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

12 In the Matter of THE COMMISSIONER OF) Case No.: 413-0427
CORPORATIONS OF THE STATE OF)
13 CALIFORNIA,) STATEMENT OF FACTS IN SUPPORT OF
14 Complainant,) ORDER TO DISCONTINUE VIOLATIONS
15 vs.) PURSUANT TO CALIFORNIA FINANCIAL
16 GUIDANCE RESIDENTIAL, LLC,) CODE SECTION 50321 AND NOTICE OF
17 Respondent.) INTENT TO MAKE ORDER FINAL
18)
19)

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

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

1 2. On or about June 11, 2012, the Commissioner commenced a regulatory examination
2 of the books and records of Guidance under the CRMLA (“2012 regulatory examination”). The
3 2012 regulatory examination disclosed that for six of 30 loans, or approximately 20% of the loans
4 reviewed, Guidance was charging the borrower per diem interest in excess of one day prior to the
5 date that the loan proceeds are disbursed from escrow, in violation of California Financial Code
6 (“FC”) section 50204, subdivision (o). While a document entitled, “Interim Interest Payment
7 Disclosure” was found in five of the six loans with per diem interest overcharges, the disclosures
8 did not comply with California Civil Code (“CC”) section 2948.5, subdivision (b). Therefore, the
9 disclosures were not considered in calculating per diem interest charges. The range of per diem
10 interest overcharges was between \$9.15 and \$272.23. The range of days that interest was
11 overcharged was between one and five.

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

24 4. On or about November 6, 2012, Guidance submitted its response claiming it had
25 completed a self-audit of a total of 556 loans representing all loans originated since January 22, 2008
26 through the present. However, the self-audit report listed details for only the 73 loans which
27 reportedly required refunds because of per diem interest overcharges. Guidance did not provide any
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1 information regarding the remaining 483 loan files that were reportedly self-audited but did not
2 require refunds.

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

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

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

19 By reason of the foregoing, Guidance Residential, LLC has violated FC section 50204,
20 subdivision (o) and FC section 50307, subdivision (b).

21 7. California Financial Code section 50321 provides in pertinent part:

22 If, after investigation, the commissioner has reasonable grounds to believe
23 that any licensee has violated its articles of incorporation or any law or
24 rule binding upon it, the commissioner shall, by written order addressed to
25 the licensee, direct the discontinuance of the violation. The order shall be
26 effective immediately, but shall not become final except in accordance
27 with the provisions of Section 50323.

28 8. California Financial Code section 50323 provides:

(a) No order issued pursuant to Section 50321 or 50322 may become final
except after notice to the affected licensee of the commissioner's intention
to make the order final and of the reasons for the finding. The

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commissioner shall also notify the licensee that upon receiving a request the matter will be set for hearing to commence within 15 business days after receipt. The licensee may consent to have the hearing commence at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without hearing and the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under that act. If, upon the hearing, it appears to the commissioner that the licensee is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the licensee shall immediately discontinue the practices named in the order.

(b) The licensee has 10 days after an order is made final to commence an action to restrain enforcement of the order. If the enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the licensee shall comply with the order.

WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue Violations Pursuant to Financial Code section 50321 and notifying Guidance Residential, LLC of her intention to make the order final.

Dated: June 18, 2013
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Corporations

By _____
Sophia C. Kim
Corporations Counsel
Enforcement Division