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7  
8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA

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11 In the Matter of the Accusation of ) FILE NO.: 413 1195  
12 THE CALIFORNIA COMMISSIONER OF )  
BUSINESS OVERSIGHT, ) ACCUSATION IN SUPPORT OF ORDER TO  
13 ) REVOKE RESIDENTIAL MORTGAGE  
Complainant, ) LENDER AND/OR SERVICER LICENSE  
14 v. )  
15 )  
16 REVERSE MORTGAGE USA, INC. )  
doing business as 1ST REVERSE MORTGAGE, )  
17 )  
18 Respondent. )  
19 )  
20 )

21 Jan Lynn Owen, the Commissioner of Business Oversight ("Commissioner") is informed and  
22 believes, and based upon such information and belief, alleges and charges Respondent as follows:

23 I.

24 JURISDICTION AND VENUE

25 The Commissioner brings this revocation action under the provisions of Financial Code  
26 section 50327, subdivision (a) (1) and the rules and regulations promulgated thereunder.

27 The Commissioner is authorized to administer and enforce the provisions of the California  
28 Residential Mortgage Lending Act (Financial Code § 50000 et seq.) ("CRMLA") and the regulations

1 issued under title 10, California Code of Regulations (“CCR”) which regulate the business and  
2 activities of residential mortgage lenders and servicers.

3 **II.**

4 **STATEMENT OF FACTS**

5 Reverse Mortgage USA, Inc. doing business as 1st Reverse Mortgage (“1st Reverse  
6 Mortgage”) is a residential mortgage lender and/or servicer licensed by the Commissioner under the  
7 CRMLA. Its principal place of business is located at 6500 River Place Blvd., Building 1, Ste. 425,  
8 Austin, Texas. At all relevant times herein, 1st Reverse Mortgage operates several branch offices in  
9 the State of California.

10 John Stuart Mitchell (“Mitchell”) was, at all relevant times herein, the president of 1st  
11 Reverse Mortgage.

12 On or about November 12, 2013, the Commissioner, by and through her staff, commenced a  
13 regulatory examination of 1st Reverse Mortgage. The examination revealed numerous violations of  
14 the CRMLA, including the following:

15 1. 1st Reverse Mortgage did not directly deposit escrow funds into its proper trust  
16 accounts as required by Financial Code section 50202. Consequently, it failed to maintain current its  
17 books and records with reference to the trust accounts in violation of CCR section 1950.314.1;

18 2. At least nine borrowers were overcharged on their appraisal fee and/or there was no  
19 evidence provided to fully substantiate the actual amount of the fee in violation of Financial Code  
20 section 50204, subdivisions (c), (j), (k) and CCR section 1950.314.4, subdivision (j) (6);

21 3. At least ten borrowers were overcharged on their title insurance premiums and/or  
22 there was no evidence provided to fully substantiate the actual amount of the fee in violation of  
23 Financial Code section 50204 and CCR section 1950.314.4, subdivision (j) (6) ;

24 4. At least six reverse mortgage applications were accepted without first receiving  
25 certification from the applicant or the applicant’s authorized representative that the applicant has  
26 received counseling from an agency as required by Civil Code sections 1923.2, subdivision (k) and  
27 1923.5, subdivision (b);

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1           5.       1st Reverse Mortgage has failed to file fingerprints and/or form MBL (Mortgage  
2 Bankers Law) 1950.122.2 for at least five of its employees as required by Financial Code sections  
3 50121, 50307.2 and CCR 1950.122.2; and

4           6.       The Fair Lending Notices were not provided in a timely manner in at least two loan  
5 files.

6           On February 5, 2014, the report of regulatory examination was sent to 1st Reverse Mortgage  
7 noting the violations found during the November 12, 2013 examination. The report stated that 1st  
8 Reverse Mortgage must reply within thirty days from the date of the report. The report also stated  
9 that failure to comply within ten days from the due date (March 4, 2014), or any extension of time  
10 granted by the Commissioner, would result in penalties. 1st Reverse Mortgage failed to submit its  
11 regulatory response or request an extension of time to submit its response by the deadline imposed in  
12 the report.

