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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CRMLA LICENSE NO.: 413-0768
13)
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
15)
Complainant,)
16)
17 v.)
18 MORTGAGE NOW, INC.,)
19 Respondent.)
20)
21)

21 This Consent Order is entered into between the Commissioner of Business Oversight
22 (Commissioner) and Mortgage Now, Inc. (collectively, the Parties), and is made with respect to the
23 following facts:

24 I.

25 **Recitals**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of mortgage lending and/or servicing pursuant to the California
28 Residential Mortgage Lending Act (CRMLA) (Financial Code section §50000 et seq.).

1 B. Mortgage Now, Inc. (Mortgage Now) is a residential mortgage lender licensed by the
2 Commissioner, pursuant to the CRMLA.

3 C. Mortgage Now has its primary place of business at 1161 Broad Street, Suite 212,
4 Shrewsbury, New Jersey 07702.

5 D. James L. Marchese is the president of Mortgage Now, and as such, is authorized to
6 enter into this Consent Order on behalf of Mortgage Now.

7 E. On May 21, 2018, the Department commenced a regulatory examination (2018
8 Examination), and reviewed Mortgage Now’s books and records from April 1, 2015 through March
9 31, 2018. The 2018 examination revealed that Mortgage Now violated the CRMLA, as described in
10 more detail below.

11 F. Mortgage Now incorrectly used a California Financing Law (CFL) disclosure form in
12 loans made under its CRMLA license in violation of Financial Code sections 50314 and 50503(a)(2)
13 and California Code of Regulations, title 10, section 1950.314.4. Mortgage Now provided borrowers
14 a CFL disclosure form in about eleven loans it originated under its CRMLA license.

15 G. Pursuant to California Code of Regulations, title 10, section 1950.204.3(b), all
16 licensees must refer to their licensure under the CRMLA in any written or printed communication or
17 any communication by means of recorded telephone messages, telephonic or electronic media, or
18 spoken on radio, television or similar communications media, only by the following statement:
19 “Licensed by the Department of Business Oversight under the California Residential Mortgage
20 Lending Act.” Mortgage Now failed to include the required verbiage on its website.

21 H. Mortgage Now was previously cited for the above violations during a previous
22 examination in June of 2014.

23 I. Based upon the foregoing, the Commissioner finds that Mortgage Now violated
24 Financial Code sections 50314 and 50503(a)(2) and California Code of Regulations, title 10,
25 sections 1950.314.4 and 1950.204.3(b).

26 J. The Commissioner finds that this Consent Order is appropriate, in the public interest,
27 and consistent with the purposes fairly intended by the policies and provisions of the CRMLA.

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II.

Terms and Conditions

1. Purpose. This Consent Order resolves the issues before the Commissioner, finding that Mortgage Now violated the CRMLA, as set forth above in paragraphs A through J, in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of the applicable law under the CRMLA.

2. Order to Discontinue Violations. In accordance with Financial Code sections 50321 and 50323, Mortgage Now, Inc. is hereby ordered to immediately discontinue violations of Financial Code sections 50314 and 50503(a)(2) and California Code of Regulations, title 10, sections 1950.314.4 and 1950.204.3(b), set forth herein. This Order to Discontinue Violations is final and effective from the Effective Date of this Consent Order, as defined in paragraph 24 (Effective Date).

3. Payment of Penalties. Mortgage Now agrees to pay civil administrative penalties in the amount of \$15,000.00 within 90 days from the Effective Date of this Consent Order. The penalty payment shall be made in the form of a cashier’s check or Automated Clearing House deposit to the “Department of Business Oversight,” and transmitted to the attention of: Accounting - Litigation, at the Department of Business Oversight, located at 1515 K Street, Suite 200, Sacramento, California 95814. Notice of payment shall be sent concurrently to Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at: affi.eghbaldari@dbo.ca.gov.

4. Waiver of Hearing Rights. Mortgage Now acknowledges the Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement action on the charges contained in this Consent Order. Mortgage Now hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law. Mortgage Now further expressly waives any requirement for the filing of an enforcement action pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, Mortgage Now effectively consents to this Consent Order becoming final.

5. Full and Final Settlement. The parties hereby acknowledge and agree that this

1 Consent Order is intended to constitute a full, final, and complete resolution of the violations
2 described herein: providing an incorrect disclosure form in loans originated under its CRMLA
3 license, and failing to include the required verbiage; and that no further proceedings or
4 actions will be brought by the Commissioner in connection with these matters except under the
5 CRMLA, or any other provision of law, to enforce compliance with the terms of this Consent Order.

