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PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING

COMMONWEALTH OF PENNSYLVANIA	:	Docket No. 11	0182	(ENF-CO)
DEPARTMENT OF BANKING, BUREAU	:			
OF COMPLIANCE, INVESTIGATION	:			
AND LICENSING	:			
	:			
v.	:			
	:			
GUARDIAN FIRST FUNDING GROUP, LLC	:			
	:			

**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations has conducted an examination of Guardian First Funding Group, LLC ("Guardian First Funding") and its officers, employees and directors. Based on the results of its examination, the Bureau of Compliance and Licensing (the "Bureau") believes that Guardian First Funding 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.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act for the Department.

3. Guardian First Funding is licensed as a mortgage broker under the Mortgage Licensing Act and holds license number 25252 and was assigned the Nationwide Mortgage Licensing System and Registry ("NMLS") identification number 2626.

4. Guardian First Funding's principal place of business is located at 1 Pennsylvania Place, Suite 1414, New York, New York.

5. On October 5, 2010, the Bureau of Examinations commenced an off-site examination of Guardian First Funding upon which the Bureau's position is based.

#### Unlicensed Origination

6. The Mortgage Licensing Act provides, in relevant part, that ". . . on and after the effective date of this section [November 5, 2008], 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. A mortgage originator may not engage in the mortgage loan business unless the mortgage originator is employed and supervised by a licensed mortgage broker, mortgage lender or mortgage loan correspondent. . ." 7 Pa. C.S. § 6111(a).

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7. Based on information obtained through the examination, the Bureau concluded that Guardian First Funding originated forty-seven (47) loans for Pennsylvania consumers through thirty-one (31) loan originators unlicensed to perform such services.

8. It is the conclusion of the Bureau that the mortgage loan applications originated by Guardian First Funding subsequent to November 5, 2008 through unlicensed individuals are in violation of the Mortgage Licensing Act.

9. Guardian First Funding is required to directly supervise, control and maintain responsibility for the acts and omissions of the mortgage originators it employs. 7 Pa. C.S. § 6131(f)(1).

10. It is the conclusion of the Bureau that Guardian First Funding failed to employ only licensed mortgage loan originators, and failed to directly supervise, control and maintain responsibility for the acts and omission of the mortgage originators it employed as required by the Mortgage Licensing Act.

#### Lock-In Agreements

11. The Mortgage Licensing Act provides, in relevant part, that “[a] licensee engaging in the mortgage loan business shall not...[i]n the case of a mortgage broker or mortgage originator, commit to close or close mortgage loans in its own name, services mortgage loans, enter into lock-in agreements or collect lock-in fees or be or designate the exclusive recipient of notices or other communications sent from a lender or servicer to a consumer, provided, however, that a mortgage broker or mortgage originator can provide a lender’s lock-in agreement to a consumer on behalf of that lender and collect lock-in fees payable to that lender on the lender’s behalf.” 7 Pa. C.S. § 6123(7).

12. Based on information obtained from the examination, the Bureau concluded that Guardian First Funding provided twenty-one (21) lock-in agreements in its own name.

13. It is the conclusion of the Bureau that lock-in agreements provided and entered into by Guardian First Funding, as a mortgage broker, are in violation of the Mortgage Licensing Act.

#### Unique Identifier

14. Section 6121(14) of the Mortgage Licensing Act requires that “[a] licensee shall . . . [i]n the case of a mortgage originator, clearly display the mortgage originator’s unique identifier

on all mortgage loan application forms and personal solicitations or advertisements, including business cards.” 7 Pa. C.S. § 6121(14).

15. Based on information obtained from the examination, the Bureau concluded that Guardian First Funding failed to display the mortgage originator’s NMLS unique identifier on four (4) mortgage loan applications, on business cards and mail solicitation forms.

16. It is the conclusion of the Bureau that by failing to display its mortgage originators’ NMLS unique identifiers on mortgage loan applications, business cards and mail solicitations, Guardian First Fund violated the Mortgage Licensing Act.

