unverified report" and the information in the Article derived from the "unverified report" upon receiving notice of this litigation. Respondent, however, has refused to agree to permanently refrain from posting the "unverified report."

the NHBD and the MDB. Id. at ¶ 14. It is unclear, therefore, how Respondent came to possess a copy of the 2007 Loan Chart. Id.

In addition to the Article, Respondent's website also contained comments posted by an individual using the username "Brianbattersby" dated October 4, 2008 and October 7, 2008.² Id. at ¶¶ 16-17. The October 4, 2008 post contained false and defamatory comments about MSI and its President, Michael Gill, including a statement that Mr. Gill "was caught for FRAUD back in 2002 FOR SIGNING BORROWERS NAMES and bought his way out." See Exhibit K. The October 7, 2008 comment reads "Mortgage Specialists Fraud Michael Gill Fraud Mortgage Specialists NH Fraud Michael Gill NH Fraud" and is intended to insure that the comment turns up at or near the top of the list on the prominent Internet search engines. Verified Petition at ¶ 17. Indeed, as of November 12, 2008, Respondent's website was the second hit when the words Michael, Gill and Fraud were entered into a "Google" search. See id.

On November 12, 2008, MSI filed the Verified Petition, seeking an injunction requiring Respondent to disclose the identity of the individual or entity that provided it with the 2007 Loan Chart and the identity of "Brianbattersby." In addition, MSI seeks an injunction prohibiting Respondent from reposting the 2007 Loan Chart and from reposting the false and defamatory comments by "Brianbattersby." MSI only seeks injunctive relief and, at this time, has not asserted damage claims against Respondent for defamation, violation of the banking department statutes, or violation of its right to privacy based on the public disclosure of its private and confidential documents and information.

² Respondent also "temporarily" removed the comments posted by "Brianbattersby" upon receiving notice of this litigation. Respondent, however, has refused to agree to permanently refrain from posting the "Brianbattersby" comments.

III. Argument

A. Standard of Review

In New Hampshire, “[t]he plaintiff bears the burden of demonstrating facts sufficient to establish personal jurisdiction over the defendant.” Phelps v. Kingston, 130 N.H. 166, 170 (1987). This burden lies in offering affirmative proof to substantiate facts that relate to personal jurisdiction. Brother Records v. HarperCollins Publishers, 141 N.H. 322, 324, (1996). “The plaintiff, however, need make only a prima facie showing of jurisdictional facts to defeat defendant’s motion to dismiss.” Metcalf v. Lawson, 148 N.H. 35, 37 (2002).

In determining whether a defendant is subject to personal jurisdiction, New Hampshire courts generally engage in two inquiries. Staffing Network, Inc. v. Pietropaolo, 145 N.H. 456, 457 (2000). “First, the State’s long-arm statute must authorize such jurisdiction. [Second, the requirements of the Federal Due Process Clause must be satisfied.” Id. (internal citations omitted). The New Hampshire Supreme Court has construed the New Hampshire long-arm statute as permitting the exercise of personal jurisdiction to the extent permissible under the Federal Due Process Clause. Metcalf, 148 N.H. at 39; Dagesse v. Plant Hotel N.V., 113 F. Supp. 2d 211, 215 (D.N.H. 2000). Accordingly, the relevant issue for purposes of determining whether personal jurisdiction exists is whether the exercise of jurisdiction is consistent with the Federal Due Process Clause.

The Federal Due Process Clause authorizes a court to exercise personal jurisdiction over a non-resident defendant if the defendant has certain minimum contacts with the forum, “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Alacron v. Swanson, 145 N.H. 625, 628 (2000). Respondent, therefore, is subject to personal jurisdiction if it has sufficient contacts with New Hampshire.

Sufficient minimum contacts give rise to either general or specific jurisdiction. General jurisdiction is based upon "continuous and systematic" activity in the State of New Hampshire. Northern Laminate Sales, Inc. v. Davis, 403 F.3d 14, 24 (1st Cir. 2005). In the absence of "continuous and systematic" contacts with the forum state, Perkins v. Benguet Mining Co., 342 U.S. 437, 438 (1952), specific jurisdiction requires that the controversy arise out of the defendant's contacts with the forum. See Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414-16 (1984). The facts, as set forth herein, conclusively establish that Respondent is subject to both specific and general jurisdiction.

B. Respondent Is Subject To Specific Jurisdiction

Where "specific rather than continuous contacts with the forum are the basis for personal jurisdiction, whether these contacts are sufficient to confer jurisdiction over a foreign defendant depends upon the relationship between the defendant, the forum, and the litigation." Alacron, 145 N.H. at 628. In the context of the Internet, specific jurisdiction is determined based upon whether (1) the contacts relate to the cause of action; (2) the defendant has purposefully availed itself of the protections of New Hampshire law; and (3) it would be fair and reasonable to require the defendant to defend suit in New Hampshire. Metcalf, 148 N.H. at 37-38. All three factors must be satisfied in order for the exercise of jurisdiction to be constitutionally proper and each factor must be evaluated on a case-by-case basis. Id. at 37-38.

1. Relatedness

A court may exercise specific jurisdiction where a plaintiff's cause of action is one that "arises out of or relates to the defendant's forum based contacts." Staffing Network, 145 N.H. at 458; Thomas v. Telegraph Publishing Co., 151 N.H. 435, 438 (2004). MSI seeks an injunction prohibiting Respondent from posting MSI's confidential records and information on its website,

or elsewhere, and directing Respondent to identify the individual and/or entity that provided it with MSI's confidential records and information. MSI also requests that the Court issue an injunction ordering Respondent to disclose the identity of an individual using the username "Brianbattersby" who posted certain false and defamatory comments about MSI and its President, Michael Gill, on Respondent's website and to prohibit Respondent from reposting the "Brianbattersby" comments.

The Article, as written and published by Respondent, is clearly aimed at a New Hampshire audience. In this regard, it is about a New Hampshire corporation that does substantial business in New Hampshire. The Article states that MSI is "based in Plaistow, NH," repeatedly refers to New Hampshire, and relies upon New Hampshire sources such as unionleader.com and seacoastonline.com. Respondent, therefore, clearly knew that MSI was a New Hampshire company and the Article, including the 2007 Loan Chart, was aimed at a New Hampshire audience. The comments posted by "Brianbattersby" were similarly aimed at a New Hampshire audience. Indeed, the October 7, 2008 comment by "Brianbattersby" repeatedly mentions New Hampshire in an transparent attempt to link MSI, and its President, to New Hampshire. MSI's claims, therefore, arise out of and directly relate to Respondent's contacts with New Hampshire. Thomas, 151 N.H. at 438 (holding that defamatory statements by out-of-state defendants published in New Hampshire newspaper created personal jurisdiction); Brother Records, 141 N.H. at 324-26 (holding that defamatory statements in a book sold in New Hampshire created personal jurisdiction).

In its Objection, Respondent fails to recognize the causes of action in this case.³

Respondent is incorrect in its assertion that “[t]he only *tortious* conduct alleged in this case was the conduct of the anonymous poster, Brianbattersby.” See Objection at 8 (emphasis supplied). The stolen and altered 2007 Loan Chart, which has been disseminated on Respondent’s website, contains confidential financial information. That type of financial information is protected by the First Amendment right of privacy. See Whalen v. Roe, 429 U.S. 589, 599 (1977) (the constitutional right to privacy includes the “individual interest in avoiding disclosure of personal matters”). New Hampshire recognizes a tort cause of action for violation of the right to privacy by public disclosure of private facts. See Hamberger v. Eastman, 106 N.H. 107, 110-111 (1964). A claim alleging disclosure involves “the invasion of something secret, secluded or private pertaining to the plaintiff” and also “depends upon publicity.” Id. at 110-11. As explained in the Restatement, “publicity . . . means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.” Restatement (Second) of Torts § 652D cmt. a at 384 (1977). Respondent meets all of the elements of this cognizable tort. Respondent publicized private and confidential information without regard for the harm that would result. Petitioner alleges this tortious conduct in addition to the tortious conduct of “Brianbattersby” in this case, as well as Respondent’s publication of a confidential document in violation of RSA 383:10-b.

As explained, MSI has, at this time, chosen only to seek equitable relief in the form of an injunction, based on Respondent’s violation of New Hampshire common and statutory law. The factual basis for the relief sought and the New Hampshire law cited in support of this relief further establishes that the Court has personal jurisdiction over Respondent. See Sawtelle, 70

³ Respondent suggests MSI has sued it for damages. In fact, MSI only seeks injunctive relief based on the publication of MSI’s confidential document and information, and false and defamatory statements on its website in violation of New Hampshire common and statutory law.

F.3d at 1389 (Court must “consider the contacts between the defendants and the forum state viewed through the prism of the plaintiffs” particular suit).

2. Purposeful Availment

Next, Respondent’s contacts are sufficient to satisfy this multi-part test because its activity outside the State had “reasonably foreseeable consequences within the forum State. . . . [and] it was reasonably foreseeable that the [Respondent] would be sued in New Hampshire.” Tavoularis v. Womer, 123 N.H. 423, 427-28 (1983); Brother Records, 141 N.H. at 325. Respondent “purposefully availed” itself of the protections of New Hampshire law because its contacts with the forum state were more than fortuitous. See Tavoularis, 123 N.H. at 427; see also World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295 (1980). These contacts were “purposefully directed toward the forum State.” See Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102, 112 (1987) (emphasis omitted); see also Burger King v. Rudzewicz, 471 U.S. 462, 472 (1985); Phelps v. Kingston, 130 N.H. 166, 172 (1987). Moreover, the contacts proximately resulted from the actions of the Respondent itself. See Asahi, 480 U.S. at 109. “When a non-resident defendant performs allegedly tortious acts in New Hampshire, little doubt clouds a finding that New Hampshire has jurisdiction.”⁴ Brother Records, 141 N.H. at 325 (internal citations omitted).

Brother Records involved a defamation claim arising out of book published by HarperCollins and written by Brian Wilson of the Beach Boys and Todd Gold: Id. at 323. Another member of the Beach Boys and two California corporations through which the Beach

⁴ Respondent’s reliance on the distinction between the conduct that occurred in The Lyme Timber Co. v. DSF Investors, LCC, 150 N.H. 557 (2004) and the conduct in this case is misplaced. Direct communications between the parties themselves are not necessary to prove purposeful availment. See Brother Records, Inc. v. HarperCollins Publishers, 141 N.H. 322, 325 (1996) (purposefully directing activities at New Hampshire residents sufficient).

Boys conducted business sued, *inter alia*, Wilson, Gold, and the copyright holder of the book, Brains and Genius ("B&G"), in New Hampshire Superior Court alleging defamation and related torts. Id. The defendants moved to dismiss arguing "that New Hampshire has virtually no connection with the parties or the subject matter of the action and that they lacked contacts with New Hampshire sufficient to justify the exercise of jurisdiction over them by the superior court." Id. The trial court denied the motions and the New Hampshire Supreme Court affirmed, holding that where the defendants were authors of a publication, who had control over the project, intended to reach a market that included New Hampshire, and distributed the publication to New Hampshire, they had "purposefully availed" themselves of the benefits and protections of New Hampshire law. Id. at 327.

