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BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE)	Case No.: 413-0427
COMMISSIONER OF CORPORATIONS OF)	
THE STATE OF CALIFORNIA,)	ACCUSATION IN SUPPORT OF NOTICE OF
)	INTENT TO ISSUE ORDERS SUSPENDING
Complainant,)	LICENSE AND IMPOSING PENALTIES
)	
vs.)	
)	
GUIDANCE RESIDENTIAL, LLC,)	
)	
Respondent.)	
)	

The Complainant is informed and believes and based upon such information and belief, alleges and charges the Respondent as follows:

I

Guidance Residential, LLC (“Guidance”) is a residential mortgage lender and loan servicer licensed since September 11, 2002 by the Commissioner of Corporations (“Commissioner” or “Complainant”) pursuant to the California Residential Mortgage Lending Act (“CRMLA”) (California Financial Code sections 50000 et seq.). Guidance has its principal place of business located at 11107 Sunset Hills Road, Suite 200, Reston, Virginia 20190. Guidance employs mortgage loan originators.

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II

On or about June 11, 2012, the Commissioner commenced a regulatory examination of the books and records of Guidance under the CRMLA (“2012 regulatory examination”). The 2012 regulatory examination disclosed that for six of 30 loans, or approximately 20% of the loans reviewed, Guidance was charging the borrower per diem interest in excess of one day prior to the date that the loan proceeds are disbursed from escrow, in violation of California Financial Code (“FC”) section 50204, subdivision (o). While a document entitled, “Interim Interest Payment Disclosure” was found in five of the six loans with per diem interest overcharges, the disclosures did not comply with California Civil Code (“CC”) section 2948.5, subdivision (b). Therefore, the disclosures were not considered in calculating per diem interest charges. The range of per diem interest overcharges was between \$9.15 and \$272.23. The range of days that interest was overcharged was between one and five.

On or about August 3, 2012, the Commissioner made written demand on Guidance to complete the following: (i) conduct a self-audit regarding per diem interest for all loans originated from the date of the last regulatory examination on or about January 22, 2008 through the present; (ii) make appropriate refunds in the amount of the overcharge plus 10 percent per annum; and (iii) submit a response to the Department of Corporations (“Department”) within 30 calendar days from August 3, 2012 detailing the findings of the self-audit and the refunds made (“self-audit report”) and the corrective actions implemented to prevent any recurrences of these violations of the CRMLA. The self-audit report was to include the following information for *all* loans from January 22, 2008 through the present: loan number, borrower’s name, loan amount, interest rate, date disbursed by the settlement agent, date starting collecting interest, interest overcharged, the total amount of the refund due to the borrowers (overcharge plus interest at the rate of 10 percent per annum), and the date the borrowers were refunded.

III

On or about November 6, 2012, Guidance submitted a written response claiming it had completed a self-audit of a total of 556 loans representing all loans originated since January 22, 2008

1 through the present. However, the self-audit report listed details for only the 73 loans which
2 reportedly required refunds because of per diem interest overcharges. Guidance did not provide any
3 information regarding the remaining 483 loan files that were reportedly self-audited but did not
4 require refunds.

5 Moreover, one of the six per diem interest overcharges brought to the attention of Guidance
6 during the 2012 regulatory examination was not captured in its self-audit as requiring a refund or
7 being refunded.

8 Therefore, on or about January 7, 2013, the Department sent Guidance a follow-up letter
9 demanding that Guidance submit the following: (i) a self-audit report regarding per diem interest for
10 *all* loans originated from the date of the last regulatory examination on or about January 22, 2008
11 through the present, including the one loan that was brought to the attention of Guidance during the
12 2012 regulatory examination but was not captured in its self-audit; and (ii) documentation of the
13 corrective actions claimed to have been taken to prevent any recurrences of the violations of FC
14 section 50204, subdivision (o). Guidance was to submit its response within 15 days from the date of
15 the letter, or by January 22, 2013. To date, Guidance has not submitted any response to the
16 Commissioner’s January 7, 2013 follow-up letter.

17 Therefore, Guidance has violated FC section 50307, subdivision (b) by failing to make a
18 special report to the Commissioner, specifically, the self-audit report and documentation of the
19 corrective actions claimed to have been taken to prevent any recurrences of the violations of FC
20 section 50204, subdivision (o).

21 IV

22 California Financial Code section 50327 provides in pertinent part:

23 (a) The commissioner may, after notice and a reasonable opportunity to
24 be heard, suspend or revoke any license, if the commissioner finds that:

25 (1) the licensee has violated any provision of this division or rule or order
26 of the commissioner thereunder; or (2) any fact or condition exists that, if
27 it had existed at the time of the original application for license, reasonably
28 would have warranted the commissioner in refusing to issue the license
originally.

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California Financial Code section 50513 provides in pertinent part:

(a) The commissioner may do one or more of the following:

...

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

...

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

V

The Commissioner finds that, by reason of the foregoing, Guidance Residential, LLC has violated Financial Code sections 50204, subdivision (o) and 50307, subdivision (b), and therefore grounds exist to suspend the residential mortgage lender license of Guidance Residential, LLC pursuant to Financial Code section 50327, subdivision (a), and assess penalties against Guidance Residential, LLC pursuant to Financial Code section 50513.

WHEREFORE, IT IS PRAYED that:

1. Pursuant to Financial Code section 50327, the residential mortgage lender license of Guidance Residential, LLC be suspended for a period of up to 12 months;
2. Pursuant to Financial Code section 50513, subdivision (b), penalties in the total amount of at least \$75,000 be imposed upon Guidance Residential, LLC as follows:

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(i) For one violation of Financial Code section 50307, subdivision (b), in the amount of \$1,000, or according to proof; and

(ii) For at least 74 violations of Financial Code section 50204, subdivision (o) occurring between on or about January 22, 2008 through November 6, 2012, in the amount of \$1,000 per violation, totaling \$74,000, or according to proof.

Dated: June 19, 2013
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Corporations

By _____
Sophia C. Kim
Corporations Counsel
Enforcement Division