

1 MARY ANN SMITH  
Deputy Commissioner  
2 SEAN M. ROONEY  
Assistant Chief Counsel  
3 JUDY L. HARTLEY (State Bar No. 110628)  
Senior Counsel  
4 Department of Business Oversight  
320 West 4<sup>th</sup> Street, Ste. 750  
5 Los Angeles, California 90013-2344  
Telephone: (213) 576-7604  
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA

10  
11 In the Matter of: )  
 ) CRMLA LICENSE NO.: 413-0789  
12 THE COMMISSIONER OF BUSINESS )  
13 OVERSIGHT, ) SETTLEMENT AGREEMENT  
 )  
14 Complainant, )  
 )  
15 v. )  
 )  
16 GATEWAY MORTGAGE GROUP, LLC, )  
17 )  
18 Respondent. )

19 This Settlement Agreement (Agreement) is entered into by and between Respondent  
20 Gateway Mortgage Group, LLC (Gateway Mortgage) and Complainant the Commissioner of  
21 Business Oversight (Commissioner), and is made with respect to the following facts:

22 I.

23 **RECITALS**

24 A. Gateway Mortgage is a limited liability company in good standing, duly formed and  
25 existing pursuant to the laws of the State of Oklahoma and is authorized to conduct business in the  
26 State of California.

27 B. Gateway Mortgage is a residential mortgage lender and servicer licensed by the  
28

1 Commissioner pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code  
2 §50000 et seq.). Gateway Mortgage has its principal place of business located at 244 South Gateway  
3 Place, Jenkins, Oklahoma 74037. Gateway Mortgage has 25 branch locations under its CRMLA  
4 license in California and elsewhere. Gateway Mortgage employs mortgage loan originators in its  
5 CRMLA business.

6 C. The Department of Business Oversight (Department), through the Commissioner, has  
7 jurisdiction over the licensing and regulation of persons and entities engaged in the business of  
8 lending and/or servicing pursuant to the CRMLA.

9 D. On August 22, 2018, Gateway Mortgage was personally served by the Commissioner  
10 with a Notice of Intention to Issue Orders Suspending Residential Mortgage Lender and/or Servicer  
11 Licenses and to Levy Penalties, Accusation and accompanying documents dated August 21, 2018  
12 (Accusation). Gateway Mortgage has filed a Notice of Defense with the Commissioner regarding  
13 the Accusation.

14 E. On August 22, 2018, Gateway Mortgage was also personally served by the  
15 Commissioner with an Order to Discontinue Violations Pursuant to Financial Code Section 50321  
16 and Statement of Facts In Support of Order to Discontinue Violations Pursuant to Financial Code  
17 Section 50321 and Notice of Intent to Make Order Final dated August 21, 2018 (Order to  
18 Discontinue Violations) and an Order to Refund Excessive Per Diem Interest Charges Pursuant to  
19 Financial Code Section 50504 dated August 21, 2018 (Order to Refund)(collectively Orders).  
20 Gateway Mortgage has filed requests for hearing with the Commissioner regarding the Orders.

21 F. The Commissioner hereby acknowledges that Gateway Mortgage has submitted  
22 information demonstrating that it has adopted policies and procedures addressing the issues  
23 described in the Accusation and Orders.

24 G. As of December 31, 2018, Gateway Mortgage ceased loan originations from retail  
25 production office locations in the state of California except to close loans in its pipeline as of that  
26 date.

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

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

3 **II.**

4 **TERMS AND CONDITIONS**

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

7 2. Waiver of Hearing Rights. Gateway Mortgage acknowledges its right to an  
8 administrative hearing under the CRMLA in connection with the Accusation and/or Orders and  
9 hereby waives that right to a hearing, and to any reconsideration, appeal, or other rights which may  
10 be afforded pursuant to the CRMLA, the California Administrative Procedure Act, the California  
11 Code of Civil Procedure, or any other provision of law in connection with these matters.

