

1 PRESTON DUFAUCHARD  
California Corporations Commissioner  
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8 BEFORE THE DEPARTMENT OF CORPORATIONS  
9 OF THE STATE OF CALIFORNIA

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In the Matter of the Accusation of THE ) File No.: 415-0045  
11 CALIFORNIA CORPORATIONS )  
COMMISSIONER, )

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Complainant, )

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**AMENDED ACCUSATION**

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v. )

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FIDELITY CAPITAL FUNDING, INC., )

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Respondent. )

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The Complainant, California Corporations Commissioner ("Commissioner"), is informed and  
20 believes, and based upon such information and belief, alleges and charges Respondent as follows:  
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**I.**

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Respondent, Fidelity Capital Funding, Inc. ("Respondent") is a residential mortgage lender  
24 and residential mortgage loan servicer licensed by the California Department of Corporations  
25 ("Department") pursuant to the California Residential Mortgage Lending Act ("CRMLA")  
26 (California Financial Code sections 50000 *et seq.*). Respondent has its principal place of business  
27 located at 2603 Camino Ramon, Suite 350, San Ramon, California, 94583.  
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**II.**

Pursuant to Financial Code sections 50307, 50401 and California Code of Regulations, title 10, section 1950.314.8, all licensees under the CRMLA are required to file an annual Report of Principal Amount of Loans and Aggregate Amount of Loans Serviced, (“Activity Report”) on or before March 1st of each year for the preceding 12-month period ended December 31.

On or about February 1, 2008, an Activity Report form was sent to all CRMLA licensees with a notice that its Activity Report was due on or before March 1, 2008. Respondent failed to file the Activity Report with the Commissioner by the due date. On or about May 15, 2008, a letter was sent to Respondent demanding that the Activity Report be filed, and assessing Respondent a penalty of \$1,000.00, pursuant to California Financial Code section 50326. The Commissioner notified Respondent in writing that failure to file the Activity Report and/or pay the penalty within ten (10) days of the letter would result in an action to either suspend or revoke its license.

Respondent has yet to submit the Activity Report or pay the penalty as required by California Financial Code sections 50307, 50326, and 50401.

**III.**

Financial Code section 50326 states:

If any licensee fails to do any of the following, the licensee shall forfeit to the people of the state a sum of up to one hundred dollars (\$100) for every day up to the 10th day: (a) to make any report required by law or by the commissioner within 10 days from the day designated for the making of the report, or within any extension of time granted by the commissioner, or (b) fails to include therein any matter required by law or by the commissioner. Thereafter, any failure shall constitute grounds for the suspension or revocation of the license held by the residential mortgage lender or residential mortgage loan servicer.

Financial Code section 50327 provides in pertinent part:

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

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Financial Code section 50311 states:

Nothing in this law shall preclude a person whose license has been suspended or revoked, summarily or otherwise, from making a residential mortgage loan pursuant to a commitment issued by that person prior to the suspension or revocation. A prospective borrower who received a commitment issued by a person whose license has been suspended or revoked may, prior to the closing of the loan, terminate the commitment or receive a refund of all money paid to that person.

**IV.**

The Commissioner finds that, by reason of the foregoing, Fidelity Capital Funding, Inc. has violated California Financial Code sections 50307, 50401 and California Code of Regulations, title 10, section 1950.314.8, and based thereon grounds exist to revoke the residential mortgage lender and residential mortgage loan servicer license of Fidelity Capital Funding, Inc.

WHEREFORE, IT IS PRAYED that the residential mortgage lender license and residential mortgage loan servicer license of Fidelity Capital Funding, Inc. be revoked and, pursuant to Financial Code section 50311, Fidelity Capital Funding, Inc. be given a transition period of sixty (60) days within which to complete any loans for which it had prior commitments.

DATED: September 10, 2008  
San Diego, CA

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
Afsaneh Eghbaldari  
Corporations Counsel