

IN THE MATTER OF:

**CREDENCE LAW GROUP, INC., d/b/a
CREDENCE LAW GROUP**

and

BYRON LANDAU

Respondents.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: CFR-FY2014-059

SUMMARY ORDER TO CEASE AND DESIST

WHEREAS, the Deputy Commissioner of Financial Regulation (the “Deputy Commissioner”) undertook an investigation into the credit services business activities of Credence Law Group, Inc., d/b/a Credence Law Group (“Credence”), and Byron Landau (collectively “Respondents”); and

WHEREAS, as a result of that investigation, the Deputy Commissioner finds grounds to allege that Respondents violated various provisions of the Annotated Code of Maryland, including Commercial Law Article (“CL”), Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter “MCSBA”), Financial Institutions Article (“FI”), Title 11, Subtitles 2 and 3, and Real Property Article (“RP”), Title 7, Subtitle 3 (Protection of Homeowners in Foreclosure Act, “PHIFA”), RP Title 7, Subtitle 5 (the Maryland Mortgage Assistance Relief Services Act, “MARS”), and the Commissioner finds that action under FI § 2-115, and RP § 7-319.1 is appropriate.

NOW, THEREFORE, the Deputy Commissioner has determined, for the reasons set forth below, that Respondents are in violation of Maryland law, and that it is in the public interest that Respondents immediately cease and desist from engaging in credit services business activities and/or foreclosure consulting activities with Maryland residents, homeowners and/or

consumers (hereinafter "Maryland consumers"), including directly or indirectly offering, contracting to provide, or otherwise engaging in, loan modification, loss mitigation, foreclosure consulting, or similar services related to residential real property (hereinafter "loan modification services").

1. FI §§ 2-115(a) and (b) set forth the Commissioner's authority to issue summary cease and desist orders, and to take additional actions for violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction, providing as follows:

(a) *Summary cease and desist orders.*- When the Commissioner determines that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, and that immediate action against the person is in the public interest, the Commissioner may in the Commissioner's discretion issue, without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity, provided that the summary cease and desist order gives the person:

(1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and

(2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of receipt of the summary cease and desist order.

(b) *Other authorized actions for violations.*- When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

(1) Issue a final cease and desist order against the person;

(2) Suspend or revoke the license of the person;

(3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation; or

(4) Take any combination of the actions specified in this subsection.

2. FI §§ 2-114(a) and (b) set forth the Commissioner's general authority to order the production of information, as well as documents and records, while investigating potential violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction. Thus, FI § 2-114(a)(2) provides that the Commissioner may "[r]equire . . . a person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning the matter to be investigated." Further, pursuant to FI § 2-114(b), "the Commissioner or an officer designated by the Commissioner may," among other things, "take evidence, and require the production of books, papers, correspondence, memoranda, and agreements, or other documents."

3 In the present matter, in December 2014, the Deputy Commissioner began an investigation into the business activities of Respondents as a result of a consumer complaint. Pursuant to the Deputy Commissioner's inquiry into Respondents' business activities, the Deputy Commissioner has developed reasonable grounds to believe that Respondents engaged in unlicensed loan modification activities with Maryland consumers in violation of various provisions of Maryland Law, including, but not limited to, the MCSBA and FI Title 11, Subtitles 2 and 3, and that Respondents' business activities constituted other violations of the MCSBA and PHIFA. The legal and factual bases for these determinations are described below.

Maryland Credit Services Businesses Act

4. The MCSBA provides, pursuant to CL § 14-1902, that "[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: (1) [r]eceive any money or other valuable consideration from the consumer, unless the credit services business has secured from the Commissioner a license under Title 11, Subtitle 3 of the Financial Institutions Article[.]"

5. Pursuant to CL § 14-1903(b), “[a] credit services business is required to be licensed under this subtitle and is subject to the licensing, investigatory, enforcement, and penalty provisions of this subtitle and Title 11, Subtitle 3 of the Financial Institutions Article.”

6. Pursuant to FI § 11-302, “[u]nless the person is licensed by the Commissioner, a person may not: . . . (3) [e]ngage in the business of a credit services business as defined under Title 14, Subtitle 19 of the Commercial Law Article.”