The court rejected the defendants' arguments "that the plaintiffs failed to demonstrate sufficient contacts between the defendants and New Hampshire because the plaintiffs failed to show that the defendants purposefully directed their activities at New Hampshire." Id. at 325-326. By agreeing to release the book "through normal retail channels in the United States," the court found that the defendants had "purposefully directed their activities at New Hampshire residents." Id. at 326 (internal quotations omitted). Even though "the bulk of the harm allegedly done to the plaintiffs occurred outside New Hampshire," simply including New Hampshire's market within its nationwide distribution was deemed "deliberate[] exploit[ation of] the New Hampshire market." Id. at 327 (internal quotations and citations omitted). Where the defendant has a "direct hand in the writing and publication" of "nationally-distributed" material, the court held it "must reasonably anticipate being haled into court in [an action] where injury to the targeted plaintiff[] can be expected to occur." Id. at 239. (citations omitted).

As Brother Records illustrates, even if a defendant only targets its activity at New Hampshire by virtue of its nationwide distribution, jurisdiction can exist. In this case, Respondent's website focuses on various businesses from different states and even allows users to search "Non-Imploded" mortgage lenders by State by either clicking on a map of the United States or using a drop-down text box containing the names of all 50 states, including New Hampshire. According to Respondent's website, as of the end of 2007, the website had a core daily audience of about 100,000 visitors. As a result of Respondent's nationwide contacts, which included contacts with New Hampshire, it should have anticipated being sued for tortious information published on their website. See Whitney Information Network, Inc. v. Xcentric Ventures, LLC, 347 F. Supp. 2d 1242 (M.D. Fla. 2004) (holding that exercising personal jurisdiction in Florida over the Arizona operators of websites that allowed consumers to post complaints about businesses in any state did not violate due process in the defamation action brought by a Florida business appearing on those sites; the websites focused on various companies from different states, and appeared to allow consumers to target their search to a specific state or subject, solicited funds from consumers, and sold products to assist consumers in prevailing in their disputes).

If anything, the facts of this case weigh more heavily in favor of personal jurisdiction than the facts of Brother Records. Here, unlike in Brother Records, the "bulk of the harm" done to the Petitioner occurred in New Hampshire -- a result that Respondent should have reasonably anticipated. Respondent was reporting about a New Hampshire company doing business in New Hampshire. The Article states that the company is "based in Plaistow, NH." Moreover, the Article repeatedly refers to New Hampshire and relies upon New Hampshire sources such as unionleader.com and seacoastonline.com. Respondent's principal market for the Article was

New Hampshire. The contacts were purposefully and specifically aimed at New Hampshire. Consequently, Respondent undoubtedly has the requisite minimum contacts with New Hampshire and can be said to have "purposefully availed" itself of the laws of the State. See Brother Records, 141 N.H. at 327.

3. Fair Play And Substantial Justice

Finally, the court must determine whether Respondent's contacts, in light of other factors, justify the exercise of personal jurisdiction such that traditional notions of "fair play and substantial justice" are not offended. See Phelps v. Kingston, 130 N.H. 166, 172 (1987). The court may consider

the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.

Id. (quotations omitted). These "gestalt factors," Kopf v. Chloride Power Electronics, Inc., 882 F.Supp. 1183, 1195-96 (D.N.H.1995), "sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required." Phelps, 130 N.H. at 172 (quotations omitted). Contrary to Respondent's assertion that its contacts with New Hampshire were "tenuous" in nature, as already noted Respondent intentionally directed its publications at a New Hampshire residents. New Hampshire has a significant interest in affording New Hampshire plaintiffs a convenient forum in which to seek redress for injuries they suffer here. See Phelps, 130 N.H. at 175.

C. Respondent Is Subject To General Jurisdiction

General jurisdiction exists when there are "substantial" or "continuous and systematic" contacts with the forum state, even if the cause of action is unrelated to those contacts.

Helicopteros Nacionales de Colombia, S.A., 466 U.S. at 415. Some courts have reasoned that the posting of a website advertisement or solicitation, in itself, constitutes “a persistent course of conduct” that is capable of subjecting a party to personal jurisdiction. See, e.g., Telco Communications v. An Apple A Day, et al, 977 F. Supp. 404 (E.D. Va. 1997).

In Gator.com v. L.L. Bean, the Ninth Circuit found that website contacts could suffice to confer general jurisdiction over an entity. 341 F.3d 1072, 1079 (9th Cir. 2003), *vacated as moot after settlement*, 398 F.3d 1125 (9th Cir. 2005). Where a website is “highly interactive and very extensive,” an entity can be said to engage in “continuous and systematic” activity for purposes of general jurisdiction. Id.

Here, Respondent has actively solicited toward and participated in New Hampshire’s markets, thereby qualifying its Internet contacts as “continuous and systematic.” Id. at 1075. As noted previously, Respondent’s website is “highly interactive.” Examples of this interactivity include an “Email a Tip” link, a registration page, private messaging, a feature allowing users to post messages in forums, a polling feature, an advertisement inquiry form, and a “Non-Imploded” listings application form. Respondent offers a “premium” information Internet service that costs ten dollars each month. Additionally, the website specifically targets New Hampshire. Users can hone in on “Non-Imploded” lenders in New Hampshire by either clicking on a map of the United States or using a drop-down text box containing the names of all 50 states. All of these contacts are available continuously, 24 hours a day, on Respondent’s website. Accordingly, based on its persistent course of action in New Hampshire, this Court can exercise general jurisdiction over Respondent.

D. Respondent’s Arguments In Support Of The Lack Of Personal Jurisdiction Are Without Merit

In Metcalf v. Lawson, the only case in which the New Hampshire Supreme Court has thus far addressed the issue of asserting personal jurisdiction over an Internet website, the Court noted that

[i]t can be difficult to apply long-standing jurisdictional principles in cases involving Internet contacts. [T]he internet . . . undoubtedly challenges the territorial-based concepts that courts have traditionally applied to problems of personal jurisdiction[,] . . . it is equally true that traditional constitutional requirements of foreseeability, minimum contacts, purposeful availment, and fundamental fairness must continue to be satisfied before any activity - including internet activity - can support an exercise of personal jurisdiction.

148 N.H. 35, 38 (2002) (internal citations and quotations omitted). In so noting, the court cited Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.Supp. 1119, 1124 (W.D. Pa. 1997) for its proposition "that the constitutionality of a State's exercise of jurisdiction is proportionate to the nature and quality of the commercial activity the defendant conducts over the Internet." Metcalf, 148 N.H. at 38-39. As mentioned throughout this Memorandum, Respondent's website allows browsers, including New Hampshire residents, to engage in various forms of interactivity, see Exhibits B-H, thereby allowing an exchange of information between the browser's computer and Respondent's host computer. See Zippo, 952 F. Supp. at 1124. The constant exchange of information and direct communication that New Hampshire users are able to have with Respondent's host computer via its website is the "epitome of website interactivity." See Blumenthal v. Drudge, 992 F. Supp. 44, 56 (1998). Additionally, it should be noted that ultimately, the Metcalf court stated that "[i]t is the conduct of the defendant, rather than the medium utilized by [it], to which the parameters of specific jurisdiction apply." 148 N.H. at 40 (internal citations omitted).

The conduct in question in this case is distinguishable from the circumstances in both Revell v. Lidov, 317 F.3d 467 (5th Cir. 2002) and Young v. New Haven Advocate, 315 F.3d

256, 258 (4th Cir. 2002), cited by Respondent in its Objection. In Revell, the Fifth Circuit found that the court lacked personal jurisdiction over the author of an Internet bulletin board posting “because the post to the bulletin board was presumably directed at the entire world” and was not “directed specifically at Texas.” 317 F.3d at 475. In analyzing that case, the court principally relied upon Calder v. Jones, 465 U.S. 783 (1984).

Calder v. Jones involved a reporter living in Florida who published an allegedly defamatory article in the National Enquirer, a Florida-based publication with national distribution, about an entertainer living in California. 465 U.S. 783 (1984). The allegedly defamatory article concerned the California activities of a California resident. Id. Importantly, the Supreme Court noted that the article drew from California sources and that the reporter and publishers of the article knew that “the brunt of the harm” would be felt in California. Id. at 788-89. The United States Supreme Court found that “an individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California.” Id. at 790.

An “essential” Calder factor that the Fifth Circuit failed to find in Revell was that the defendant knew the “brunt” of the injury, if any, would be felt in Texas. Id. at 475-76. In Revell, no reference was made to Texas in the article, the article did not rely on any Texas sources, and the defendant did not even know that the plaintiff was a resident of Texas when he posted his article. Id. In marked contrast, as already stated above, here, Respondent clearly knew Petitioner was a New Hampshire resident because the Article about Petitioner states that the company is “based in Plaistow, NH.” Moreover, the Article repeatedly refers to New Hampshire and relies upon New Hampshire sources such as unionleader.com and

seacoastonline.com. Consequently, Respondent's conduct constituted "express aim" at New Hampshire. See id. at 475.

In Young v. New Haven Advocate, the Fourth Circuit found held that a Virginia court could not exercise jurisdiction over Connecticut newspapers because the focus of the articles in question was a Connecticut prisoner transfer policy and its impact on the prisoners and their families in the state of Connecticut. 315 F.3d 256, 63 (4th Cir. 2002). The articles were meant to foster public debate in Connecticut regarding the soundness of the policy. Id. One of the websites characterized itself as a "source of news and entertainment in Connecticut" rather than Virginia. Id. Thus, the Fourth Circuit held there was a lack of personal jurisdiction. Id. ("[T]he fact that the newspapers' websites could be accessed anywhere, including Virginia, does not *by itself* demonstrate that the newspapers were intentionally directing their website content to a Virginia audience. Something more than posting and accessibility is needed to indicate that the newspapers purposefully (albeit electronically) directed their activity in a substantial way to the forum state." (emphasis added)). "[S]omething more than posting and accessibility" is present in this case -- namely, Respondent's "express aim" at New Hampshire. See Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1322 (9th Cir. 1998) (finding personal jurisdiction and holding that intentionally targeting the plaintiff, which maintained its principal place of business in California, was "something more" or purposeful availment).

Respondent incorrectly asserts in its Objection that "this case is not comparable to Brother Records" because in this case "there was no national distribution and sales network that sent the materials published by Implode Explode purposefully into the stores and shops of the State of New Hampshire." Respondent may not escape New Hampshire's exercise of personal jurisdiction simply because it chose to distribute its materials via the Internet rather than "into

the stores and shops of the State of New Hampshire.” The New Hampshire Supreme Court has already noted that Internet contacts may form the basis of exercising personal jurisdiction. See Metcalf v. Lawson, 148 N.H. 35, 38 (2002).