12 3. Final Orders. Gateway Mortgage hereby agrees that the Orders described in  
13 Paragraph E above are hereby deemed final orders.

14 4. Administrative Penalty. Gateway Mortgage agrees to pay to the Commissioner the  
15 sum of \$37,200.00 in administrative penalties within 5 business days of the effective date of this  
16 Agreement as that date is defined in paragraph 23 herein. The payment shall be made by cashiers'  
17 check payable to the Department of Business Oversight and shall be sent to the Department,  
18 attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-4052.

19 5. June 28, 2013 through August 31, 2018 Audit. The parties acknowledge that  
20 Gateway Mortgage has conducted a self-audit of per diem interest charges for all loans originated  
21 between June 28, 2013 and August 31, 2018 that has been reviewed by an independent certified  
22 public accounting firm (audit). Pursuant to such audit, Gateway Mortgage has issued refunds plus  
23 per diem interest at a rate of ten percent from the date of loan funding to borrowers identified  
24 pursuant to the audit and submitted the audit report along with evidence of payment of borrower  
25 refunds to the Commissioner.

26 6. Outstanding Refunds. Gateway Mortgage shall be responsible for ensuring that any  
27 outstanding refund payment owed to any borrower identified in the audit described in Paragraph 5  
28 above shall be escheated to the State of California pursuant to the provisions of the California

1 Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

2       7.     Effect of Agreement on Licenses. In consideration of the information provided to the  
3 Commissioner by Gateway Mortgage as described in Paragraph F above and the agreement of  
4 Gateway Mortgage to the entry of the finality of the Orders and payment of penalties as provided for  
5 in Paragraphs 3 and 4 above, the Commissioner hereby agrees that, except as otherwise set forth in  
6 this Agreement, she shall not suspend and/or revoke the residential mortgage lender and servicer  
7 licenses of Gateway Mortgage. Accordingly, this Agreement does not affect the licensing status of  
8 Gateway Mortgage.

9       8.     Failure to Comply. Gateway Mortgage agrees that if it fails to comply with  
10 Paragraph 4 above, the Commissioner may, in addition to all other available remedies under the  
11 CRMLA, summarily suspend the CRMLA licenses of Gateway Mortgage until such time as  
12 Gateway Mortgage is in compliance. Gateway Mortgage waives any notice and hearing rights to  
13 contest such summary suspension which may be afforded under the CRMLA, the California  
14 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law  
15 in connection therewith.

16       9.     Information Willfully Withheld. This Agreement may be revoked and the  
17 Commissioner may pursue any and all remedies available under law against Gateway Mortgage, if  
18 the Commissioner later finds out that Gateway Mortgage knowingly or willfully withheld  
19 information used and relied upon in this Agreement.

20       10.    Binding. This Agreement is binding on all heirs, assigns and/or successors in interest.

21       11.    Third Party Actions. This Agreement does not create any private rights or remedies  
22 against Gateway Mortgage, create any liability for Gateway Mortgage or limit defenses of Gateway  
23 Mortgage for any person or entity not a party to this Agreement.

24       12.    Full and Final Settlement. The parties hereby acknowledge and agree that this  
25 Agreement is intended to constitute a full, final and complete resolution of the Accusation and  
26 Orders and that no further proceedings or actions will be brought by the Commissioner in connection  
27 with these matters either under the CRMLA, or any other provision of law, excepting therefrom any  
28 proceeding or action if such proceeding or action is based upon facts not presently known to the

1 Commissioner and which were actively concealed from the Commissioner by Gateway Mortgage.

2 13. Commissioner’s Duties. The parties further acknowledge and agree that nothing  
3 contained in this Agreement shall operate to limit the Commissioner's ability to assist any other  
4 agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,  
5 brought by any such agency against Gateway Mortgage or any other person based upon any of the  
6 activities alleged in these matters or otherwise.

7 14. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
8 has received independent advice from its attorney(s) and/or representatives with respect to the  
9 advisability of executing this Agreement.

