

1 PRESTON DuFAUCHARD  
 California Corporations Commissioner  
 2 WAYNE STRUMPFER  
 Deputy Commissioner  
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 Lead Corporations Counsel  
 4 JUDY L. HARTLEY (CA BAR NO. 110628)  
 Senior Corporations Counsel  
 5 Department of Corporations  
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7 Attorneys for Complainant

8  
 9 **BEFORE THE DEPARTMENT OF CORPORATIONS**  
 10 **OF THE STATE OF CALIFORNIA**

11  
 12 In the Matter of the Accusation of THE ) OAH CASE NO. L-2006110490  
 CALIFORNIA CORPORATIONS )  
 13 COMMISSIONER, ) File No.: 603-B544  
 )  
 14 Complainant, ) SETTLEMENT AGREEMENT  
 )  
 15 vs. )  
 16 )  
 17 EMERALD MORTGAGE CORP., )  
 )  
 18 Respondent. )  
 19 )

20 This Settlement Agreement is entered into between Emerald Mortgage Corp. ("Emerald")  
 21 and the California Corporations Commissioner ("Commissioner") and is made with respect to the  
 22 following facts:

23 **RECITALS**

- 24 A. Emerald is a corporation in good standing, duly formed and existing pursuant to the  
 25 laws of the State of California, and authorized to conduct business in the State of California.  
 26 B. Emerald currently holds a broker's license under the California Finance Lenders Law  
 27 ("CFL"). Emerald has its principal place of business at 18425 Burbank Boulevard, Suite 404,  
 28 Tarzana, California 91356.

1 C. Markus S. Shepherd (“Shepherd”) is the president of Emerald and is authorized to  
2 enter into this Settlement on behalf of Emerald.

3 D. On October 19, 2006, Emerald was personally served with a Notice of Intention to  
4 Issue Order Revoking Finance Lenders License, Accusation, and accompanying documents issued  
5 by the Commissioner on October 17, 2006 (“Accusation”). Emerald has filed a Notice of Defense  
6 with the Commissioner. A two-day hearing is currently scheduled to commence on May 29, 2007.

7 E. It is the intention and desire of the parties to resolve this matter without the necessity  
8 of a hearing and/or other litigation.

9 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
10 forth herein, the parties agree as follows:

11 **TERMS AND CONDITIONS**

12 1. This Settlement Agreement is entered into for the purpose of judicial economy and  
13 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

14 2. Emerald admits the allegations contained in the Accusation. The admissions of  
15 Emerald are solely for the limited purposes of these proceedings and any future proceeding(s) that  
16 may be initiated by or brought before the Commissioner against Emerald. It is the intent and  
17 understanding between the parties that this Settlement Agreement, and particularly the admissions of  
18 Emerald herein, shall not be binding or admissible against Emerald in any action(s) brought against  
19 Emerald by third parties.

20 3. Emerald hereby agrees to the issuance by the Commissioner of an order revoking its  
21 finance lenders license. The revocation shall become effective immediately upon the execution of  
22 this Stipulation by both parties. A copy of the revocation order is attached and incorporated as  
23 Exhibit A.

24 4. Emerald acknowledges its right to an administrative hearing under Financial Code  
25 section 22714 in connection with this matter, and hereby waives its right to a hearing, and to any  
26 reconsideration, appeal, or other rights which may be afforded pursuant to the CFLL, the California  
27 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law  
28 in connection with this matter.

1           5.     Shepherd acknowledges that the allegations made in the Accusation, while made  
2 against Emerald, could be cause to deny future license applications and/or amendments to any  
3 existing and/or future license applications under the Commissioner's jurisdiction if such license  
4 application(s) and/or amendment(s) include Shepherd as a reportable individual, i.e., officer,  
5 director, person owning or controlling, directly or indirectly, 10 percent or more of the outstanding  
6 equity securities. The Commissioner, by entering into this Settlement Agreement, is not making any  
7 representations or promises regarding the processing of any future license applications and/or  
8 amendments to any existing and/or future license applications under the Commissioner's jurisdiction  
9 if such license application(s) and/or amendment(s) include Shepherd as a reportable individual.

10           6.     The parties hereby acknowledge and agree that this Settlement Agreement is intended  
11 to constitute a full, final and complete resolution of this matter. The parties further acknowledge and  
12 agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner's  
13 ability to assist any other agency, (county, state or federal) with any prosecution, administrative,  
14 civil or criminal, brought by any such agency against Emerald and others based upon any of the  
15 activities alleged in this matter or otherwise.

16           7.     The Commissioner shall cause this Settlement Agreement to be filed with the Office  
17 of Administrative Hearings within five business days of its execution.

18           8.     Each of the parties represents, warrants, and agrees that it has received independent  
19 advice from its attorney(s) and/or representatives with respect to the advisability of executing this  
20 Settlement Agreement.

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



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Dated: 3-19-07

By MARKUS S. SHEPHERD an individual  
(as to paragraph 5 only)

APPROVED AS TO FORM AND CONTENT:

POTHIER & ASSOCIATES

By ROSE POTHIER, Attorneys for  
EMERALD MORTGAGE CORP. and MARKUS S. SHEPHERD

PRESTON DuFAUCHARD  
California Corporations Commissioner

By JUDY L. HARTLEY  
Senior Corporations Counsel

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 California Corporations Commissioner  
 2 WAYNE STRUMPFER  
 Deputy Commissioner  
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10 STATE OF CALIFORNIA

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 12 In The Matter of the Accusation of THE  
 CALIFORNIA CORPORATIONS  
 13 COMMISSIONER,

) OAH NO. L-2006110490

) File Nos. 603-B544

14 Complainant,

) ORDER REVOKING FINANCE LENDERS  
 ) LICENSE

15 vs.

