

**IN THE MATTER OF:**

**SEAN MOORE,**

**Respondent**

**BEFORE THE MARYLAND**

**COMMISSIONER OF**

**FINANCIAL REGULATION**

**Case No.: CFR-FY2012-104**

**SETTLEMENT AGREEMENT AND CONSENT ORDER**

This Settlement Agreement and Consent Order (“Agreement”) is entered into this 17<sup>th</sup> day of November, 2015, by and between the Maryland Commissioner of Financial Regulation (the “Commissioner” or “Agency”), and Sean Moore (the “Respondent”). The Commissioner and Respondent (the “Parties”) consent to the entry of this Agreement as a final resolution of this matter as to the Respondent. All paragraphs below are intended to be part of the contractual obligations of the Parties hereto, so far as they may be so construed, and are not mere recitals to this Agreement.

1. The Commissioner is responsible for enforcing the provisions of the Protection of Homeowners in Foreclosure Act (“PHIFA”), at §§ 7-301–7-325 of the Real Property Article (“RP”), Annotated Code of Maryland. Thus, pursuant to RP § 7-319.1, the Commissioner may, among other things, conduct investigations and issue orders in accordance with the Commissioner’s general powers under §§ 2-113–2-116 of the Financial Institutions Article (“FI”), Annotated Code of Maryland, including issuing final cease and desist orders and imposing civil penalties for each violation of PHIFA. Pursuant to RP § 7-319.1, the Commissioner may also require persons to take affirmative action to correct a violation of PHIFA, including providing restitution to individuals aggrieved by the violation.

2. 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.”

3. 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.

4. 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.”

5. 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.

6. Therefore, unless otherwise exempt, the provisions of PHIFA apply to, *inter alia*, activities in which an individual or business offers, sells, provides, or enters into an agreement to provide, residential mortgage loan modification services (that is, loss

mitigation, foreclosure consulting, and similar services) pertaining to a Maryland residence in default or in foreclosure.

7. 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)).

8. 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.”

9. 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.”

10. 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).

11. The Commissioner is responsible for enforcing the provisions of the Maryland Mortgage Assistance Relief Services Act (“MARSA”), at RP §§ 7-501–7-511. Thus,

pursuant to RP § 7-506, the Commissioner may, among other things, conduct investigations and issue orders in accordance with the Commissioner's general powers under FI §§ 2-113 – 2-116, including issuing final cease and desist orders and imposing civil penalties for each violation of MARSAs. Pursuant to RP § 7-506, the Commissioner may also require persons to take affirmative action to correct a violation of MARSAs, including providing restitution to individuals aggrieved by the violation.

12. MARSAs requires compliance with the federal Mortgage Assistance Relief Services Rule (hereinafter, "Regulation O"), set forth in 12 C.F.R. Part 1015. Specifically, RP § 7-502 provides 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." Therefore, any violation of Regulation O is a violation of MARSAs pursuant to RP § 7-502.

13. Pursuant to RP § 7-501(d) of MARSAs, "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 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."

14. In turn, 12 C.F.R. § 1015.2 defines "mortgage assistance relief service provider" as "any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service," excluding "[t]he dwelling loan holder, or any agent

or contractor of such individual or entity,” and “[t]he servicer of a dwelling loan, or any agent or contractor of such individual or entity.” Further, 12 C.F.R. § 1015.2 defines “mortgage assistance relief service” 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.

15. Therefore, under the pertinent federal regulations, incorporated into Maryland law through RP §§ 7-501 and 502 of MARSAs, the definition of “mortgage assistance relief service provider” includes persons offering, providing, or representing that they can provide, loan modification services.

16. Pursuant to 12 C.F.R. § 1015.4, it is a violation of Regulation O for mortgage assistance relief service providers to fail to include the disclosures set forth in § 1015.4(a) for all general commercial communications, and it is a violation of Regulation O for them to fail to include the additional disclosures set forth in § 1015.4(b) for all consumer-specific commercial communications.

17. Pursuant to 12 C.F.R. § 1015.5(a) of Regulation O, mortgage assistance relief service providers are prohibited from collecting any up-front or other fees from consumers prior to the consumer entering into a written agreement with their lender or servicer that incorporates the offer of mortgage assistance relief.