In Brother Records, the defendants released a book “through normal retail channels in the United States.” 141 N.H. at 327. The fact that Respondent’s information appeared online, as opposed to in print, will not substantially alter the Court’s analysis. See Planet Beach Franchising Corp. v. C3Ubit, Inc., 2002 WL 1870007 at *12 (E.D. La. 2002) (“There is good reason to maintain the same jurisdictional standard for Internet communications as that which applies to print communications: to hold otherwise would give publishers an incentive to disseminate [tortious] speech via the medium with the more restrictive standard.”). Indeed, many courts have applied the test from Calder to Internet communications. See, e.g., Panavision International, L.P. v. Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998); Verizon Online Services, Inc. v. Ralsky, 203 F. Supp. 2d 601, 617 (E.D.Va. 2002); Blakey v. Continental Airlines, Inc., 164 N.J. 38, 751 A.2d 538, 555 (N.J. 2000). Here, Respondent knew Petitioner to be a New Hampshire business, and knew or should have known that “the brunt of the harm” caused by its publication of confidential materials and defamatory statements would be suffered in New Hampshire.

V. Conclusion

The conduct of Respondent rather than the fact that the activity occurred on the Internet, should control. Because Respondent engaged in sufficient activity directed at New Hampshire, it is fair and reasonable for purposes of due process for this Court to exercise personal jurisdiction over Respondent.

Respectfully submitted,

THE MORTGAGE SPECIALISTS, INC.

By its attorneys,

DEVINE, MILLIMET & BRANCH
PROFESSIONAL ASSOCIATION

Date: December 8, 2008

By: Donald L. Smith

Alexander J. Walker (No. 9404)

Donald L. Smith (No. 13525)

111 Amherst Road

Manchester, NH 03101

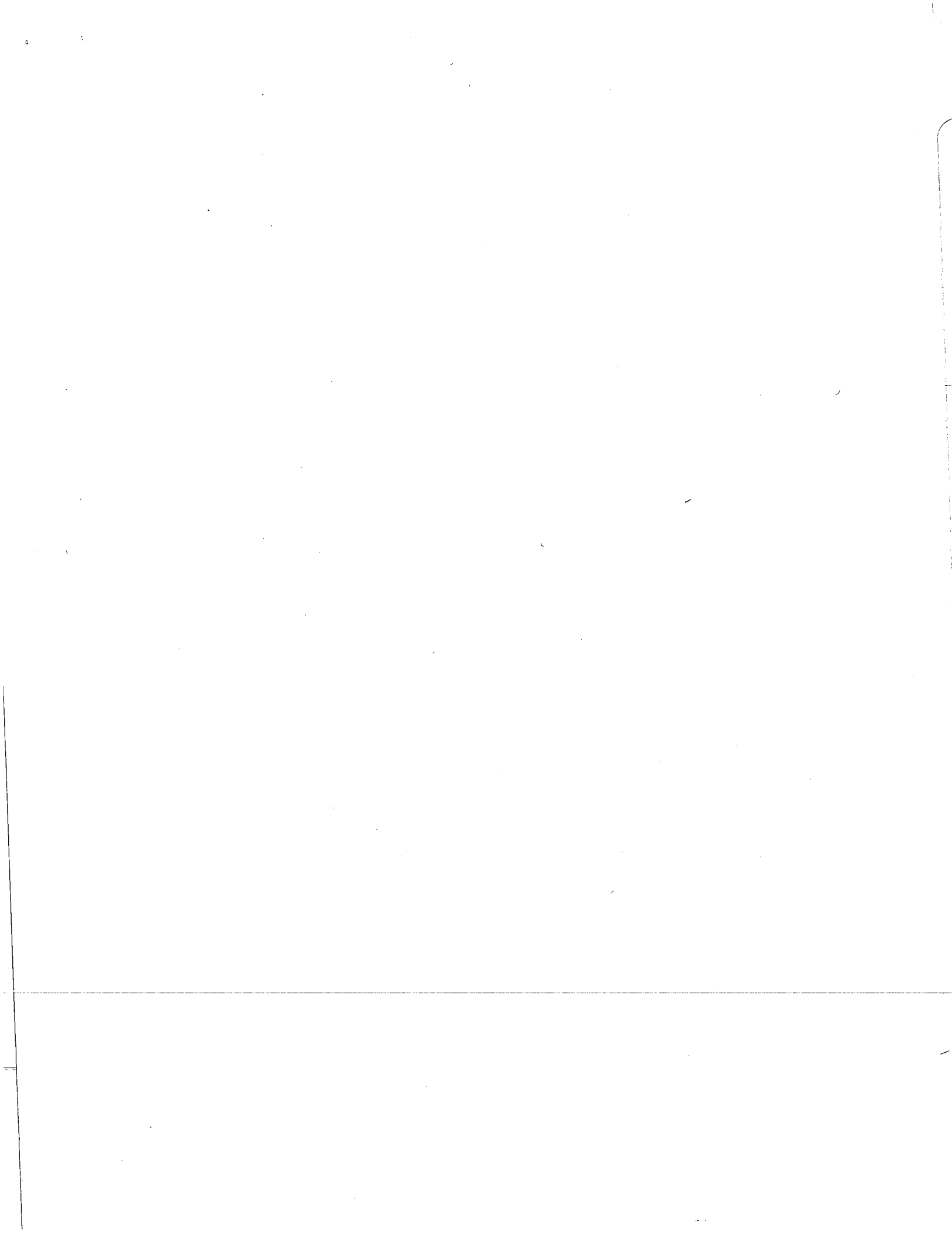
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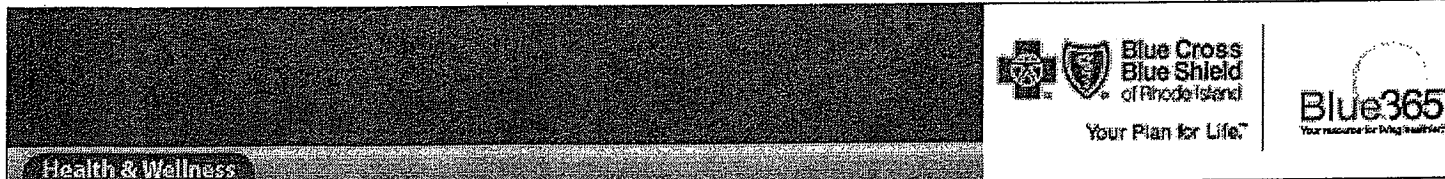
CERTIFICATE OF SERVICE

I certify that a copy of the forgoing has this day been forwarded to Jeremy D. Eggleton, Esquire, and William L. Chapman, Esquire, counsel of record for Respondent.

Donald L. Smith

Donald L. Smith, Esquire





THE MORTGAGE LENDER Implode-O-Meter™

Tracking the housing finance breakdown: a saga of corruption, hypocrisy, and government complicity.

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About the Mortgage Lender Implode-O-Meter

What We Do

The mission of ml-implode.com is *transparency, education, and accountability*. We focus on the housing finance sector, which we believe has become the focal point of extreme distortions in the US economy. These distortions have now obviously (within a year of our founding) transitioned to outright collapse. To use a metaphor that deposed Citigroup CEO Chuck Prince might appreciate, "the music has stopped".

We seek the root causes of this distortion and resulting turmoil (who and what policies were responsible); we seek to document the ripple effects and study broader economic and societal implications; and we seek to determine how to heal the housing sector, the economy, and the country. We also seek to provide a historical record, preserving indefinitely our lists, discussions, and linked articles, so that it might be impossible and inexcusable to forget the debacle that is now unfolding.

This site is a forum. We may have our own ideas regarding the above (though our own team does not even agree on everything), but we are here to learn as much as to teach, and wish to foster discussion regarding the issues. All of the primary information on the site is *received*, either from the mainstream media, independent media and bloggers, or (most importantly) people working in the housing finance sector. We add a bit of editorial work to keep the site coherent, but it is a relatively small amount. In other words, we don't make this stuff up. The site belongs to the community of all those who have a burning interest in this area of concern... a group which is beginning to look more and more like "the general public."

Who We Are

We are a small team of dedicated individuals who care about the housing industry and the economy:

Aaron Krowne : Founder, Publisher, general management, editor-in-chief (owner)
Justin Owings : General management, financials, forum moderation, graphic design, marketing (owner)
Randall Marquis : Senior Editor, Research lead, writing, industry liaison, business development
Bonnie Rabichow : Treasurer, books & office management
Robin Medecke : Research, writing, forum admin/moderation

ML-Implode is owned and operated by a small "virtual corporation" called Implode-Explode Heavy Industries, Inc. ("IEHI"). IEHI is a company we have set up to run the site and similar sites (see "History" below).

Our Standards

In general we editorially include any factual report or editorial which we feel is credible and/or insightful, with little regard to name recognition or organizational reputation. **We care primarily about content, not reputations or resources.** Any repeat coverage from a particular writer or outlet is more a testament to our appreciation of the content and other incidental factors of our screening than any sort of deference to reputation. As an independent source, we have this luxury.

For company coverage (in "implosion" or "ailing/watch" lists), we like at least 2 out of three of the following to be met:

- at least \$20M/month in origination volume (any stage of origination)
- at least 3 states of operation
- at least 50 employees

These are not hard-and-fast standards; we've been known to lower the bar a bit to include "smaller" failing divisions at major companies. Ultimately what matters is whether the implosion is particularly "noteworthy" for some reason. If it appears the public is "interested" in coverage of a particular company, we will likely cover it.

The "ailing/watch" list tends to stay smaller for a number of reasons. One is that the prevailing opinion on a company (or division) tends to be that it is going to survive... until the day it closes down. This is just natural wishful thinking that is exhibited at all levels. Another reason is that *most* companies in the industry are in general distress right now, so we must wait until we receive *specific* information that sets a company apart (on a potential path towards implosion) before listing it. Finally, still-operating companies and units will closely guard any such information, making it difficult to get much more than rumors and hearsay. Plus, even more compelling information might be difficult to post without being sued by a still-operating company (even if not much of it is left).

All leads on companies must be supported by multiple independent sources. We prefer in the following order:

1. communication from the company itself

2. mainstream or industry press coverage (or blog coverage with clear supporting evidence)
3. multiple independent tips from individuals

This is not to say that we don't want reports from individuals; however these are more likely to go into our files and inform our research, as opposed to resulting in an immediate publication per se.

Complaints

If you have a complaint about any information carried on the site, we recommend as a first course of action posting to the item or our forum with your concerns, in a level-headed manner. This is the appropriate course of action for any material we have included from elsewhere, whether there is a factual error or argument that you find contentious. If it is wrong, say why it is wrong. As a forum, we do not have the authority to say that someone else's contribution is wrong.

If you have an objection to a lending operation we are (or are not) including in one of our lists, please email us with evidence supporting your case (see "Standards"). We are always looking to improve our coverage and our categorization of covered companies. Keep in mind it is impossible to have 100% perfect coverage at any point in time, and your feedback helps us achieve greater accuracy over time.

If you are principal management at one of these companies, please email us at the above address with an official statement of your company's condition that addresses the alleged inaccuracies. We almost always defer to an official statement in the absence of reliable public documentation. **We cannot do anything without further (publishable) information;** and a legal threat or naked assertion does not constitute sufficient information we can use.

