

**IN THE MATTER OF:**  
**ATC FINANCIAL, LLC,**  
**SEAN M. DER, and**  
**JAMES T. WEISKERGER,**  
  
**Respondents.**

**BEFORE THE MARYLAND**  
**COMMISSIONER OF**  
**FINANCIAL REGULATION**

**Case No.: CFR-FY2012-179**

**SETTLEMENT AGREEMENT AND CONSENT ORDER**

This Settlement Agreement and Consent Order (“Agreement”) is entered into this 5<sup>th</sup> day of June, 2013, by and between the Maryland Commissioner of Financial Regulation (the “Commissioner” or the “Agency”), and ATC Financial, LLC (“ATC”), Sean M. Der (“Der”), and James T. Weiskerger (“Weiskerger”) (collectively, the “Respondents”). The Commissioner and Respondents (the “Parties”) consent to the entry of this Agreement as a final resolution of the above-captioned case. This Agreement supersedes and fully replaces the Summary Order to Cease and Desist and Summary Suspension of Credit Services Business License issued by the Commissioner to Respondents on March 27, 2013 (the “Summary Order”) as well as the Interim Settlement Agreement and Modification to Summary Order to Cease and Desist and Summary Suspension of Credit Services Business License entered into by the Parties on April 22, 2013 (the “Interim Agreement”). All paragraphs below are intended to be part of the contractual obligations of the Parties hereto, so far as they may be construed, and are not mere recitals to this Agreement.

1. Pursuant to the Maryland Credit Services Businesses Act (“MCSBA”), Md. Code Ann., Com. Law (“CL”), § 14-1901 *et seq.*, the Commissioner is responsible for licensing and regulating business entities and other persons who engage in credit services business activities in the State of Maryland (the “State”) or otherwise involving Maryland residents (or “consumers”).

2. 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.”

3. Pursuant to Md. Code Ann., Fin. Inst. (“FI”), § 11-302(b), “[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.”

4. The MCSBA defines “*credit services business*” at CL § 14-1901(e), which 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:

\* \* \*

- (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.

5. The MCSBA defines “*extension of credit*” at CL § 14-1903(f) 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.”

6. CL § 14-1902 addresses activities prohibited under the MCSBA, stating, in 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 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

\* \* \*

7. A “short sale” involves circumstances where a homeowner, or other real property owner, desires to sell his or her property for an amount that will be insufficient to satisfy all indebtedness (mortgages and other liens) secured by the property. “Short sale negotiation services” involve directly or indirectly offering, contracting to provide, or otherwise engaging in, short sale negotiations, loss mitigation activity, foreclosure consulting, or similar services which involve the negotiation of the sale of residential real property with the seller’s mortgage lender, servicer, and/or other lienholders for less than the full value of the secured debt. Short sale negotiation services always have the potential to result in the seller incurring an unsecured obligation representing the shortfall or some portion of the shortfall arising from the difference between the total amount of indebtedness secured by the property and the actual sales price of the property, *i.e.* a “deficiency,” which constitutes an extension of credit for the seller. Therefore, unless otherwise exempt, pursuant to CL §§ 14-1901(e) and 14-1901(f) persons providing short

sale negotiation 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.

8. The Commissioner is authorized to enforce the provisions of the Maryland Mortgage Fraud Protection Act (“MMFPA”), Md. Code Ann., Real Prop. (“RP”) § 7-401 *et seq.*

9. Pursuant to RP § 7-401(d), “mortgage fraud” is defined as follows:

(d) *Mortgage Fraud.*— “Mortgage fraud” means any action by a person made with the intent to defraud that involves:

(1) Knowingly making any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(2) Knowingly creating or producing a document for use during the mortgage lending process that contains a deliberate misstatement, misrepresentation, or omission with the intent that the document containing the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(3) Knowingly using or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(4) Receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from a violation of item (1), (2), or (3) of this section;

(5) Conspiring to violate any of the provisions of item (1), (2), (3), or (4) of this section; or

(6) Filing or causing to be filed in the land records in the county where a residential real property is located, any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation, or omission.

10. Pursuant to RP § 7-401(e), the “mortgage lending process” is defined as follows:

(e) *Mortgage lending process.*—

(1) “Mortgage lending process” means the process by which a person seeks or obtains a mortgage loan.

