

# Lender Liability: Yes, That's Still a Thing

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## What is "Lender Liability"?

- "Lender liability" is an umbrella term used to describe various claims borrowers may assert to impose liability (or a remedy) against lenders who overstep their boundaries in enforcing a loan.

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## Breach of Contract

- (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained as a result of the breach.

## Duress

- "It has been held that threatening to do that which a party has a legal right to do cannot form the basis of a claim of duress by business compulsion. The vice arises only when he employs extortionate measures, or when, lacking good faith, he makes improper demands." *State Nat'l Bank v. Farah Mfg. Co.*, 678 S.W.2d 661, 684 (Tex. Ct. App. 1984) (also citing elements of duress).

## Fraud

- (1) defendant made a representation to the plaintiff; (2) the representation was material; (3) the representation was false; (4) when defendant made the representation, it either knew the representation was false or positively asserted the representation recklessly and without knowledge of whether it was true; (5) defendant made the representation with the intent that the plaintiff act on it; (6) the plaintiff relied on the representation; and (7) the representation caused the plaintiff's injury.

## Negligent Misrepresentation

- 1) a representation made by a defendant in the course of its business or in a transaction in which it has a pecuniary interest; (2) the representation conveyed 'false information' for the guidance of others in their business; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; and (3) the plaintiff suffers pecuniary loss by *justifiably relying* on the representation.

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