13           On February 13, 2014, the Commissioner, through her staff, received an e-mail from  
14 Mitchell advising the Commissioner that 1st Reverse Mortgage has ceased doing business and that  
15 all employees had been terminated. No response was provided to the report of regulatory  
16 examination.

17           On April 3, 2014, a letter along with a copy of the report of examination dated February 5,  
18 2014 was sent to 1st Reverse Mortgage to remind it of its requirement to submit its regulatory  
19 response.

20           On May 13, 2014, the Commissioner received a letter dated May 8, 2014 from 1st Reverse  
21 Mortgage advising the Commissioner that it was surrendering its license.

22           On May 22, 2014, the Commissioner sent a letter to 1st Reverse Mortgage stating that prior  
23 to the surrender of its license it must file a plan for approval by the Commissioner as required by  
24 section 50123.

25           On May 23, 2014, the Commissioner received a letter from 1st Reverse Mortgage dated May  
26 16, 2014 concerning the surrender of its license. Along with the letter, the company included its  
27 plan of surrender, the escrow trust account audit and review, and its attestation concerning its  
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1 inability to locate the original license issued by the Commissioner as required by Financial Code  
2 section 50123.

3 On June 20, 2014, the Commissioner sent another letter to 1st Reverse Mortgage addressing  
4 additional issues with the surrender of its residential mortgage lending and/or servicer license. The  
5 letter notified the company that all regulatory and administrative matters before the Department must  
6 be completed. In light of its failure to respond to the report of regulatory examination, its regulatory  
7 matters have not been completed.

8 In addition to the noted violations discovered during the regulatory examination, 1st Reverse  
9 Mortgage also violated the CRMLA, as followed:

10 1. 1st Reverse Mortgage failed to file its audited financial statements for its fiscal year  
11 ended December 31, 2013 as required by Financial Code section 50200. 1st Reverse Mortgage's  
12 only explanation for its failure to file is that it has ceased doing business at the end of 2013. The  
13 company has yet to file its audit report with the Commissioner;

14 2. 1st Reverse Mortgage failed to maintain its surety bond as required by Financial Code  
15 section 50205. The surety bond of 1st Reverse Mortgage expired on February 9, 2014, and no  
16 replacement bond was obtained by 1st Reverse Mortgage. On March 4, 2014, the Commissioner  
17 issued an Order to Discontinue Residential Mortgage Lending and/or Servicing Activities pursuant  
18 to section 50319 for failure to maintain the required surety bond. This Order was served on 1st  
19 Reverse Mortgage on or about March 6, 2014.

20 3. 1st Reverse Mortgage failed to file its annual report as required under Financial Code  
21 section 50307, and to pay the penalty that was assessed under Financial Code section 50326;

22 4. 1st Reverse Mortgage failed to file its Mortgage Call Reports for the first quarter of  
23 2014 and the second quarter of 2014 as required under Financial Code sections 50124 and 50307.

24 **III.**

25 **LAW**

26 Financial Code section 50202 provides, in relevant parts:

27 (a) Escrow funds for a purpose authorized by the residential  
28 mortgage loan contract (1) shall be subject to and satisfy all applicable  
state and federal requirements . . . (2) shall be maintained in a

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depository institution as described in subdivision (b), and (3) may not be commingled with a licensee's funds.

(b) . . . a trust account shall be placed in a non-interest-bearing account in a federally insured depository institution, a federal home loan bank, a federal reserve bank, or other similar government-sponsored enterprise, to be removed and used only for the following:

- (1) Payments authorized by the borrower, allowed by the mortgage loan contract, or required by federal or state law.
- (2) Refunds to the borrower.
- (3) Transfer to another institution that is described in this subdivision.
- (4) Forwarding to the appropriate servicer in case of a transfer of servicing.
- (5) Any other purpose authorized by the residential mortgage loan contract.
- (6) Compliance with a regulatory or court order.

CCR section 1950.314.1, in relevant part provides:

(a) A residential mortgage lender, residential mortgage lender and servicer, or residential mortgage loan servicer shall establish, and maintain current, the following books with reference to its trust accounts:

- (1) A trust account ledger card for each account detailing receipts and disbursement of all funds deposited by the borrower, lender or seller with the licensee in connection with the origination, closing or servicing of any mortgage loan . . . .
- (2) Liability controlling account;
- (3) Cash receipt and disbursement journal or a file containing copies of all receipts and checks and/or check stubs of checks issued by the residential mortgage lender or residential mortgage loan servicer as a medium of posting to the records referred to in subsections (a) and (b) in which case adding machine tapes of totals of receipts and checks shall be retained.

