

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING

FILED

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

v.

U.S. MORTGAGE FUNDING, INC.

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PA DEPT OF BANKING  
Docket No. : 12 0076 (ENF-ORD)

**NOTICE OF RIGHT TO APPEAL AND HEARING**

You, U.S. Mortgage Funding, Inc., have the right to appeal the attached Order within **10 days** of the date of service. *See* 1 Pa. Code § 35.20. The date of service is the date the Order is deposited in the mail or delivered to you in person, as the case may be, as set forth in 1 Pa. Code § 33.34. If you appeal the Order, you also have a right to a hearing.

To file an appeal and request a hearing on the Order, you must file a petition with the Secretary of Banking within 10 days of the date of service. 1 Pa. Code § 35.20. The petition must be in writing, state clearly and concisely your grounds of interest in the subject matter, the facts you rely upon, the law you rely upon, and the relief you seek. *See* 1 Pa. Code § 35.17. Please deliver your petition to:

Linnea Freeberg, Docket Clerk  
Office of Executive Deputy Secretary  
Pennsylvania Department of Banking  
17 N. Second Street, Suite 1300  
Harrisburg, PA 17101

The petition must be **received** by the Docket Clerk within the aforementioned 10 day deadline. If the Docket Clerk does not receive your petition on time, your right to a hearing will be waived and the Order will be deemed final.

If you choose to file a petition challenging the Order, please send an additional copy to:

Sharon M. Williams, Assistant Counsel  
Pennsylvania Department of Banking  
17 N. Second Street, Suite 1300  
Harrisburg, PA 17101

Once you file your petition appealing the Order and requesting a hearing, you will be notified of the hearing date, time, place, the person who will preside at your hearing, and any other pertinent information.

You have the right to be represented by an attorney. Corporations may be required to be represented by an attorney.

The hearing and all other procedural matters will be governed by the Pennsylvania Administrative Agency Law, 2 Pa. C.S. §§ 501-508, 701-704, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1.-35.251.



**WHEREAS**, on September 18, 2009, the Georgia Department of Banking and Finance issued an order to cease and desist against U.S. Mortgage Funding for engaging in residential mortgage brokering/lending activities without a license or under an applicable exemption; and

**WHEREAS**, on March 10, 2010, the California Department of Real Estate issued a cease and desist order against U.S. Mortgage Funding and two individuals for soliciting, negotiating or performing services for borrowers in connections with loans secured by real property; and

**WHEREAS**, on December 21, 2010, the Connecticut Department of Banking issued a temporary order to cease and desist against U.S. Mortgage Funding for engaging in or offering to engage in debt negotiation and imposing fees in excess of that allowed by Connecticut law; and

**WHEREAS**, on January 19, 2011, the Maryland Commissioner of Financial Regulation issued a cease and desist order against U.S. Mortgage Funding and several other companies and individuals for engaging in credit services business activities including loan modifications; and

**WHEREAS**, on September 20, 2011, the Federal Trade Commission (FTC) was awarded permanent injunctive relief against, *inter alia*, U.S. Mortgage Funding, which permanently banned U.S. Mortgage Funding from engaging in: mortgage loan modification and foreclosure relief services; telemarketing; representations relating to financial related goods and services; and certain representations relating to any goods and services; and

**WHEREAS**, in case funds can be recovered from U.S. Mortgage Funding, the FTC is asking affected consumers to file a complaint at [www.ftc.gov](http://www.ftc.gov) and provide information regarding any interaction with U.S. Mortgage Funding, including their name and contact information, when they signed up with U.S. Mortgage Funding, what was promised, what was paid, and the result of the interaction with U.S. Mortgage Funding; and

Advance Fees Prior to January 31, 2011

**WHEREAS**, Section 6102 of the Mortgage Licensing Act defines an “advance fee” as “[a]ny funds requested by or to be paid to a person in advance of or during the processing of a mortgage loan application, excluding those fees paid by a consumer directly to a credit agency reporting bureau, title company or real estate appraiser,” *See* 7 Pa. C.S. § 6102; and

**WHEREAS**, the Pennsylvania consumers, received information from U.S. Mortgage Funding for loan modification services regarding Pennsylvania residential properties; and

**WHEREAS**, the Pennsylvania consumers paid U.S. Mortgage Funding a “retainer” fee in advance of the mortgage loan modifications being negotiated with the consumers’ lenders by U.S. Mortgage Funding; and

