

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

In the matter of:	)	Case No. M2009-571
	)	<b>AMENDED</b>
<b>KEVIN J. GAINER</b>	)	<b>Notice of Intent to Deny Loan Officer</b>
1317 Deepwood Drive	)	<b>Renewal Application and Impose a Fine</b>
Macedonia, Ohio 44056	)	<b>&amp;</b>
	)	<b>Notice of Opportunity for a Hearing</b>
	)	

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**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 Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322. In accordance therewith, the Division is accountable for the licensing of loan officers and approval of operations managers.

**RESPONDENT**

**KEVIN J. GAINER** ("Respondent") is an individual that holds a loan officer license issued by the Division to originate residential mortgage loans pursuant to R.C. Chapter 1322. Respondent has applied to the Division for renewal of his loan officer license, which expired April 30, 2009. His address of record is 1317 Deepwood Drive, Macedonia, Ohio 44056, and his date of birth is October 8, 1974. Respondent was approved in July 2008 to be the Operations Manager of Triton Financial Group, LLC whose address was 2000 Auburn Drive, Suite 200, Beechwood, Ohio 44122. Respondent has filed a request to transfer his license to Hartford Financial Group, LLC whose main office is located at 565 Metro Place South, Dublin, Ohio 43017.

**NOTICE OF PROPOSED ACTION**

In accordance with sections 1322.04 and 1322.10 of the R.C., and R.C. Chapter 119, the Division intends to DENY Respondent's 2009 renewal application for a loan officer license and impose a FINE.

**BASIS FOR PROPOSED ACTION**

The Division has conducted an investigation of Respondent, pursuant to R.C. 1322.10(B), and has found the following:

- A. The Division is authorized by R.C. 1322.10(A)(1)(a) to refuse to renew an applicant's loan officer license if the Division finds that the applicant has violated "or failed 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. The Division is authorized by R.C. 1322.041(B) to issue a renewal loan officer license if the applicant complies with R.C. 1322.01 to 1322.12 and his character and general fitness commands the confidence of the public and warrants the belief that the business will be

operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12.

- C. The Division is authorized by R.C. 1322.10(A)(2) to “[i]mpose of fine of not more than one thousand dollars, for each day a violation of law or rule is committed, repeated or continued. If the registrant or licensee engages in a pattern of repeated violations of law or rule, the Division may impose a fine of not more than two thousand dollars for each day the violation is committed, repeated, or continued.”
- D. R.C. 1322.072 prohibits persons from knowingly circumventing, interfering with, obstructing, or failing to cooperate, including making a false or misleading statement, failing to produce records, or intimidating or suborning any witness in connection with any examination or investigation conducted by the superintendent of financial institutions under sections 1322.01 to 1322.12 of the Revised Code.
- E. Following the Division’s February 2008 Examination of Triton Financial Group, LLC, on May 14, 2008, Richard Keck, Chief Examiner for Consumer Finance wrote Kevin Gainer of Triton Financial Group a letter addressing the issues raised in the February compliance examination. At this time, Kevin Gainer was the individual designated as Triton Financial Group, LLC’s Operations Manager. (He became Triton Financial Group, LLC’s approved Operations Manager in July 2008). The letter was sent by US regular mail and requested a response within thirty days. The Division did not receive a letter from Triton Financial Group, LLC in response to the Division’s May 14, 2008 letter addressing the issues found in the Division’s examination.
- F. Subsequently, on August 20, 2008, Richard Keck, Chief Examiner for Consumer Finance, wrote another letter to Kevin Gainer of Triton Financial Group, LLC, again requesting Triton Financial Group, LLC address the issues raised in the Division’s examination and respond to the Division’s letter on or before September 3, 2008. This letter was sent by Certified Mail to Kevin Gainer, the Operations Manager of Triton Financial Group, LLC at Respondent’s business address and received on August 22, 2008. The Division received no response to its August 20, 2008 letter from any representative of Triton Financial Group, LLC.
- G. By failing to respond to the Division’s May 14, 2008 and August 20, 2008 letters that addressed the compliance issues found during the February 2008 examination and that were sent to him while he performed the Operations Manager duties of Triton Financial Group, LLC, Respondent violated R.C. 1322.072.
- H. R.C. 1322.064(A) states: “[n]o registrant or licensee shall fail to do either of the following: (1) Timely inform the buyer of any material change in terms of the loan.” This statute defines “material change” as the following: (a) A change in the type of loan being offered, such as fixed or variable rate loan or a loan with a balloon payment; (b) a change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made; (c) a change in the interest rate of more than .15%; (d) a change in the regular monthly payment of principal and interest of more than five percent; (e) a change regarding the escrow of taxes or insurance; (f) a change regarding the payment of private mortgage insurance.
- I. In arranging mortgage loans secured by real estate, Respondent failed to timely inform the buyer(s) of any material change(s) to the loan, in violation of R.C. 1322.064(A).
  - a. For the mortgage loan secured by 1890 Woodbrook Lane, Lyndhurst, Ohio 44124, Respondent failed to notify the buyer of the following material changes to the loan:

- i. A change in interest rate from .149% fixed to 7.25% variable (first mortgage and 11% variable (second mortgage).
  - ii. A change in the type of loan being offered. On November 14, 2006, the buyer signed preliminary disclosures for a fixed rate thirty year loan with an APR of .149%. On January 23, 2007, the buyer signed settlement documents for a first mortgage in the amount of \$880,000 with a variable interest rate of 7.25% with a balloon and also signed settlement documents for a second mortgage in the amount of \$220,000 with a variable interest rate of 11%.
  - iii. A change in the regular monthly payment of principal and interest of more than five percent. The initial disclosures list a monthly mortgage payment of \$1350 for the entire amount borrowed. At settlement, the borrower agreed to a first and second mortgage for which the monthly payments combined were \$9,369 (plus balloon payments).
- J. R.C. 1322.064(A)(2) states: [n]o registrant or licensee shall fail to...[t]imely inform the buyer if any fees payable by the buyer to the registrant or lender increase by more than ten percent or one hundred dollars, whichever is greater.
- K. In arranging mortgage loans secured by real estate located at 1890 Woodbrook Lane, Lyndhurst, Ohio 44124, Respondent failed to timely inform the buyer(s) of any fees payable by the buyer to the registrant that increased by more than ten percent, in violation of R.C. 1322.064(A)(2).
- L. Respondent is a "supplier" as defined in R.C. 1345.01(C).
- M. R.C. 1345.031(A) states: "No supplier shall commit an unconscionable act or practice concerning a consumer transaction in connection with a residential mortgage. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction."
- N. R.C. 1345.031(B)(14) and O.A.C. 109:4-3-27(A) defines an unconscionable act or practice as including: "[e]ntering into the consumer transaction knowing there was no reasonable probability of payment of the obligation by the consumer."
- O. O.A.C. 109:4-3-27(B) states that "[t]he supplier's analysis of the reasonable probability of payment of the obligation by the consumer may include, but shall not be limited to, verification of the borrower's current and expected income, current and expected cash flow, net worth and other financial resources (other than the consumer's equity in the dwelling that secures repayment of the loan), current financial obligations, property taxes and insurance, assessments on the property, employment status, credit history, and other relevant factors such as debt-to-income ratio, credit score, tax returns, pension statements, employment payment records, and statements or information submitted by the consumer in their mortgage loan application, provided that no supplier shall disregard facts and circumstances that indicate that the financial or other information submitted by the consumer is inaccurate or incomplete."
- P. O.A.C. 109:4-3-27(E) states that "[a]ll records, worksheets, or supporting documentation used by the supplier in conducting an analysis of the reasonable probability of payment of the obligation by the consumer shall be maintained by that supplier in the consumer's loan file for each residential mortgage loan transaction for a period of at least two years from the date of closing, or as required by other applicable state or federal law, whichever time period is greater...."

- Q. R.C. 1322.07(C) prohibits a licensee from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings.
- R. An act or practice by a licensee that is unconscionable under R.C. 1345.031(B) is also prohibited conduct under R.C. 1322.07(C).
- S. In arranging mortgage loans secured by real estate located at 1890 Woodbrook Lane, Lyndhurst, Ohio 44124, and 2574 Fairwood Drive, Pepper Pike, Ohio 44124, Respondent originated the mortgage loan without regard to whether the buyer was able to repay the loan and failed to use any reasonable method to determine a borrower's ability to repay the mortgage loan in violation of R.C. 1345.031(B)(14), O.A.C. 109:4-3-27(A) and (C), 1345.031(A) and 1322.07(C).

As a result of the findings listed above, the Division has determined that:

- 1. Respondent's actions listed in paragraphs E-G violated R.C. 1322.072.
- 2. Respondent's actions listed in paragraph I violated R.C. 1322.064(A)(1).
- 3. Respondent's actions listed in paragraph K violated R.C. 1322.064(A)(2).
- 4. Respondent's actions listed in paragraph O violated R.C. 1345.031(A), O.A.C. 109:4-3-27(A) and (C), 1345.031(B)(14) and 1322.07(C).
- 5. Because Respondent violated or failed to comply with R.C. sections 1322.072, 1322.064(A)(1) and (2), and 1322.031(A), Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes sections 1322.01 to 1322.12 of the Revised Code. See R.C. 1322.041(A)(6) and (B)(3).
- 6. Because Respondent violated or failed to comply with R.C. sections 1322.072, 1322.064(A)(1) and (2), and 1345.031(A), the Division is authorized under R.C. 1322.10(A)(1)(a) to deny the renewal of Respondent's loan officer license.

#### **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 renewal application and ordering payment of a five thousand dollar (\$5,000.00) fine under the Ohio Mortgage Broker Act.

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: Martha Rhea, Consumer Finance Attorney Examiner, 77 South High Street, 21<sup>st</sup> 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. At the hearing, a corporation must have a representative that is permitted to practice before the Agency, such as an attorney.

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 renewal application and ordering payment of a five thousand dollar (\$5,000.00) fine.

Signed and sealed this 16<sup>th</sup> day of July, 2009.

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**LEIGH A. WILLIS**

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