(b) The records referred to in subsections (a)(1) and (2) shall be reconciled at least once each month with the bank statements of the trust account. The records referred to in subsection (a)(1) shall be reconciled at least once each week with the liability controlling account referred to in subsection (a)(2).

(c) Maintenance of records in accordance with generally accepted accounting principles on microfilm, microfiche, or electronic data processing and retrieval systems shall be deemed to be in compliance with the requirements of this section.

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1 Financial Code section 50204 states, in relevant parts:

2 A licensee may not do any of the following:

3 (c) Accept fees at closing that are not disclosed to the borrower on  
4 the federal HUD-1 Settlement Statement.

5 (j) Knowingly misrepresent, circumvent, or conceal, through  
6 subterfuge or device, any material aspect or information regarding a  
7 transaction to which it is a party.

8 (k) Do an act, whether of the same or a different character than  
9 specified in this section, that constitutes fraud or dishonest dealings.

10 CCR section 1950.314.4, subdivision (j) provides:

11 (j) All licensees shall maintain a record keeping system which shall  
12 demonstrate the following fees if charged to the mortgage applicant  
13 by, the licensee:

- 14 (1) Appraisal fees;
- 15 (2) Credit report fees;
- 16 (3) Application fees;
- 17 (4) Commitment fees;
- 18 (5) Warehouse fees; and
- 19 (6) Third party charges.

20 Civil Code section 1923.2, subdivision (k) states:

21 A reverse mortgage loan shall comply with all of the following  
22 requirements:

23 (k) A lender shall not accept a final and complete application for a  
24 reverse mortgage loan from a prospective applicant or assess any fees  
25 upon a prospective applicant without first receiving certification from  
26 the applicant or the applicant's authorized representative that the  
27 applicant has received counseling from an agency as described in  
28 subdivision (j) and that the counseling was conducted in person, unless  
the certification specifies that the applicant elected to receive the  
counseling in a manner other than in person. The certification shall be  
signed by the borrower and the agency counselor, and shall include the  
date of the counseling and the name, address, and telephone number of  
both the counselor and the applicant. Electronic facsimile copy of the  
housing counseling certification satisfies the requirements of this  
subdivision. The lender shall maintain the certification in an accurate,  
reproducible, and accessible format for the term of the reverse  
mortgage.

Civil Code section 1923.5 provides, in relevant parts:

(a) No reverse mortgage loan application shall be taken by a lender  
unless the loan applicant, prior to receiving counseling, has received  
from the lender the following plain language statement in conspicuous



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CCR section 1950.122.2 in relevant part provides:

- (a) The notice to accompany the filing of an individual's fingerprints required in the following circumstances shall be made on the form set forth in subsection (c) of this rule:
  - (1) In compliance with the requirements for a license application in Section 1950.122.4 of Subchapter 11.5 of these rules;
  - (2) In compliance with the requirements for filing an application for change of control (Rule 1950.206);
  - (3) In compliance with Section 50317(a) of the Code for an officer, director, partner, shareholder controlling 10 percent or more of the ownership interests or trustee of a licensed residential mortgage lender, residential mortgage lender and servicer, or residential mortgage loan servicer whose office, employment, ownership interest or other participation in the licensed business commenced after January 1, 1995; or
  - (4) In compliance with the requirements of Rule 1950.301 for certain employees.

Financial Code section 50123 in relevant part states:

(b) A residential mortgage lender licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall inform the commissioner in writing and, at that time, surrender the license and all other indicia of licensure to the commissioner. The licensee shall file a plan for the withdrawal from regulated business, and the plan shall include a timetable for the disposition of the business. The plan shall also include a closing audit, review, or other agreed upon procedures performed by an independent certified public accountant prescribed by rule or order of the commissioner. Upon receipt of the written notice and plan, the commissioner shall review the plan and, if satisfactory to the commissioner, shall accept the surrender of the license. A license is not surrendered until its tender is accepted in writing by the commissioner after a review, and a finding has been made on the licensee's plan required to be filed by this section, and a determination has been made that there is no violation of this law.