History

This site was founded on January 1, 2007, by Aaron Krowne, a blogger with a computer science and math background and an avid interest in economics and finance. By early to mid 2006, Krowne had come to the conclusion that housing was the "linchpin" of the US economy, but disconcertingly, it appeared to be in a historically unprecedented bubble. When a number of subprime lending companies (including Ownit!) began imploding in fall of 2006, Krowne deemed it the start of a larger wave and deflation of the housing bubble, with likely wider economic impact (including recession).

When the media failed to catch on to the story within a few months, Krowne resolved to do it himself the "blogger" way, and started ml-implode.com as a single web page with six companies listed.

Soon there were dozens of companies, and the site received increasing links from bloggers and newsletter writers. In March, 2006, the site was covered on-air on Bloomberg and CNBC, and traffic exploded to almost 100,000 visitors a day.

Soon after this, the site became a de facto mortgage industry site, as a core following of industry professionals developed to check out the latest of the turmoil on the daily basis. This audience began regularly sending tips and leads, which allowed ml-implode to begin rivalling mainstream and even mortgage industry media in the timeliness and breadth of its coverage.

As 2007 proceeded, the crisis deepened, spreading throughout the US and global banking system. Homeowner distress also continued, with delinquencies and foreclosure skyrocketing. The housing market was clearly in a freefall. By late year, recession was an openly-discussed possibility.

The skeptical, if bearish case ml-implode had been making with its coverage, as well as the implicit warnings therein, had been vindicated. This continues to be the case to the present day.

As 2007 closes, ml-implode now has a core daily audience of about 100,000 visitors, as it continues its ongoing up-to-the-minute coverage and track record of making the right case and having a nose for *tomorrow's* economic story.

In late 2007, ml-implode passed from ownership by Krowne Concepts, Inc, to Implode-Explode Heavy Industries (IEHI). The new company (with principals Aaron Krowne and Justin Owings) focuses on not only housing finance but other issues and sectors throughout the political economy. Some other IEHI sites are:

The Hedge Fund Implode-o-Meter
Bank Implode!
Bernanke-Panky
The Home Builder Implode-o-Meter
The Federal Reserve Gallery Of Shame
Hugo Chavez-Watch

With many more to come. The suite of IEHI sites allows the inquisitive and concerned to focus on trouble areas and areas of rapid change in the US economy and beyond.

Supporting

If you like and support what we're doing with this page, a donation would be much appreciated (Credit or transfer via PayPal). No amount is too small or too large. Donations will help support this site and expand its coverage, quality, and information service offerings.

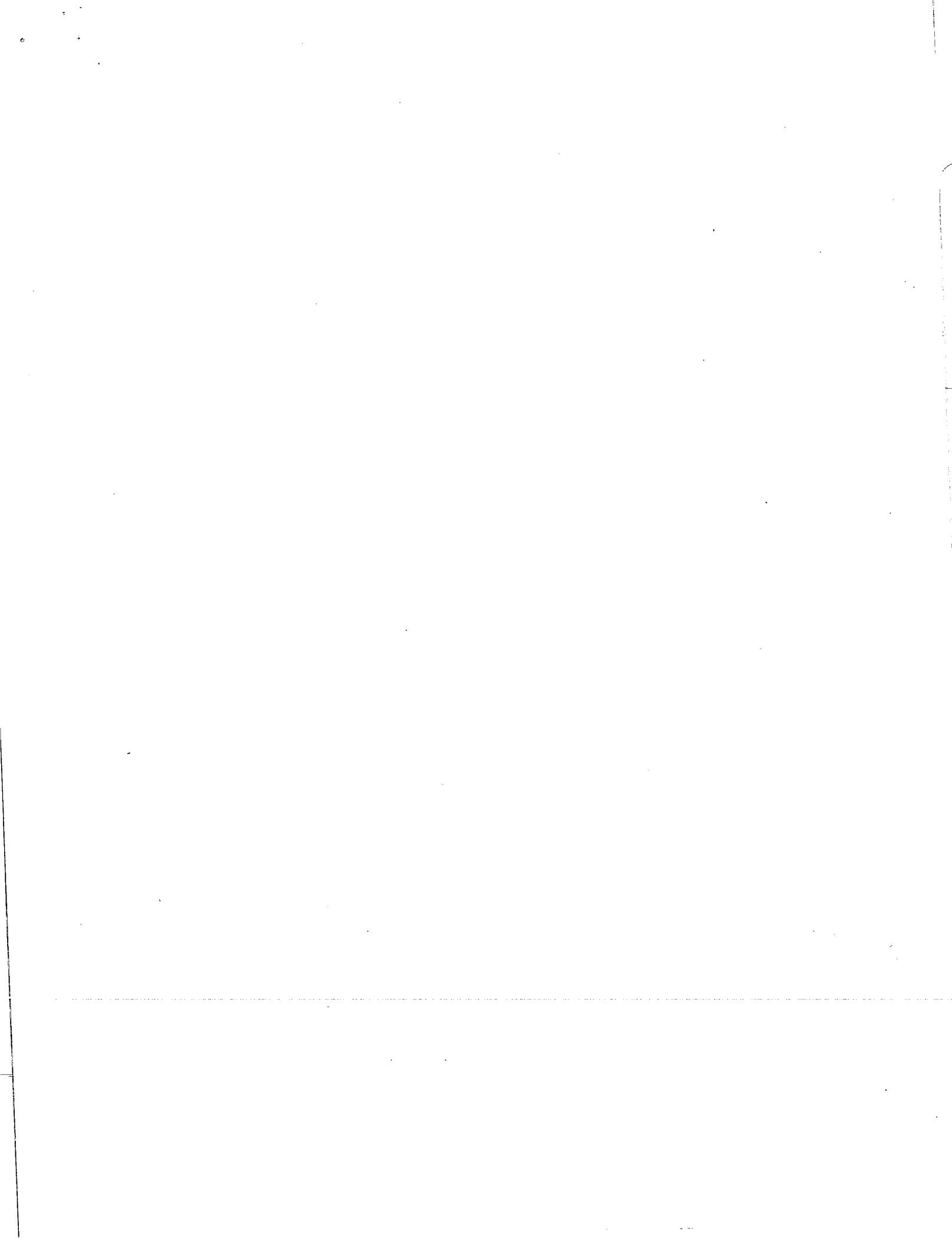
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5348 Vegas Drive
Las Vegas NV 89108

(link to this site as: ml-implode.com, lenderimplode.com, or mortgageimplode.com)

Legal disclosure: While we do strive to confirm all information presented here and qualify all doubtful items, the information on this site is neither definitive nor should it be construed as professional advice. It is a community site that depends on community feedback. Factual or alleged factual information presented here does not originate from ml-implode, and all commentary is purely the opinion of the author(s) of this site, unless otherwise quoted from other sources. You should consult a finance professional before making any decisions based on information found at this site.

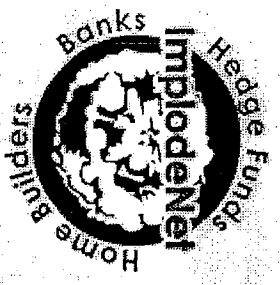
Financial Disclosure (good faith): The contributors to this site may, from time to time, hold short (or long) positions in mentioned and related companies.





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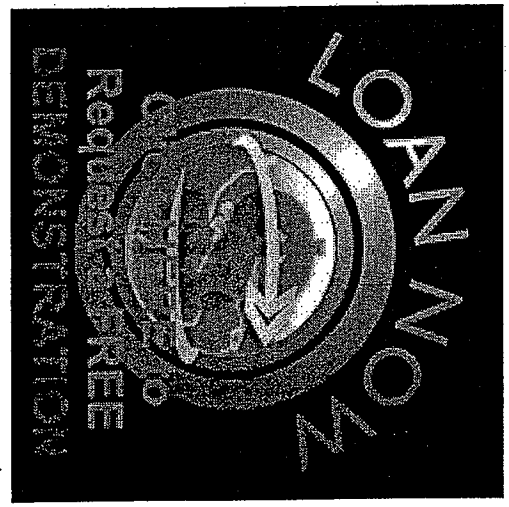
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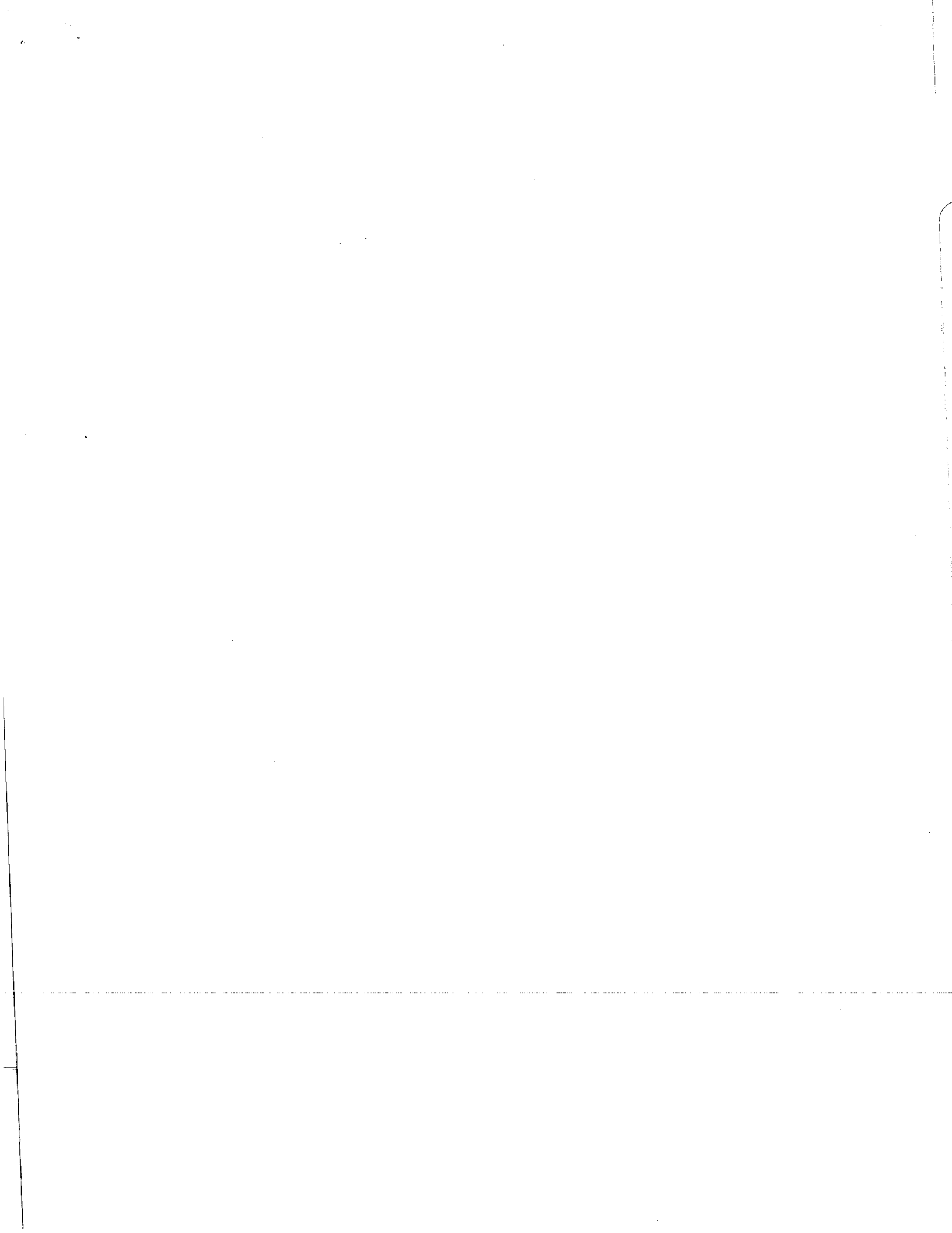
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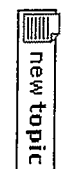
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Easy -- click the relevant button on either the forum or topic screens. You may need to register before you can post a message. The facilities available to you are listed at the bottom of the forum and topic screens (the *You can post new topics*, *You can vote in polls*, etc. list)

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How do I edit or delete a post?

