

1 PRESTON DUFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 AFSANEH EGHBALDARI (BAR NO. 250107)
Corporations Counsel
4 1350 Front Street, Room 2034
San Diego, California 92101
5 Telephone: (619) 645-3166

6 Attorneys for Complainant

7

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

10

In the Matter of the Accusation of THE)	File No.: 415-0045
CALIFORNIA CORPORATIONS)	
COMMISSIONER,)	
)	
Complainant,)	ACCUSATION IN SUPPORT OF
)	REVOCAION OF RESIDENTIAL
v.)	MORTGAGE LENDER AND MORTGAGE
)	LOAN SERVICER LICENSE
FIDELITY CAPITAL FUNDING, INC.,)	
)	
Respondent.)	
)	
)	
)	

19

20 The Complainant, California Corporations Commissioner ("Commissioner"), is informed and
21 believes, and based upon such information and belief, alleges and charges Respondent, Fidelity
22 Capital Funding, Inc. ("Fidelity Capital Funding") as follows:

23

I.

24 Fidelity Capital Funding is a residential mortgage lender and mortgage loan servicer licensed
25 by the California Department of Corporations ("Department") pursuant to the California Residential
26 Mortgage Lending Act ("CRMLA") (California Financial Code sections 50000 *et seq.*) (All future
27 references to sections are to the California Financial Code unless indicated otherwise.).

28

Fidelity Capital Funding has its principal place of business located at 2694 Bishop Drive,

1 Suite 203, San Ramon, California, 94583.

2 **II.**

3 Pursuant to California Financial Code section 50201, all licensees under the CRMLA are
4 required to maintain a minimum tangible net worth of two hundred fifty thousand dollars (\$250,000)
5 at all times. As of August 31, 2009, Fidelity Capital Funding's audited financial statements reflect a
6 tangible net worth deficiency of at least approximately eighty three thousand eight hundred fifty
7 seven dollars (\$83,857.00). On or about December 28, 2009, Fidelity Capital Funding notified the
8 Commissioner of its intention to surrender its CRMLA license. To date, Fidelity Capital Funding has
9 not remedied the net worth deficiency and has not completed the requirements to surrender its
10 CRMLA license.

11 **III.**

12 Pursuant to California Financial Code sections 50307, 50401, and California Code of
13 Regulations, title 10, section 1950.314.8, all licensees under the CRMLA are required to file an
14 annual Report of Principal Amount of Loans Originated and Aggregate Amount of Loans Serviced
15 for the 12 Month Period Ended December 31, 2009 ("Activity Report"), an annual Report on Non-
16 traditional Adjustable Rate and Mortgage Loan Products ("Non-traditional Report") and an annual
17 Non-traditional, Adjustable Rate and Mortgage Loan Survey ("Survey") on or before March 1st of
18 each year for the preceding twelve month period ended December 31st.

19 On or about January 29, 2010, Activity Report forms, Non-traditional Report forms, and
20 Surveys were sent to all CRMLA licensees, including Fidelity Capital Funding, with a notice that
21 their reports were due on or before March 1, 2010. Fidelity Capital Funding failed to submit its
22 Activity Report, Non-traditional Report and Survey by the due date.

23 On or about May 22, 2009, a letter was sent to Fidelity Capital Funding demanding that the
24 Activity Report and the Non-traditional Report be filed "no later than 10 days from the date of this
25 letter," and assessing a penalty of \$1,000 pursuant to California Financial Code section 50326.
26 Fidelity Capital Funding was notified in the letter that its failure to file the Activity Report, the Non-
27 traditional Report or pay the penalty would result in an action to either suspend or revoke its license.

28 ///

1 Fidelity Capital Funding has yet to submit its Activity Report, Non-traditional Report and
2 Survey, or pay the penalty as required by California Financial Code sections 50307, 50326, and
3 50401 and California Code of Regulations, title 10, section 1950.314.8.

4 **IV.**

5 Pursuant to California Financial Code section 50205, all licensees under the CRMLA are
6 required to maintain a surety bond. On or about May 4, 2010, the Commissioner received a Notice of
7 Cancellation from Washington International Insurance Company notifying the Commissioner that the
8 surety bond of Fidelity Capital Funding would be cancelled effective June 1, 2010. On or about May
9 10, 2010, the Commissioner sent Fidelity Capital Funding a certified letter reminding it that its surety
10 bond needed to be replaced or reinstated before the cancellation date. On June 3, 2010, the
11 Commissioner issued and served Fidelity Capital Funding an Order to Discontinue Residential
12 Mortgage Lending and/or Servicing Activities. To date, the bond has not been reinstated or replaced
13 in violation of California Financial Code section 50205.

14 **V.**

15 Pursuant to Financial Code section 50002.5, all licensees under the CRMLA were required to
16 register with the Nationwide Mortgage Licensing System and Registry (“NMLS”) on or before July
17 31, 2010. To date, Fidelity Capital Funding has failed to file a transition request through NMLS for
18 its CRMLA license in violation of California Financial Code section 50002.5.

