

# SETTLEMENT AGREEMENT

## 803818

by and between

THE OHIO DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

Consumer Finance Section

77 South High Street, 21<sup>st</sup> Floor  
Columbus, OH 43215-6120

&

**ROSE MORTGAGE OF OHIO, LLC.**  
**7281 Pearl Road, Suite 2A**  
**Middleburg Heights, Ohio 44130**

This Settlement Agreement is a legally binding document that affects the rights of your mortgage brokerage company. Read it carefully. If you have any questions, consult an attorney.



If you choose to enter into this Settlement Agreement, you must follow it EXACTLY. If you fail to follow any one filing instruction or any one provision of the Agreement, the Division may reject the Agreement.

**All of the following must be completed and RETURNED to the Division no later than August 10, 2007:**

- ☐ **All pages of this Settlement Agreement, including this cover page, must remain attached.**
- ☐ The Settlement Agreement must be signed by: the owner if the mortgage broker registrant is a sole proprietor; all partners if the registrant is a partnership; at least one member if a limited liability company; and the president and secretary, as duly authorized by resolution of the board of directors, if the registrant is a corporation. The ORIGINAL, signed Agreement with all pages attached must be returned. Keep a copy for your records.
- ☐ A cashier's check or money order in the amount of \$1,000 made payable to "DFI Consumer Finance."

# SETTLEMENT AGREEMENT

**803818**

This Settlement Agreement is entered into by and between:

THE OHIO DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

Consumer Finance Section

77 South High Street, 21<sup>st</sup> Floor  
Columbus, OH 43215-6120

Hereinafter referred to as “DFI.”

&

**ROSE MORTGAGE OF OHIO, LLC**

**7281 Pearl Road, Suite 2A**

**Middleburg Heights, Ohio 44130**

Hereinafter referred to as “Respondent.”

DFI is a state agency charged with the responsibility of administering and enforcing the Ohio Mortgage Broker Act (“OMBA”), codified in Chapter 1322 of the Ohio Revised Code (“R.C.”). Respondent is a limited liability company that has filed an application for a mortgage broker certificate of registration issued by DFI to engage in business as a mortgage broker pursuant to R.C. Chapter 1322. After conducting an investigation, DFI discovered violations of the Ohio Mortgage Broker Act with respect to its sole member and operations manager. Respondent and DFI have moved to resolve all issues and violations by entering into this Settlement Agreement.

Respondent voluntarily enters into this Settlement Agreement being fully informed of its right to representation by counsel, and its right to reject this Settlement Agreement, and said rejection may result in the initiation of proceedings pursuant to R.C. Chapter 119 on the issues considered herein.

This Settlement Agreement contains the entire Settlement Agreement between the parties. There is no other Settlement Agreement of any kind, verbal or otherwise, on the issues considered herein, which varies the terms of the Settlement Agreement.

## AGREEMENTS AND UNDERSTANDINGS

This Settlement Agreement is entered into on the basis of the following stipulations and understandings:

- A. DFI is authorized by R.C. 1322.10(A)(1)(a) to refuse to issue a mortgage broker certificate of registration if DFI finds that the applicant has violated “or fail[ed] to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted under a certificate of registration[.]”
- B. In order to issue a mortgage broker certificate of registration, DFI must find that the applicant’s “financial responsibility, experience, character, and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the law.” (See R.C. 1322.04(B)(3) and 1322.04(A)(10).)
- C. Brian Niec, sole member and designated operations manager for Respondent, originated mortgage loans for Rose Mortgage Corporation as an independent contractor, not an employee, as evidenced by the IRS form 1099s he provided to DFI. As an independent contractor, Brian Niec was required to obtain a mortgage broker certificate of registration pursuant to R.C. 1322.02(A)(1). Brian Niec did not obtain a mortgage broker certificate of registration, in violation of R.C. 1322.02(A)(1).
- D. The actions and violation of law mentioned in paragraph C constitute improper dealings in violation of R.C. 1322.07(C).
- E. It is understood and agreed by Respondent that any persons who are employed as loan officers must be compensated in accordance with the definition of employee as defined in R.C. 1322.01(C). Note: loan officers who receive IRS form 1099 at the end of the year are not considered compensated in accordance with R.C. 1322.01(C).
- F. All parties enter into this Settlement Agreement in lieu of formal proceedings under R.C. Chapter 119.
- G. Brian Niec, in lieu of administrative action against him and Respondent for the violations in paragraphs C and D, agrees to pay a fine of one thousand dollars (\$1,000). Payment of the fine shall be in the form of a cashier’s check or money order, made payable to “DFI Consumer Finance,” and shall be submitted to DFI with this Settlement Agreement.
- H. Upon Brian Niec’s and Respondent’s compliance with the provisions of this agreement, and if Respondent complies with all other terms and conditions for issuance of its certificate of registration, DFI will issue a certificate of registration with an expiration date of April 30, 2008.

- I. DFI expressly reserves the right to institute formal proceedings based upon any violation of or noncompliance with any provision of the OMBA not specifically addressed herein, whether occurring before, on, or after the effective date of this Settlement Agreement
- J. Respondent understands and agrees that if Respondent fails to follow any term of this Settlement Agreement or any filing instruction, DFI may reject the Settlement Agreement and initiate formal proceedings under R.C. Chapter 119.
- K. Should DFI discover that Respondent has provided DFI with false, fraudulent, misleading, or incomplete information pertaining to this Agreement, Respondent agrees that such evidence will firmly establish that Respondent's character and general fitness do not command the confidence of the public and warrant the belief that it will conduct business honestly and fairly in compliance with the purposes of the OMBA. Respondent further agrees that such discovery is grounds for permanent revocation of its mortgage broker certificate of registration.
- L. The above-described terms, conditions, and limitations may be amended or terminated at any time upon the written agreement of both parties.

#### **ACKNOWLEDGMENTS/LIABILITY RELEASE**

Respondent acknowledges that it has been advised by DFI to seek legal counsel if it has any question concerning the terms and/or effect of this Settlement Agreement.

Respondent hereby releases DFI, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter. Respondent shall not seek attorney fees or other costs arising from the within matter.

This Settlement Agreement shall be considered a public record as that term is used in R.C. 149.43, and may be reported to appropriate organizations, data banks, and governmental bodies, or released to the general public.

This Settlement Agreement in no way binds or limits future actions DFI may take with respect to Respondent or any other person, individual, or company, for the same or similar violations.

**EFFECTIVE DATE**

It is expressly understood that this Settlement Agreement shall become effective upon the last date of signature below.

The Settlement Agreement must be signed by: the owner if the mortgage broker registrant is a sole proprietor; all partners if the registrant is a partnership; at least one member if a limited liability company; and the president and secretary, as duly authorized by resolution of the board of directors, if the registrant is a corporation. **The ORIGINAL, signed Agreement with all pages attached must be returned.** Keep a copy for your records.

PRINTED Name of authorized signor #1: \_\_\_\_\_ Date \_\_\_\_\_

SIGNATURE of authorized signor #1: \_\_\_\_\_ Date \_\_\_\_\_

PRINTED Name of authorized signor #2: \_\_\_\_\_ Date \_\_\_\_\_

SIGNATURE of authorized signor #2: \_\_\_\_\_ Date \_\_\_\_\_

RICHARD F. KECK                      DATE  
Acting Deputy Superintendent for Consumer Finance  
Ohio Division of Financial Institutions

MARK L. RHEA  
Consumer Finance Licensing Attorney  
Ohio Division of Financial Institutions