

1 PRESTON DUFAUCHARD  
California Corporations Commissioner  
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Deputy Commissioner  
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6 Attorneys for Complainant

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8 BEFORE THE DEPARTMENT OF CORPORATIONS  
9 OF THE STATE OF CALIFORNIA

10 In the Matter of the Accusation of THE ) File No.: 413-0892  
CALIFORNIA CORPORATIONS )  
11 COMMISSIONER, )  
12 ) **ACCUSATION**  
Complainant, )  
13 v. )  
14 BERGIN FINANCIAL, INC., )  
15 Respondent. )  
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20 The Complainant is informed and believes, and based upon such information and belief,  
21 alleges and charges Respondent as follows:

22 **I**

23 Respondent Bergin Financial, Inc. ("Bergin Financial") is a residential mortgage lender and  
24 loan servicer licensed by the California Corporations Commissioner ("Commissioner") pursuant to  
25 the California Residential Mortgage Lending Act (California Financial Code, § 50000 et seq.)  
26 ("CRMLA"). Bergin Financial has its principal place of business located at 29200 Northwestern  
27 Highway, #350, Southfield, Michigan 48034.

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**II**

Pursuant to California Financial Code sections 50307 and 50401 and California Code of Regulations, title 10, section 1950.314.8, all licensees under the CRMLA are required to file an annual (1) Report of Principal Amount of Loans and Aggregate Amount of Loans Serviced ("Activity Report"), (2) Report on Non-traditional, Adjustable Rate and Mortgage Loan Products ("Non-traditional Report"), and (3) Non-traditional, Adjustable Rate and Mortgage Loan Survey ("Survey") on or before March 1st of each year for the preceding 12-month period ended December 31.

On or about January 23, 2009, an Activity Report form, Non-traditional Report form and Survey were sent to all CRMLA licensees with a notice that they were due on or before March 1, 2009. Bergin Financial has not yet submitted the Activity Report, the Non-traditional Report or the Survey to the Commissioner.

On or about May 22, 2009, a letter was sent to Bergin Financial 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 Bergin Financial a penalty of \$1,000 pursuant to California Financial Code section 50326. Bergin Financial was notified in the letter that 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.

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

**III**

Pursuant to California Financial Code section 50200, Bergin Financial was required to submit its audited financial statement for its fiscal year ended December 31, 2008 ("Audit Report") to the Commissioner on or before April 15, 2009, including a reconciliation of its trust accounts and an Independent Auditor's Report on Internal Controls ("Report on Internal Controls") pursuant to the California Code of Regulations, title 10, section 1950.200. Bergin Financial has yet to file its Audit Report, trust account reconciliation, or Report on Internal Controls with the Commissioner despite having been sent numerous reminder letters.

1 On or about December 23, 2008, the Department notified Bergin Financial in writing that its  
2 Audit Report, trust account reconciliation, and Report on Internal Controls were due on or before  
3 April 15, 2009. Bergin Financial was advised in the letter that failure to file these reports might  
4 “result in fines in accordance with Financial Code section 50326, an immediate examination by the  
5 Commissioner in accordance with Financial Code section 50307, and/or revocation of the license.”

6 On or about April 17, 2009, a further letter was sent to Bergin Financial demanding that it file  
7 the Audit Report, trust account reconciliation, and Report on Internal Controls “within ten (10) days  
8 of the date of this letter.” Bergin Financial failed to submit the Audit Report, trust account  
9 reconciliation, and Report on Internal Controls or respond to the letter.

10 On or about June 10, 2009, a final letter was sent to Bergin Financial demanding that the  
11 Audit Report, trust account reconciliation, and Report on Internal Controls be filed “no later than 10  
12 days from the date of this letter,” and assessing Bergin Financial a penalty of \$1,000 pursuant to  
13 California Financial Code section 50326. Bergin Financial was notified in the letter that its failure to  
14 file the Audit Report, trust account reconciliation, Report on Internal Controls and/or pay the penalty  
15 would result in an action to either suspend or revoke its license pursuant to California Financial Code  
16 section 50327.

17 Bergin Financial has yet to file its Audit Report, trust account reconciliation, Report on  
18 Internal Controls, or pay the penalty as required by Financial Code sections 50200, 50326, and title  
19 10, section 1950.200 of the California Code of Regulations.

#### 20 21 IV

22 California Financial Code section 50205(a) states that “[a] licensee shall maintain a surety  
23 bond in accordance with this subdivision.” Bergin Financial has failed to maintain its surety bond as  
24 required by that section. On May 5, 2009, the Department received a Notice of Cancellation  
25 of Bergin Financial’s surety bond from Hartford Fire Insurance Company. The date of cancellation  
26 stated on the Notice of Cancellation was June 8, 2009.

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California Financial Code section 50319 provides in pertinent part:

(a) If the commissioner, as a result of any examination or from any report made to him or her, shall find that any person subject to this division.... has failed to comply with the bonding requirements of Section 50205, the commissioner may, by an order addressed to and served by registered or certified mail, or by personal service on that person...., direct discontinuance of the disbursement, in whole or in part, of trust funds held by the licensee and order the establishment of a separate trust account for all subsequent trust funds received by the licensee.

On June 8, 2009, an Order was issued pursuant to section 50319. To date, the surety bond has not been reinstated or replaced, and the order remains in effect.

**V**

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.

**VI**

The Commissioner finds that, by reason of the foregoing, Bergin Financial, Inc. has violated California Financial Code sections 50200, 50307, 50326, 50401 and California Code of Regulations, title 10, section 1950.200 and 1950.314.8, and based thereon, grounds exist to revoke the residential mortgage lender and loan servicer license of Bergin Financial, Inc.

WHEREFORE, IT IS PRAYED that the residential mortgage lender and loan servicer license of Bergin Financial, Inc. be revoked and pursuant to California Financial Code section 50311, Bergin

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1 Financial, Inc. be given a transition period of sixty (60) days within which to complete any loans for  
2 which it had commitments.

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4 DATED: October 27, 2009  
5 Sacramento, CA

6 PRESTON DuFAUCHARD  
7 California Corporations Commissioner

8 By \_\_\_\_\_  
9 Brent Lindgren  
10 Senior Corporations Counsel

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