**WHEREAS**, those advance fees are connected to the mortgage loan business; and

**WHEREAS**, by charging advance fees, U.S. Mortgage Funding has violated the Mortgage Licensing Act; and

Advance Fees After January 31, 2011

**WHEREAS**, on December 29, 2010, the FTC’s regulation of mortgage assistance relief services, 16 CFR § 322.1, *et seq.* became effective (the “FTC Regulation”); and

**WHEREAS**, mortgage loan modifications and other similar services are included in the FTC Regulation’s definition of “Mortgage Assistance Relief Service.” *See* 16 CFR § 322.2(i); and

**WHEREAS**, the FTC Regulation defines a “Mortgage Assistance Relief Service Provider” as “any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service.” 16 CFR § 322.2(j); and

**WHEREAS**, a mortgage loan modification company provides, offers to provide or arranges for others mortgage assistance relief services and is therefore a Mortgage Assistance Relief Service Provider as defined by the FTC Regulation; and

**WHEREAS**, on January 31, 2011, the FTC Regulation became effective and Section 322.5(a) of the FTC Regulation provides that it is a violation of the regulation for any mortgage assistance relief service provider to “[r]equest or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer’s dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer’s dwelling loan holder or servicer.” 16 CFR § 322.5(a); and

**WHEREAS**, U.S. Mortgage Funding does not meet any exception to the applicability of the FTC Regulation. *See* 16 C.F.R. § 322.7; and

**WHEREAS**, by charging an advance “retainer” fee U.S. Mortgage Funding is in violation of the FTC Regulation; and

**WHEREAS**, Section 6121(3) of the Mortgage Licensing Act provides that a licensee must comply with all applicable Federal law. 7 Pa. C.S. § 6121(3); and

**WHEREAS**, by charging advance fees in violation of the FTC Regulation, U.S. Mortgage Funding has violated the Mortgage Licensing Act; and

Mortgage Licensing Act

**WHEREAS**, the Mortgage Licensing Act applies to any mortgage loan that is “(i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender *or any other person*; (ii) made or executed within this

Commonwealth; or (iii) notwithstanding the place of execution, secured by real property located in this Commonwealth.” 7 Pa. C.S. § 6135(1) (emphasis added); and

**WHEREAS**, 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.” 7 Pa. C.S. § 6102; and

**WHEREAS**, Section 6102 of the Mortgage Licensing Act defines a “mortgage originator” as:

- (1) An individual [that] takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain.
- (2) The term does not include any of the following:
  - (i) An individual engaged solely as a loan processor or underwriter consistent with section 6112(8) (relating to exceptions to licensing requirements).
  - (ii) A person or entity solely involved in extensions of credit relating to timeshare plans. . . .
- (3) Except as set forth in paragraph (4), the term does not include an employee of a licensee or person exempt or excepted from licensure under this chapter who *solely renegotiates terms for existing mortgage loans held or serviced by that licensee or person* and who does not otherwise act as a mortgage originator. . . .

7 Pa. C.S. § 6102 (emphasis added); and

**WHEREAS**, Section 6102 of the Mortgage Licensing Act defines a “first mortgage loan” as a loan which is “(1) made primarily for personal, family or household use; and (2) secured by any first lien mortgage, deed of trust, or equivalent consensual security interest on a dwelling or on residential real estate.” 7 Pa. C.S. § 6102; and

**WHEREAS**, Section 6102 of the Mortgage Licensing Act defines a “secondary mortgage loan” as “(1) made primarily for personal, family or household use; and (2) secured by

any secondary lien mortgage, deed of trust, or equivalent consensual security interest on a dwelling or on residential real estate.” 7 Pa. C.S. § 6102; and

**WHEREAS**, 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; and

**WHEREAS**, 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. 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); and

**WHEREAS**, Section 6131(e)(1) of the Mortgage Licensing Act provides that mortgage broker license applicants must obtain and “maintain a bond in the amount of \$100,000, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall be a penal bond conditioned on compliance with this chapter and subject to forfeiture by the department and shall run to the Commonwealth for its use. The bond shall also be for the use of any person against the mortgage broker for failure to carry out the terms of any provision for which advance fees are paid. . . .” 7 Pa. C.S. § 6131(e)(1); and

#### Authority of the Department

**WHEREAS**, 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 the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4); and