7. Pursuant to FI § 11-303, “[a] license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law – Licensing Provisions.”

8. The MCSBA defines “*credit services business*” at CL § 14-1901(e); this provision provides, in part, as follows:

(1) “Credit services business” means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

- (i) Improving a consumer’s credit record, history, or rating or establishing a new credit file or record;
- (ii) Obtaining an extension of credit for a consumer; or
- (iii) Providing advice or assistance to a consumer with regard to either subparagraph (i) or (ii) of this paragraph.

9. CL § 14-1901(f) defines “*extension of credit*” as “the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.”

10. CL § 14-1902 further provides, in pertinent part, as follows:

A credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not:

- (4) Make or use any false or misleading representations in the offer or sale of the services of a credit services business;
- (5) Engage, directly or indirectly, in any act, practice, or course of business which operates as a fraud or deception on any person in connection with the offer or sale of the services of a credit services business;
- (6) Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer;

11. CL § 14-1903(a) addresses the scope of credit services contracts covered under MCSBA, providing as follows:

(a) *In general.* – Notwithstanding any election of law or designation of situs in any contract, this subtitle applies to any contract for credit services if:

- (1) The credit services business offers or agrees to sell, provide, or perform any services to a resident of this State;
- (2) A resident of this State accepts or makes the offer in this State to purchase the services of the credit services business; or
- (3) The credit services business makes any verbal or written solicitation or communication that originates either inside or outside of this State but is received in the State by a resident of this State.

12. Pursuant to CL § 14-1903.1,

A person who advertises a service described in § 14-1901(e)(1) of this subtitle, whether or not a credit services business, shall clearly and conspicuously state in each advertisement the number of:

- (1) The license issued under § 14-1903 of this subtitle; or
- (2) If not required to be licensed, the exemption provided by the Commissioner.

13. CL § 14-1904(a) provides that, “[b]efore either the execution of a contract or agreement between a consumer and a credit services business or the receipt by the credit services business of any money or other valuable consideration, the credit services business shall provide the consumer with a written information statement containing all of the information required under § 14-1905 of [the MCSBA].” CL § 14-1905(b) further requires a credit services business

“to maintain on file for a period of 2 years from the date of the consumer’s acknowledgment a copy of the information statement signed by the consumer acknowledging receipt of the information statement.”

14. CL § 14-1905 indicates the specific terms which must be provided in the information statement, stating, in part, as follows:

(a) *In general.* – The information statement required under § 14-1904 of this subtitle shall include:

* * *

(5) A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay for the services.

* * *

(b) *Additional requirements of licenses.* – A credit services business required to obtain a license pursuant to § 14-1902 of this subtitle shall include in the information statement required under § 14-1904 of this subtitle:

- (1) A statement of the consumer’s right to file a complaint pursuant to § 14-1911 of this subtitle;
- (2) The address of the Commissioner where such complaints should be filed; and
- (3) A statement that a bond exists and the consumer’s right to proceed against the bond under the circumstances and in the manner set forth in § 14-1910 of this subtitle.

15. CL § 14-1906 discusses requirements for contracts between credit services businesses and consumers, providing as follows:

(a) *Requirements.* – Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer, and shall include:

(1) A conspicuous statement in size equal to at least 10-point bold type, in immediate proximity to the space reserved for the signature of the consumer as follows:

“You, the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.”;

(2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified and the estimated date by which each modification will occur; and

(4) The principal business address of the credit services business and the name and address of its agent in this State authorized to receive service of process.

(b) *Notice of cancellation form.*— The contract shall be accompanied by a form completed in duplicate, captioned “**NOTICE OF CANCELLATION**”, which shall be attached to the contract and easily detachable, and which shall contain in at least 10-point bold type the following statement:

“**NOTICE OF CANCELLATION**”

You may cancel this contract, without any penalty or obligation, at any time prior to midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 10 days following receipt by the seller of your cancellation notice.

* * *

(c) *Copies of completed contract and other documents to be given to consumer.*— A copy of the completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

16. CL § 14-1907 provides, in part, as follows:

(a) *Breach of contract.*— Any breach by a credit services business of a contract under this subtitle, or of any obligation arising under it, shall constitute a violation of this subtitle.

