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California Corporations Commissioner
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BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, v. FIDELITY CAPITAL FUNDING, INC., Respondent.	File No.: 415-0045 **ACCUSATION IN SUPPORT OF REVOCATION OF RESIDENTIAL MORTGAGE LENDER AND MORTGAGE LOAN SERVICER LICENSE**

The Complainant, California Corporations Commissioner ("Commissioner"), is informed and believes, and based upon such information and belief, alleges and charges Respondent, Fidelity Capital Funding, Inc. ("Fidelity Capital Funding") as follows:

I.

Fidelity Capital Funding is a residential mortgage lender and mortgage loan servicer licensed by the California Department of Corporations (“Department”) pursuant to the California Residential Mortgage Lending Act (“CRMLA”) (California Financial Code sections 50000 *et seq*.) (All future references to sections are to the California Financial Code unless indicated otherwise.).

Fidelity Capital Funding has its principal place of business located at 2694 Bishop Drive,

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Suite 203, San Ramon, California, 94583.

II.

Pursuant to California Financial Code section 50201, all licensees under the CRMLA are required to maintain a minimum tangible net worth of two hundred fifty thousand dollars ($250,000) at all times. As of August 31, 2009, Fidelity Capital Funding's audited financial statements reflect a tangible net worth deficiency of at least approximately eighty three thousand eight hundred fifty seven dollars ($83,857.00). On or about December 28, 2009, Fidelity Capital Funding notified the Commissioner of its intention to surrender its CRMLA license. To date, Fidelity Capital Funding has not remedied the net worth deficiency and has not completed the requirements to surrender its CRMLA license.

III.

Pursuant to California Financial Code sections 50307, 50401, and California Code of Regulations, title 10, section 1950.314.8, all licensees under the CRMLA are required to file an annual Report of Principal Amount of Loans Originated and Aggregate Amount of Loans Serviced for the 12 Month Period Ended December 31, 2009 ("Activity Report"), an annual Report on Non-traditional Adjustable Rate and Mortgage Loan Products ("Non-traditional Report") and an annual Non-traditional, Adjustable Rate and Mortgage Loan Survey ("Survey") on or before March 1st of each year for the preceding twelve month period ended December 31st.

On or about January 29, 2010, Activity Report forms, Non-traditional Report forms, and Surveys were sent to all CRMLA licensees, including Fidelity Capital Funding, with a notice that their reports were due on or before March 1, 2010. Fidelity Capital Funding failed to submit its Activity Report, Non-traditional Report and Survey by the due date.

On or about May 22, 2009, a letter was sent to Fidelity Capital Funding demanding that the Activity Report and the Non-traditional Report be filed "no later than 10 days from the date of this letter," and assessing a penalty of $1,000 pursuant to California Financial Code section 50326. Fidelity Capital Funding was notified in the letter that its failure to file the Activity Report, the Non-traditional Report or pay the penalty would result in an action to either suspend or revoke its license.

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Fidelity Capital Funding has yet to submit its Activity Report, Non-traditional Report and Survey, or pay the penalty as required by California Financial Code sections 50307, 50326, and 50401 and California Code of Regulations, title 10, section 1950.314.8.

IV.

Pursuant to California Financial Code section 50205, all licensees under the CRMLA are required to maintain a surety bond. On or about May 4, 2010, the Commissioner received a Notice of Cancellation from Washington International Insurance Company notifying the Commissioner that the surety bond of Fidelity Capital Funding would be cancelled effective June 1, 2010. On or about May 10, 2010, the Commissioner sent Fidelity Capital Funding a certified letter reminding it that its surety bond needed to be replaced or reinstated before the cancellation date. On June 3, 2010, the Commissioner issued and served Fidelity Capital Funding an Order to Discontinue Residential Mortgage Lending and/or Servicing Activities. To date, the bond has not been reinstated or replaced in violation of California Financial Code section 50205.

V.

Pursuant to Financial Code section 50002.5, all licensees under the CRMLA were required to register with the Nationwide Mortgage Licensing System and Registry ("NMLS") on or before July 31, 2010. To date, Fidelity Capital Funding has failed to file a transition request through NMLS for its CRMLA license in violation of California Financial Code section 50002.5.

VI.

California Financial Code section 50327 provides in pertinent part:

> (a) The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if the commissioner finds that: (1) the licensee has violated any provision of this division or any rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably would have warranted the commissioner in refusing to issue the license originally.

VII.

The Commissioner finds that, by reason of the foregoing, Fidelity Capital Funding, Inc. has violated California Financial Code sections 50205, 50002.5, 50201, 50307, 50401 and California

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Code of Regulations, title 10, section 1950.314.8, and based thereon grounds exist to revoke the residential mortgage lender and mortgage loan servicer license of Fidelity Capital Funding, Inc.

WHEREFORE, IT IS PRAYED that the residential mortgage lender and mortgage loan servicer license of Fidelity Capital Funding, Inc. be revoked and pursuant to California Financial Code sections 50310 and 50311, Fidelity Capital Funding, Inc. be given a transition period of sixty (60) days within which to complete any loans for which it had commitments and to transfer servicing to an authorized mortgage loan servicer.

Dated: January 10, 2011
San Diego, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By_____
AFSANEH EGHBALDARI
Corporations Counsel

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