10 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this  
11 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel  
12 and/or representative. Each of the parties further represents, warrants, and agrees that in executing  
13 this Agreement it has placed no reliance on any statement, representation, or promise of any other  
14 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or  
15 any other person or entity to make any statement, representation or disclosure of anything  
16 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in  
17 any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of  
18 parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

19 16. Full Integration. This Agreement is the final written expression and the complete and  
20 exclusive statement of all the agreements, conditions, promises, representations, and covenants  
21 between the parties with respect to the subject matter hereof, and supersedes all prior or  
22 contemporaneous agreements, negotiations, representations, understandings, and discussions  
23 between and among the parties, their respective representatives, and any other person or entity, with  
24 respect to the subject matter covered hereby.

25 17. No Presumption from Drafting. In that the parties have had the opportunity to draft,  
26 review and edit the language of this Agreement, no presumption for or against any party arising out  
27 of drafting all or any part of this Agreement will be applied in any action relating to, connected, to,  
28 or involving this Agreement. Accordingly, the parties waive the benefit of California Civil Code

1 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language  
2 of a contract should be interpreted most strongly against the party who caused the uncertainty to  
3 exist.

4 18. Waiver, Modification, and Qualified Integration. The waiver of any provision of this  
5 Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment,  
6 or modification of this Agreement shall be valid or binding to any extent unless it is in writing and  
7 signed by all of the parties affected by it.

8 19. Headings and Governing Law. The headings to the paragraphs of this Agreement are  
9 inserted for convenience only and will not be deemed a part hereof or affect the construction or  
10 interpretation of the provisions hereof. This Agreement shall be construed and enforced in  
11 accordance with and governed by California law.

12 20. Counterparts. This Agreement may be executed in one or more separate counterparts,  
13 each of which when so executed, shall be deemed an original. Such counterparts shall together  
14 constitute a single document.

15 21. Signatures. A signature delivered by facsimile or electronic mail will be deemed an  
16 original signature.

17 22. Voluntary Agreement. Gateway Mortgage enters into this Agreement voluntarily and  
18 without any coercion and acknowledges that no promise, threats, or assurances about this Agreement  
19 have been made by the Commissioner or any of her officers or agents.

20 23. Effective Date. This Agreement shall not become effective until signed by all parties  
21 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for  
22 Gateway Mortgage.

23 24. Notice. Any notice/report required under this Agreement shall be addressed as  
24 follows:

25 To Gateway Mortgage Group, LLC: Mitchel H. Kider, Esq.  
26 Weiner Brodsky Kider PC  
27 1300 9<sup>th</sup> Street NW 5<sup>th</sup> Floor  
28 Washington, D.C. 20036  
[kider@thewbkfirm.com](mailto:kider@thewbkfirm.com)

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David M. Souders, Esq.  
Weiner Brodsky Kider PC  
1300 9<sup>th</sup> Street NW 5<sup>th</sup> Floor  
Washington, D.C. 20036  
[souders@thewbkfirm.com](mailto:souders@thewbkfirm.com)

To the Commissioner:

Judy L. Hartley, Esq.  
Senior Counsel  
Department of Business Oversight  
320 W. 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013-2344  
[judy.hartley@dbo.ca.gov](mailto:judy.hartley@dbo.ca.gov)

25. Public Record. Gateway Mortgage acknowledges that this Agreement is a public record.

26. Settlement Authority. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Agreement.

Dated: 1/30/19

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner

Dated: 1/29/19

GATEWAY MORTGAGE GROUP, LLC

By \_\_\_\_\_  
ALAN FERREE, President

APPROVED AS TO FORM:

WEINER BRODSKY KIDER PC

By \_\_\_\_\_  
MITCHEL H. KIDER, ESQ. attorneys for  
GATEWAY MORTGAGE GROUP, LLC

Commissioner of Business Oversight

By \_\_\_\_\_  
JUDY L. HARTLEY, ESQ.  
Senior Counsel