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PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

COMMONWEALTH OF PENNSYLVANIA	:	Docket No. : 10 <u>0106</u> (ENF-CAO)
DEPARTMENT OF BANKING, BUREAU	:	
OF COMPLIANCE, INVESTIGATION	:	
AND LICENSING,	:	
	:	
	:	
v.	:	
	:	
CHARTER HOMES & NEIGHBORHOODS.	:	
	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Compliance, Investigation and Licensing (the "Bureau"), has conducted an investigation into the business practices of Charter Homes & Neighborhoods ("Charter Homes") and its officers, employees and directors. Based on the results of the review, the Bureau believes that Charter Homes operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 et. seq. The parties to the above captioned matter, in lieu of litigation, hereby stipulate that the following statements are true and correct in the settlement of the above-captioned matter and, intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order (the "Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Mortgage Licensing Act and the Proper Conduct of Lending and Brokering in the Mortgage Loan Business regulation (the "Proper Conduct Regulation"), 10 Pa. Code § 46.1 et seq.

2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act and the Proper Conduct Regulation for the Department.

3. The Mortgage Licensing Act amended the Mortgage Act on August 5, 2009. *See* 7 Pa. C.S. § 6101 *et seq.*, amended by Act 31 of 2009, H.B. 1654 (P.N. 2448).

4. Charter Homes is a Pennsylvania homebuilder located at 1190 Dillerville road, Lancaster, PA 17601.

5. Charter Homes is not currently licensed by the Department.

Advertising

6. The investigation revealed that Charter Homes engaged in a multi-media marketing campaign, including, but not limited to, billboards, newspapers, mailers and its website, www.charterhomes.com (the "Website"), in which Charter Homes advertised mortgage loan interest rates for the purchase of new homes for sale with Charter Homes.

7. For example, the Website contained a banner (the "Banner") that included the following language: "2.99%, Don't wait, Rate ends Feb 28."

8. Upon clicking on the Banner the following language appeared: "Better homes, better neighborhoods, and our exclusive 2.99% interest rate make today the best time to buy a Charter home."

9. Section 6102 of the Mortgage Licensing Act defines "mortgage loan business" as "[t]he business of advertising, causing to be advertised, soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans." (*emphasis added*) 7 Pa. C.S. § 6102.

10. Section 6102 of the Mortgage Licensing Act defines a "mortgage loan" as "[a] first or secondary mortgage loan, or both, as the context may require." 7 Pa. C.S. § 6102.

11. Section 6111(a) of the Mortgage Licensing Act provides that “. . . no person shall engage in the mortgage loan business in this Commonwealth without being licensed as a mortgage broker, mortgage lender, mortgage loan correspondent or mortgage originator as provided under this chapter. . . .” 7 Pa. C.S. § 6111(a).

12. By advertising rates and terms on various media outlets Charter Homes was engaged in the mortgage loan business as defined by the Mortgage Licensing Act.

13. Charter Homes does not meet any of the exceptions to licensure in Sections 6111(b) and 6112 of the Mortgage Licensing Act. *See* 7 Pa. C.S. § 6111(b), 6112.

14. Charter Homes disclosed to the Bureau that the marketing campaign was running through February 28, 2010.

Regulation Z

15. Charter Homes disclosed to the Bureau that the advertised rates were for an adjustable rate mortgage whereby the mortgage interest rate increases throughout the first three years and is then fixed for the remaining term of the mortgage loan.

16. Charter Homes did not disclose the annual percentage rate on the advertisements.

17. Federal Reserve Regulation Z, Truth-in-Lending, (“Regulation Z”) states “[i]f an advertisement states a rate of finance charge, it shall state the rate as an “annual percentage rate,” using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. . . . If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.” 12 CFR 226.24(c).

17. Charter Homes did not disclose the terms of the mortgage loan in accordance with Regulation Z by failing to disclose the adjustable rate feature of the mortgage loan and failing to disclose the annual percentage rate as conspicuously as the advertised rate.

18. Section 46.2(a) of the Proper Conduct Regulation provides that "a licensee may not engage in false or misleading advertising." 10 Pa. Code § 46.2(a).

19. A violation of the Proper Conduct Regulation is a violation of the Mortgage Licensing Act. See 10 Pa. Code § 46.3(a).

20. By failing to disclose that the mortgage loan rate was adjustable Charter Homes has engaged in misleading advertising.

Authority of the Department

21. Section 6138(a)(4) of the Mortgage Licensing Act provides the Department with authority to issue orders as may be necessary for the proper conduct of the mortgage loan business and for the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

22. Section 6140(a) of the Mortgage Licensing Act provides, in relevant part, that "[a] person subject to the provisions of this chapter and not licensed by the department who violates any provision of this chapter or who commits any action which would subject a license to suspension, revocation or nonrenewal under section 6139 (relating to suspension, revocation or refusal) may be fined by the department up to \$10,000 for each offense." 7 Pa. C.S. § 6140(a).

VIOLATIONS

23. Charter Homes has violated the Mortgage Licensing Act by engaging in the loan business in Pennsylvania without a license

24. Charter Homes has violated the Mortgage Licensing Act by engaging in misleading advertising.

25. Charter Homes could be in violation of Regulation Z by failing to properly disclose the rates and terms of mortgage loans in the advertising campaign.

RELIEF

26. Corrective Action. Upon the Effective Date of this Order, Charter Homes agrees to cease engaging in the mortgage loan business as defined by the Mortgage Licensing Act, including, but not limited to, advertising rates and terms of mortgages, until such time that Charter Homes is licensed by the Department or qualifies for an exemption from the licensing requirements of the Mortgage Licensing Act or any successor statute.

27. Fine. Upon the Effective Date of this Order, Charter Homes shall pay the Department a fine, in the amount of twenty thousand dollars (\$20,000) payable in eight (8) payments of \$2,500. The first payment shall be due and payable within thirty (30) days of the Effective Date of this Order and additional payments shall be due every thirty (30) days thereafter until the fine is paid in full. The fine payments shall be remitted by a company check, certified check or money order made payable to the "Department of Banking" and forwarded to the following: Department of Banking, Bureau of Compliance, Investigation and Licensing, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

FURTHER PROVISIONS

28. Consent. Charter Homes hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the Mortgage Licensing Act and agrees that it understands all of the terms and conditions contained therein. Charter Homes, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

29. Publication. The Department will publish this Order pursuant to its authority in Section 302.A.(5) of the Department of Banking Code. 71 P.S. § 733-302.A.(5).

30. Entire Agreement. This Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Bureau and Charter Homes.

31. Binding Nature. The Department and Charter Homes intend to be and are legally bound by the terms of this Order.

32. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

33. Effectiveness. Charter Homes hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

34. Other Enforcement Action.

a. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Charter Homes in the future regarding all matters not resolved by this Order.

b. Charter Homes acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

35. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

36. Counterparts. This Order may be executed in separate counterparts and by facsimile or PDF.

37. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Department and Charter Homes, intending to be legally bound, do hereby execute this Consent Agreement and Order.

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU OF COMPLIANCE,
INVESTIGATION AND LICENSING

Ryan M. Walsh, Administrator
Bureau of Compliance,
Investigation and Licensing
Department of Banking

Date: March 29, 2010

FOR CHARTER HOMES & NEIGHBORHOODS

(Officer Signature)

Robert P. Bauman

(Print Officer Name)

President

(Title)

Date: 3/25/10