(2) “Mortgage lending process” includes:

(i) The solicitation, application, origination, negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan; and

(ii) The notarizing of any document in connection with a mortgage loan.

11. Pursuant to RP § 7-402, “[a] person may not commit mortgage fraud.”

12. ATC has been duly licensed by the Commissioner as a Maryland Credit Services Business since May 5, 2011, holding license number 28-30, subject to the Summary Order and the Interim Agreement.

13. Respondents, by and through ATC, are engaged in the business of offering and performing short sale negotiation services to and on behalf of Maryland homeowners.

14. The Commissioner commenced an investigation of Respondents’ short sale activities in March of 2012 after receiving complaints related to Respondents’ short sale business activities. On March 27, 2013, after concluding that there were reasonable grounds to believe that Respondents’ short sale negotiation activities violated various provisions of the MCSBA and the MMFPA cited above (the “Alleged Violations”), and upon making a determination that action under FI § 2-115 and Md. Code Ann., State Gov’t. (“SG”) § 10-226 was appropriate, the Agency issued the Summary Order to Respondents.

15. On April 22, 2013, the Parties entered into the Interim Agreement which, *inter alia*, authorized Respondents to resume processing those short sale cases for Maryland homeowners where there was a completed, executed contract of sale between the homeowner seller and a prospective buyer.

16. Respondents do not admit to the Alleged Violations, but wish to resolve this matter without the need for an administrative hearing and to avoid the costs associated with such proceedings and any potential appeals, and therefore agree to resolve the above-captioned case fully, finally, and completely without an administrative hearing. Furthermore, Respondents accept without condition, and fully agree to abide by, each and every term and obligation set forth in this Agreement.

17. The Commissioner desires to ensure that Respondents will comply with all applicable statutes, regulations, and others laws governing Maryland credit services businesses activities, short sale negotiation, and other mortgage-related activities, and further wishes to avoid the costs to the taxpayers of an administrative hearing and any potential appeals.

18. Respondents have agreed to take each and every one of the following actions in exchange for a final resolution of this matter:

a. Respondents will pay a civil money penalty of \$50,000 (FIFTY THOUSAND DOLLARS) by cashier's check or money order made payable to the "Commissioner of Financial Regulation" in 4 separate payments, as follows: the first payment in an amount of \$10,000 will be made on or before June 30, 2013; the second payment in an amount of \$10,000 will be made on or before August 31, 2013; the third

payment in an amount of \$15,000 will be made on or before October 31, 2013; and the fourth payment in an amount of \$15,000 will be made on or before December 18, 2013.

b. Respondents will pay an investigative fee of \$10,000 (TEN THOUSAND DOLLARS) by cashier's check or money order made payable to the "Commissioner of Financial Regulation" immediately upon this Agreement being fully executed.

c. Respondents agree that, in connection with any short sale transaction in which the HUD-1 settlement statement as of the date of this Agreement has not previously been approved in writing by the Seller's lender/servicer, they will identify and communicate any fee payable to Respondents clearly and accurately, in connection with any document including, without limitation, any preliminary/estimated or final HUD-1 settlement statement submitted to a lender/servicer or other holder of a mortgage loan, that such fees must be for services actually performed and that such fees must be limited to those that the Respondents are legally permitted to perform and to report based on their business licenses and other considerations. When reporting such fees, respondents agree to refrain from using nomenclature that states or implies that Respondents have or will provide a service that Respondents will not actually provide, or which they are not authorized to provide due to particular licensing requirements or similar considerations.

d. Respondents agree that they will not, in connection with any short sale transaction in which the HUD-1 settlement statement as of the date of this Agreement has not previously been approved in writing by the Seller's lender/servicer, identify any fee payable to Respondents, in any document including, without limitation, any

preliminary/estimated or final HUD-1 settlement statement submitted to a lender/servicer or other holder of a mortgage loan, using nomenclature that states or implies that the fee is required by, or is payable to, a government agency.

e. Respondents agree that, in connection with any short sale transaction undertaken on behalf of a Maryland consumer homeowner, they will provide the lender/servicer/holder of the consumer homeowner/seller's mortgage loans, with a disclosure substantially in the form attached hereto as "Exhibit A," which, *inter alia*, provides the lender/servicer with notification that ATC provides short sale negotiation services.