(b) *Void contracts.*— Any contract for services from a credit services business that does not comply with the applicable provisions of this subtitle shall be void and unenforceable as contrary to the public policy of this State.

(c) *Waivers.*—

* * *

(2) Any attempt by a credit services business to have a consumer waive rights given by this subtitle shall constitute a violation of this subtitle.

17. CL § 14-1908 provides that, “[a] credit services business is required to obtain a surety bond pursuant to Title 11, Subtitle 3 of the Financial Institutions Article.” Further, CL § 14-1909 provides that, “[t]he surety bond shall be issued by a surety company authorized to do business in this State.”

18. CL § 14-1912 discusses liability for failure to comply with the MCSBA, providing as follows:

(a) *Willful noncompliance.*— Any credit services business which willfully fails to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- (1) Any actual damages sustained by the consumer as a result of the failure;
- (2) A monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner;
- (3) Such amount of punitive damages as the court may allow; and
- (4) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney’s fees as determined by the court.

(b) *Negligent noncompliance.*— Any credit services business which is negligent in failing to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- (1) Any actual damages sustained by the consumer as a result of the failure; and
- (2) In the case of any successful action to enforce any liability under this section, the cost of the action together with reasonable attorney’s fees as determined by the court.

19. Loan modification services generally include obtaining an extension of credit for consumers, namely obtaining forbearance or other deferrals of payment on consumers’ mortgage loans. This includes any offered services intended as part of the loan modification process, or which are represented to consumers to be necessary for participating in a loan modification

program. Under certain circumstances, loan modification services may involve improving a consumer's credit record, history, or rating or establishing a new credit file or record. Therefore, unless otherwise exempt, pursuant to CL §§ 14-1901(e) and 14-1901(f) persons providing loan modification services, in which they are offering forbearance services, loss mitigation services, and/or credit repair services, fall under the statutory definition of "credit services businesses," and are thereby subject to the licensing, investigatory, enforcement, and penalty provisions of the MCSBA.

20. The Deputy Commissioner's investigation determined that Respondent Credence operates out of offices located in Chicago, Illinois. Further, the Deputy Commissioner's investigation revealed that Respondent Credence engaged in business activities with Maryland consumers involving Maryland residential real property, despite not being registered to do business in the State of Maryland with the State Department of Assessments and Taxation ("SDAT").

21. The Deputy Commissioner's investigation further determined that Respondent Landau is an owner, director, officer, manager, employee and/or agent of Homeowners Counseling, LLC.

22. The Deputy Commissioner's investigation revealed that in June 2013, [REDACTED] [REDACTED] (collectively "Consumer A"), who were more than sixty (60) days in default on their residential mortgage, entered into a loan modification agreement with Respondents. Consumer A paid \$3,651.00 in up-front fees to Respondents in exchange for which Respondents represented that they would be able to obtain a loan modification for Consumer A. Although Respondents collected \$3,651.00 in up-front fees, Respondents never obtained a loan modification for Consumer A.

23. In the present matter, Respondents are subject to the MCSBA, including its prohibition on engaging in credit services business activities without first being licensed under the MCSBA pursuant to CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303. At no time relevant to the facts set forth in this Summary Order to Cease and Desist and Order to Produce (the "Summary Order") have Respondents been licensed by the Commissioner under the MCSBA.

24. By representing that they could provide loan modification services, and by entering into agreements with Maryland consumers to provide loan modification services, Respondents have engaged in credit services business activities without having the requisite license. Respondents' unlicensed loan modification activities thus constitute violations of CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303, thereby subjecting Respondents to the penalty provisions of the MCSBA.

25. Additionally, by collecting up-front fees prior to fully and completely performing all services on behalf of consumers, Respondents violated CL § 14-1902(6) of the MCSBA. Respondents further violated the MCSBA through the following: they failed to obtain the requisite surety bonds, in violation of CL §§ 14-1908 and 14-1909; they failed to provide consumers with the requisite information statements, in violation of CL §§ 14-1904 and 14-1905; and they failed to include all of the requisite contractual terms in their agreements with consumers, as required under CL § 14-1906.

26. As the agreements between Respondents and the consumers failed to comply with the specific requirements imposed by the MCSBA (as discussed above), pursuant to CL § 14-1907(b), all such contracts between Respondents and Maryland consumers are void and unenforceable as against the public policy of State of Maryland.

27. By failing to obtain beneficial loan modifications or other forms of forbearance agreements for Maryland consumers which Respondents had agreed to provide, Respondents breached their contracts with Maryland consumers and/or breached the obligations arising under those agreements. Pursuant to CL § 14-1907(a), such breaches constitute *per se* violations of the MCSBA.

Protection of Homeowners in Foreclosure Act

28. Under PHIFA, (specifically RP § 7-301(i)), the term “*homeowner*” is defined as “the record owner of a residence in default or a residence in foreclosure, or an individual occupying the residence under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article.” In turn, pursuant to RP § 7-301(j), the term “*residence in default*” refers to homeowner-occupied Maryland residential real property “on which the mortgage is at least 60 days in default,” while pursuant to RP § 7-301(k), “*residence in foreclosure*” refers to homeowner-occupied Maryland residential real property “against which an order to docket or a petition to foreclose has been filed.”

29. Pursuant to RP § 7-301(c), a “*foreclosure consultant*” is defined as a person who:

(1) Solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary or mortgagee;

(iii) Assist the homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published;

(iv) Obtain an extension of the period within which the homeowner may reinstate the homeowner’s obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any

promissory note or contract secured by a mortgage on a residence in default or contained in the mortgage;

(vi) Assist the homeowner to obtain a loan or advance of funds;

(vii) Avoid or ameliorate the impairment of the homeowner's credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;

(viii) Save the homeowner's residence from foreclosure;

(ix) Purchase or obtain an option to purchase the homeowner's residence within 20 days of an advertised or docketed foreclosure sale; or

(x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence after a sale or transfer; or

(2) Systematically contacts owners of residences in default to offer foreclosure consulting services.

30. Pursuant to RP § 7-301(d), a "*foreclosure consulting contract*" is defined as "a written, oral, or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service."

31. Pursuant to RP § 7-301(e), a "*foreclosure consulting service*" includes:

(1) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in default;

(2) Contacting creditors on behalf of a homeowner;

(3) Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;

(4) Arranging or attempting to arrange for any delay or postponement of the sale of a residence in default;

(5) Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title;

(6) Arranging or facilitating the sale of a homeowner's residence or the transfer of legal title, in any form, to another party as an alternative to foreclosure; or

(7) Arranging for or facilitating a homeowner remaining in the homeowner's residence after a sale or transfer as a tenant, renter, or lessee under terms provided in a written lease.

32. PHIFA provides that, "a homeowner has the right to rescind a foreclosure consulting contract at any time" (RP § 7-305), and that a foreclosure consulting contract must

include, *inter alia*, appropriate notices of rescission and related information (*see* RP §§ 7-306(a)(6), (b), and (c)).

33. RP § 7-307(2) provides that a foreclosure consultant may not “[c]laim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform.” Further, RP § 7-307(7) states that a foreclosure consultant may not “[r]eceive any money to be held in escrow or on a contingent basis on behalf of the homeowner.”

34. RP § 7-307(10) provides that a foreclosure consultant may not “[i]nduce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subtitle.”

35. Pursuant to RP § 7-309(b), “[a] foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under § 17-532 of the Business Occupations and Professions Article” (“BO&P”). The pertinent duty of care in the referenced statute is stated to be “[the duty to] exercise reasonable care and diligence.” BO&P § 17-532(c)(vi).

36. Unless otherwise exempt, the provisions of PHIFA apply to, *inter alia*, activities in which a person or business entity solicits, offers, sells, provides, or enters into an agreement to provide, residential mortgage loan modification services (a/k/a loss mitigation, foreclosure consulting, and similar services) pertaining to homeowner-occupied Maryland residential real property which is in default or in foreclosure.

