

IN THE MATTER OF:

**SUN WEST MORTGAGE COMPANY,
INC. (NMLS # 3277),**

Licensee.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

AGREEMENT AND CONSENT ORDER

This Agreement and Consent Order (the “Agreement”) is entered into this 23rd day of July, 2019, by and between the Maryland Commissioner of Financial Regulation (the “Commissioner” or the “Agency”), and Sun West Mortgage Company, Inc. (the “Licensee”). The Commissioner and the Licensee (together, the “Parties”) consent to the entry of the Agreement as a final resolution of the matters discussed below. The terms of the Agreement are contractual and not mere recitals.

1. Pursuant to the Maryland Mortgage Lender Law (“MMLL”), Md. Code Ann., Fin. Inst. (“FI”) § 11-501 *et seq.*, the Commissioner is responsible for licensing and regulating, *inter alia*, mortgage lenders who make, broker and/or service mortgage loans as that term is defined in the MMLL, secured by a dwelling located in the State of Maryland (the “State”).

2. At all times relevant hereto, the Licensee has been duly licensed under the MMLL as a Maryland mortgage lender engaged in the mortgage lending business as those terms are defined in FI § 11-501(j) and (k), respectively, holding license number(s) 17740, 21107 and 22299.

3 The Agency, in conjunction with the Multi-State Mortgage Committee (“MMC”), a committee of state mortgage regulators who have agreed to engage collectively in coordinated supervisory activity, undertook a multi-state examination of the Licensee commencing on June 14, 2018 (“MMC Examination”) in order to evaluate the Licensee’s compliance with applicable federal and state laws and regulations, financial condition, and control and supervision of its licensed mortgage servicing operations.¹

4. Pursuant to the MMC Examination of the Licensee, the Agency identified deficiencies, unsatisfactory conditions, and/or violations of federal and/or State mortgage-related laws and regulations in the records and business activities of the Licensee (the “Examiner’s Findings”). Specifically, the following conduct was the basis for the Examiner’s Findings as it pertains to this Agreement:

a. That the Licensee violated Md. Code Ann., Com. Law (“CL”) §§ 12-121 and 12-1027, which prohibits the imposition of a lender’s inspection fee in connection with a Maryland loan made to a consumer borrower that is secured by a dwelling.

b. That this finding represents a repeat violation as similar prohibited conduct was identified in a previous supervisory examination. Specifically, during the examination of the Licensee in 2013, the examination team determined that the Licensee was assessing prohibited property inspection fees in connection with Maryland loans secured by residential real estate. As part of the examination resolution process, the

¹ The Agency commenced a separate supervisory examination of the Licensee pursuant to FI § 11-515(a) of the MMLL on November 21, 2016, and incorporated the mortgage servicing aspects into the MMC Examination.

Licensee represented to the Agency that it had updated and corrected its policies and procedures and that it would cease assessing the prohibited inspection fees on a going forward basis. Additionally, the Agency required the Licensee to complete an internal audit of all Maryland serviced loans and to refund all prohibited fees assessed to consumer accounts. Evidence of refunds was provided to the Agency in early 2014.

c. That on or about May 15, 2018, the Licensee conducted an internal audit to verify compliance with Maryland law, which resulted in the Licensee representing to the Agency that it had discovered a “process gap” where loans that were 90 days past due were being assessed prohibited inspection fees in violation of Maryland law.

d. That, for the period from 01/01/2014 to 12/31/2018, the Licensee assessed approximately 927 prohibited inspection fees to 109 Maryland borrowers of forward mortgage loans that are or have been secured by a dwelling.

e. That, for the period 01/01/2014 to 12/31/2018, the Licensee assessed 53 prohibited inspection fees to 9 Maryland borrowers of reverse mortgage loans that are or have been secured by residential real property.

f. That the Licensee represented and warranted during the MMC Examination that it had engaged in corrective action to undo and remediate the consumer harm caused by the assessment of prohibited inspection fees.

g. That the Licensee violated Md. Code Ann., Com. Law (“CL”) § 13-316(d), providing that a servicer shall make timely payments of insurance premiums due under the mortgage so long as the mortgagor has paid an amount sufficient to pay the insurance premium due.