f. Respondents agree that, in connection with any short sale transaction undertaken on behalf of a Maryland consumer homeowner, they will provide the consumer/homeowner client seeking to sell their property with a disclosure substantially in the form attached hereto as "Exhibit B," which, *inter alia*, provides the homeowners with notification of the potential negative ramifications of entering into a short sale. Effective July 1, 2013, Respondents will also provide consumers with all disclosures required pursuant to the Maryland Mortgage Assistance Relief Services Act.

g. Respondents agree that, in connection with any short sale transaction undertaken on behalf of a Maryland consumer homeowner, any fees to be listed on a HUD-1 in connection with their short sales negotiation services may not be listed in the 1100 series, which is reserved for title and settlement-related services fees.

h. Respondents agree that, in connection with any short sale transaction undertaken on behalf of a Maryland consumer homeowner, Respondents will



not dictate or require the use of any particular title company or other closing agent (“title company”). However, this does not preclude ATC from publishing a “preferred” listing of title companies, provided that ATC provides an accompanying notice clearly stating that buyers are entitled to select the title company of their choice, provided that Respondents do not have any associate relationship with any of the title companies on their preferred list, as the term “associate” is defined in 12 U.S.C. § 2602(8) of the federal Real Estate Settlement Procedures Act (“RESPA”), and provided that the Respondents do not receive any compensation, directly or indirectly, as a result of referring buyers to these title companies.

i. Respondents agree that, from the date of this Agreement forward, Sean Der will remain the sole member of ATC and will direct and oversee all business activities of ATC, and that any changes to the ownership or to the managers or officers of ATC must first be approved in writing by the Office of the Commissioner. Any such requests should be submitted in writing to the Director of Licensing.

j. In the event that any federal law enforcement or other federal governmental agency brings an administrative or civil action, or files criminal charges, or brings a like action against any employee or agent of ATC based on any conduct, or in the event that any state law enforcement or other state governmental agency brings an administrative or civil action, or files felony criminal charges, against any employee or agent of ATC based on conduct that occurred after the date that this Agreement was fully executed, then ATC will immediately sever all ties with the individual, including but not limited to ending the individual’s employment or agency relationship with ATC, and ATC will immediately notify the Office of the Commissioner of the same. No such individuals

may resume working as an employee or agent of ATC in any capacity without prior written approval by the Office of the Commissioner.

k. Respondents agree to cooperate fully with the Office of the Commissioner in any related enforcement actions against any person not a party to this Agreement.

l. Respondents agree to conform all business activities with all recommendations and guidance made in any Advisories issued by the Commissioner on the issue of short sales.

19. Respondents acknowledge that they have voluntarily entered into this Agreement with full knowledge of their right to a hearing pursuant to FI § 2-115(a) and pursuant to the Maryland Administrative Procedures Act – Contested Cases, Md. Code Ann., State Gov't. ("SG"), § 10-201 *et seq.*, and that Respondents hereby waive their right to a hearing. Respondents further acknowledge that they have had an opportunity to consult with independent legal counsel in connection with their waiver of rights and with the negotiation and execution of this Agreement, and that Respondents have in fact consulted with independent legal counsel.

20. Respondents represent the following: that they are currently in compliance with all applicable statutes, regulations, and others laws governing Maryland credit services businesses activities, short sale negotiations, and other mortgage related activities, and that they will continue to act in compliance at all future times.

21. The Parties hereto agree that this Agreement shall be binding upon the Parties and enforceable in a court of competent jurisdiction by the Commissioner and by

the Respondents, shall be admissible in court, if relevant, and shall be binding upon and inure to any of the Respondents' present and future owners, principals, directors, officers, members, partners, managers, agents, successors, and assigns.

22. The Parties hereto acknowledge that this Agreement does not in any way relate to, impact, or otherwise effect the legal rights of, or preclude the Commissioner from bringing or continuing actions against, persons not Parties to this Agreement. Further, this Agreement is by and between the Commissioner and the Respondents and shall not inure to the benefit of any person not a party to this Agreement.