37. The Deputy Commissioner’s investigation revealed that the business activities of Respondents are subject to PHIFA. By entering into agreements with Maryland homeowners in

default or in foreclosure to provide residential mortgage loan modification services pertaining to homeowner-occupied Maryland residential real property, Respondents acted as “foreclosure consultants” under PHIFA (as that term is defined at RP § 7-301(c)), as they had entered into “foreclosure consulting contracts” with homeowners for the provision of “foreclosure consulting services” (as those terms are defined under RP §§ 7-301(d) and (e), respectively). As such, Respondents are required to comply with all provisions of PHIFA applicable to foreclosure consultants.

38. The Deputy Commissioner’s investigation revealed that Respondents failed to comply with the requirements of PHIFA. First, Respondents violated RP § 7-307(2) by requiring Maryland homeowners to pay up-front fees prior to successfully obtaining a loan modification for the Maryland consumers.

39. Respondents also violated PHIFA by inducing Maryland homeowners to enter into foreclosure consulting agreements which lacked the notices of rescission and related information required under RP §§ 7-305 and 7-306(a)(6), (b), and (c), and thus Respondents violated RP § 7-307(10) (“[a] foreclosure consultant may not . . . [i]nduce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with [PHIFA].”)

40. Respondents further violated PHIFA when they breached the duty of reasonable care and diligence required under RP § 7-309(b) and BO&P § 17-532(c)(vi), including, but not limited to, the following conduct: Respondents failed to perform those loan modification and foreclosure prevention services for Maryland consumers which they promised to provide and for which they had collected up-front fees.

41. Pursuant to RP § 7-319.1, the Commissioner may enforce the provisions of PHIFA, and applicable regulations, by issuing an order (i) requiring a licensee to cease and desist from any violations of PHIFA and any further similar violations; and (ii) requiring a licensee to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation. Additionally, the Commissioner may impose a civil penalty not exceeding \$1,000 for each violation PHIFA, as well as \$5,000 for each subsequent violation.

Maryland Mortgage Assistance Relief Services Act

42. The Maryland Mortgage Assistance Relief Services Act (“Maryland MARS Act,” at RP § 7-501 *et seq.*) went into effect on July 1, 2013. Pursuant to RP § 7-501(d) of the Maryland MARS Act, “mortgage assistance relief service” has the meaning stated in 12 C.F.R. § 1015.2 and any subsequent revision of that federal regulation. Further, pursuant to RP § 7-501(e), “mortgage assistance relief service provider” has the meaning stated in 12 C.F.R. § 1015.2 and any subsequent revision of that regulation, and that definition incorporates the meanings of other terms stated in 12 C.F.R. § 1015.2 to the extent those terms are used to establish the meaning of “mortgage assistance relief service provider.”

43. “Mortgage assistance relief service” is defined under 12 C.F.R. § 1015.2 as follows:

Mortgage Assistance Relief Service means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:
(1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer’s dwelling, any repossession of the consumer’s dwelling, or otherwise saving the consumer’s dwelling from foreclosure or repossession;

- (2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
- (3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
- (4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:
 - (i) Cure his or her default on a dwelling loan,
 - (ii) Reinstate his or her dwelling loan,
 - (iii) Redeem a dwelling, or
 - (iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;
- (5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or
- (6) Negotiating, obtaining or arranging:
 - (i) A short sale of a dwelling,
 - (ii) A deed-in-lieu of foreclosure, or
 - (iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

44. "Mortgage assistance relief service provider" is defined under 12 C.F.R. § 1015.2

as follows:

Mortgage Assistance Relief Service Provider or Provider means any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service. This term does not include:

- (1) The dwelling loan holder, or any agent or contractor of such individual or entity.
- (2) The servicer of a dwelling loan, or any agent or contractor of such individual or entity.

45. Additional definitions stated in 12 C.F.R. § 1015.2 that help to establish the meaning of "mortgage assistance relief service provider" include the following:

Consumer means any natural person who is obligated under any loan secured by a dwelling.

Dwelling means a residential structure containing four or fewer units, whether or not that structure is attached to real property, that is primarily for personal, family, or household purposes. The term includes any of the following if used as a residence: An individual

condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Dwelling loan means any loan secured by a dwelling, and any associated deed of trust or mortgage.

Dwelling Loan Holder means any individual or entity who holds the dwelling loan that is the subject of the offer to provide mortgage assistance relief services.

Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity, except to the extent that any person is specifically excluded from the Federal Trade Commission's jurisdiction pursuant to 15 U.S.C. 44 and 45(a)(2).

46. RP § 7-502 of the Maryland MARS Act requires compliance with federal law, providing as follows: “[a] mortgage assistance relief service provider providing mortgage assistance relief service in connection with a dwelling in the State that does not comply with 12 C.F.R. §§ 1015.1 through 1015.11 and any subsequent revision of those regulations is in violation of this subtitle.”

47. The Commissioner's authority to enforce the Maryland MARS Act is set forth in RP § 7-506, which provides as follows:

(a) *In general.* --- The Commissioner may enforce the provisions of this subtitle by exercising any of the powers provided under §§ 2-113 through 2-116 of the Financial Institutions Article.

(b) *Injunctions or other court orders or judgments.* ---

(1) The Commissioner may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this subtitle from engaging or continuing to engage in the violation.

(2) The court may enter any order or judgment necessary to:

(i) Prevent the use by a person of any prohibited practice;

(ii) Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or

(iii) Appoint a receiver in case of willful violation of this subtitle.

(3) In any action brought by the Commissioner under this section, the Commissioner is entitled to recover the costs of the action for the use of the State.

(c) *Requiring violator to take affirmative action.* -- The Commissioner may enforce the provisions of this subtitle by requiring a violator to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation.

(d) *Investigations or assistance to other units of State government.* -- The Commissioner may:

- (1) Investigate violations of this subtitle; and
- (2) Aid any other unit of State government that has regulatory jurisdiction over the business activities of the violator.

(e) *Cooperation investigations.* -- The Commissioner may cooperate in the investigation and prosecution of any violation of this subtitle with:

- (1) The Office of the Attorney General, a State's Attorney, or any other unit of law enforcement in the State; or
- (2) The Federal Trade Commission, the Consumer Financial Protection Bureau, or the U.S. Department of Housing and Urban Development.

48. The loan modification activities of Respondents constitute "mortgage assistance relief services" under 12 C.F.R. § 1015.2, and the Respondents satisfy the definition of "mortgage assistance relief service providers" under 12 C.F.R. § 1015.2. As such, pursuant to RP §§ 7-501 and 502, Respondents and their loan modification activities are currently subject to the Maryland MARS Act, including the investigative and enforcement authority of the Commissioner set forth in RP § 7-506.

49. 12 C.F.R. § 1015.3 prohibits a mortgage assistance relief service provider from the following activities:

- (a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.
- (b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:
 - (1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of Mortgage Assistance Relief Service in § 1015.2;
 - (2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such

as those set forth in the definition of Mortgage Assistance Relief Service in § 1015.2;

(3) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:

- (i) The United States government,
- (ii) Any governmental homeowner assistance plan,
- (iii) Any Federal, State, or local government agency, unit, or department,
- (iv) Any nonprofit housing counselor agency or program,
- (v) The maker, holder, or servicer of the consumer's dwelling loan,
or
- (vi) Any other individual, entity, or program;

(4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;

(5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;

(6) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;

(7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;

(8) That the consumer will receive legal representation;

(9) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the consumer can obtain mortgage assistance relief, including negotiating directly with the dwelling loan holder or servicer, or using any nonprofit housing counselor agency or program;

(10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service;

(11) The total cost to purchase the mortgage assistance relief service;
or

(12) The terms, conditions, or limitations of any offer of mortgage assistance relief the provider obtains from the consumer's dwelling loan holder or servicer, including the time period in which the consumer must decide to accept the offer;

(c) Making a representation, expressly or by implication, about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time such representation is made, the provider possesses and relies upon competent and reliable evidence that substantiates that the representation is true. For the purposes of this paragraph, competent and reliable evidence means tests, analyses, research, studies, or other evidence based on the expertise of

professionals in the relevant area, that have been conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

50. In electronic mail ("e-mail") correspondence with Consumer A, Respondents attached the logo of the following governmental programs and agencies: Making Home Affordable, Fannie Mae, Freddie Mac, and Federal Housing Authority. In so doing, Respondents were intimating that they were affiliated and/or endorsed by the federal government. Respondents, however, were not affiliated and/or endorsed by the federal government. Consequently, Respondents violated 12 C.F.R. § 1015.3, which, in turn, violated RP § 7-502.