18. Further, 12 C.F.R. § 1015.5(b)–(d) requires mortgage assistance relief service providers to give additional disclosures and notices to consumers at the time the provider furnishes the consumer with the written agreement specified in paragraph 12 C.F.R. § 1015.5(a); the failure to provide such notices and disclosures constitutes a violation of Regulation O.

19. The Agency began an investigation into the business activities of Respondent Sean Moore and of Home Retention USA, Inc., Secure Loan Mod, and Timothy D. Lopez (the “associated persons”) as a result of a consumer complaint pertaining to their loan modification activities. On April 13, 2015, after concluding that there were reasonable grounds to believe that the loan modification activities of Respondent and associated persons violated the various provisions of PHIFA and MARSAs cited above (the “Alleged Violations”), and upon making a determination that action under FI § 2-115 was appropriate, the Commissioner issued a Summary Order to Cease and Desist and Order to Produce to the

Respondent and associated persons.

20. Respondent does not admit to the Alleged Violations, but wishes 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 agrees to resolve the above-captioned case fully, finally, and completely without an administrative hearing. Furthermore, Respondent accepts without condition, and fully agrees to abide by, each and every term and obligation set forth in this Agreement.

21. The Commissioner desires to ensure that the Respondent complies with all applicable statutes, regulations, and others laws governing foreclosure consulting, mortgage loan modification activities, and other mortgage assistance relief services involving Maryland consumers, and further wishes to avoid the costs to the taxpayers of an administrative hearing and any potential appeals.

22. Neither this Agreement nor the agreement of the Respondent to make payments to the Agency or to provide restitution as set forth below shall be construed as an admission of liability by the Respondent, but is in compromise and settlement of the Alleged Violations.

23. The Respondent has agreed to take each and every one of the following actions in exchange for a final resolution of this matter:

a. Respondent will pay a penalty of \$6,500 (SIX THOUSAND FIVE HUNDRED DOLLARS) in the form of two checks made payable to the "Commissioner of Financial Regulation," with the first payment of \$4,000 due within 14 days of the date this Agreement is fully executed, and the second payment of \$2,500 due within 7 months of the



date this Agreement is fully executed.

b. Respondent will also pay an investigation fee of \$1,000 (ONE THOUSAND DOLLARS) by separate check made payable to the "Commissioner of Financial Regulation" within 14 days of the date this Agreement is fully executed.

c. Respondent will provide restitution to the following Maryland homeowners (the "Maryland Consumers") in the amounts specified (totaling \$21,800):

<u>Homeowner's Name</u>	<u>Amount of refund</u>
████████████████████	\$ 1,200
████████████████████	\$ 2,400
████████████████████	\$ 2,400
██████████████	\$ 2,800
██████████████	\$ 2,400
████████████████████	\$ 2,400
██████████████	\$ 2,400
████████████████████	\$ 2,400
██████████████	\$ 1,200
████████████████████	\$ 2,200
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Total	\$ 21,800

Each payment to these Maryland Consumers shall be made in accordance within the following:

(1). Within 7 months of the date this Agreement is fully executed, Respondent shall mail a check for the amount of money to be refunded to each Maryland Consumer via First Class U.S. Mail, to each Maryland Consumer's last known address, or to an updated address as can be identified through customary address verification means. Each refund shall be accompanied by a letter indicating that that the refund is being issued

pursuant to a Settlement Agreement between the Respondent and the Commissioner of Financial Regulation, and that the Settlement Agreement does not in any way affect the Maryland Consumer's legal rights. The text of this letter shall be pre-approved by the Agency.

(2). On or before August 1, 2016, the Respondent shall furnish evidence to the Agency that refunds were tendered to each Maryland Consumer in the agreed amount by providing a copy of the front and back of the cancelled check for each refund payment that was negotiated by the Maryland Consumer.

(3). On or before August 1, 2016, if any refund payment checks mailed by the Respondent to Maryland Consumers in accordance with this Agreement are either not cashed or are returned to the Respondent as non-deliverable (collectively, the "Undeliverable Refunds"), such Undeliverable Refunds will escheat to the State of Maryland. In such event, the Respondent will stop payment on such undeliverable refund payment checks, and shall pay the total amount of all Undeliverable Refunds in the form of a single check made payable to the "Comptroller of Maryland," which shall be submitted to W. Thomas Lawrie, Assistant Attorney General, Office of the Attorney General, Department of Labor Licensing and Regulation, 500 N. Calvert Street, Suite 406, Baltimore, Maryland, 21202, copy to the Agency, both of which shall be accompanied by a spreadsheet containing the following information for each Maryland Consumer: the social security number of the consumer (if known), the date of birth of the consumer (if known), the date on which each refund check was mailed, and an indication of which refund checks were cashed, and which refund checks were either not cashed or were returned to the Respondent as non-deliverable.