Unless you are the board admin or forum moderator you can only edit or delete your own posts. You can edit a post (sometimes for only a limited time after it was made) by clicking the *edit* button for the relevant post. If someone has already replied to the post, you will find a small piece of text output below the post when you return to the topic that lists the number of times you edited it. This will only appear if no one has replied; it also will not appear if moderators or administrators edit the post (they should leave a message saying what they altered and why). Please note that normal users cannot delete a post once someone has replied.

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How do I add a signature to my post?

To add a signature to a post you must first create one; this is done via your profile. Once created you can check the *Add Signature* box on the posting form to add your signature. You can also add a signature by default to all your posts by checking the appropriate radio box in your profile. You can still prevent a signature being added to individual posts by un-checking the add signature box on the posting form.

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How do I create a poll?

Creating a poll is easy -- when you post a new topic (or edit the first post of a topic, if you have permission) you should see a *Add Poll* form below the main posting box. If you cannot see this then you probably do not have rights to create polls. You should enter a title for the poll and then at least two options -- to set an option type in the poll question and click the *Add option* button. You can also set a time limit for the poll, 0 being an infinite amount. There will be a limit to the number of options you can list, which is set by the board administrator

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How do I edit or delete a poll?

As with posts, polls can only be edited by the original poster, a moderator, or board administrator. To edit a poll, click the first post in the topic, which always has the poll associated with it. If no one has cast a vote then users can delete the poll or edit any poll option. However, if people have already placed votes only moderators or administrators can edit or delete it; this is to prevent people rigging polls by changing options mid-way through a poll

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Why can't I access a forum?

Some forums may be limited to certain users or groups. To view, read, post, etc. you may need special authorization which only the forum moderator and board administrator can grant, so you should contact them.

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Why can't I vote in polls?

Only registered users can vote in polls so as to prevent spoofing of results. If you have registered and still cannot vote then you probably do not have appropriate access rights.


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"Jim Cramer made compelling cases for the superiority of... and the indispensibility of the websites Implode-O-Meter..."

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We have a variety of advertising options:

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- Forum advertising - over 1 million page views per month
- ML-Implode sponsor links and banners
- The "Non-Imploded List" - our 'intel' and active lenders
- The Niche Report Magazine - (print)
- Mr. Mortgage - The video voice of the Implode-O-Meter

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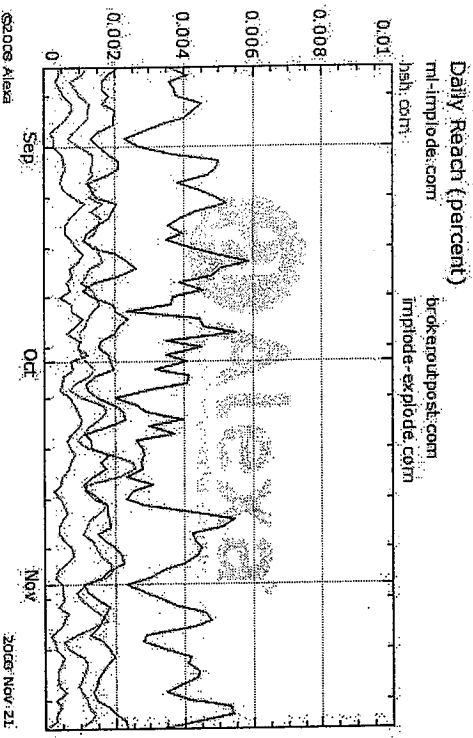
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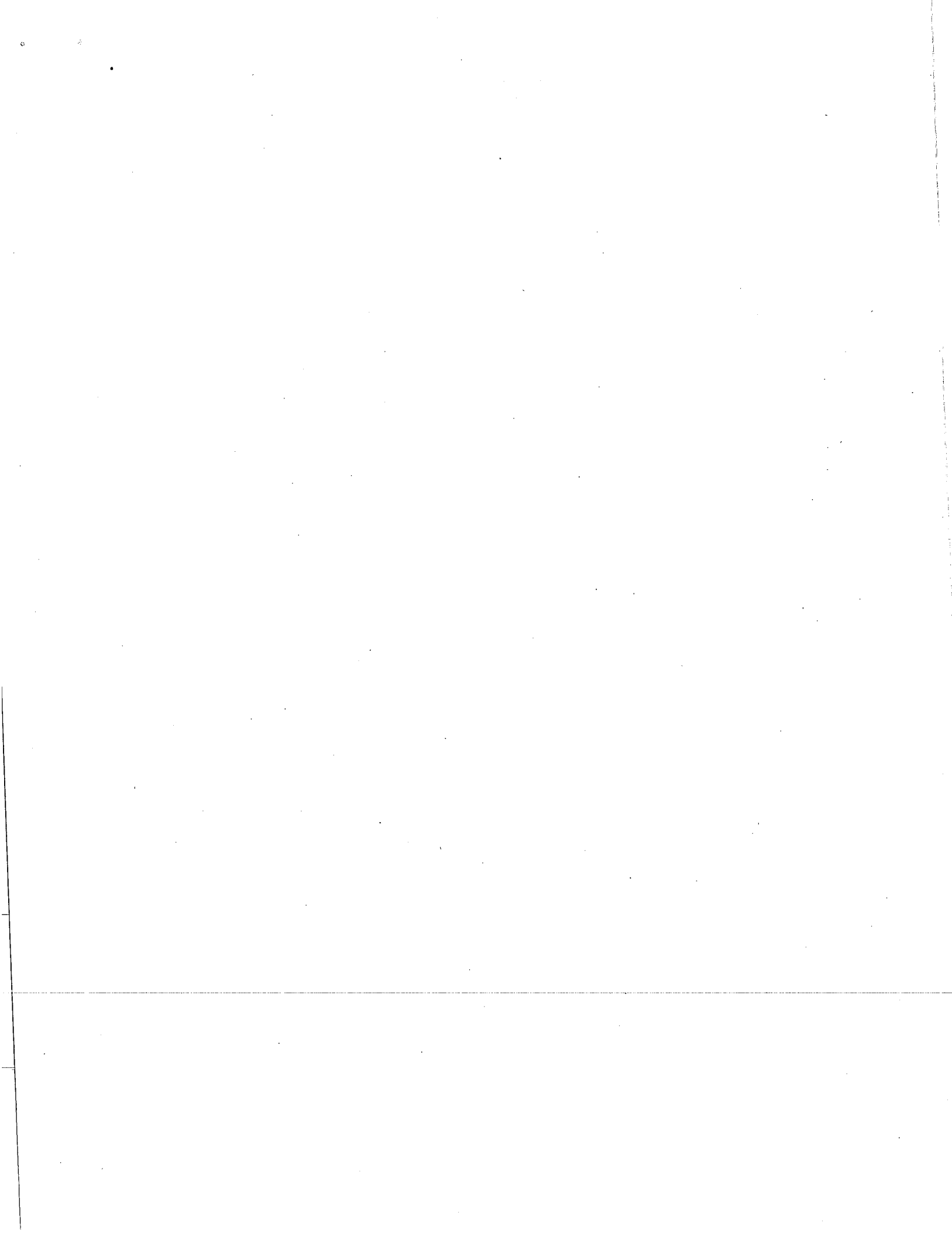
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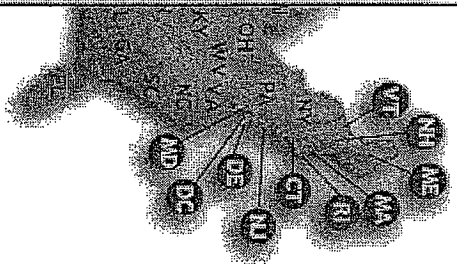
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- WASHINGTON STATE
- WEST VIRGINIA
- WISCONSIN
- WYOMING
- NEW HAMPSHIRE