51. Pursuant to 12 C.F.R. § 1015.5(a), a mortgage assistance relief service provider may not "[r]equest or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer[.]"

52. By collecting up-front fees for a loan-modification, Respondents violated 12 C.F.R. § 1015.5(a), which, in turn, violated RP § 7-502.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland, it is, by the Maryland Commissioner of Financial Regulation, hereby

ORDERED that Respondents shall immediately **CEASE** and **DESIST** from engaging in any further credit services business activities and/or foreclosure consultant activities with Maryland consumers, including contracting to provide, or otherwise engaging in loan

modification services, foreclosure consulting, or similar services with Maryland consumers; and it is further

ORDERED that Respondents shall immediately **CEASE** and **DESIST** from directly or indirectly offering, contracting to provide, or otherwise engaging in, mortgage assistance relief services with Maryland consumers; and it is further

ORDERED that Respondents shall immediately **CEASE** and **DESIST** from violating the aforementioned statutory provisions of the Annotated Code of Maryland, including, but not limited to, Title 14, Subtitle 19 of the Commercial Law Article (the Maryland Credit Services Businesses Act), Title 11, Subtitles 2 and 3 of the Financial Institutions Article; and that Respondents should be assessed statutory monetary penalties and directed to make restitution for such violations; and it is further

ORDERED that all provisions of this Summary Order, including all orders and notices set forth herein, shall also apply to all unnamed partners, employees, and/or agents of Respondents; and it is further

ORDERED that Respondents shall provide a copy of this Summary Order to all unnamed partners, employees and/or agents of Respondents; furthermore,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115, CL § 14-1911, and RP § 7-319.1, Respondents are entitled to a hearing before the Commissioner to determine whether this Summary Order should be vacated, modified, or entered as a final order of the Commissioner; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115, CL § 14-1911, and RP § 7-319.1, this Summary Order will be entered as a final order of the

Commissioner if Respondents do not request a hearing within 15 days of the receipt of this Summary Order; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to Code of Maryland Regulations (“COMAR”) § 09.01.02.08, and State Government Article (“SG”) §§ 9-1607.1, 10-206.1, and 10-207, and in accordance with SG § 10-207(b)(4), individual Respondents are permitted to request a hearing, and to appear at such hearing, on behalf of themselves, or through an attorney authorized to practice law in Maryland at Respondents’ own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to SG §§ 9-1607.1 and 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at Respondents’ own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Administrator
Enforcement Unit
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;

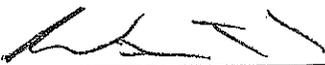
and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115(b) and RP § 7-319.1, as a result of a hearing, or of Respondents’ failure to timely request a hearing in the manner described above, the Commissioner may, in the Commissioner’s discretion, and in addition to taking any other action authorized by law, take the following actions: enter an order making this Summary Order final; issue a penalty order against Respondents imposing a civil

penalty up to \$1,000 for each violation of the MCSBA, up to \$1,000 for each violation of the FI § 2-114, and up to \$1,000 for each additional violation cited above; issue a penalty order against Respondents imposing a civil penalty up to \$5,000 for each subsequent violation of these laws; or may take any combination of the aforementioned actions against Respondents. The Commissioner may also enter a final order declaring, pursuant to CL §§ 14-1902 and 14-1907, that all loan modification services agreements made by Respondents with Maryland consumers are void and unenforceable, and that Respondents must refund to Maryland consumers all money and other valuable consideration that consumers paid to Respondents, and, if applicable, to their partners, employees, and/or agents, that is in any way related to these agreements. In addition, pursuant to CL § 14-1912, as a result of Respondents' failure to comply with requirements imposed under the MCSBA, the Commissioner may also enter an order requiring Respondents to pay consumers a monetary award equal to any actual damages sustained by the consumers as a result of that failure, and, in instances of willful noncompliance under the MCSBA, an additional monetary award equal to 3 times the total amount collected from the consumers.

**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

6/15/2015
Date


By: Keisha Whitehall Wolfe
Acting Deputy Commissioner