



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

3. The Mortgage Licensing Act is the successor statute to Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (“MBBCEPA”), 63 P.S. § 456.101 et seq., and the Secondary Mortgage Loan Act (“SMLA”), 7 P.S. § 6601 et seq. On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by 7 Pa. C.S. § 6101 et seq., which was then amended on August 5, 2009 by Act 31 of 2009, H.B. 1654 (P.N. 2448).

4. CHL is currently licensed as a mortgage banker under the Mortgage Licensing Act with license number 22742 and a Nationwide Mortgage Licensing System and Registry (“NMLS”) identification number of 13677.

5. CHL’s corporate headquarters is located at 175 Pinelawn Road, Suite 400, Melville, NY 11747 and has branch locations in New York, New Jersey and Massachusetts.

6. On or around May 19, 2010, the Department commenced an examination of CHL (the “Examination”).

#### Unlicensed Mortgage Originators

7. 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.

8. The Examination revealed that CHL accepted twenty-seven (27) Pennsylvania residential mortgage loans from four (4) unlicensed loan originators.

9. CHL 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)).

10. 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).

11. By failing to ensure that CHL employed only licensed mortgage loan originators, CHL 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.

12. CHL 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 Examination revealed that CHL did not provide Pennsylvania consumers with a completed disclosure form and did not instruct the Pennsylvania consumers to sign, date and return the disclosure within 10 days as required by the Proper Conduct Reg.

14. Section 46.2(b) of the Proper Conduct Reg requires mortgage licensees to disclose to applicants, on a form prescribed by the Department, information regarding any escrow account, any lock-in on rates, any variable rate, any balloon payment, any prepayment penalty and any negative amortization. 10 Pa. Code § 46.2(b).

15. Section 46.2(c) of the Proper Conduct Reg provides, in relevant part, that “[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. Section 46.2(e) of the Proper Conduct Reg provides, in relevant part, that “[a] licensee *shall* require an applicant to sign and date the disclosure form required... *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 obtain the executed consumer disclosure forms within the time required CHL violated Section 46.2(e) of the Proper Conduct Reg.

18. Section 6139(a)(8) of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a licensee’s license if the licensee failed to comply with a regulation. 7 Pa. C.S. § 6139(a)(8).

19. By failing to provide the Pennsylvania consumer disclosure as provided by the Proper Conduct Reg, CHL failed to comply with a regulation of the Department in violation of the Mortgage Licensing Act.

20. CHL contends that this error was due to the fact that this was a Pennsylvania specific requirement and has instructed its IT department to include the disclosure for all future Pennsylvania loans in its computer system.

#### Accepting Loans from Unlicensed FHA-Brokers

21. The Examination revealed that CHL allegedly accepted and originated nineteen (19) Pennsylvania mortgage loan applications for Federal Housing Administration (“FHA”) mortgages from ten (10) non-FHA approved mortgage brokers.

22. CHL contends that the non-FHA approved mortgage brokers only provided counseling services to the Pennsylvania consumers.

23. The Examination revealed alleged instances where the loans closed and funded, the Pennsylvania consumer paid a fee to the non-FHA approved brokers that was generally 2%

of the loan amount. The fee, since it was paid to a mortgage broker, was listed on the HUD-1 Settlement Statements as a “Consultant Fee.”

24. The Bureau contends that since the consumers paid a Consultant Fee to the non-FHA approved brokers at settlement, CHL was having the non-FHA brokers compensated for referring the consumers to CHL.

25. Pursuant to the Mortgage Licensing Act, a licensee shall “[c]omply with all applicable Federal law, including the Real Estate Settlement Procedures Act (88 Stat. 1724, 12 U.S.C. §§ 2601 *et seq.*) the Truth in Lending Act (82 Stat. 1521, 15 U.S.C. §§ 1691 *et seq.*) and the Equal Credit Opportunity Act (88 Stat. 1521, 15 U.S.C. §§ 1691 *et seq.*.” 7 Pa. C.S. § 6121(3).

26. Section 8(a) of RESPA provides, in relevant part, that “[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.” 12 USC § 2607(a).

27. Mortgagee Letter 2008-17, interpreting section 8(a) of RESPA, issued by the United States Department of Housing and Urban Development (“HUD”) on June 20, 2008 provides “FHA loan origination services *must be performed by a FHA-approved lender or FHA-approved broker* (loan correspondent).” (emphasis added).

28. Mortgagee Letter 2008-17 further provides that “[w]hile FHA regulations permit a borrower to engage a broker who is not FHA-approved to assist him/her in obtaining mortgage financing (24 CFR 203.27(e)), the loan origination services *may not be performed by that broker*

*and the FHA approved mortgagee shall not compensate the broker for such services.”* (emphasis added).

29. The Mortgagee Letter 2008-17 prohibits “the payment of duplicative fees.” The payment to the unapproved broker for duplicated services *amounts to an unearned fee* in violation of section 8(b) of RESPA.”

30. The Mortgagee Letter 2008-17 further explains that counseling type services “must be paid from the mortgagor’s *own available assets*, must be disclosed on the HUD-1 at closing and a copy of the contract for these services must be included in the loan file submitted for insurance endorsement.” (emphasis in the original).

31. The Department may suspend, revoke or refuse to renew a license if the licensee engaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the mortgage loan business pursuant to the Mortgage Licensing Act. 7 Pa. C.S. § 6139(a)(3).

32. CHL denies any wrongdoing as it relates to this violation and disagrees with the Bureau’s position on RESPA and the applicability of the cited HUD guidance .

#### Authority of the Department

33. 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).

34. 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).

35. Section 46.3(a) of the Proper Conduct Regulation provides that a violation of the Proper Conduct Regulation is a violation of the Mortgage Licensing Act. 10 Pa. Code § 46.3(a).

### **VIOLATIONS**

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

37. By failing to provide the Pennsylvania consumer disclosure, CHL violated Section 46.2 of the Proper Conduct Reg.

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

39. By accepting loans from unlicensed FHA brokers, CHL violated Sections 6121(3) and 6139(a)(3) of the Mortgage Licensing Act.

### **RELIEF**

40. Fine. Within thirty (30) days of the Effective Date of this Order, CHL shall pay a fine of \$17,000 for violations of the Mortgage Licensing Act. 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.

41. Corrective Measures. Upon the Effective Date of this Order, CHL shall:

- a. cease and desist from originating Pennsylvania mortgage loans from locations not licensed to conduct mortgage loan business subject to the Mortgage Licensing Act.
- b. shall cease and desist from accepting Pennsylvania mortgage loans from unlicensed mortgage loan originators.
- c. shall comply with all applicable state and Federal laws and regulations.

### FURTHER PROVISIONS

42. Consent. CHL 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. CHL, 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.

43. 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).

44. 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 CHL.

45. Binding Nature. The Department, CHL, and all officers, owners, directors, employees, heirs and assigns of CHL intend to be and are legally bound by the terms of this Order.

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



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

48. 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 CHL in the future regarding all matters not resolved by this Order.

b. CHL 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.

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

50. Counterparts. This Order may be executed in separate counterparts, by facsimile and by PDF.

51. 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 CHL, 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**

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

Date: June 15, 2011

**FOR CONTINENTAL HOME LOANS**

\_\_\_\_\_  
(Officer's Signature)

\_\_\_\_\_  
(Print Officer's Name)

President / CEO

(Title)

Date: 6/13/11