

AMJA Resident Fatwa Committee resolution about Islamic Home Financing Companies in the US.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, the Compassionate, the Merciful

All praise are due to Allah alone and may the peace and blessings be upon the Messenger of Allah. To proceed:

The AMJA Fiqh Committee Resident Fatwa Committee met in Houston on the 20-22 of Dhul-Qadah 1435 A.H. (September 15-17 2014 C.E.) in order to issue a resolution concerning Islamic Home Financing in the United States. This meeting took place after an entire conference had previously been held on this topic, in which papers were discussed in the presence and with the participation of representatives of most of the relevant companies. This was followed up by correspondence between the Resident Fatwa Committee Fiqh Committee and those companies with an attempt to clarify and respond to the Shareeah issues that are present in their contracts. Sh. Jamaal Zarabozo (may Allah preserve him) also participated in this meeting in Houston.

After looking into the matter, the Committee Resident Fatwa Committee (RFC) decided upon, according to the majority of its members, the following resolution:

First, the Shareeah fundamentals concerning the companies that deal in Islamic home financing:

Companies that deal with Islamic home financing in the United States may be divided into three categories:

The first group is comprised of those companies whose contracts, in general, are in agreement with the Shareeah. They are assisted by the fact that they are not in need of selling their contracts to the Public government-sponsored enterprises federal, interest-based organizations [such as Freddie Mac]; this gives them the freedom to design their contracts in a manner in accord with the Shareeah without facing any restrictions from Public government-sponsored enterprises interest-based financing institutions. At the same time, though, it is noted that the capabilities of these companies are quite limited. They are able to supply houses in the tens [as opposed to the thousands]. Furthermore, their availability is limited to certain states. Thus, they are not truly able to fulfill the needs of the millions of Muslims who reside in America.

The ruling of the RFC Committee is that it is permissible to deal with and purchase homes from companies of this nature.

The second group is comprised of those companies whose contracts, in general, avoid falling into explicit interest (*Ribaa*). They do not deal with interest-based loans. Instead, they deal in types of contracts that are permissible in the Shareeah in general, such as *Murabahah* cost-plus purchase order, *Musharakah* diminishing partnership and *Ijarah* rent-to-own. Many of the people who run these companies, we noticed, are anxious to avoid forbidden transactions and have exerted a great deal of effort with their legal advisors to produce legally sound contracts that will allow them to avoid what the Shareeah would consider void contracts. However, their contracts do contain some forbidden components, such as invalid clauses, inequity, undue risk, unknown quantities and the like. Additionally, they need to invoke exemptions allowed by the jurists and resort to an improper mixing of different schools of jurisprudence in order to devise a Shareeah-based way out [of the problem of interest]. In order to meet the large demands of

the millions of Muslims residing in America, these companies are in need of selling their contracts to the federal institutions, such as Freddie Mac. These federal, interest-based institutions put a number of restrictions on them that virtually prevent their contracts from being free of these Islamic violations. These violations differ in intensity from one company to another.

The ruling of the RFC Committee specifically concerning this set of companies is that there is an exemption to buy through them in the case of need or dire need, depending on the different intensities of violations and the fact that need must be dealt with according to its severity.

We encourage these companies to continue their efforts in developing their contracts in order to bring an end to their shortcomings that the Committee has noted. If someone can find an alternative and not deal with these companies, he will be safe and will be protecting his faith and his honor.

The third group is comprised of companies that still continue to deal in interest-based loans. Their contracts are no more than offshoots of traditional interest-based loans or simply a form of impermissible legal stratagem to get around the prohibition of interest. The ruling of the RFC Committee with respect to these types of companies is that it is not allowed to purchase homes through them. We advise those who are administering these contracts to adjust them and make them proper.

Second, the Committee would like to emphasize that this ruling on this issue is directed towards those who wish to deal with these companies to purchase real estate via their financing and contracts and the ruling holds as long as the contracts are as they are in the present state and the modes of purchase are as they are now. Any change in their contracts or manner of execution would therefore require a change in the ruling.

As for the companies themselves, this ruling is actually in need of more clarification from them concerning their relationship with the Public government-sponsored enterprises federal financing institutions [such as Freddie Mac], a matter concerning which the RFC Committee was not able to receive a detailed clarification.

Third, “need” is that which is desired by an individual or society to make things easier on them and remove constraints. If one is lacking what is determined to be a “need,” then the individuals or the society face hardships and difficulties that go above and beyond the customary efforts required of individuals by the Shareeah. People may differ in estimating those hardships. However, the RFC Fatwa Committee views owning houses to be a general need of the Muslim population in America. As for determining the level of need for specific individuals, this would depend on the availability of a substitute in the form of being able to rent without being caused harm.

Fourth, below is the application of these principles to the Islamic financing companies that are operating throughout the United States:

Guidance Residential: They are based on a diminishing partnership with rent to own ending in ownership model in their relationship to the purchaser. Their contract is sound in general. However, it contains some Shareeah violations with respect to maintenance, taxes and insurance, as these expenses are not distributed in a just manner according to percentage of ownership.

