

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)
)
Top Tier Mortgage, LLC) **CONSENT AGREEMENT**
331 Village Point Plaza)
Omaha, Nebraska)

NMLS No. 2347792

THIS MATTER comes before the Nebraska Department of Banking and Finance (“Department”), by and through its Deputy Director – Financial Institutions, pursuant to its authority under the Residential Mortgage Licensing Act, Neb. Rev. Stat. §§ 45-701 to 45-754 (Reissue 2021) (“the Act”). The Department has examined the record of Top Tier Mortgage, LLC (“Top Tier Mortgage”). As a result of such examination, and being duly advised and informed in the matter, the Deputy Director – Financial Institutions of the Department and Top Tier Mortgage enter into the following Consent Agreement.

FINDINGS OF FACT

1. The Nationwide Mortgage Licensing System and Registry (“NMLS”) is an online licensing system created by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The NMLS allows an entity to submit mortgage banker license applications, renewals, reports, and amendments to multiple state regulators through one online system. The Department requires that mortgage banker license applications, request for renewals, and amendments be submitted via the NMLS pursuant to its authority under Neb. Rev. Stat. § 45-748 (Reissue 2021).

2. The NMLS assigns a unique identifier to each entity who creates a filing on the NMLS. The unique identifier allows regulators to track an entity across state lines and across license types over time. Top Tier Mortgage was assigned the unique identifier No. 2347792.

3. Top Tier Mortgage submitted an original application for Mortgage Banker License (“License”) to the Department via the NMLS on a Company Form on May 25, 2022.

4. The Department approved Top Tier Mortgage for a Mortgage Banker License on June 7, 2022.

5. Neb. Rev. Stat. § 45-726 (Reissue 2021) requires that each licensed mortgage banker company shall submit a mortgage report of condition through the NMLS to the Department.

6. On May 6, 2011, the Department, by and through its Director, issued an Order Adopting Mortgage Report of Condition (“Order”) requiring all licensed mortgage bankers to submit mortgage reports of condition, through the NMLS, utilizing the uniform mortgage call report process. A mortgage call report (“Report”) contains two distinct components: a financial condition component and a production data component. The financial condition component is due no later than ninety (90) days after the close of each entity’s fiscal year, while the production data component is due on a quarterly basis.

7. The NMLS automatically sets a license item on the NMLS record of each mortgage banker company that fails to file either component of the Report on the day after the initial due date. Reports are then due forty-five (45) days from the initial due date, and become delinquent thereafter.

8. The production data component of the Report for the second quarter of 2022 had an initial due date on July 1, 2022, and a required filing date of August 14, 2022. The NMLS automatically set a license item on Top Tier Mortgage’s NMLS record, reflecting the filing

requirement, on August 15, 2022. Top Tier Mortgage failed to file the production data component of the Report for the second quarter of 2022.

9. On August 16, 2022, the Department set an additional license item on the NMLS record of Top Tier Mortgage, informing Top Tier Mortgage that it was required to provide the complete Report on or before September 6, 2022, and that failure to file such Report by that date could result in administrative action being taken against its license, which could include but was not limited to, an administrative fine of not more than five thousand (\$5,000.00) dollars for each separate violation of the Act, and the costs of any investigation into such violation.

10. As of the date of this Agreement, Top Tier Mortgage has failed to file the complete Report, including the production data component of the Report for the second quarter of 2022.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-726 (Reissue 2021) provides that each mortgage banker shall submit a mortgage report of condition through the NMLS.

2. The Order provides that each mortgage banker must submit a mortgage report of condition through the NMLS on a quarterly basis, utilizing the mortgage call report process.

3. Neb. Rev. Stat. § 45-742(1) and (6) (Reissue 2021) provides that the Director may, following a hearing, suspend or revoke any license issued under the Act, and the Director may impose an administrative fine for each separate violation of the Act. No revocation, suspension, cancellation, or expiration of a license shall affect civil acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members for acts committed before the revocation, suspension, cancellation, or expiration.

4. Neb. Rev. Stat. § 45-742.01(1)(a) (Reissue 2021) provides that the Director may enter an emergency order suspending the license of any mortgage banker without notice or hearing if it appears upon grounds satisfactory to the Director that the licensee has failed to file the report of condition as required by Section 45-726.