6 6. Failure to Comply with Consent Order. Mortgage Now agrees that if it fails to
7 comply with any of the terms of this Consent Order or the Order to Discontinue Violations,
8 including but not limited to, failure to timely pay the penalty amount, or failure to satisfy or meet the
9 requirements of Financial Code sections 50314 and 50503(a)(2) and California Code of Regulations,
10 title 10, sections 1950.314.4 and 1950.204.3(b), the Commissioner may, in addition to all other
11 available remedies it may invoke under the CRMLA, summarily suspend or revoke Mortgage Now's
12 license. Mortgage Now waives any notice and hearing rights to contest such summary suspension or
13 revocation which may be afforded under the CRMLA, the California Administrative Procedure Act,
14 the California Code of Civil Procedure, or any other provision of law in connection therewith.

15 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
16 revoked, and the Commissioner may pursue any and all remedies available under the law against
17 Mortgage Now if the Commissioner discovers that Mortgage Now knowingly or willfully withheld
18 or misrepresented information used for and relied upon in this Consent Order.

19 8. Future Actions by Commissioner. If Mortgage Now fails to comply with any terms of
20 this Consent Order or Order to Discontinue Violations, the Commissioner may institute proceedings
21 for any and all violations otherwise resolved under this Consent Order. The Commissioner reserves
22 the right to bring any future actions against Mortgage Now, or any of its partners, owners, officers,
23 shareholders, directors, employees or successors for any and all unknown violations of the CRMLA.

24 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
25 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
26 administrative, civil, or criminal brought by that agency against Mortgage Now or any other person
27 based upon any of the activities alleged in this matter or otherwise.

28 10. No Presumption Against Drafting Party. Each party acknowledges that it has had the

1 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
2 intend that no presumption for or against the drafting party will apply in construing any part of this
3 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
4 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
5 language of a contract should be interpreted most strongly against the party that caused the
6 uncertainty to exist.

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

10 12. Headings. The headings to the paragraphs of this Consent Order are inserted for
11 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
12 the provisions hereof.

13 13. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
14 interest.

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

24 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
25 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
26 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
27 provision. No waiver by either party of any breach of, or of compliance with, any condition or
28 provision of this Agreement by the other party will be considered a waiver of any other condition or

1 provision or of the same condition or provision at another time.

2 16. Full Integration. This Consent Order is the final written expression and the complete
3 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
4 between the parties with respect to the subject matter hereof, and supersedes all prior or
5 contemporaneous agreements, negotiations, representations, understandings, and discussions
6 between and among the parties, their respective representatives, and any other person or entity with
7 respect to the subject matter covered hereby.

8 17. Governing Law. This Consent Order will be governed by and construed in
9 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,
10 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
11 forum to the maintenance of such action or proceeding in such court.

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

15 19. Effect Upon Future Proceedings. If Mortgage Now applies for any license, permit or
16 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
17 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
18 admitted for the purpose of such application(s) or enforcement proceeding(s).

19 20. Voluntary Agreement. Mortgage Now enters this Consent Order voluntarily and
20 without coercion and acknowledges that no promises, threats or assurances have been made by the
21 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
22 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
23 without any duress or undue influence of any kind from any source.

24 21. Notice. Any notice required under this Consent Order shall be provided to each party
25 at the following addresses:

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To Mortgage Now: Mortgage Now, Inc.
1161 Broad Street, Suite 212
Shrewsbury, New Jersey 07702

To the Commissioner: Affi Eghbaldari, Counsel
Department of Business Oversight
1350 Front Street, #2034
San Diego, California 92101
Affi.Eghbaldari@dbo.ca.gov

22. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

23. Public Record. Mortgage Now acknowledges that this Consent Order is and will be a matter of public record.

24. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Mortgage Now’s president, James L. Marchese at jlmarchese@mtgnow.com.

25. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

MANUEL P. ALVAREZ
Commissioner of Business Oversight

Dated: March 13, 2020

By _____
Mary Ann Smith
Deputy Commissioner

MORTGAGE NOW, INC.

Dated: March 13, 2020

By _____
James L. Marchese
President of Mortgage Now, Inc.