The ruling of the RFC Committee concerning this company is that it is permissible to deal with them in the face of need. The representatives of this company are advised to review those defective portions of their contract.

Addendum about Ameen Housing contract (As for Jan 2015)

All praise be to Allah, the Lord of the Worlds, and may the blessings and peace be upon the final Prophet and

upon all of his family and Companions.

The Fiqh Committee of AMJA had issued a declaration explaining the issues in the contracts of the Islamic Home Financing Companies in the United States. That ruling was based on the contracts that they used at the time of the issuing of that declaration. With respect to Ameen Housing, two issues were of major concern. One was the late payment fee when a person paid his rent late and the other was the issue of the cost of maintenance being properly distributed between the two parties wherein Ameen returned a fix percentage of the rent to the buyer/renter regardless of the actual amount of maintenance expenses.

After the issuing of that declaration, Ameen Housing—may Allah reward them for responding positively to that declaration—have now discontinued their late payment fee policy and have clarified to the Committee that the distribution of the maintenance expenses is handled in a way that is just.

Based on the above, the Fatwa Committee now rules that *the contracts that Ameen Housing is now using are consistent with the laws of the Shareeah*. We have now no Shareeah objection to their practice and it is permissible for Muslims to purchase homes through them.

Devon Bank: This company has two types of Islamic contracts:

The first contract is *Murabahah* a cost-plus purchase. This contract is surrounded by doubts concerning whether the bank truly owns the property before it is readied for sale. In addition, this contract also contains some defective or problematic conditions or aspects of great unfairness, such as with respect to (a) the bank having exclusive benefits from insurance payouts while requiring the purchaser to pay for the insurance, (b) the bank's right to freeze the purchaser's account simply on the suspicion that he will not be able to make his payments, (c) the bank's right to declare the purchaser in default if he does not use the property as a residence or due to his death although heirs have the right to continue the contract after his death, in fact the cost-plus purchase contract states that the heirs are bound by the contract.

The ruling of the Committee is that there is no harm in dealing with this [contract of] this company in the presence of dire need. Whoever remains away from it has kept himself safe and has protected his faith and honor. The Committee advises the Bank to correct these aspects and to affirm the ownership of the property before selling it and to avoid the other invalid conditions as much as possible.

The second contract is a rent to own contract. This also contains a number of Shareeah violations and invalid conditions, including having two different contracts (sale and lease) at one time, about one item during one time period. Various Fiqh councils have ruled that this model is not permissible as the legal effects of the two types of contracts are contradictory. This may be corrected by separating the two contracts by making them independent of each other time-wise, such that the sale contract is done after the lease contract, which must be a true lease and not something meant to simply hide the sale. Or, they [may replace the sale] with a promise of handing over ownership at the end of the lease.

From among the defective or void stipulations that this contract embodies are the fact that the bank can evict the lessee upon default but the bank still holds him responsible for the rent until they can find a new renter, the fact that the bank does not pay for the basic maintenance of the property and the fact that the lessee is required to pay insurance while the bank retains the right of any payments from the insurance, allowing the bank to benefit while the lessee bears the cost.

The ruling of the Committee is that there is no harm in dealing with this [contract of this] company when one is in a state of dire need. Whoever remains away from it has kept himself safe and has protected his faith and honor. The Committee emphasizes its recommendation to the bank to rectify the current model by separating between the two contracts and avoiding the defective or void stipulations as much as possible.

University Islamic Financial: The same comments concerning their cost-plus model and lease-to-own models as were stated concerning Devon Bank can be repeated here. Thus, their models have the same rulings and the Committee offers them the same advice. There is an exemption to deal with this company only if one is in a state of dire need. Whoever remains away from it has kept himself safe and has protected his faith and honor.

Ijara Loan: This company starts by directing the purchaser to get a standard interest-based [mortgage] loan and then creates a trust with the purchaser a partner in the trust, in order to borrow from the bank and then get ownership of the property. After that, the trust will sell the house to the purchaser with a rent-to-own contract. The purchaser is alone in getting the interest-based loan at the beginning and then shares in it at the end.

The ruling of the Committee is that it is not allowed to deal with this company as their model contains clear and explicit interest. We advise those in charge of this company to review and correct their model and to fulfill the trust that has been put in them by those who wish to avoid interest in their financial dealings.

Lariba: The contract of this company does not differ from a traditional mortgage that interest-based banks provide. This is the overriding contract between this company and the purchaser and what they present as an Islamic form to it actually has no existence in reality and has no legal authority in case of dispute.

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Additionally, the Committee would like to emphasize that the rulings previously made that are on the AMJA website represent the views of those individual scholars and do not necessarily represent the views of the RFC Committee. Furthermore, those rulings preceded this ruling and it could be the case that some of the scholars have adjusted their views to the views of the Committee. Finally, the Committee would like to encourage those Muslims who have experience and those who have funds to invest to create a competitive Islamic alternative, perhaps a credit union among themselves which may have profit in this world and we hope also a profit in the Hereafter if the intentions are sound.

May Allah bless everyone with acts of obedience to Him and may be the blessings of Allah be upon His best creation, Muhammad, and upon all his family and all of his Companions.

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