

New York State
Department of Financial Services

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In the Matter of

OwnersChoice Funding, Incorporated
B500038

SETTLEMENT AGREEMENT

A Licensed Mortgage Banker Pursuant to
Article 12-D of the New York Banking Law

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This Settlement Agreement (“Agreement”) is made and entered into by and between OwnersChoice Funding, Incorporated (“OwnersChoice”) and the New York State Department of Financial Services (the “Department” and collectively with OwnersChoice, the “Settling Parties”) evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations cited herein of Articles 12-D and 12-E of the New York Banking Law (“Banking Law” or “BL”) and Parts 410 and 419 of the Superintendent’s Regulations (“SR”), upon and subject to the terms and conditions hereof.

I.

RECITALS

1. OwnersChoice, headquartered at 1021 Watervliet-Shaker Road, Albany, NY 12205, was granted a license by the Department on March 26, 1987, to engage in the business of a mortgage banker pursuant to Article 12-D of the Banking Law and is both an “originating entity” and a “servicer” under the provisions of the Banking Law and the regulations cited herein.

2. BL Sections 44 and 598 of the Banking Law provide, in part, that the

Superintendent of Financial Services (“Superintendent”) may, in a proceeding after notice and a hearing, require a licensed mortgage banker to pay to the people of this State a penalty for any violation of the Banking Law and/or regulation promulgated thereunder.

3. Section 38.8 of the General Regulations of the Superintendent provides that a mortgage banker may be subject to disciplinary action by the Department for, among other things, violations of Article 12-D of the Banking Law, the regulations promulgated thereunder, or violations of state or federal law indicating that the entity is unfit to engage in the business of a mortgage banker.

Unauthorized Domain Name

4. BL Section 591(3) requires mortgage banker licensees to apply for and receive Department authorization prior to using a specific business address.

5. Pursuant to the Department’s June 1, 2000 Industry Letter “Re: Recording Domain Names,” the domain name of any website used by a licensee to conduct mortgage banking activity is a business address for purposes of the requirements of BL Section 591(3).

6. The Department found that during a period including July 2015, OwnersChoice used, without authorization, the domain name www.ownerschoice.com to promote and solicit New York regulated residential mortgages. (A sample printout of the www.ownerschoice.com website is annexed as Exhibit A.)

7. Accordingly, OwnersChoice violated BL Section 591(3).

Missing Address on Advertisements

8. Based on the Department’s examination of OwnersChoice, conducted as of March

31, 2015 (the “2015 Examination”), the Department found that the printed brochures of OwnersChoice did not indicate the office address of any OwnersChoice location.

9. Accordingly, OwnersChoice violated BL Section 595-a(2)(a), which requires that all advertisements by a mortgage banker licensee shall contain the name and an office address of such licensee, which shall conform to a name and address on record with the Department.

Failure to Keep Records

10. Based on the 2015 Examination, the Department found that OwnersChoice failed to maintain complete foreclosure documents in loan servicing files.

11. In addition, the Department found that there were no documents to support the cure amounts indicated in 90-day foreclosure notices.

12. Furthermore, the Department found that there were loan modification documents and origination loan documents missing from loan files.

13. Accordingly, OwnersChoice violated BL Section 597, which requires each licensee, servicer, registrant and exempt organization to keep and use in its business such books, accounts and records as will enable the Superintendent to determine whether such licensee, servicer, registrant or exempt organization is complying with the provisions of BL Article 12-D and with the rules and regulations lawfully made by the Superintendent.

Failure to Provide Quarterly Mortgage Loan Originator (“MLO”) Reports of Employment Status

14. Pursuant to BL Section 599-m(3), each originating entity shall on a quarterly basis in each calendar year provide the Superintendent with a report detailing all of the MLOs employed

by, or affiliated with, such originating entity and shall also advise in such report of any dismissal for cause of an MLO employed by, or affiliated with, such originating entity (a “Quarterly Report of Employment Status” or “QRES”).

15. As a result of the 2015 Examination, the Department found that, since 2012, OwnersChoice filed with the Superintendent only one required QRES, dated June 16, 2014.

16. Accordingly, OwnersChoice violated BL Section 599-m(3).

Failure to Maintain Application Log

17. Based on the 2015 Examination, the Department found that OwnersChoice’s application log did not contain the name and address of applicants and the address of properties.

18. Accordingly, OwnersChoice violated SR Section 410.7(a)(4), which requires every mortgage banker to establish a centralized application log for the principal office and all branch offices, updated daily, based on the date of receipt of the application, containing, among other things, the “name and address of applicant” and the “address of property.”

Missing and Inadequate Policies and Procedures

19. Based on the 2015 Examination, the Department found that OwnersChoice did not have policies and procedures in place to respond to and resolve borrower inquiries and complaints.

20. Accordingly, OwnersChoice violated SR Section 419.4(b), which requires that “a servicer shall have procedures and systems in place to respond to and resolve borrower inquiries and complaints in a prompt and appropriate manner.”

21. Additionally, the existing policies and procedures of OwnersChoice did not adequately address the handling of payment overages and shortages.

22. Accordingly, OwnersChoice violated SR Section 419.6(g), which requires a servicer to establish written policies and procedures for determining the handling of payment overages and shortages.

Incomplete Schedule of Fees; Failure to Make Available on Website

23. Based on the 2015 Examination, the Department found that OwnersChoice's schedule of fees did not list all fees assessed by OwnersChoice, such as broker's price opinion, property inspection and the amount of the fee or range of amounts for attorney's fees if there is no standard fee.

24. Additionally, the Department found that the schedule of fees was not available on OwnersChoice's website.

25. Accordingly, OwnersChoice violated SR Section 419.10(a), which requires that a servicer shall maintain and keep current a fee schedule that is available on its website and to the borrower or borrower's authorized representative upon request.

Failure to File Quarterly Certification of Net Worth

26. The Department found that OwnersChoice failed to file with the Department the required quarterly certification of net worth. During the period reviewed in the 2015 Examination, OwnersChoice filed only two certifications of net worth, as of January 9, 2015 and October 31, 2015.

27. Accordingly, OwnersChoice violated SR Section 419.13(e), which requires that, within forty-five (45) days of the end of each fiscal quarter, the servicer must submit to the Department, in a format prescribed by the Superintendent, a quarterly financial report and a

certification of net worth.

II.

SETTLEMENT TERMS AND CONDITIONS

OwnersChoice is willing to resolve the violations cited herein by entering into this Agreement and freely and voluntarily waives its right to a hearing under BL Sections 44 and 598 on such violations. Therefore, in consideration of the promises and covenants set forth herein:

1. OwnersChoice agrees to take all necessary steps to ensure its compliance with all applicable federal and state laws, regulations and supervisory requirements relating to its mortgage business, including, but not limited to:

- a. complying with the requirements of BL Articles 12-D and 12-E and SR Parts 410 and 419; and
- b. not conducting or transacting business in this state under any name, assumed name or designation using any website, domain or other name that has not been approved by the Superintendent.

2. OwnersChoice agrees to develop appropriate written advertisement and compliance policies and procedures (collectively, "Compliance Policies and Procedures") in order to ensure compliance with all applicable state and federal laws, regulations, supervisory requirements and guidance letters. To the extent that OwnersChoice may have already developed Compliance Policies and Procedures, OwnersChoice is required to review and update them so that they appropriately address the issues described herein. The Compliance Policies and Procedures shall, at a minimum: (i) designate an individual responsible for monitoring compliance with all

applicable state and federal laws, regulations, supervisory requirements and guidance letters; and (ii) establish a training program to ensure that OwnersChoice and its employees understand all applicable federal and state laws, regulations, supervisory requirements and guidance letters.

3. Within ninety (90) days from the effective date of this Agreement, OwnersChoice agrees to submit a draft of its Compliance Policies and Procedures to the Department for review.

4. Within thirty (30) days of receipt of any non-objection or any comments from the Department, and after incorporation and adoption of all comments, OwnersChoice agrees to submit a copy of its final Compliance Policies and Procedures to the Department together with a letter from an authorized officer of OwnersChoice indicating his/her approval of such Compliance Policies and Procedures.

5. OwnersChoice agrees to pay a fine of \$20,000.⁰⁰

6. OwnersChoice further agrees that such payment will be made in immediately available funds in accordance with the Department's payment instructions.

III.

MISCELLANEOUS TERMS AND CONDITIONS

1. OwnersChoice acknowledges that its failure to comply with any of the settlement terms and conditions of this Agreement may result in the Department taking action to revoke OwnersChoice's license to engage in the business of a mortgage banker under BL Article 12-D.

2. OwnersChoice acknowledges that entering into this Agreement shall not bar, estop or otherwise prevent the Superintendent, or any state, federal or local agency or department or any prosecutorial authority from taking any other action affecting OwnersChoice, any of its current or

former owners, officers, directors, employees or insiders, or their successors or assigns with respect to the violations cited herein or any other matter or matters whether related or not to such violations.

3. This Agreement may not be altered, modified or changed unless in writing signed by the Superintendent or her designee.

4. This Agreement shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or her designee.

5. The effective date of this Agreement is the date on which it is executed by the Deputy Superintendent.

6. All written communications to the Department regarding this Agreement should be sent as follows.

Attention:

Rholda L. Ricketts
Deputy Superintendent
New York State Department of Financial Services
One State Street,
New York, NY 10004

7. All written communications to OwnersChoice regarding this Agreement should be sent as follows.

Attention:

Mr. William J. Mellin
President
OwnersChoice Funding, Incorporated
1021 Watervliet-Shaker Road
Albany, NY 12205

8. This Agreement is not confidential; therefore, it is available to the public.

WHEREFORE, the Settling Parties hereto have caused this Agreement to be executed.

OwnersChoice Funding, Incorporated

By: _____

William J. Mellin
President

Dated: _____

New York State Department of Financial Services

By: _____

Rholda L. Ricketts
Deputy Superintendent

Dated: _____