

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

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In the Matter of

**ABSOLUTE HOME MORTGAGE CORPORATION**  
**A005639**

**SETTLEMENT AGREEMENT**

A Registered Mortgage Broker Pursuant To  
Article XII-D of the New York Banking Law  
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This Settlement Agreement (“Agreement”) is made and entered into by and between Absolute Home Mortgage Corporation (“AHMC”) and the New York State Department of Financial Services (the “Department” and collectively with AHMC, the “Settling Parties”) evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations by AHMC of Section 591-a of the New York Banking Law (“Banking Law”) and 3 NYCRR Part 38 of the General Regulations of the Superintendent (the “General Regulations”), upon and subject to the terms and conditions hereof.

**I.**

**RECITALS**

1. AHMC, headquartered at 330 Passaic Avenue, Suite 204, Fairfield, NJ 07004, was granted a registration by the Department on September 10, 2003 to engage in business as a mortgage broker pursuant to Article 12-D of the Banking Law.
2. Sections 44 and 598 of the Banking Law provide, in part, that the Superintendent of Financial Services of the State of New York (the “Superintendent”) may, in a proceeding after notice and a hearing, require a registered mortgage broker to pay to the people of this State a penalty for any violation of the Banking Law and/or regulation promulgated thereunder.
3. Section 38.8 of the General Regulations provides that a mortgage broker may be subject to disciplinary action by the Department for, among other things, violations of Articles 12-D

of the Banking Law, the regulations promulgated thereunder, or violations of state or federal law indicating that the entity is unfit to engage in the business of a mortgage broker.

4. The Department conducted an examination of AHMC's mortgage business activities as of close of business September 30, 2015 (the "2015 Examination"), which disclosed a number of violations and deficiencies of state and federal laws and regulations.

#### **Utilization of Unauthorized Domain Names**

5. Pursuant to the Department's All Industry Letter, dated June 1, 2000 (the "2000 Industry Letter"), the domain name of any website used by a licensee or a registrant to conduct mortgage banking or brokering activity qualifies as a business address that must be registered with the Department.

6. As a result of the 2015 Examination, the Department discovered AHMC used the domain names and websites, "ahmcloans.com" and "ahmcdocs.com" to conduct mortgage activities relating to properties located in New York during time periods including January 2016 and April 2016.

7. AHMC failed to obtain authorization from the Department to utilize the aforementioned domain names prior to the time periods in question.

8. Accordingly, pursuant to the 2000 Industry Letter, the Department has determined that AHMC violated Section 591-a (2) of the Banking Law, which requires registrants to apply for and receive permission prior to using a specific business address.

#### **Misrepresentation of Registration Status**

9. The 2015 Examination revealed that AHMC identified itself as a lender on mortgage loan application disclosures such as Truth-In Lending, credit reports, HUD, and New York loan application in at least 16 instances.

10. Additionally, the 2015 Examination discovered that AHMC advertised in LinkedIn, a social media site, itself as “retail mortgage bankers” for “Greater New York City Area.”

11. According to the Department’s records, AHMC was not licensed as a mortgage banker.

12. Accordingly, the Department has determined that AHMC violated Section 38.2(d) of the General Regulations, which prohibits registrants from utilizing “language which indicates or suggests that the mortgage broker will fund a mortgage loan....”

## II.

### SETTLEMENT TERMS AND CONDITIONS

AHMC is willing to resolve the violations cited herein by entering into this Agreement and freely and voluntarily waives its right to a hearing under Sections 44 and 598 of the Banking Law on such violations. Therefore, in consideration of the promises and covenants set forth herein:

1. AHMC agrees to take all necessary steps to ensure its compliance with all applicable federal and state laws, regulations, and supervisory requirements relating to its mortgage business, including, but not limited to:

- a. complying with the provisions of Article 12-D of the Banking Law and Part 38 of the General Regulations;
  - b. complying with the 2000 Industry Letter, already defined above, regarding recording Domain Names and Section 591-a (2) of the Banking Law by ceasing use of any unauthorized websites to conduct mortgage broker business; and
  - c. not conducting or transacting business in this state under any name, assumed name or designation using any website, domain, or other name that has not been approved by the Superintendent.
2. Licensee agrees to develop appropriate written compliance policies and procedures

(“Compliance Policies and Procedures”) designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements and guidance letters. The Compliance Policies and Procedures shall, at a minimum: (i) designate an individual responsible for monitoring compliance with all applicable federal and state laws, regulations, supervisory requirements and guidance letters; and (ii) establish a training program to ensure that AHMC and its employees involved in loan origination understand all applicable federal and state laws, regulations, supervisory requirements and guidance letters.