16 EMERALD MORTGAGE CORP.,

17 Respondent.  
 18  
 19  
 20

21 Pursuant to the Settlement Agreement entered into between Emerald Mortgage Corp.  
 22 ("Emerald") and the California Corporations Commissioner ("Commissioner") on January 2007,  
 23 attached and incorporated herein as Exhibit A, the finance lenders license issued by the  
 24 Commissioner to Emerald is hereby revoked effective immediately.

25 Pursuant to the terms of the Settlement Agreement, Emerald admits the following for  
 26 purposes of this action and any future proceedings initiated by or brought before the California  
 27 Corporations Commissioner only:  
 28

**EXHIBIT A**

1           1.       Emerald, a California corporation, was a broker licensed by the Commissioner  
2 pursuant to the California Finance Lenders Law of the State of California (California Financial Code  
3 § 22000 et seq.) ("CFL"). Emerald had been licensed as a broker under the CFL since July 5,  
4 2005. Emerald's principal place of business was 18425 Burbank Boulevard, Suite 404, Tarzana,  
5 California 91356.

6           2.       California Financial Code section 22101 provides that an application for a CFL  
7 license shall be in the form and contain the information that the Commissioner may by rule require.  
8 California Financial Code section 22101 and California Code of Regulations, title 10, section 1422,  
9 requires corporate applicants to disclose to the Commissioner in the application all officers,  
10 directors, any person owning or controlling, directly or indirectly, 10% or more of the applicant, and  
11 all person(s) who would be in charge of the business.

12           3.       On April 5, 2005, Emerald filed its application for a broker license with the  
13 Commissioner pursuant to California Financial Code section 22101 (File No. 603-B544 hereinafter  
14 the "application"). The application identified Markus Shepherd ("Shepherd") as the president,  
15 secretary, sole director, sole shareholder and person in charge of Emerald. As required by California  
16 Code of Regulations, title 10, section 1422, the application included a Statement of Identity and  
17 Questionnaire ("SIQ") for Shepherd. Section 1422 requires CFL applications to include an SIQ for  
18 all officers, directors, any person owning or controlling, directly or indirectly, 10% or more of the  
19 applicant, and all person(s) who would be in charge of the business. Shepherd executed the  
20 application under penalty of perjury as president of Emerald.

21           4.       On July 21, 2006, the Department of Corporations ("Department") received  
22 information that Emerald had a new officer and/or owner and that this new officer/owner may not  
23 qualify for such positions under the CFL. Pursuant to California Financial Code section 22108 and  
24 California Code of Regulations, title 10, section 1422, all CFL licensees are required to amend  
25 their application(s) if there is any change in any of the persons required to be identified in the  
26 application(s). Additionally, California Code of Regulations, title 10, section 1409 requires CFL  
27 licensees to maintain a current list of officers and directors with the Commissioner, and in the event  
28 of any change, to file with the Commissioner the same information on such new persons as is

1 required for an original license.

2 5. On September 19, 2006, the Commissioner commenced an examination of the books  
3 and records of Emerald. The examination disclosed that on October 14, 2005, Jonathan R. Bates  
4 ("Bates") had acquired 50% of the outstanding shares of Emerald and had also been appointed as a  
5 director and senior vice-president of Emerald.

6 6. A review of the Department's files on Emerald revealed that Emerald had not  
7 disclosed Bates to the Commissioner until on March 20, 2006, more than 5 months after Bates  
8 became an owner and officer of Emerald. Emerald made this disclosure by way of its Annual  
9 Report, Schedule K, filed with the Commissioner pursuant to California Financial Code section  
10 22159. Emerald had listed Bates on its Schedule K as an "EVP" (executive vice-president) only.  
11 Emerald did not file any other documents in regards to Bates with the Commissioner at that time,  
12 such as the required SIQ, which would have alerted the Commissioner's staff that this was a new  
13 officer.

14 7. The Department's records further disclosed that Emerald finally filed an SIQ for  
15 Bates on July 7, 2006. The SIQ, however, failed to disclose required details of the criminal actions  
16 revealed in the SIQ and Emerald was instructed to re-submit with the proper detailed disclosures.  
17 Emerald never re-submitted the SIQ. In the SIQ, Bates identified the date of the most recent  
18 criminal action against him (later learned to be grand theft auto) as August 27, 1996. Further  
19 investigation revealed that this criminal action against Bates had not been filed until August 27,  
20 1997, a full year later than disclosed, and the conviction had not occurred until December 1, 1997.  
21 Bates conviction is grounds for the Commissioner to revoke the CFLL license of Emerald pursuant  
22 to California Financial Code sections 22109 and 22714, as the conviction is less than 10 years old.

23 8. Based on the above, Emerald (i) failed to maintain a current list of officers and  
24 directors with the Commissioner in violation of California Code of Regulations, title 10, section  
25 1409, (ii) violated California Financial Code section 22108 and California Code of Regulations, title  
26 10, section 1422 by failing to timely and adequately amend its application to disclose Bates, (iii) has  
27 an unqualified owner/officer in Bates, and (iv) filed a false Annual Report and SIQ as the Annual  
28 Report only disclosed Bates as an officer and the SIQ gave a 1996 date for the most recent criminal

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conviction of Bates.

Dated: January , 2007  
Los Angeles, California

WILLIAM P. WOOD  
California Corporations Commissioner

By \_\_\_\_\_  
Patricia R. Speight, Special Administrator  
California Finance Lenders Law