h. That on or about in May 2018 the Licensee voluntarily conducted an audit covering the January 2017 through March 2018 time frame on loans where Lenders Placed Insurance ("LPI") had been placed or otherwise there had been a lapse in insurance coverage ("Insurance Escrow Audit"). The audit identified instances where the placement of LPI was the result of the Licensee's failure to timely pay insurance premiums even though Licensee had sufficient funds paid by Maryland borrowers to cover the cost of these premiums. That the Licensee represented and warranted during the examination that it had engaged in corrective action to undo and remediate any and all harm caused to consumer borrowers by these untimely disbursements from escrow accounts, including reversing LPI charges and obtaining reinstatement of prior insurance policies that had lapsed due to Licensee's failure to timely pay insurance premiums.

5. The Licensee accepts the statement of facts as set forth above and wishes to resolve these matters in the most expedient and cost effective manner possible. Therefore, the Licensee accepts the Examiner's Findings fully and completely, without conditions or exceptions, and agrees to abide by each and every term set forth in this Agreement. Further, the Licensee represents and warrants that as of this Agreement's execution date it has implemented changes reasonably designed to prevent Maryland borrowers of forward and reverse mortgage loans that are secured by a dwellings from being charged a property inspection fee in violation of CL §§ 12-121 or 12-1027, or in the event that the borrower has been assessed a property inspection fee, ensuring that the Licensee and not the Borrower pays such property inspection fees. As used throughout this Agreement, the execution date of this Agreement is the date that it is signed by all parties as herein listed

below. The Parties agree that this paragraph shall in no way limit any of the Agency's enforcement powers for any potential violations in the future, and does not create any additional defenses beyond those that existed prior to this Agreement's execution date.

6. The Commissioner desires to ensure that the Licensee will comply with all applicable statutes, regulations, and other laws governing mortgage lending and servicing in the State, and further wishes to resolve the matter in a manner that would avoid the costs to the taxpayers of an administrative hearing and any potential appeals. Further, a consensual resolution of this matter is in the interest of the citizens of the State and is appropriate in light of Respondents' representations and warranties in this Agreement.

7. The Licensee has agreed to take each and every one of the following actions in exchange for a final resolution of this matter:

a. The Licensee represents and warrants that it has refunded, reversed, or otherwise credited all inspection fees serviced from January 1, 2014 to December 31, 2018 to the impacted forward mortgage Maryland borrowers. The Licensee paid restitution to certain of these borrowers in the total amount of **SEVEN THOUSAND FOUR HUNDRED AND THREE DOLLARS (\$7,403.00)**, including a total of **THREE THOUSAND ONE HUNDRED THIRTY EIGHT DOLLARS AND FIFTY CENTS (\$3,138.50)** in cash refunds and a total of **FOUR THOUSAND TWO HUNDRED SIXTY FOUR DOLLARS AND FIFTY CENTS (\$4,264.50)** in credits applied to corresponding loan accounts;

b. The Licensee represents and warrants that it has refunded, reversed, or otherwise credited all inspection fees serviced from January 1, 2014 to December 31,

2018 to the impacted reverse mortgage Maryland borrowers. The Licensee paid restitution to these borrowers in the total amount of **SIX HUNDRED NINETY FIVE DOLLARS AND FIFTY CENTS** (\$695.50) cash refunds;

c. The Licensee represents and warrants that it has refunded, reversed, or otherwise credited all LPI fees charged to borrowers arising from Licensee's failure to timely pay insurance premiums as identified in the Insurance Escrow Audit. Similarly, the Licensee represents and warrants that it has obtained reinstatement of prior insurance policies or otherwise provided full restitution to those borrowers whose insurance policies had lapsed due to Licensee's failure to timely pay insurance premiums as identified in the Insurance Escrow Audit.