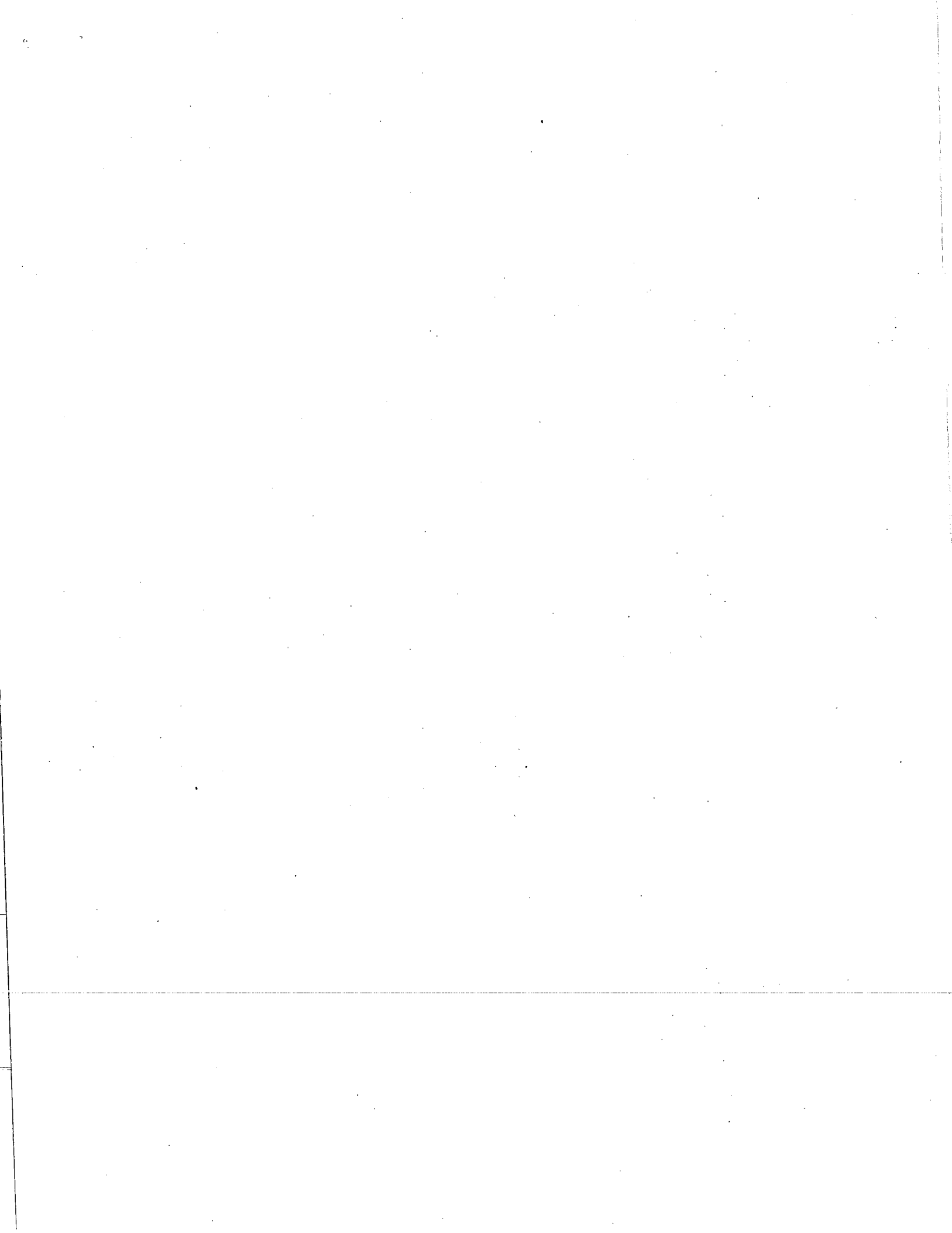
in your State
next box below



in cooperation with
TheNicheReport
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THE MORTGAGE LENDER **Implode-O-Meter**

Non-Imploded

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Blue365
The Standard for the Industry

Tracking the housing finance breakdown: a saga of corruption, hypocrisy, and government complicity.

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Information Required to be Considered for Participation on the Non-Imploded (tm) Lenders List

To be included in the State-level Non-Imploded Lender listings, please contact theNicheReport directly at 703-989-2293 or email by clicking here.

For consideration for **TOP** and **FEATURED** Non-Imploded listings, please fill in the following form **COMPLETELY**. We will follow up with a phone interview. If you pass our review (receive a grade of 'B' or above), you will be placed on the Non-Imploded(tm) list. Your company will be placed under the requested **Top** or **Featured** Lender Section in a position at our discretion. You may use your inclusion on the Non-Imploded list in any sales or marketing materials as long as your company remains on this list. However, you may not claim that your presence on this list is an endorsement by the Mortgage Lender Implode-O-Meter of your company.

Inclusion on the Non-Imploded(tm) list is definitely highly visible and sought after in the Mortgage and Financial Industries. The 'Implode-O-Meter' averages over 100,000 visitors during regular business days and has been included in dozens of articles and televised segments on CNBC, the New York Times, BusinessWeek, the Wall Street Journal, and most Mortgage Industry publications and web sites. [Click here](#) to see a list of current headlines and articles.

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nationwide
www.BeantownCommercial.com

Front Page Descriptions: (* denotes required field)

Company Name: *

Web Site Address: *

Description:

This will be your initial text for
display and State-level
listings. (no HTML)

http://

You have 235 characters remaining.

Secondary Page Descriptions

City: *

State and Zip: *

Contact Name: *

Contact Phone Number: *

Contact Email Address: *

Requested Level:

- Tier 1 (Top Level - Includes Tiers 2 & 3)
- Tier 2 (Featured Level - Includes Tier 3)
- Tier 3 (State Level Listings)

Promo code?

Insert current Niche Report Ad
code

Offshore:

Have you considered, or do
you now use any Offshore
services?

Magazine Advertising:

Which Industry magazines do
you currently advertise with?

**The following must be filled out for Tier 1 and 2 applications
only.**

Services: (Otherwise please scroll down and click the Submit button.)

Describe what service levels your company provides.

Management:
Quick name and positions of Senior Management

Technology Information:
What makes your technology stand out? How sophisticated is your back-end system? To what depth?

Product Information:
Describe what loan products your company provides.

Inventions:
Any proprietary systems that sets your company above the norm?

Geography:
What States are you licensed to lend within?

Innovation:
What makes your company special?

The above request will be sent to **Waquis Global** and **The Niche Report**, and you will be contacted shortly.

A substantial discount is given to bundle your Non-Imploded listing (Tiers 1-3) with any size print ad campaign within the Mortgage Industry magazine **The Niche Report**.

Click here for descriptions of Tiers 1 to 3 and their rates (.pdf file).

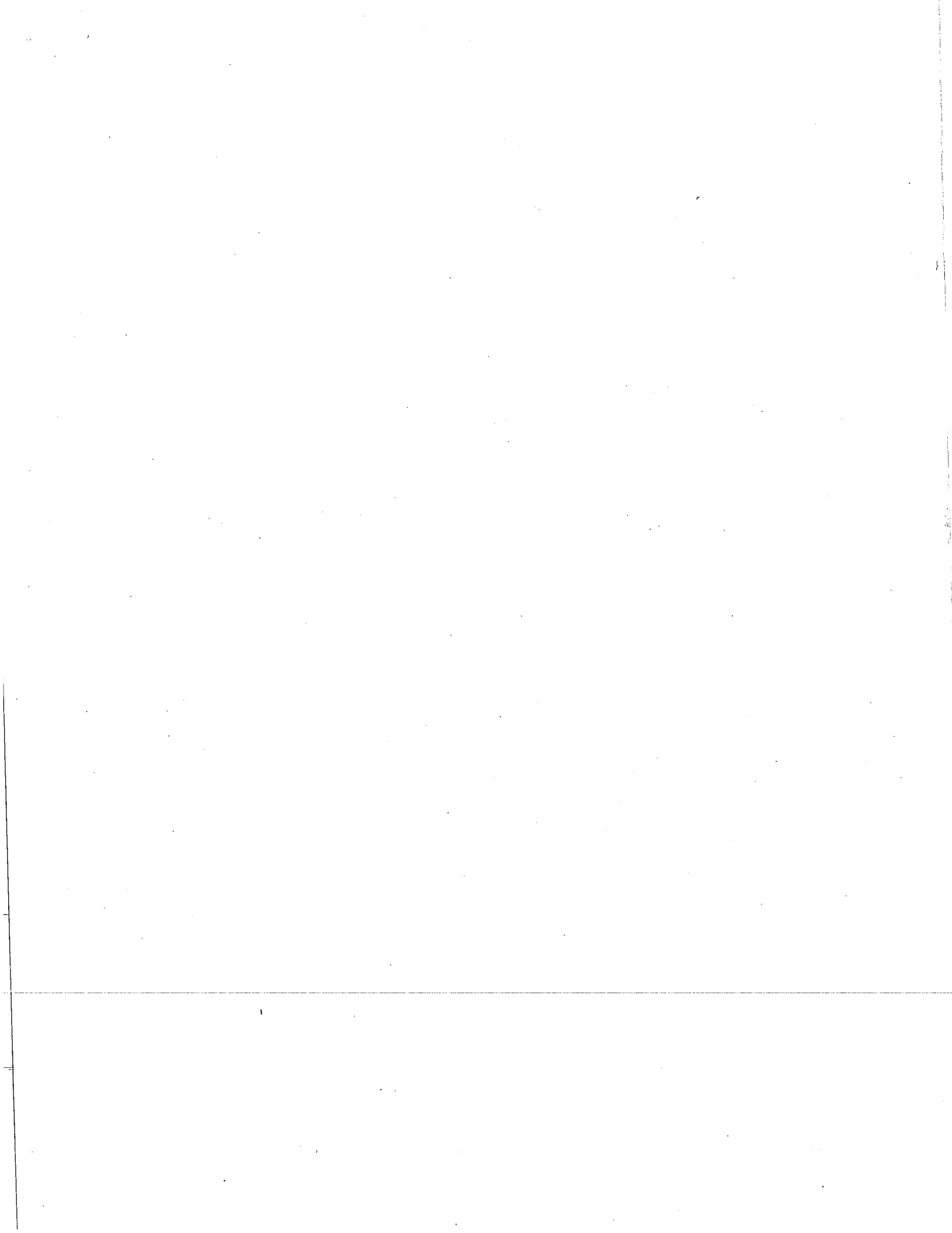
Cancellation Policy: Please provide cancellation notice to Waquis Global or The Niche Report 20 days prior to the end of the quarterly statement. Any cancellations received after 20 days prior to cancellation date will automatically renew for a subsequent quarter.

Disclaimer: The Mortgage Lender Implode-O-Meter, a property of Implode-Explode Heavy Industries, Inc., can remove your placement on the Non-Imploded^(tm) list at anytime at our discretion. Pro-rated refunds will be provided for early termination. You agree that The Mortgage Lender Implode-O-Meter will place an independent grade of your operations and business. You also agree to in no way hold The Mortgage Lender Implode-O-Meter or its operator(s), agents, or assigns responsible for either positive or negative public relations or business results stemming from your Non-Imploded^(tm) list entry or its termination. You agree to forgo or remove references to your inclusion on the Non-Imploded^(tm) list in all current communication materials in the event the listing is terminated or your subscription lapses.

***I agree to the above Cancellation Policy and have read and understood the Disclaimer above.**

Agreed and Submit

Start Over



Already a Member?

THE MORTGAGE LENDER Implode-O-Meter Premium

The Mortgage Lender Implode-O-Meter is excited to introduce a premium information service—*Housing Finance Watch* (or, "Implode-O-Premium", as we lovingly call it). This service gives members:

- Access to our market information center, which has stock information on Implode-O-Meter listed companies, as well as other relevant companies in a separate "watch list".
- E-mail updates on rumors and inside scuttlebutt that have not yet reached the public or the ml-implode front page.
- E-mail alerts upon additions to the Implode-O-Meter lists (both imploded and ailing).
- Access to our premium forums (*coming soon*)

This is all for the low low price of **\$10 per month!** Billing is month-to-month and there's no long-term commitment—you can cancel any time.

(If you're already a member, you can log in by clicking [here](#).)