19 **VI.**

20 California Financial Code section 50327 provides in pertinent part:

- 21 (a) The commissioner may, after notice and a reasonable opportunity to be
22 heard, suspend or revoke any license if the commissioner finds that: (1) the
23 licensee has violated any provision of this division or any rule or order of
24 the commissioner thereunder; or (2) any fact or condition exists that, if it
25 had existed at the time of the original application for license, reasonably
would have warranted the commissioner in refusing to issue the license
originally.

26 **VII.**

27 The Commissioner finds that, by reason of the foregoing, Fidelity Capital Funding, Inc. has
28 violated California Financial Code sections 50205, 50002.5, 50201, 50307, 50401 and California

1 Code of Regulations, title 10, section 1950.314.8, and based thereon grounds exist to revoke the
2 residential mortgage lender and mortgage loan servicer license of Fidelity Capital Funding, Inc.

3 WHEREFORE, IT IS PRAYED that the residential mortgage lender and mortgage loan
4 servicer license of Fidelity Capital Funding, Inc. be revoked and pursuant to California Financial
5 Code sections 50310 and 50311, Fidelity Capital Funding, Inc. be given a transition period of sixty
6 (60) days within which to complete any loans for which it had commitments and to transfer servicing
7 to an authorized mortgage loan servicer.

8

9 Dated: January 10, 2011
10 San Diego, California

PRESTON DuFAUCHARD
California Corporations Commissioner

11

12

By _____

13

AFSANEH EGHBALDARI
Corporations Counsel

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 PRESTON DUFAUCHARD
2 CALIFORNIA CORPORATIONS COMMISSIONER
3 ALAN S. WEINGER (CA BAR NO. 86717)
4 DEPUTY COMMISSIONER
5 320 WEST 4th Street, Ste. 750
6 LOS ANGELES, CALIFORNIA 90013-1105

7 Attorneys for Complainant

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE) File No. 415 0045
COMMISSIONER OF CORPORATIONS OF)
THE STATE OF CALIFORNIA,)
Complainant,)
vs.)
FIDELITY CAPITAL FUNDING INC.,)
Respondent.)

ORDER TO DISCONTINUE RESIDENTIAL MORTGAGE LENDING
AND/OR SERVICING ACTIVITIES PURSUANT TO
SECTION 50319, CALIFORNIA FINANCIAL CODE

TO: FIDELITY CAPITAL FUNDING INC.
2694 BISHOP DRIVE, SUITE 203
SAN RAMON, CA 94583

THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA
FINDS THAT:

FIDELITY CAPITAL FUNDING INC. has failed to comply with the bonding requirements
of the California Residential Mortgage Lending Act (California Financial Code Section 50000 et
seq.) in that effective June 3, 2010 Bond No. 9024106 issued by WASHINGTON

1 INTERNATIONAL INSURANCE COMPANY in favor of FIDELITY CAPITAL FUNDING
2 INC. expired and no replacement bond has been obtained.

3
4 Based on the foregoing, Respondent is conducting residential mortgage lending
5 and/or servicing business in violation of Section 50205 of the Financial Code and is conducting
6 business in such an unsafe and injurious manner as to render further operations hazardous to the
7 public or to customers.

8 NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING
9 THEREFORE, it is hereby ORDERED, under the provisions of Section 50319 of the California
10 Financial Code, FIDELITY CAPITAL FUNDING INC. immediately discontinue the disbursement,
11 in whole or in part, of trust funds held by the licensee and establish a separate trust account for all
12 subsequent trust funds received by the licensee.
13

14
15 THIS ORDER is to remain in full force and effect until further order of the Commissioner.

16 Section 50319 of the Financial Code provides as follows:

17 (a) If the commissioner, as a result of any examination or from any report
18 made to him or her, shall find that any person subject to this division is in an
19 insolvent condition, is conducting business in an unsafe or injurious manner that
20 renders further operations hazardous to the public or to customers, has failed to
21 comply with the provision of Section 50317, has permitted its tangible net worth to
22 be lower than the minimum required by law, or has failed to comply with the
23 bonding requirements of Section 50205, the commissioner may, by an order
24 addressed to and served by registered or certified mail, or by personal service on that
25 person, and on any other person having in his or her possession or control any trust
26 funds or other property deposited in escrow with that person, direct discontinuance
of the disbursement, in whole or in part, of trust funds held by the licensee and order
the establishment of a separate trust account for all subsequent trust funds received
by the licensee. No person having in his or her possession any of these funds or
documents shall be liable for failure to comply with the order unless he or she has
received written notice of the order. Subject to subdivision (b), the order shall
remain in effect until set aside by the commissioner, or the person has been adjudged
bankrupt.

27 (b) Within 15 days from the date of an order pursuant to subdivision (a), the
28 person may request a hearing under the Administrative Procedure Act (Chapter 5
(commencing with Section 11500) of Part 2 of Division 3 of Title 2 of the
Government Code). Upon receiving a request, the matter shall be set for hearing to
commence within 30 days after the receipt unless the person subject to this division
consents to a later date. If no hearing is requested within 15 days after the mailing or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

service of the notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing. Neither the request for a hearing nor the hearing itself shall stay the order issued by the commissioner under subdivision (a).

DATED: June 3, 2010
Los Angeles, California

Preston DuFauchard
California Corporations Commissioner

By _____
DiAun M. Burns
Special Administrator
California Residential Mortgage Lending Act