d. The Licensee has represented that it has conducted an additional audit of lender placed insurance fees assessed and accounts in which there was a lapse of insurance coverage and that the Licensee controlled an escrow account to cover such costs, for all accounts serviced from January 1, 2014 to December 31, 2016 and April 1, 2018 to December 31, 2018. The audit report will provides at a minimum the following information: 1) a detailed report on all impacted loan files including a list of the impacted loan numbers, impacted borrowers, respective address of impacted borrowers, the root cause for the failure to pay insurance premiums even though Licensee had sufficient funds paid by the impacted borrowers to cover the cost of these premiums, if applicable, whether the placement of LPI was the result of the Licensee's failure to timely pay these insurance premiums even though Licensee had sufficient funds paid by the borrower to cover the cost of these premiums, and the amount of the lenders placed insurance assessed to the

Maryland borrower; and 2) detailed information regarding all remediation taken by Licensee to resolve the audit findings, including providing sufficient evidence of all refunds, reversals, credits, policy reinstatements, and any other remediation taken to resolve the audit findings;

e. The Licensee will pay a monetary penalty of **FIFTEEN THOUSAND DOLLARS** (\$15,000) through the NMLS (a/k/a the Nationwide Mortgage Licensing System, a/k/a the Nationwide Multistate Licensing System) immediately upon the Agreement being fully executed;

f. The Licensee will provide the Agency with control reporting relating to the charging of property inspection fees to Maryland borrowers for forward and reverse mortgage loans for conduct through the end of calendar year 2019. Respondents will provide reports to the Agency by the **FIFTEENTH** (15th) day following the end of each calendar quarter, except for the first report. Respondents will provide the first report within **THIRTY** (30) days after the effective date of this Agreement, covering the fourth quarter of 2018. Respondents will provide a final report on or by January 15, 2020, covering the fourth quarter of 2019;

g. The Licensee will provide the Agency with quarterly updates through the end of calendar year 2019 on any and all corrective action plans and/or substantive updates to policies and procedures addressing the Licensee's handling of escrow accounts, including, but not limited to, the timely disbursement of escrow funds. Respondents will provide updates to the Agency by the **FIFTEENTH** (15th) day following the end of each calendar quarter, except for the first report. Respondents will provide the

first report within **THIRTY** (30) days after the effective date of this Consent Order, covering the fourth quarter of 2018. Respondents will provide a final report on or by January 15, 2020, covering the fourth quarter of 2019;

h. The Licensee will maintain and continue to improve its Enterprise-Wide Risk Management System (“ERMS”) that is commensurate with the risk profile of the Licensee. The risk profile of Licensee shall, in part, be defined by the results of regulatory examinations, external audits, and internal reviews. The ERMS is required at all times to effectively identify, measure, monitor, and control risk through adequate policies and procedures and internal controls given Licensee’s size, operational complexity and overall risk profile. To ensure adequate management of the ERMS, Licensee shall maintain at all times a senior management position responsible for overseeing risk and compliance who will be assigned duties commonly understood for this respective position and in accordance with the expected role of a risk and compliance position given a mortgage company having the size, complexity and overall risk profile of Licensee. Additionally, the ERMS shall at all times incorporate an adequate Compliance Management System (“CMS”);i. The Licensee will engage a qualified, independent, third-party consultant to perform: (1) an updated Enterprise Risk Assessment evaluating the Licensee’s exposure to risk, including the sufficiency of the Licensee’s ERMS and CMS and (2) a Management Assessment that ensures that each member of the senior management team shall have the authority, responsibilities, and duties commonly understood for the respective position and in accordance with the expected role of that position given a mortgage company having the size, complexity and overall risk profile of

Licensee and that each senior manager shall have the requisite background, experience, and skillset necessary to fulfill the duties of that position given the role of that position in a mortgage company having the size, complexity and overall risk profile of Licensee and Licensee will provide each assessment to the Agency and Licensee's Board of Director within twenty-four (24) months of this Agreement's execution date;

j. The Licensee agrees to cooperate fully with all future requests for documentation, information, and records requested by the Agency to determine compliance with the terms of the Agreement; and

k. The Licensee represents that it has taken all corrective actions recommended in the report of Examination issued by the Agency.