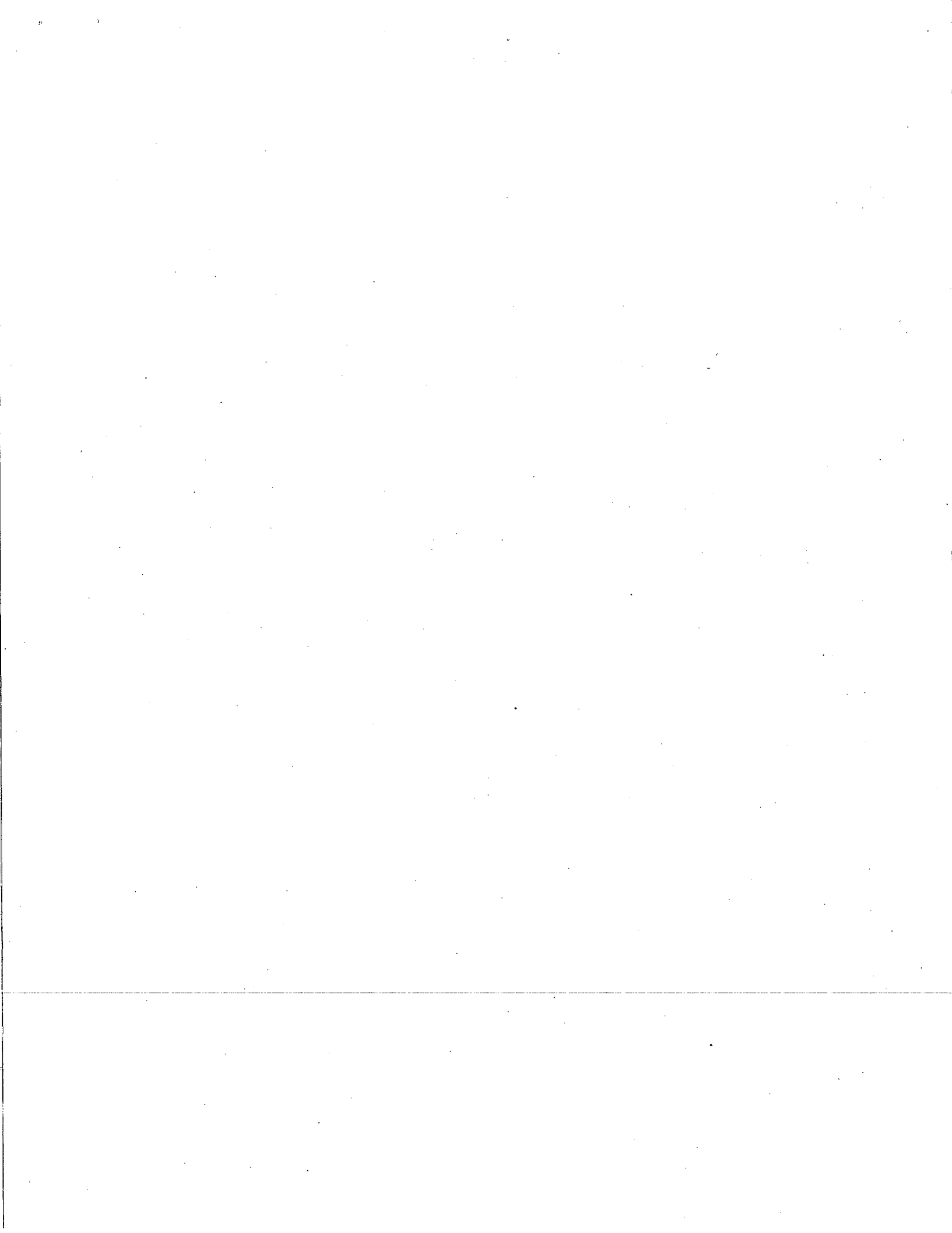
Email (Will be username)	<input type="text"/>
Password *	<input type="password"/>
Confirm Password *	<input type="password"/>
First Name *	<input type="text"/>
Last Name *	<input type="text"/>
Billing Address *	<input type="text"/>
Apt/Unit/Suite	<input type="text"/>
City *	<input type="text"/>
State *	Alaska <input type="checkbox"/>
Zip *	<input type="text"/>
Card Type *	VISA <input type="checkbox"/>
Card Number *	<input type="text"/>
Card exp * MM/YY	<input type="text"/>

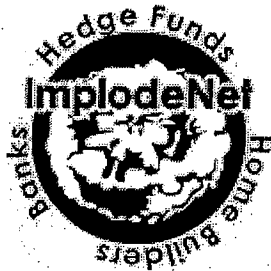
Please DO NOT send News or Alerts by email.

By accepting I understand that all the information herein does not rise above the level of rumor or hearsay, unless referenced or excerpted from a public outside source that makes representations otherwise. I understand there is no warranty of accuracy on the information herein. I thus agree to forgo libel and defamation claims against ML-implode/Implode-o-Premium based on the information found herein. I also understand that ML-implode's editorial compilation of information is copyrighted, even if it cites or excerpts public sources, and I agree not to distribute it.

I agree to the contract above.

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Banking Regulator Played Advocate Over Enforcer

Tribune hires bankruptcy lawyers

Mortgage REIT Insider: Agencies Ascending

American economy is in freefall

Bubble-States Awash in Negative-Equity (Revisited)

Who REALLY Can Benefit From Lower Mortgage Rates?

Hyperinflation in action

Treasury wants to drive mortgage rates to 4.5%

Radio Free Wall Street 12/3/2008

more ...

Resources

Read about the "Penobscot" lawsuit (10/08)

Implode-O-Meter in the news

Buy Bulk REOs
Mortgage Crisis Center - Get Help

Since late 2006

307

major U.S. lending operations have "imploded"

- » LIME Financial Svcs. - Wholesale
- » Mortgage Network Inc. - Wholesale
- » Tamweel PJSC
- » Amlak Finance PJSC
- » Fortes Financial - Wholesale

For the rest » Go to the list!

Not sure you can stay afloat today's construction lender



Learn to swim at the SSCL Seminars

Read about the ATTACK on ML-Implode by subprimers" — Latest - Injunction Against Implode Denied / Introductory writeup



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Get it Most Accurate

Housing Finance Bust News

Update: Liberty Home Lending - [2008-12-08] - A source sends this email: "FYI, it seems as though this company has ceased

Top Non-Imploded™

Assurity Financial Services (Wholesale) :

A+ "Great 'FHA Platinum' and CONFORMING A+ pricing and service."

Assurity Financial Services (Retail) :

A+ "Best 'common sense' FHA Manual Underwriting Lender."

Key Financial Corporation :

A "A true affiliate branch lender; FHA, customer service specialists."

Megastar Financial Corporation :

A+ "Transfer your business to a stable environment!"

Also featuring:

Foundation Financial

Other Implosions

Imploded:

First Georgia Community Bank, Jackson, GA

Minnesota

home builder

Wensmann Homes closes doors

Implosion:

BlueBay Emerging Market Total Return Fund

Imploded:

AmTrust Financial Corp.

HF Implosion:

Trident European Fund

Stop Foreclosure Forum

Read about the (old) LCC lawsuit

Stop The Mortgage Bailout

Petition: Abolish the Fed

Angry Renter

Subprime scoreboard (old)

Partners

TheNicheRe



I am Facing Foreclosure

IR Iacono Res

Other IEHI News

Lawyer Dreier Sued by Wachovia Over Millions in Loans

The race to zero

Central Bank Cash May Discourage Money-Market Lending, BIS Says

Detroit Bailout Is Set to Bring on More U.S. Oversight

Thain is said to want \$10 million, Bonuses

Hideous Jobs Report Made Market Look Better Than It Is

One in 10 American on food stamps

Depressionomics, Poof 1/2 Million Jobs Lost

New Risk to Your 401(k): Firms Cut Matching Funds

retail operations as well. Toll free # no longer wor...

Well-Known Pundit Challenges Geithner to Debate; Voices Concern over Bailout - [2008-12-08] - "Saying that the nation's system of checks and balances means being open to answering hard questions, well-known financial comme..."

Majority of Modified Loans Fail After 6 Months, Regulator Says - [2008-12-08] - "Most U.S. mortgages modified by lenders to help keep struggling borrowers in their homes fell back into delinquency within six ..."

U.S. housing crisis also hitting the wealthy - [2008-12-08] - "Less than a year ago, few people in this affluent Chicago suburb expected the subprime U.S. housing crisis would hit close to h..."

Florida Tops Nation In Foreclosures For Third Quarter - [2008-12-08] - Florida recorded some of the highest third-quarter mortgage loan delinquencies in the nation, according to a report by the Mortg...

- **How Freddie Mac Splashed Cash to Halt Regulation** - [2008-12-08]
- **Commercial real estate heading South** - [2008-12-08]
- **U.S. Rep. Luis Gutierrez has made more than \$420,000 on real estate deals** - [2008-12-08]
- **Housing Chief Sees No 'Target' in Mortgage Rates** - [2008-12-08]
- **Banking Regulator Played Advocate Over Enforcer** - [2008-12-08]
- **The Worst Housing Crash in American History.** - [2008-12-08]
- **Obama's Public Works Plan: Trickle Up Economics?** - [2008-12-07]
- **New law leaves AmeriDream without a mission** - [2008-12-07]
- **Dear Santa: Help!** - [2008-12-07]
- **Inside Look: Mortgage Delinquencies Rise** - [2008-12-07]

News Archive



Latest Posts from the ML Forum!

RE: Line of protocol/recourse on Predatory Broker Lender - Let me guess you didn't go locally to obtain your loan? Did you get your loan off of the internet or some lead company bought y... (6 minutes ago)

RE: Assurity Financial, bad news again - If Assurity is so bad i notice you pin nothing on the broker that brokered the loan to

(JO Hambro)

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Bid REO Prices Up

With Online Actions. Expose your REOs to 3 Million buyers, Nationwide
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Bad Credit Mortgage Loans

We can get your loan approved even with Bad Credit. Quick and Easy
www.1Guaranty.com

Mortgage Foreclosure

Avoid Or Stop Foreclosure. Get Free Expert Foreclosure Help Now.
www.Foreclosure-Answer.com

Blogroll

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- [The Mortgage](#)

'Lowest breakeven price of Oil is \$30 a barrel'

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The Justin Owings Page

PlanetMath

Aaron Krowne's Home Page

Non-Imploded List™ :



Sponsored by Waquis. So you think the market is all

doom and gloom? Not us. There are actually lenders out there that are operating and focused on smart business fundamentals. Listed below are companies that wish to express that they are still operating in good health and soliciting business:

Top Non-Imploded Lenders

Assurity Financial Services (Wholesale) :

Our Grade: A+ [Great 'FHA Platinum' and CONFORMING A+ pricing and service.]

Assurity Financial Services (Retail) : Our Grade: A+ [Best 'common sense' FHA Manual Underwriting Lender.]

Key Financial

them. In this case is it really Assuriti... (2 minutes ago)

RE: AUTOMATED UNDERWRITING VERSUS REAL LIFE - Do-the-Math The reason that many people will defend AUS is simply that it put more dollars in their pocket. Nothing else. It i... (21 minutes ago)

RE: 30 yr. Fixed 4.5%? - Please turn this guy in. I am an appraiser in Socal, for the last 3 months I would say about 90% of my business is out there in... (1 hour, 20 minutes ago)

RE: MortgageIT - Gee, that is so terrific. I just love reading these threads and hearing about loan officers who closed a deal. I am just so thr... (1 hour, 42 minutes ago)

Go to the MLI forum!