Financial Code section 50200 provides, in relevant parts:

(a) At the end of the licensee's fiscal year, but in no case more than 12 months after the last audit conducted pursuant to this section, each licensed residential mortgage lender or servicer shall cause its books and accounts to be audited by an independent certified public accountant. Beginning with all audits of business conducted after December 31, 1995, the audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements prepared in accordance with generally accepted accounting principles and shall be performed in accordance with generally accepted auditing standards. The audit shall include a reconciliation of the licensee's trust accounts as of the audit date.

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(d) The audit report shall be filed with the commissioner within 105 days of the end of the licensee's fiscal year. The report filed with the commissioner shall be certified by the certified public accountant conducting the audit. The commissioner may promulgate rules regarding late audit reports.

(e) If a licensee required to make an audit fails to cause an audit to be made, the commissioner may cause the audit to be made by an independent certified public accountant at the licensee's expense. The commissioner shall select the independent certified public accountant by advertising for bids or by other fair and impartial means that the commissioner establishes by rule. The commissioner may summarily revoke the license of a licensee who fails to file a certified financial statement prepared by an independent certified public accountant as required by this division or at the request of the commissioner.

Financial Code section 50205 provides, in relevant parts:

(a) A residential mortgage lender or servicer licensee shall maintain a surety bond in accordance with this subdivision. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division. The bond shall be payable when the licensee fails to comply with a provision of this division and shall be in the amount of fifty thousand dollars (\$50,000), and may be increased by order of the commissioner to one hundred thousand dollars (\$100,000) upon a determination by the commissioner that the licensee is not in compliance with any provision of this chapter or any rule or order adopted or issued by the commissioner to implement or enforce provisions of this chapter. The bond shall be payable to the commissioner and issued by an insurance company authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of its execution.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon the recovery of an action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

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Financial Code section 50307 in relevant part states:

(a) Each residential mortgage lender or servicer licensee shall file a report with the commissioner annually, on or before the first day of March, giving the relevant information that the commissioner reasonably requires to make the calculation required by subdivision (a) of Section 50401. The report shall be made under oath and in the form prescribed by the commissioner.

Financial Code section 50326 provides:

If any licensee fails to do any of the following, the licensee shall forfeit to the people of the state a sum of up to one hundred dollars (\$100) for every day up to the 10th day: (a) to make any report required by law or by the commissioner within 10 days from the day designated for the making of the report, or within any extension of time granted by the commissioner, or (b) fails to include therein any matter required by law or by the commissioner. Thereafter, any failure shall constitute grounds for the suspension or revocation of the license held by the residential mortgage lender or residential mortgage loan servicer.

Financial Code section 50124 provides, in relevant parts:

(a) A residential mortgage lender or servicer shall do all of the following:

(3) File with the commissioner any report required under law or by rule or order of the commissioner.

....

(7) Comply with the provisions of this division, and with any order or rule of the commissioner.

....

(17) Comply with any other requirement established by rule of the commissioner.

(b) The commissioner may require an applicant to submit a statement agreeing to comply with the requirements of this section.

Financial Code section 50307.2 provides:

The commissioner may require a licensee that employs one or more mortgage loan originators to submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

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**IV.  
CONCLUSION**

The Commissioner finds, by reason of the foregoing that 1st Reverse Mortgage has violated Financial Code sections 50200, 50202, 50204, subdivisions (c), (j), and (k), 50307, 50326, CCR sections 1950.314.1, 1950.122.2, 1950.314.4, subdivision (j), and Civil Code sections 1923.2, subdivision (k) and 1923.5, subdivision (b), and based thereon, grounds exist to revoke the residential mortgage lender and/or servicer license of 1st Reverse Mortgage.

WHEREFORE, IT IS PRAYED that the residential mortgage lender and/or servicer license of 1st Reverse Mortgage be revoked and that pursuant to Financial Code section 50311, 1st Reverse Mortgage be given a transition period of sixty days within which to complete any loans for which it had commitments.

Dated: January 26, 2015

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
MARLOU de LUNA  
Senior Corporations Counsel  
Enforcement Division