8. The Licensee acknowledges that it has voluntarily entered into this Agreement with full knowledge of its right to a hearing pursuant to FI § 2-115(a) and pursuant to the Maryland Administrative Procedures Act – Contested Cases, Md. Code Ann., State Gov't. ("SG") § 10-201 *et seq.*, and that the Licensee hereby waives its right to a hearing. The Licensee further acknowledges that it has had an opportunity to consult with independent legal counsel in connection with its waiver of rights and with the negotiation and execution of this Agreement, and that the Licensee has either consulted with independent legal counsel or has knowingly elected not to do so.

9. The Licensee represents, to the best of its knowledge, the following: the Examiner's Findings notwithstanding, that it is currently in compliance with all applicable statutes, regulations, and others laws governing Maryland mortgage lending, brokering, servicing, and origination, and that it will continue to act in compliance at all future times.

10. The Licensee acknowledges that the Commissioner is relying, in part, upon the Licensee's representations and warranties stated herein in making his determinations in this matter. The Licensee further acknowledges that this Agreement may be revoked and the Commissioner may pursue any and all remedies available under the law against the Licensee if the Commissioner later finds that the Licensee knowingly or willfully withheld information from the Commissioner.

11. The Parties agree that the Agreement shall be binding upon the Parties and enforceable in a court of competent jurisdiction by the Commissioner. The Agreement shall be admissible in court, and shall be binding upon any of the Licensee's present and future owners, principals, directors, officers, members, partners, managers, agents, successors, and assigns.

12. The Parties acknowledge that the Agreement does not in any way relate to, impact, or otherwise affect the legal rights of, or preclude the Commissioner from bringing or continuing to pursue actions against persons not Parties to the Agreement. Further, the Agreement is by and between the Commissioner and the Licensee and shall not inure to the benefit of any person not a party.

13. The Parties agree that any notices hereunder shall be effectively "delivered" when sent via overnight delivery or certified mail as follows:

a. To the Commissioner:

Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202-3651
Attn: Jedd Bellman, Assistant Commissioner

b. To Licensee:

Sun West Mortgage Company, Inc.
6131 Orangethorpe Avenue, Suite 500
Buena Park, California 90520
Attn: Jennifer Vallinayagam

With a Copy to:

J. Steven Lovejoy, Esquire
901 Dulaney Valley Road, Suite 610
Towson, MD 21204

NOW, THEREFORE, it is, by the Maryland Commissioner of Financial Regulation, hereby

ORDERED that the Licensee shall adhere to all terms of the Agreement, the violation of which shall constitute a violation of a Final Order of the Commissioner; it is further

ORDERED that the Licensee shall conduct business in full compliance with all statutes, regulations, and other laws governing mortgage lending, brokering, servicing, and origination in the State of Maryland, and shall continue to act in full compliance at all future times; and it is further

ORDERED that, in the event the Licensee violates any provision of the Agreement, or otherwise engages in the activities which formed the basis for the Examiner's Findings described above, the Commissioner may, at the Commissioner's discretion, take any enforcement actions available under FI § 2-115, under the Maryland Mortgage Lender Law, as well as take any other enforcement actions as permitted by, and in accordance with, applicable State or Federal law; and that such enforcement actions

could include an order to cease and desist, civil money penalties of up to \$25,000 for each violation of the law, an order to provide restitution of money or property to any aggrieved persons, and/or referral for possible criminal prosecution; and it is further

ORDERED that this matter shall be resolved in accordance with the terms of this Agreement and Consent Order and that the same shall be reflected among the records of the Office of the Commissioner of Financial Regulation; and it is further

ORDERED that this document shall constitute a Final Order of the Maryland Commissioner of Financial Regulation, and that the Commissioner may consider this Agreement and Consent Order and the facts set forth herein in connection with, and in deciding, any examination, action, or proceeding before the Commissioner; and that this Agreement and Consent Order may, if relevant, be admitted into evidence in any matter before the Commissioner.

It is so **ORDERED**.

IN WITNESS WHEREOF, this Agreement and Consent Order is executed on the day and year first above written.

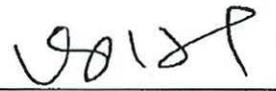
**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

By:


Antonio P. Salazar
Commissioner

**SUN WEST MORTGAGE COMPANY,
INC.**

By:


Jennifer Vallinayagam, COO