Lists

Imploded* Lenders™

(alphabetical)

- 307. **LIME Financial Svcs. - Wholesale**
- 306. **Mortgage Network Inc. - Wholesale**
- 305. **Fortes Financial - Wholesale**
- 304. **HSBC Mortgage Corp. - Wholesale**
- 303. **CBRE Realty Finance**
- 302. **Franklin Bank, SSB**
- 301. **Mortgage Lion, Inc. - Wholesale**
- 300. **HMS Capital, Inc.**
- 299. **American Sterling Bank - Wholesale**
- 298. **CTX Mortgage Co. - Retail**
- 297. **Equity One Commercial Svcs.**
- 296. **Coldstream Financial Svcs.**
- 295. **Banco Popular North America - Wholesale**
- 294. **Ace Mortgage Funding, LLC**
- 293. **E-Loan**
- 292. **Gateway Bank, F.S.B. - Wholesale**
- 291. **First Call Mortgage Co.**
- 290. **Downey Savings and**

Ailing/Watc List

Lenders™:

- 14. **Envision Lending Group Inc.**
- 13. **Velocity Commercial Capital**
- 12. **CitiMortgage Wholesale Lending**
- 11. **Wachovia - Retail**
- 10. **Chase Prime Wholesale**
- 9. **The Mortgage Specialists**
- 8. **Bayview Lending Group, LLC**
- 7. **American Equity Mortgage Inc.**
- 6. **BankUnited (Wholesale)**
- 5. **MortgageIT**
- 4. **Sallie Mae**
- 3. **Meridias Capital**
- 2. **Doral Financia Corp.**

IEHI Bloggers:

Mr. Mortgage

Mortgage

Whistleblower

Option Armageddon

Reggie Middleton

Housing Bubble:

Housing Doom

Soot and Ashes

Patrick.net

Sacramento Real Estate Stats

Bakersfield Bubble

Global House Price Crash

Housing Derivatives

Dr. Housing Bubble

Bubble Meter Blog

Bubbletracking Blog

House Bubble Blog

The Robbo Report

Economics & Finance:

Fed Up USA

iTulip

Russ Winter

Mish's Global Econ.

TheMessThatGreensp

Roubini Global Econ.

Immobilienblasen

Charles Hugh Smith

Prudent Bear

Calculated Risk

The Big Picture

Market Ticker

"Boom, Bust, Blog"

Paper Money Blog

The Great

Depression of 2006

EconomyInCrisis

PrudentInvestor

Juggling Dynamite

"Run To Gold"

Mortgage and Credit:

Housing Wire

Blown Mortgage

The Truth About Mortgage

Loan Modification News

Corporation : Our Grade: A [Key Financial Corporation is a true affiliate branch mortgage lender that specializes in FHA loans and superior customer service.]

Megastar Financial Corporation : Our Grade: A+ [Looking for Net Branch, Branch Mgr or VP that wants to transfer business, LO's or company to stable environment.]

Featured Lenders Foundation Financial: Our Grade: A [Hiring retail Mortgage professionals in the Atlanta, Jacksonville, and Miami centers.]

Remington Financial Group: Our Grade: A [Commercial and Hard Money Financing -- Senior financing on existing real estate all property types, competitive rates. Up to 95% financing construction, rehab, renovation, development. Up to 65% of valued collateral, fast closing.]

Light Funding Corp: Our Grade: A [Commercial Loans in all 50 States for the purchase, refinance, or construction of a commercial property, we can arrange the best loan package to suit your needs.]

...
More Lenders & State Specific Lenders

Want to put your company in this spot? **Please fill out our web application.** This section is managed by **Waqis Global**. Waqis is an off-shore outsourcing company focused on the mortgage lending and banking markets. Our clients are more profitable, efficient, and resilient in a challenging market due to off-shoring in countries like India.

Loan - Wholesale
289. Prospect's Metrocities Mortgage - Wholesale
288. ComCor Mortgage - Wholesale
287. Chevy Chase Bank - Wholesale
286. Washington Mutual - Retail and Warehouse
285. Hometown Commercial Capital
284. Mid Atlantic Capital LLC
283. Kemper Mortgage, Inc.
282. Liberty Mortgage Funding Co.
281. Freddie Mac
280. Fannie Mae
279. Pacific Community Mortgage, Inc. - Gold Reverse, Inc.
278. Homecomings Financial, LLC
277. Thornburg Mortgage
276. CSB Mortgage
275. Carteret Mortgage Corporation
274. Accredited Home Lenders, Lone Star Funds - Wholesale
273. Western Residential Mortgage
272. Liberty Home Lending
271. Equipoint Financial Network, Inc.
270. Ideal Mortgage Bankers, Ltd. - Wholesale
269. Silver State Bank - Wholesale
268. Irwin Union Bank & Trust Co. - Wholesale
267. SunTrust Bank Equity Wholesale
266. Wachovia Mortgage, FSB - Wholesale
265. Lehman Brothers SBF
264. IndyMac Bancorp
263. Mortgages Ltd.
262. Wilmington Finance - Wholesale
261. Accredited Home Lenders, Home Funds Direct
260. Assured Lending Corp. - Wholesale
259. Homewide Lending

1. Residential Capital, LLC*

"They're Back"— Lenders Who've Returned:

2. Nationstar Mortgage
1. Home 123 Mortgage

Contact us if you're on this list and want to improve your listing.

"Implodes Around The World"

9. [UAE] Tamwee PJSC
8. [UAE] Amlak Finance PJSC
7. [AU] GE Money - Wholesale
6. [UK] Bradford and Bingley plc
5. [DE] Hypo Real Estate Bank
4. [UK] HBOS
3. [UK] Future Mortgages - Citigroup
2. [UK] Advantage - Morgan Stanley
1. [UK] The Mortgage Business plc

Library

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Broken Credit
FHA Book Blog
Americans for Debt Relief
Reverse Mortgage Blog
FHA Mortgage Guide



FHA Opening Audit Program - FHA/HUD and Mortgage
Broker/Banker
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THE MORTGAGE LENDER **Implode-Meter**

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[Fixed Loans](#)
[Mortgage News](#)
[FHA Loan Rate](#)

Current news for this company:

Cover-up broker banned and fined - The Press Association

Bradford & Bingley's future hangs in balance - Telegraph.co.uk

Genworth Financial Announces Strategic Review of US Mortgage Insurance - PR Newswire (press release)

New Servicer Targets Needs of Distressed Mortgage Investors - Housing Wire

FSA fines North Wales broker £100000 - Mortgage Strategy

The day when buy-to-let died: How the B&B debacle brings mortgage ... -

The Mortgage Specialists - Retail

2008-08-19

NEW! Comment on this article

stories: unionleader.com,
seacoastonline.com

Massachusetts and New Hampshire's Banking Departments issued "Temporary Cease and Desist Orders" against **The Mortgage Specialists, Inc.** based in Plaistow, NH on July 24th and 31st respectively. Wrote one tipster, "There has been a lot of this type of activity from the Banking Dept. in both MA and NH regarding The Mortgage Specialists."

SeacoastOnline reported, "The division's temporary cease and desist order requires The Mortgage Specialists to place all remaining loans with a qualified lender or broker with no link to consumers and forbids the company from initiating any new transactions." According to an article in the **Union Leader**:

"State regulators and investigators claim an inspection shows The Mortgage Specialists:

- Represented photocopied customer signatures as original;
- Removed a signature from a loan file;
- Altered broker fee agreements after the consumer signed documents;
- Failed to keep customer application files under lock and key.

News

Questions and concerns about Fannie, Freddie take advantage of the disaster!

Free E-Course
How to make \$38,100 a result of the Subprime Meltdown!

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Making A Mint -
Barron's

Market conditions
bring opportunities
for landlords claims
letting ... -
Residential Landlord

Local banks solid
through slump:
Lenders say money
has stayed local -
Trading Markets
(press release)

SYH
Charterhouse
relaunches as equity
release specialist -
Mortgage Strategy

by the Gramm-Leach-Bliley Act;

- Fraudulently issued a 40-year adjustable rate mortgage balloon payment at the end of 30 years to a customer applied for a fixed-rate, 30-year mortgage.

The department alleges The Mortgage Specialists committed 50 violations of state banking laws, each subject to an administrative fine of up to \$2,500. If the violations were upheld after hearing applied to both the corporation and the four named defendants, administrative fines could total \$1 million."

As of August 18, The Mortgage Specialists, Inc. entered into "Consent Orders" with both states (view **MA** or **NH**) "...solely for the purpose of settling this matter, and without admitting any allegations or implications of fact or the existence of any violation of state or federal laws." They must engage an independent auditing firm to perform a site review of all files processed dating back to March of 2005. New Hampshire levied monetary fines of \$300,000 to each state. New Hampshire levied an additional \$25,000 penalty for failure to pre-screen against the Not Call List, and also fined the company's principals including each of President Michael Gill and Lisa Tracy, its Controller and Compliance Officer. The Mortgage Specialists, Inc. was given 90 days to employ a compliance manager acceptable to the state to oversee the compliance office.

It was reported that The Mortgage Specialists Inc. has 120 employees in five NH branch offices in Manchester, Nashua, Salem, Somers and Windham, as well as two Massachusetts branches in Peabody and Worcester. An unverified **report** we were sent of 2007 loan portfolio indicated average volume of over **Redacted**

In an open letter on their **web site**, President Michael Gill writes to let you know that these are compliance issues and only that. There has never been a customer that has been cheated or defrauded." To view the image file, **click here**.

The affects of the allegations and State orders can certainly hurt the public's confidence in the Mortgage Broker industry as a whole. Please comment! Please **email us** if you can add any more details.

[permalink to this record](#) | [forum thread](#)



Comments: Be the first to add a comment

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Note: Comments may take a few minutes to show up on this page. If you go to the forum thread however, you can see them immediately.

Important: *This company is on our list of lending operations that are approved by the FDIC, which we think are worth watching for any other reason. We make no representation or claim that any company on this list will or will not continue as a going concern in any other way, adverse or beneficial. If you have concerns about this company, we suggest contacting them directly and/or checking with other reliable sources.*



Brianbattersby at 23:48 2008-10-03 said:

This guy Mike Gill(owner) just got a 1.3 MILLION DOLLAR US TAX LIEN from the IRS attached to himself in Rockingham and Strafford county NH. Also his soon be ex wife just put a lien on all properties in the state of NH. This guy is no stranger to REGULATORY ACTIONS. He was caught for FRAUD back in 2002 FOR SIGNING BORROWERS NAMES and bought his way out. He just paid 700,000 FRAUD FINE IN NH AND MA FOR SIGNING BORROWERS NAMES AGAIN ON 20 LOANS. He isn't really even the owner. He is listed as president of the company but the shares are in his wife's name. He is NOT ELIGABLE for a brokers license in NH. OH MAN WHAT WAS THE NH BANKING DEPT. THINKING? I guess with the big fine he doesn't have the money to pay the IRS or his wife off. Shouldn't have been dipping the pen in company ink Mr. Gill. EVERY DOG HAS HIS DAY! TODAY IS YOURS! [Permalink](#)