

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. M2009-758
)	
PROSPER MARKETPLACE, INC.)	Notice of Intent to Deny Second Mortgage Lender
111 Sutter Street, 22 nd Floor)	Renewal Application
San Francisco, CA 94104)	&
)	Notice of Opportunity for a Hearing
)	

JURISDICTION

The Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of administering and enforcing the Ohio Mortgage Loan Act ("OMLA"), as codified in Ohio Revised Code ("R.C.") Chapter 1321, and the rules adopted thereunder.

RESPONDENT

PROSPER MARKETPLACE, INC. ("Respondent") is a foreign corporation that holds a certificate of registration issued by the Division to conduct business in Ohio as a second mortgage lender. Its business address of record is 111 Sutter Street, 22nd Floor, San Francisco, CA 94104.

NOTICE OF PROPOSED ACTION

In accordance with R.C. 1321.54(B), and pursuant to R.C. Chapter 119, the Division intends to DENY Respondent's second mortgage lender renewal application.

BASIS FOR PROPOSED ACTION

Pursuant to R.C. 1321.54(C), the Division conducted an investigation of Respondent, and as a result thereof, alleges the following:

- A. On or about June 30, 2009, Respondent filed an application with the Division to renew its certificate of registration to conduct business in the State of Ohio as a second mortgage lender under R.C. Sections 1321.51 to 1321.60, of the Ohio Mortgage Loan Act.
- B. In accordance with R.C. 1321.54(B), the superintendent of the Division may refuse to renew a second mortgage lender's certificate of registration if the superintendent finds that the registrant has committed a violation of the Ohio Mortgage Loan Act, and continued to do so despite being put on notice of the violation.
- C. R.C. 1321.53(A)(1) requires every foreign business entity registered as a second mortgage lender in the State of Ohio to maintain a license or registration with the Ohio Secretary of State in order to transact business in this state.
- D. R.C. 5733.20 requires the Ohio Secretary of State to cancel a corporation's Articles of Incorporation upon certification by the Ohio Department of Taxation of such corporation's failure to file a return or failure to pay the appropriate tax or fee.

- E. R.C. 5733.20 provides that, upon cancellation, “all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease,” subject to R.C. 1701.88, which proscribes that the corporation “shall cease to carry on business and shall do only such acts as are required to wind up its affairs, or to obtain reinstatement...”
- F. On or about May 5, 2009, Respondent was notified by the Ohio Secretary of State that the Secretary has cancelled the Articles of Incorporation/Certificate of Authority issued to Respondent, in accordance with R.C. 5733.20, due to Respondent’s nonpayment of the corporate franchise tax within the time required by law.
- G. As of the date of this Notice, the Respondent’s Articles of Incorporation/Certificate of Authority are still cancelled, and the Respondent has failed to correct the violation of R.C. 1321.53(A)(1).
- H. As of May 5, 2009, Respondent is no longer authorized to conduct business in the State of Ohio.

As a result of the findings listed above, the Division has determined that Respondent’s second mortgage lender renewal application should be DENIED, pursuant to R.C. Section R.C. 1321.54(B).

NOTICE OF OPPORTUNITY FOR A HEARING ON PROPOSED ACTION

Therefore, pursuant to R.C. Chapters 1322 and 119, Respondent is hereby notified that thirty-one (31) days from the date of the mailing of this Notice, the Superintendent intends to issue an order denying Respondent’s second mortgage lender renewal application.

Respondent is further notified, pursuant to R.C. Chapter 119, that Respondent is entitled to a hearing on this matter. If Respondent desires to request a hearing, the request must be made in writing, and must be received in the offices of the Ohio Division of Financial Institutions within thirty (30) days of the time of the mailing of this Notice. Hearing requests should be addressed: Ohio Division of Financial Institutions, Attn: Desiree T. Shannon, Attorney Examiner, 77 South High Street, 21st Floor, Columbus, Ohio 43215-6120.

At the hearing, Respondent may appear in person, by Respondent’s attorney, or by such other representative as is permitted to practice before the Agency, or Respondent may present its position, arguments, or contentions in writing, and, at the hearing, may present evidence and examine witnesses appearing for and against Respondent.

If the Ohio Division of Financial Institutions does not receive a written request for a hearing in its offices within thirty (30) days of the time of the mailing of this Notice, the Superintendent will issue an order denying Respondent’s second mortgage lender renewal application.

Signed and sealed this 18th day of November 2009.

LEIGH A. WILLIS

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce