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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA	:	Docket No. : 11 <u>0125</u> (ENF-CO)
DEPARTMENT OF BANKING, BUREAU	:	
OF COMPLIANCE, INVESTIGATION	:	
AND LICENSING	:	
	:	
	:	
v.	:	
	:	
INFINITY HOME MORTGAGE	:	
COMPANY, INC.	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations, has conducted an examination of Infinity Home Mortgage Company, Inc. ("Infinity Home Mortgage") and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") believes that Infinity Home Mortgage operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *et seq.* and the Proper Conduct of Lending and Brokering in the Mortgage Loan Business Regulations ("Proper Conduct Regulations"), 10 Pa. Code §§ 46.1 -- 46.3. The parties to the above-captioned matter, in lieu of litigation, hereby stipulate and agree 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 Regulations.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act and the Proper Conduct Regulations for the Department.
3. Infinity Home Mortgage is currently licensed as a mortgage lender under the Mortgage Licensing Act with license number 22533 and a Nationwide Mortgage Licensing System and Registry ("NMLS") identification number of 121461.
4. Infinity Home Mortgage's corporate headquarters is located at 7 Carnegie Plaza, Cherry Hill, New Jersey 08003.
5. On or around October 25, 2010, the Department commenced an examination of Infinity Home Mortgage.

Unlicensed Mortgage Originators

6. As of November 5, 2008, individuals acting as mortgage loan originators were required to be licensed pursuant to Section 6111(a) of the Mortgage Licensing Act.
7. The Bureau concluded based on the examination that Infinity Home Mortgage accepted one hundred seventy seven (177) Pennsylvania residential mortgage loans from unlicensed loan originators.
8. Infinity Home Mortgage is required to directly supervise, control and maintain responsibility for the acts and omissions of the mortgage originators it employs. 7 Pa. C.S. § 6121(13(i)).

9. Section 6139(a)(14) of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a license of a licensee if the licensee has "conducted mortgage loan origination business through an unlicensed mortgage originator." 7 Pa. C.S. § 6139(a)(14).

10. By failing to ensure that Infinity Home Mortgage employed only licensed mortgage loan originators, Infinity Home Mortgage 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.

11. Infinity Home Mortgage contends that this violation occurred due to a misunderstanding to the new laws as well as the rapidly changing mortgage regulatory system at the state, federal and investor levels.

Failure to Provide Required Consumer Disclosure

13. The Bureau concluded based on the examination that 32 mortgage loan files originated by Infinity Home Mortgage did not contain the original fully executed disclosure form required by Section 46.2 of the Proper Conduct Regulations.

14. Section 46.2(b) of the Regulations provides:

[o]n a form prescribed by the Department, a licensee who takes an application shall disclose the following to the applicant:

- (1) If the lender providing the loan will escrow the applicable property taxes and hazard insurance.
- (2) If the licensee is a lender with the ability to directly lock-in a loan interest rate.
- (3) Whether the loan contains a variable interest rate or a balloon payment feature.
- (4) Whether the loan includes a prepayment penalty.
- (5) Whether the loan has a negative amortization feature.

10 Pa. Code § 46.2(b).

15. A "licensee issuing the disclosure form . . . shall sign and date the disclosure form and deliver or place in the mail the disclosure form within 3 business days after the application is received or prepared by the licensee." 10 Pa. Code § 46.2(c).

16. Moreover, "[a] licensee shall require an applicant to sign and date the disclosure form . . . within 10 business days after delivery or mailing *and retain the original executed disclosure form in the applicant's loan file.*" 10 Pa. Code § 46.2(e) (emphasis added).

17. By failing to provide the applicants with a fully completed Pennsylvania Consumer Disclosure and maintaining the original executed form in the applicant's loan file, Infinity Home Mortgage violated the Proper Conduct Regulations.

18. Prior to the completion of the examination, Infinity Home Mortgage added the Pennsylvania Consumer Disclosure to the company's origination software to ensure that it is provided to the consumer with each mortgage loan application.

Unique Identifier Missing from Applications

19. The Bureau concluded based on the examination that all applications originated by Infinity Home Mortgage did not contain the mortgage originator's National Mortgage Licensing System unique identifier number as required by the Mortgage Licensing Act.

20. Section 6121(14) of the Mortgage Licensing Act requires that "in 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).

Authority of the Department

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

22. 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).

VIOLATIONS

23. By accepting loans from unlicensed mortgage originators, Infinity Home Mortgage has violated Sections 6111(a), 6121(13)(i) and 6139(a)(14) of the Mortgage Licensing Act.

24. By failing to provide the consumer disclosure as required by the Proper Conduct Regulations, Infinity Home Mortgage has violated Sections 6139(a)(8) and 6139(a)(10) of the Mortgage Licensing Act.

25. By failing to include the mortgage originator’s unique identifier on all mortgage applications, Infinity Home Mortgage was in violation of Section 6121(14) of the Mortgage Licensing Act.

RELIEF

26. Fine. Infinity Home Mortgage shall pay a fine of \$46,500 for violations of the Mortgage Licensing Act. The fine shall be due and payable on the following schedule: one (1)

payment of \$5,000 and twenty-three (23) payments of \$1804.35 with the first payment due and payable within thirty (30) days of the Effective Date of this Order and subsequent payments due every 30 days thereafter until paid in full. The fine payments shall be remitted by company checks, certified checks or money orders made payable to the Pennsylvania Department of Banking and sent to the attention of the Compliance Division, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

27. Corrective Measures. Upon the effective date of this Order as defined in paragraph 33 below, Infinity Home Mortgage shall:

- a. cease and desist from accepting Pennsylvania mortgage loans from unlicensed mortgage loan originators;
- b. provide the Pennsylvania Consumer Disclosure Form in a manner consistent with the Proper Conduct Regulations; and
- c. include the mortgage originators NMLS Identification number on all applications and advertisements as required in the Mortgage Licensing Act.

FURTHER PROVISIONS

28. Consent. Infinity Home Mortgage 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 herein. Infinity Home Mortgage, 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 Infinity Home Mortgage.

31. Binding Nature. The Department, Infinity Home Mortgage, and all officers, owners, directors, employees, heirs and assigns of Infinity Home Mortgage 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 counsel.

33. Effectiveness. Infinity Home Mortgage hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "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 Infinity Home Mortgage in the future regarding all matters not resolved by this Order.
- b. Infinity Home Mortgage 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, by facsimile and by 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 Infinity Home Mortgage, intending to be legally bound, do hereby execute this Consent Agreement and Order in resolution of all outstanding issues.

**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: July 1, 2011

FOR INFINITY HOME MORTGAGE COMPANY, INC.

(Officer's Signature)

(Print Officer's Name)

Vice President

(Title)

Date: 6/21/11