**AND NOW, THEREFORE**, since U.S. Mortgage Funding has engaged in unlicensed activity, the Bureau, pursuant to its authority referenced above hereby imposes the following Order:

1. Loan Origination. Upon the effective date of this Order, U.S. Mortgage Funding and any and all officers, members, managers, employees, independent contractors or agents of U.S. Mortgage Funding shall cease and desist from engaging in the mortgage loan business subject to the Mortgage Licensing Act, including, but not limited to, advertising (including website advertising), accepting applications and negotiating mortgage loans and mortgage loan modifications in Pennsylvania or to Pennsylvania consumers, unless and until such time that U.S. Mortgage Funding and all mortgage originators as defined by the Mortgage Licensing Act are licensed by the Department pursuant to the Mortgage Licensing Act.

2. Pipeline Report. Upon the effective date of this Order, U.S. Mortgage Funding shall provide a list of consumers that U.S. Mortgage Funding has worked with in order to negotiate mortgage loan modifications (the "Pipeline Report"). The Pipeline Report shall include, but is not limited to:

- a. The names, addresses and phone numbers of Pennsylvania consumers that have responded to advertisements or that U.S. Mortgage Funding has as clients; and
- b. The amount of fees collected from the consumers; and
- c. The current rate, term and payment of the Pennsylvania consumers' loans; and
- d. The proposed rate, term and payment of the loans subsequent to the loan modification; and

- e. The current status and/or resolution of the loan modification.

The Pipeline Report shall be sent to John Talalai, Administrator, Compliance Division,

by 5:00 PM eastern time on the effective date of this Order. The Pipeline Report shall be updated weekly, until the Bureau no longer requires updates.

3. Advertising. Upon the effective date of this Order, U.S. Mortgage Funding shall provide a list of any other websites or copies of any other advertising that U.S. Mortgage Funding has utilized including, but not limited to, mail solicitations. The information shall be sent to John Talalai, Administrator, Compliance Division, by 5:00 PM eastern time on the effective date of this Order.

4. Contact Information. Upon the effective date of this Order, U.S. Mortgage Funding shall provide a list of all owners, officers and employees of U.S. Mortgage Funding. The list shall include the name, address telephone number and position of these individuals. The information shall be sent to John Talalai, Administrator, Compliance Division, by 5:00 PM eastern time on the effective date of this Order.

5. Advance Fees. Upon the effective date of this Order, U.S. Mortgage Funding shall refund all advance fees collected from a Pennsylvania consumer and shall cease and desist from collecting any future advance fees unless and until such time as U.S. Mortgage Funding obtains a bond to collect advance fees. Proof of the refunded advance fees shall be made in the form of cancelled/cleared checks and shall be sent to John Talalai, Administrator, Compliance Division, by 5:00 PM eastern time on the effective date of this Order.

6. Waiver. Nothing in this Order shall prevent U.S. Mortgage Funding from seeking a waiver from the Department to allow U.S. Mortgage Funding to complete a loan modification

for Pennsylvania consumers that had been originated and listed on the Report in order to prevent further harm to the consumer and for no other reason.

7. Reservation of Rights. Nothing in this Order shall prevent the Bureau from taking any further administrative action as deemed necessary including, but not limited to imposing fines pursuant to Section 6140(a) or (b) of the Mortgage Licensing Act or seeking restitution for consumers.

**IT IS SO ORDERED.**

John Talalai, Administrator  
Department of Banking,  
Bureau of Compliance and Licensing

9-10-2012  
(Date)

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DEPARTMENT OF BANKING

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U.S. MORTGAGE FUNDING, INC.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Order upon the parties below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED AND FIRST CLASS MAIL

U.S. Mortgage Funding, Inc.  
1200 Clint Moore Rd.  
Suite 2  
Boca Raton, FL 33487

U.S. Mortgage Funding, Inc.  
951 Broken Sound Parkway NW  
Suite 200  
Boca Raton, FL 33487

U.S. Mortgage Funding, Inc.  
3600 Crondall Lane  
Owings Mills, MD 21117

Dated this 10 day of September, 2012.

/s/ Sharon M. Williams  
Assistant Counsel  
Attorney I.D. # 207545  
FOR: Commonwealth of Pennsylvania  
Department of Banking  
17 North Second Street, Suite 1300  
Harrisburg, PA 17101  
(717) 787-1471