

**State of New York Department  
of Financial Services**

-----X

In the Matter of

**Fort Funding Corp  
A003656**

**SETTLEMENT AGREEMENT**

A Registered Mortgage Broker Pursuant to  
Article 12-D of the New York Banking Law

-----X

This Settlement Agreement ("Agreement") is made and entered into by and between Fort Funding Corp. ("Fort Funding") and the State of New York Department of Financial Services (the "Department", and collectively with Fort Funding, the "Settling Parties"), and evidences an agreement between the Settling Parties to resolve, without a hearing, violations of Article 12-D of the New York Banking Law ("Banking Law"), Sections 202 and Section 301 of the New York Business Corporation Law, Section 130 of the General Business Law ("GBL"), and Part 38 of the General Regulations of the Superintendent (the "General Regulations"), upon and subject to the terms and conditions hereof.

**I.**

**RECITALS**

1. Fort Funding, headquartered at 7016 Fort Hamilton Parkway, Brooklyn, New York 11228 was granted a registration on September 2, 1993, to engage in the business of a mortgage broker pursuant to Article 12-D of the Banking Law.
2. Sections 44 of the Banking Law provides, in part, that the Superintendent of Financial Services ("Superintendent") may, in a proceeding after notice and a hearing, require a registered mortgage broker to pay to the people of this State a

penalty for a violation of the Banking Law and/or any regulation promulgated thereunder.

3. Part 38 Section 38.8 of the General Regulations provides that a mortgage broker may be subject to disciplinary action by the Department for, among other things, violations of Banking Law Article 12-D, 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 broker.

#### **Unauthorized Domain Name**

4. Pursuant to the Department's June 1, 2000 industry letter, the domain name of any website used by a licensee or a registrant to conduct mortgage banking or brokering activity qualifies as a business address.

5. In April 2013, Fort Funding caused a marketing company to place an advertisement promoting New York residential mortgages on [www.tlcreverse.com](http://www.tlcreverse.com). A screenshot of the advertisement is annexed as Exhibit A.

6. Fort Funding utilized the domain name [www.tlcreverse.com](http://www.tlcreverse.com) to conduct New York regulated residential mortgage activities prior to receiving authorization from the Department to do so.

7. Accordingly, Fort Funding violated Section 591-a(2) of the Banking Law, which requires registrants to apply for and receive permission prior to using a business address different from that which was stated on the registration certificate.

#### **Unauthorized Usage of Assumed Name**

8. On September 2, 1993, the Department issued a certificate to Fort Funding under the name Fort Funding Corp.

9. The advertisement in the website tlcreverse.com utilized the assumed name “TLC Reverse Mortgages” to promote New York regulated mortgage loans.

10. Fort Funding failed to receive approval from the Department prior to assuming use of the names “TLC Reverse Mortgages” or “tlcreverse.com.”

11. Accordingly, Fort Funding violated Section 595-a(2)(a) of the Banking Law, which provides in part that all advertisements by a mortgage broker shall contain the name which shall conform to a name on record with the Department.

12. Additionally, Fort Funding failed to file the Certificate of Assumed Name with the New York Secretary of State to utilize either aforementioned assumed names.

13. Accordingly, Fort Funding violated GBL Section 130(1)(b), which provides that no one shall carry on or conduct or transact business in this state under any name or designation other than his or its real name unless such person files a Certificate of Assumed Name with the New York Secretary of State.

14. Also, Fort Funding violated Section 202(a)(16)(b) of the New York Business Corporation Law, which provides that no corporation shall do business in New York State under any name, other than the names that appear in its certificate of incorporation, in compliance with the filing provisions of Section 130 of the General Business Law governing the conduct of business under an assumed name.

**Unauthorized Usage of Restricted Word**

15. Fort Funding in its advertisement utilized a derivative of the word “mortgage” in the name “TLC Reverse Mortgages” prior to receiving approval from the Superintendent.

16. Accordingly, Fort Funding violated Section 301(a)(5)(b) of the Business Corporation Law, which in general prohibits utilizing the restricted word “mortgage” in an assumed name without approval from the Superintendent.

## II.

### SETTLEMENT TERMS AND CONDITIONS

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

1. Fort Funding 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 Article 12-D of the Banking Law, and Part 38 of the General Regulations;
  - b. not conducting or transacting business in the state under any assumed name or designation using any website, domain, or other names, and using a restricted word or a derivative of restricted word such as “mortgage” that has not been approved by the Superintendent; and
  - c. ensuring that it will provide appropriate training for its employees regarding the utilization of any assumed name or any website, domain, or other names;

2. Fort Funding agrees to develop appropriate written compliance policies and procedures designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements, and guidelines. The policies and procedures shall, at a minimum: (i) designate an individual responsible for monitoring compliance with all applicable federal and state laws, regulations, supervisory requirements, and guidelines; (ii) include a listing of all applicable laws and regulations; (iii) establish a mechanism for ensuring that all applicable laws and regulations are met; and (iv) establish a training program to ensure that Fort Funding and its employees involved in establishing new branch locations and utilizing new assumed names understand all applicable federal and state laws and regulations.

3. Within ninety (90) days from the effective date of this Agreement, Fort Funding agrees to submit a draft of its compliance policies and procedures to the Department.

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

5. Fort Funding agrees to pay a fine of \$ 5,000 payable in ten (10) monthly installments as follows:

- \$500.00 upon execution of this Agreement, and
- \$500.00 each on or before the 15<sup>th</sup> day of each consecutive month for the following nine (9) months.

6. Fort Funding 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. Fort Funding 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 Fort Funding's license to engage in the business of a mortgage broker under Article 12-D of the Banking Law.

2. Fort Funding 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 Fort Funding, 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 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 his designee.

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

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

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

Attention:

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

7. All written communications to Fort Funding regarding this Agreement should be sent as follows:

Attention:

Gus Zacharakos  
President  
Fort Funding Corp.  
7016 Fort Hamilton Parkway  
Brooklyn, NY 11228

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.

Fort Funding Corp.

By: \_\_\_\_\_

Gus Zacharakos  
President

Dated: \_\_\_\_\_

New York State Department of Financial Services

By: \_\_\_\_\_

Rholda L. Ricketts  
Deputy Superintendent

Dated: \_\_\_\_\_