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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CRMLA License No.: 413-0689
13)
14 THE COMMISSIONER OF BUSINESS) **CONSENT ORDER**
15 OVERSIGHT,)
16)
17 Complainant,)
18)
19 v.)
20)
21 ADVANCE MORTGAGE CORPORATION,)
22)
23 Respondent.)

24
25 This Consent Order is entered into between the Commissioner of Business Oversight
26 (Commissioner) and Advance Mortgage Corporation (Advance Mortgage) (collectively, the
27 parties), and is made with respect to the following facts:

28 RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of residential mortgage lending pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.)

1 B. Advance Mortgage is a residential mortgage lender licensed by the Commissioner
2 since August 15, 2005 (CRMLA License No. 413-0689.) Advance Mortgage is headquartered at
3 9020 N. May Avenue, Suite 200, Oklahoma City, Oklahoma 73120.

4 C. Don Abernathy (“Abernathy”) is the President of Advance Mortgage and a control
5 person of Advance Mortgage and, as such, is authorized to enter into this Consent Order on behalf
6 of Advance Mortgage.

7 D. On November 21, 2016, the Department of Business Oversight (Department)
8 received a Notice of Cancellation of a Bond dated November 16, 2016, from Great American
9 Insurance Company canceling the bond of Advance Mortgage effective on December 21, 2016.

10 E. On December 21, 2016, the Commissioner forwarded a letter to Advance Mortgage
11 which notified Advance Mortgage of the cancellation of the bond and the requirement to reinstate
12 or replace the bond.

13 F. On March 23, 2017, a copy of an Order to Discontinue Residential Mortgage
14 Lending and/or Servicing Activities Pursuant to Section 50319 was mailed to Advance Mortgage.
15 The USPS tracking identifier (No. 7012-0470-0002-4257-0117) showed that the order was not
16 deliverable.

17 G. On or about December 21, 2016, Lori Bailey (“Bailey”), the chief risk officer of The
18 Bankers Bank, sent an email to the Department advising that The Banker’s Bank (a state-chartered
19 bank in Oklahoma) purchased Advance Mortgage in October 2014. Advance Mortgage was
20 renamed Bankers Mortgage Corporation but the business of the Bankers Mortgage Corporation was
21 discontinued in 2016 and, as a consequence, Bankers Mortgage no longer had a need to maintain
22 and active license and does need to maintain the license or renew the bond.

23 H. Bailey reported that Bankers Mortgage Corporation ceased accepting applications on
24 August 31, 2016, and closed its last California loan on October 13, 2016. By his signature hereto,
25 Abernathy confirms Bailey’s statements as set forth in Paragraphs G and H.

26 I. It is the intention and desire of the parties to resolve this matter without the necessity
27 of a hearing and/or other litigation.
28

1 J. The Commissioner finds that this action is appropriate, in the public interest, and
2 consistent with the purposes fairly intended by the policy and provisions of this law.

3 K. NOW, THEREFORE, in consideration of the foregoing, and the terms and
4 conditions set forth herein, the parties agree as follows:

5 TERMS AND CONDITIONS

6 1. Purpose

7 The purpose of this Consent Order is to resolve the Commissioner’s regulatory concerns
8 resulting from the investigation into the violations discovered during the Department’s
9 examinations of Advance Mortgage in a manner that avoids the expense of court proceedings, is in
10 the public interest, protects consumers, and is consistent with the purposes, policies, and provisions
11 of the CRMLA.

12 2. Finality of Consent Order

13 Advance Mortgage hereby agrees to comply with the Consent Order and, further, stipulates
14 that this Consent Order is hereby deemed a final and enforceable order issued pursuant to the
15 Commissioner’s authority under the CRMLA.

16 3. Order to Revoke License

17 Advance Mortgage stipulates that in accordance with Financial Code section 50327, it
18 agrees to the revocation of its license (No. 413-0689) issued pursuant to the CRMLA.

19 4. Waiver of Hearing Rights

20 Advance Mortgage acknowledges that the Commissioner is ready, willing, and able to
21 proceed with the filing of an administrative enforcement action on the charges contained in this
22 Consent Order, and Advance Mortgage hereby waives the right to a hearing, and to any
23 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA.
24 Advance Mortgage further expressly waives any requirement for the filing of an Accusation that
25 may be afforded by Government Code section 11415.60, subdivision (b), the California
26 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of
27 law; and by waiving such rights, Advance Mortgage effectively consents to this Consent Order
28 becoming final.

1 5. Waiver of Payment of Penalties

2 In consideration of the foregoing, the Commissioner agrees to waive the
3 collection of any penalties owed and due as of the time of this Consent Order.