3. No later than ten (10) days after the effective date of this Agreement, Licensee shall pay a penalty of \$10,000 to the Department. The payment shall be made by wire transfer in accordance with the Department’s payment instructions.

4. Neither AHMC, nor any of its parents, subsidiaries, or affiliates shall, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification including but not limited to payment made pursuant to any insurance policy, or from any of its parents, subsidiaries, or affiliates, with regard to any or all of the amount payable pursuant to this Settlement Agreement.

5. AHMC agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the penalty paid pursuant to this Agreement.

### **III.**

#### **MISCELLANEOUS TERMS AND CONDITIONS**

1. AHMC acknowledges that its failure to comply with any of the settlement terms and conditions of this Agreement may result in the Department taking action to suspend or revoke AHMC’s registration to engage in the business of a mortgage broker under Article 12-D of the Banking Law.

2. The Superintendent has agreed to the terms of this Agreement based on the

representation made to the Department, or written materials submitted to the Department, by AHMC, either directly or through its counsel, and the Department's findings in the 2015 Examination. To the extent that the written representations or written submissions made by AHMC to the Department, either directly or through its counsel, are later found to be materially incomplete or inaccurate, this Agreement is voidable by the Superintendent in her sole discretion.

3. Upon the request of the Department, AHMC shall provide all documentation and information necessary for the Department to verify full compliance with this Agreement.

4. AHMC represents and warrants, through the signature below, that the terms and conditions of this Agreement were duly approved, and execution is duly authorized.

5. No further action will be taken by the Department against AHMC for the specific conduct set forth in this Agreement, provided that AHMC fully complies with the terms of this Agreement.

6. This Agreement and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

7. AHMC waives all rights to further notice and hearing in this matter as to any allegations of past violations up to and including the effective date of this Agreement and agrees that no provision of the Agreement is subject to review in any court of tribunal outside of the Department.

8. In the event that one or more provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

9. AHMC acknowledges that entering into this Agreement shall not bar, estop, or otherwise prevent the Superintendent, or any state, federal or local agency or department or any prosecutorial authority from taking any other action affecting AHMC, any of its current or former owners, officers, directors, employees, or insiders, or their successors or assigns with respect to the

violations cited herein, or any other matter whether related or not to such violations.

10. This Agreement may not be altered, modified or changed unless in writing signed by the Superintendent or her designee.

11. This Agreement shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or her designee.

12. The effective date of this Agreement is the date on which it is executed by the Deputy Superintendent for Mortgage Banking.

13. This Agreement may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto.

14. All written communications to the Department regarding this Agreement should be sent as follows.

Attention:

Rholda L. Ricketts  
Deputy Superintendent  
New York State Department of Financial Services  
One State Street,  
New York, New York 10004

15. All written communications to AHMC regarding this Agreement should be sent as follows.

Attention:

Matthew VanFossen  
Chief Executive Officer  
Absolute Home Mortgage Corporation  
330 Passaic Avenue, Suite 204  
Fairfield, NJ 07004

16. This Agreement is not confidential, and each of the Settling Parties understands that it is available to the public.

WHEREFORE, the Settling Parties hereto have caused this Agreement to be executed.

Absolute Home Mortgage Corporation

By: \_\_\_\_\_ / S / \_\_\_\_\_

Matthew VanFossen  
Chief Executive Officer

Dated: \_\_\_\_\_

New York State Department of Financial Services

By: \_\_\_\_\_ / S / \_\_\_\_\_

Rholda L. Ricketts  
Deputy Superintendent – Mortgage Banking

Dated: \_\_\_\_\_