5. Neb. Rev. Stat. § 45-743(1) through (3) (Reissue 2021) provides the Director may impose an administrative fine against any officer, director, shareholder, partner, or member of a licensee who violated the Act, which fine is not to exceed five thousand dollars for each separate violation and the costs of investigation, and if a person fails to pay an administrative fine and costs of investigation, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this State. The failure to pay such fine and costs shall constitute a separate violation of the Act.

6. Neb. Rev. Stat. § 45-752 (Reissue 2021) provides that the Act shall be liberally construed so as to effectuate its purposes.

7. Based upon Findings of Fact Nos. 5 through 10, inclusive, the Deputy Director – Financial Institutions concludes that Top Tier Mortgage has violated Section 45-726.

8. Based upon Findings of Fact Nos. 5 through 10, inclusive, the Deputy Director – Financial Institutions concludes that Top Tier Mortgage has failed to comply with the Order.

9. The facts listed in the Findings of Fact constitute a sufficient basis for the Deputy Director – Financial Institutions to have determined that Top Tier Mortgage has violated the Act, and that an administrative fine of not more than Five Thousand Dollars (\$5,000.00) for each separate violation, plus the costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-743 (Reissue 2021).

10. Under the Act's statutory framework, the Deputy Director – Financial Institutions has the legal and equitable authority to fashion significant remedies.

11. It is in the best interests of Top Tier Mortgage, and it is in the best interests of the public, for Top Tier Mortgage and the Department to resolve the issues included herein.

CONSENT AGREEMENT

The Department and Top Tier Mortgage agree as follows:

Stipulations: In connection with this Consent Agreement, Top Tier Mortgage and the Deputy Director – Financial Institutions stipulate to the following:

1. The Department has jurisdiction as to all matters herein.
2. This Consent Agreement shall resolve all matters raised by the Department relating to the failure of Top Tier Mortgage to file the production data component of the Report for the second quarter of 2022, which was required to be filed on or before August 14, 2022. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the Department.
3. This Consent Agreement shall be in lieu of all other proceedings available to the Department, except as specifically referenced in this Consent Agreement.

Top Tier Mortgage further represent as follows:

1. Top Tier Mortgage is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.
2. Top Tier Mortgage is acting free from any duress or coercion of any kind or nature.
3. This Consent Agreement is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Agreement and for no other purpose.

IT IS THEREFORE AGREED as follows:

1. Within ten days after the effective date of this Consent Agreement, Top Tier Mortgage shall file the production data component of the Report for the second quarter of 2022, through the NMLS.

2. Within ten days after the effective date of this Consent Agreement, Top Tier Mortgage shall pay a total fine in the amount of Five Thousand Dollars (\$5,000.00) for the violations of the Act, as noted in the Findings of Fact and Conclusions of Law of this Consent Agreement.

3. Within ten days after the effective date of this Consent Agreement, Top Tier Mortgage shall pay investigation costs incurred by the Department in the amount of One Thousand Dollars (\$1,000.00).

4. Top Tier Mortgage shall pay the fine and costs to the Department by check or money order, in accordance with this Consent Agreement. At its option, Top Tier Mortgage may transmit payment electronically to the Department, which will provide ACH transfer instructions upon request.

5. Within ten days of the effective date of this Consent Agreement, Top Tier Mortgage will disclose this Consent Agreement in the Disclosure Questions and Disclosure Explanation sections of its NMLS record.

6. In the event that Top Tier Mortgage fails to comply with any of the provisions of this Consent Agreement, the Department may commence such action regarding Top Tier Mortgage as it deems necessary and appropriate in the public interest.

7. If at any time, the Department determines that Top Tier Mortgage has committed any other violations of the Act, the Department may take any action available to it under the Act.

8. The effective date of this Consent Agreement will be the date of the Deputy Director – Financial Institutions’ signature.

DATED this 23 day of SEPTEMBER 2022.

TOP TIER MORTGAGE, LLC

DocuSigned by:

Top Tier Mortgage, LLC

By: 9AC6C9CAB79C4DD...

Adam Briley, Owner

331 Village Point Plaza
Omaha, Nebraska 68118

DATED this 23rd day of September, 2022.



**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**

DocuSigned by:

Darcy L. Bailar

By: A550EF000D35453...

Darcy Bailar,
Deputy Director – Financial Institutions

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