Such action on the part of the Respondent shall relieve the Respondent of any further obligation to make refunds to the Maryland Consumers pursuant to this Agreement.

(4). The Respondent shall not seek releases from the Maryland Consumers in conjunction with these refunds.

d. Respondent agrees not to engage, directly or indirectly, in any financial services-related business activities in Maryland or involving Maryland consumers at any time in the future. As such, among other things, Respondent is permanently prohibited from offering or providing, directly or indirectly, any loan modification services or other mortgage assistance relief services to any Maryland homeowners or other consumers.

24. Respondent acknowledges that he has voluntarily entered into this Agreement with full knowledge of his right to a hearing pursuant to FI § 2-115(a) and pursuant to the Maryland Administrative Procedures Act – Contested Cases, at §§ 10-201–10-227 of the State Government Article (“SG”), Annotated Code of Maryland, and that Respondent hereby waives his right to a hearing. Respondent further acknowledges that he has had an opportunity to consult with independent legal counsel in connection with his waiver of rights and with the negotiation and execution of this Agreement, and that Respondent has in fact consulted with independent legal counsel.

25. Respondent represents the following: that he has fully complied with the Summary Order to Cease and Desist and Order to Produce issued by the Commissioner on April 13, 2015 in Case Number CFR-FY2012-104; that he is currently in compliance with all applicable state and federal statutes, regulations, and others laws governing foreclosure consulting, mortgage loan modifications, and mortgage assistance relief services in the State

of Maryland; and that he will continue to act in compliance with the applicable laws at all future times.

26. 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 Respondent, shall be admissible in court, if relevant, and shall be binding upon and inure to the Respondent's present and future partners, managers, employees, agents, successors, assigns, and estates.

27. 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.

28. 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: Jedd Bellman, Assistant 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 Moore  
2973 Harbor Blvd. #238  
Costa Mesa, California 92626

Copy to:

David Greenbaum, Esq.  
Freeman, Wolfe & Greenbaum, P.A.  
409 Washington Avenue, Suite 300  
Towson, Maryland 21204

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

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

**ORDERED** that the Respondent is permanently prohibited from engaging in, directly or indirectly, any loan modification activities, mortgage assistance relief services, and all other financial services-related business activities in Maryland or involving Maryland consumers; and it is further

**ORDERED** that, in the event Respondent violates any provision of this Agreement, or otherwise engages in the activities which formed the basis for the Alleged Violations, the Commissioner may, at the Commissioner's discretion, take any enforcement actions available under FI § 2-115, FI § 2-116, PHIFA, and/or MARSAs, as well as take any other enforcement actions as permitted by, and in accordance with, applicable State law; and it is further

**ORDERED** that this matter involving the Respondent shall be resolved in accordance with the terms of this Agreement 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 Agreement fully supersedes and replaces the Summary Order to Cease and Desist and Order to Produce issued by the Commissioner of Financial Regulation on April 13, 2015 in Case Number CFR-FY2012-104 (the "Summary Order") as to Respondent Sean Moore only; and that the Summary Order remains in full force and effect as to Home Retention USA, Inc., Secure Loan Mod, and Timothy D. Lopez; and it is further

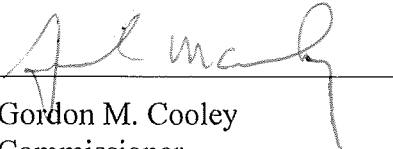
**ORDERED** that this document shall constitute a Final Order of the Maryland Commissioner of Financial Regulation, and that the Commissioner may consider this Agreement and the facts set forth herein in connection with, and in deciding, any action or proceeding before the Commissioner; and that this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

It is so ORDERED.

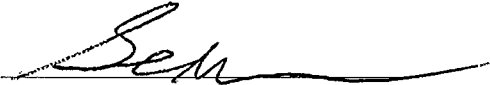
IN WITNESS WHEREOF, this Settlement Agreement and Consent Order is executed on the day and year first above written.

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

By:

  
Gordon M. Cooley  
Commissioner

RESPONDENT

  
Sean Moore