4 6. Refunds

5 Prior to the execution of this Consent Order, Advance Mortgage agrees to issue the
6 following:

- 7 a. A refund in the amount of \$9.55 to the borrower for loan number 150500000649 for
8 the overpayment of a credit report fee.
- 9 b. Refunds in the amounts specified below for overcharging borrowers for the fees
10 related to recording in the amount of \$447.00 for the following loans:

Loan Number	Amount Charged	Invoice	Amount Overcharged
150400000618	183.00	134.00	49.00
160200001700	125.00	74.00	54.00
150500000649	82.00	63.00	19.00
151200001420	89.00	65.00	24.00
150500000710	113.00	53.00	60.00
160200001730	81.00	66.00	15.00
160200001683	125.00	60.00	65.00
150500000650	94.00	76.00	18.00
160200001735	105.00	66.00	39.00
150800000962	72.00	58.00	14.00
160200001731	90.00	Not in File	90.00

20 7. Effect of Consent Order on License

21 In consideration of Advance Mortgage’s agreement to the entry of this Consent Order, the
22 Commissioner hereby agrees that except as set forth in this Consent Order, she shall not take any
23 further action for any violation for the period of January 2012 through the date of execution of this
24 Consent Order as such date is defined in Paragraph 20.

25 8. Full and Final Settlement

26 The parties hereby acknowledge and agree that this Consent Order is intended to constitute a
27 full, final, and complete resolution of the Department’s investigation of Advance Mortgage and for
28 violations discovered during its examination and that no further proceedings or actions will be

1 brought by the Commissioner in connection with these matters either under the CRMLA, or any
2 other provision of law, excepting therefrom any proceeding to enforce compliance with the terms of
3 this Consent Order, or action if such proceeding or action is based upon discovery of new and
4 further violations of the CRMLA which do not form the basis for this Consent Order or which were
5 knowingly concealed from the Commissioner by Advance Mortgage.

6 9. Binding

7 This Consent Order is binding on all heirs, assigns, and/or successors in interest.

8 10. Commissioner’s Duties

9 The parties further acknowledge and agree that nothing contained in this Consent Order
10 shall operate to limit the Commissioner’s ability to assist any other agency (city, county, state or
11 federal) with any prosecution, administrative, civil or criminal, brought by any such agency against
12 Advance Mortgage or any other person based upon any of the activities alleged in these matters or
13 otherwise.

14 11. Third Party Actions

15 It is the intent and understanding between the parties that this Consent Order does not create
16 any private rights or remedies against Advance Mortgage, create any liability for Advance
17 Mortgage or limit defenses of Advance Mortgage for any person or entity not a party to this
18 Consent Order.

19 12. Future Actions by Commissioner

20 This Consent Order may be revoked and the Commissioner may pursue any and all
21 remedies available under law against Advance Mortgage if the Commissioner later discovers that
22 Advance Mortgage knowingly or willfully withheld information used for and relied upon in this
23 Consent Order. Further, Advance Mortgage agrees that this Consent Order does not resolve any
24 penalties that may be assessed by the Commissioner upon discovery of new and further violations
25 of the CRMLA.

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1 13. Independent Legal Advice

2 Each of the parties represents, warrants, and agrees that it has received independent advice
3 from its attorney(s) and/or representatives with respect to the advisability of executing this Consent
4 Order.

5 14. Counterparts

6 The parties agree that this Consent Order may be executed in one or more separate
7 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
8 together constitute and be one and the same instrument.

9 15. Waiver, Modification, and Qualified Integration

10 The waiver of any provision of this Consent Order shall not operate to waive any other
11 provision set forth herein. No waiver, amendment, or modification of this Consent Order shall be
12 valid or binding to any extent unless it is in writing and signed by all of the parties affected by it.

13 16. Headings and Governing Law

14 The headings to the paragraphs of this Consent Order are inserted for convenience only and
15 will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.
16 This Consent Order shall be construed and enforced in accordance with and governed by California
17 law.

18 17. Full Integration

19 Each of the parties represents, warrants, and agrees that in executing this Consent Order it
20 has relied solely on the statements set forth herein and the advice of its own counsel. Each of the
21 parties further represents, warrants, and agrees that in executing this Consent Order it has placed no
22 reliance on any statement, representation, or promise of any other party, or any other person or
23 entity not expressly set forth herein, or upon the failure of any party or any other person or entity to
24 make any statement, representation or disclosure of anything whatsoever. The parties have
25 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced
26 to execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary,
27 interpret, supplement, or contradict the terms of this Consent Order.

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18. Presumption from Drafting

In that the parties have had the opportunity to draft, review and edit the language of this Consent Order, no presumption for or against any party arising out of drafting all or any part of this Consent Order will be applied in any action relating to, connected to, or involving this Consent Order. Accordingly, the parties waive the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

19. Voluntary Agreement

Advance Mortgage enters into this Consent Order voluntarily and without coercion and acknowledges that no promises, threats or assurances have been made by the Commissioner or any officer, or agent thereof, about this Consent Order.

20. Effective Date

This Consent Order shall not become effective until signed by all parties and delivered by the Commissioner’s agent by email to Advance Mortgage’s general counsel at rsonders@tbb.bank.

21. Public Record

Respondent acknowledges that this Consent Order is a public record.

22. Authority to Execute

Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order.

Dated: August 4, 2017

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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Dated: August 2, 2017

ADVANCE MORTGAGE, n/k/a Bankers Mortgage Corporation

By _____
Don Abernathy
President