Licensed by Department of Banking

17. Section 6135(a)(5) of the Mortgage Licensing Act provides, in relevant part, that “each licensee shall include in all advertisements language indicating that the licensee is licensed by the department. In the case of a mortgage originator, all advertising shall include the name of the mortgage originator’s employer and the mortgage originator’s unique identifier.” 7 Pa. C.S. § 6135(a)(5).

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18. Based on information obtained from the examination, the Bureau concluded that Guardian First Funding failed to include the statement that it is licensed by the department on its promotional DVDs provided to potential clients.

19. It is the conclusion of the Bureau that by failing to include the statement that it is licensed by the department on its promotional material, Guardian First Funding violated the Mortgage Licensing Act.

Negligence and Incompetence

20. Section 6135(a)(3) of the Mortgage Licensing Act states that a mortgage broker, mortgage lender or mortgage loan correspondent “shall file periodically as determined by the

department, a report with the department setting forth such information as the department shall require concerning the first or secondary mortgage loan business conducted by the licensee during the preceding calendar year.” 7 Pa. C.S. § 6135(a)(3).

21. Section 6139 (a) (1) of the Mortgage Licensing Act states that the Department may suspend, revoke or refuse to renew a license if the licensee made a material misstatement on a report. 7 Pa. C.S. § 6139(a)(1).

22. Based on information obtained from the examination, the Bureau concluded that Guardian First Funding misstated in the 2008 and 2009 Annual Reports the total amount of reverse mortgage loans and non-purchase money first mortgage loans it originated.

23. It is the conclusion of the Bureau that by failing to properly report mortgage loans in its Annual Reports that Guardian First Funding violated the Mortgage Licensing Act.

#### Authority of the Department

24. Section 6138(a)(4) of the Mortgage Licensing Act grants the Department broad authority to issue orders for the proper conduct of the mortgage licensing business and the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

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25. Section 6140(b) of the Mortgage Licensing Act provides, in relevant part, that “[a] person licensed under this chapter or director, officer, owner, partner, employee or agent of a licensee who violates a provision of this chapter or who commits any action which would subject the licensee to suspension, revocation or nonrenewal under section 6139 may be fined by the department up to \$10,000 for each offense.” 7 Pa C.S. § 6140(b).

#### **RELIEF**

26. Fine. Within 30 days of the effective date of this Order as defined in paragraph 33 below, Guardian First Funding shall pay the Department a fine in the amount of \$15,250

remitted by certified check or money order made payable to the Department of Banking. The fine payment shall be sent to the attention of: Non-Depository Institutions, Bureau of Compliance and Licensing, Department of Banking, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

27. Corrective Action. Upon the effective date of this Order, Guardian First Funding shall cease and desist from violating the Mortgage Licensing Act and related regulations by ensuring that: all unique identifiers are properly displayed on business cards, other forms of advertisement and loan applications; the words "licensed by the Department of Banking" are included where and when required; all reports and required updates of information are completed properly; and that they provide consumers with rate lock agreements only when acting on behalf of a licensed mortgage lender and in that lender's name.

#### FURTHER PROVISIONS

28. Consent. Guardian First Funding 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. Guardian First Funding, 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. This Order represents the final resolution of the Department's Examination of Guardian First Funding and evidences the Department's agreement that no other fines, remedies, proceedings or actions shall be commenced, asserted or directed against Guardian First Funding as a result of the Examination.

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 Guardian First Funding.

31. Binding Nature. The Department and Guardian First Funding 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. Guardian First Funding hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order.

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 Guardian First Funding, in the future regarding all matters not resolved by this Order.

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b. Guardian First Funding 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.

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

35. Counterparts. This Order may be executed in separate counterparts and by facsimile or electronic mail in portable document format "PDF."

36. 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, Guardian First Funding intending to be legally bound, do hereby execute this Consent Agreement and Order.

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

John Palalai  
John Palalai, Enforcement Administrator  
Bureau of Compliance, and Licensing  
Department of Banking

Date: 11-23-2011

FOR GUARDIAN FIRST FUNDING GROUP, LLC

(Officer Signature)

(Print Officer Name)

(Title)

Date: 11/22/11