23. The Parties hereto agree that any notices hereunder shall be effectively "delivered" when sent via overnight delivery or certified mail as follows:

a. To the Commissioner:

Commissioner of Financial Regulation  
500 North Calvert Street, Suite 402  
Baltimore, Maryland 21202-3651  
Attn: Keisha Whitehall Wolfe, Acting Deputy Commissioner

Copy to:

W. Thomas Lawrie, Assistant Attorney General  
Office of the Attorney General  
Department of Labor, Licensing, and Regulation  
500 North Calvert Street, Suite 406  
Baltimore, Maryland 21202-3651

b. To Respondents:

Sean M. Der  
ATC Financial, LLC  
2331 York Road, Suite 301  
Timonium, MD 21093

Copy to:

J. Steven Lovejoy, Esq.  
Shumaker Williams, P.C.  
901 Dulaney Valley Road, Suite 610  
Towson, Maryland 21204

James T. Weiskerger  
94 English Run Circle  
Sparks, MD 21152

Erin Murphy, Esq.  
210 North Charles Street  
Suite 2600  
Baltimore, MD 21201

**NOW, THEREFORE**, it is, by the Maryland Commissioner of Financial Regulation, hereby

**ORDERED** that Respondents shall adhere to all terms of this Settlement Agreement, the violation of which shall constitute a violation of a Final Order of the Commissioner; it is further

**ORDERED** that Respondents shall conduct business in full compliance with all statutes, regulations, and other laws governing credit services businesses activities, short sale negotiations in the State of Maryland, and other mortgage-related activities, and shall continue to act in full compliance at all future times; and it is further

**ORDERED** that, in the event Respondents violate any provision of this Settlement Agreement, or otherwise engage in the activities which formed the basis for the violations described above, the Commissioner may, at the Commissioner's discretion, take any enforcement actions available under FI § 2-115, under the Maryland Credit Services

Businesses Act, under the Maryland Mortgage Fraud Protection Act, as well as take any other enforcement actions as permitted by, and in accordance with, applicable State law; and that such enforcement actions could include an order to cease and desist, civil money penalties of up to \$5,000 for each violation of the law, an order to provide restitution of money or property to any aggrieved persons, and/or referral for possible criminal prosecution; and it is further

**ORDERED** that this matter shall be resolved in accordance with the terms of this Settlement Agreement and Consent Order and that the same shall be reflected among the records of the Office of the Commissioner of Financial Regulation; and it is further

**ORDERED** that this Settlement Agreement and Consent Order fully supersedes the Summary Order to Cease and Desist and Summary Suspension of Credit Services Business License issued by the Commissioner on March 27, 2013 and the Interim Settlement Agreement and Modification to Summary Order to Cease and Desist and Summary Suspension of Credit Services Business License entered into by the Commissioner and Respondents on April 22, 2013, in Case Number CFR-FY2012-179; and it is further


**ORDERED** that this document shall constitute a Final Order of the Maryland Commissioner of Financial Regulation, and that the Commissioner may consider this Settlement Agreement and Consent Order and the facts set forth herein in connection with, and in deciding, any action or proceeding before the Commissioner; and that this Settlement Agreement and Consent Order may, if relevant, be admitted into evidence in any matter before the Commissioner.

It is so ORDERED.

IN WITNESS WHEREOF, this Settlement Agreement and Consent Order is executed on the day and year first above written.

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

By:




Keisha Whitehall Wolfe  
Acting Deputy Commissioner

ATC Financial, LLC

By:



Sean M. Der  
Managing Member, and  
On behalf of himself individually



James T. Weiskerger  
Individually

## NOTICE TO LENDER/SERVICER

### **Prior to July 1, 2013:**

The Maryland Commissioner of Financial Regulation (the “Commissioner”) requires that any person negotiating a short sale with a lender be licensed as a Credit Services Business under the Maryland Credit Services Businesses Act (“MCSBA,” at Annotated Code of Maryland, Commercial Law Article, § 14-1901 *et seq.*), unless otherwise exempt. The Commissioner and the Maryland Real Estate Commission agree that such negotiations fall outside of the scope of a real estate broker’s license. As such, licensed real estate brokers are prohibited from engaging in short sale discussions and negotiations with lenders unless they are also licensed as Credit Services Businesses under the MCSBA. Since most real estate agents are not licensed as Credit Services Businesses in Maryland, the services that licensed third party negotiators provide are a legitimate aspect of the short sale process involving Maryland residential real property.

ATC Financial, LLC (“ATC”) is a licensed Credit Services Business under the MCSBA, and as such it is permitted under Maryland law to engage in short sale negotiations with lenders and other lienholders. ATC has been retained to conduct short sale discussions and negotiations with lenders on behalf of the seller in the present matter. The seller’s real estate agent is not licensed as a Credit Services Business, and thus the seller has determined that services of a third-party negotiator such as ATC are necessary to the short sale process in this matter. ATC charges a flat fee for its services, to be payable from the proceeds of the sale and listed on the HUD-1 [or through a different acceptable manner, to be specified on the disclosure]. If you have questions concerning ATC’s fees or ATC’s function in the short sale transaction, please contact us at [phone or e-mail]

### **On or after July 1, 2013:**

Effective July 1, 2013, any person negotiating a short sale with a lender must comply with the Maryland Mortgage Assistance Relief Services Act (Md. MARS Act, at Annotated Code of Maryland, Real Property Article, § 7-501 *et seq.*), which incorporates by reference the Federal Mortgage Assistance Relief Services Rule, originally promulgated by the Federal Trade Commission and issued as an interim final rule, known as Regulation O, by the Consumer Financial Protection Bureau. Providers of short sale services and other forms of Mortgage Assistance Relief Services are required to comply with all provisions of Regulation O and are subject to the enforcement authority of the Commissioner of Financial Regulation and the Office of the Attorney General, unless otherwise exempt.

The Commissioner and the Maryland Real Estate Commission agree that short sale negotiations fall outside of the scope of a real estate broker's license. As such, licensed real estate brokers are prohibited from engaging in short sale discussions and negotiations with lenders unless they also comply with the Md. MARS Act. Further, the services that real estate agents provide in exchange for their brokerage fees do not include short sale negotiations. Thus, short sale negotiation services are a legitimate aspect of the short sale process involving Maryland residential real property.

ATC Financial, LLC ("ATC") is permitted to provide Mortgage Assistance Relief Services in compliance with the Md. MARS Act, which includes engaging in short sale negotiations with lenders and other lienholders. ATC has been retained to conduct short sale discussions and negotiations with lenders on behalf of the seller in the present matter. ATC charges a flat fee for its services, to be payable from the proceeds of the sale and listed on the HUD-1 [or through a different acceptable manner, to be specified on the disclosure]. If you have questions concerning ATC's fees or ATC's function in the short sale transaction, please contact us at [phone or e-mail]



**NOTICE TO HOMEOWNERS CONTEMPLATING  
SHORT SALE OF THEIR PROPERTY**

**1. Potential Income Tax Consequences**

Forgiveness by the lender of any of the indebtedness secured by your home may have income tax implications. YOU ARE ENCOURAGED TO CONSULT A TAX PROFESSIONAL to determine whether there will be income tax consequences arising from the short sale transaction.

**2. Remaining Deficiency/ Post-Sale Promissory Note**

Short sales involve the sale of a property for less than the mortgage balance(s). While lenders always release the lien on the property so that clear title may be conveyed to the purchaser, in some cases lenders refuse to release homeowners from the deficiency created by a short sale transaction. This can take the form of the lender simply refusing to release the seller/homeowner from the existing deficiency, or the lender insisting that the seller execute a new promissory note evidencing a continuing obligation arising from the deficiency. IF YOUR SHORT SALE LENDER DOES NOT RELEASE YOU FROM THE DEFICIENCY, OR REQUIRES YOU TO SIGN A NEW PROMISSORY NOTE AS A CONDITION OF CLOSING, YOU SHOULD CONSULT AN ATTORNEY TO DETERMINE IF A SHORT SALE IS IN YOUR BEST INTERESTS AND TO CONSIDER ALTERNATIVES TO A SHORT SALE.

**3. Potential Adverse Credit Reporting Consequences**

The credit of homeowners who sell their homes through a short sale process will likely be adversely affected by the reporting of the short sale transaction. YOU ARE ENCOURAGED TO CONSULT AN ATTORNEY OR ACCOUNTANT to more fully understand the effect that a short sale will have on your credit, as well as the potential future ramifications of any such changes to your credit.

**NOTE: After July 1, 2013, additional disclosures must be provided in accordance with the Maryland Mortgage Assistance Relief Services Act.**