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# MEMORANDUM OF UNDERSTANDING

**M2010-462**

This Memorandum of Understanding 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

and

**RELIANCE FIRST CAPITAL, LLC**

270 South Service Road, Suite 25  
Melville, NY 11747

The Division of Financial Institutions ("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."). Reliance First Capital, LLC ("RFC") is a foreign-registered limited liability corporation that has applied for an exemption to registration as a mortgage broker pursuant to R.C. Chapter 1322.

RFC voluntarily enters into this Memorandum of Understanding being fully informed of the right to representation by counsel, and the right to reject this Memorandum of Understanding and to proceed to a formal adjudicative hearing, pursuant to R.C. Chapter 119 on the issues considered herein.

## STIPULATIONS AND ADMISSIONS

This Memorandum of Understanding is entered into on the basis of the following stipulations, admissions, allegations and understandings:

- A. R.C. 1322.02 provides, in part, that "[n]o person shall act or hold that person's self out as a mortgage broker under the authority or name of a... person exempt from sections 1322.01 to 1322.12 of the Revised Code without first having obtained a certificate of registration from the superintendent for every office to be maintained by the person for the transaction of business as a mortgage broker in this state."
- B. R.C. 1322.01(G)(1)(a) defines "mortgage broker" as "[a] person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration readily convertible into money for providing this assistance."
- C. R.C. 1322.01(G)(2)(h) provides that "mortgage broker" does not include a mortgage banker, "provided it complies with section 1322.022 of the Revised Code and holds a valid letter of exemption issued by the superintendent. For purposes of this section, 'mortgage

banker' means any person that makes, services, buys, or sells residential mortgage loans secured by a first lien, that underwrites the loans, and that meets at least one of the following criteria: (i) The person has been directly approved by the United States department of housing and urban development as a nonsupervised mortgagee with participation in the direct endorsement program...."

- D. R.C. 1322.022(B)(1) states that "[i]f the superintendent determines that the mortgage banker honestly made the attestation required under division (A)(3) of this section and otherwise qualifies for the exemption, the superintendent shall issue a letter of exemption."
- E. R.C. 1322.02(B)(1) states that "[n]o individual shall act as a loan originator without first having obtained a license from the superintendent."
- F. R.C. 1322.01(E)(1) defines "loan originator" as "an individual who for compensation or gain, or in anticipation of compensation or gain, does any of the following: (a) takes or offers to take a residential mortgage loan application; (b) assists or offers to assist a buyer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs; (c) offers or negotiates terms of a residential mortgage loan; (d) issues or offers to issue a commitment for a residential mortgage loan to a buyer."
- G. Following amendments to the OMBA that went into effect on January 1, 2010, mortgage bankers had until close of business April 30, 2010 to ~~submit the attestation required by~~ *be issued a letter of exemption per. ADS 6/29/10* R.C. 1322.022 or cease conducting business in Ohio that is subject to the OMBA, and loan originators had until April 30, 2010 to submit the application materials to conduct business that is subject to the OMBA.
- H. RFC submitted the required R.C. 1322.022 attestations on June 2, 2010 (and certain loan originator application materials both before and after), qualified by the representation in an accompanying June 2<sup>nd</sup> letter that it had engaged in business subject to the OMBA after May 1, 2010. RFC did not engage in origination on any new leads subject to the OMBA after May 26, 2010. *KLC by phone 6/29/10*
- I. This Memorandum of Understanding is intended to fully resolve any issues regarding RFC's status as an exempt mortgage banker and regarding any loans originated by RFC prior to the issuance of the exemption to registration under R.C. 1322.02(A) and (B).
- J. DFI enters into this Memorandum of Understanding in lieu of formal proceedings under R.C. 1322.022(B)(2) and R.C. Chapter 119 to deny issuance of an exemption letter to RFC.
- K. 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 or after the effective date of this Memorandum of Understanding.

#### AGREED CONDITIONS

RFC acknowledges the allegations made by the Division. In consideration of the foregoing and the mutual promises set forth herein, the parties agree to the following:

1. RFC neither admits nor denies the allegations of the Division, but in the interest of resolving this matter, RFC agrees to the terms of this Memorandum of Understanding in

lieu of the Division proceeding with prosecution of an administrative action and any other administrative or civil action against RFC for the allegations set forth herein.

2. To fully resolve the alleged violations and findings of fact listed above, RFC agrees to make a payment in the amount of five thousand dollars (\$5,000). Payment shall be in the form of a cashier's check or money order made payable to "Treasurer of State" and submitted to the Division with this Memorandum of Understanding.
3. RFC understands that for this Memorandum of Understanding to be considered for acceptance by DFI, the original properly executed Memorandum of Understanding, with all pages attached, and a cashier's check or money order for the dollar amount listed above must be received in the offices of DFI on or before **July 16, 2010**.
4. Should RFC fully comply with every provision of this Memorandum of Understanding, DFI agrees to issue RFC a letter of exemption pursuant to R.C. 1322.022 provided no additional information is required to complete the application and satisfy the requirements of R.C. 1322.022(A).
5. Should RFC fully comply with every provision of the Memorandum of Understanding, DFI agrees to process RFC's loan originator's license applications and grant such licenses, provided that no additional information is required to complete the application and satisfy the requirements of R.C. 1322.031 and 1322.041.
6. This Memorandum of Understanding fully resolves any deficiencies, violations or defects regarding any loans originated by RFC prior to the issuance of the exemption to registration which deficiencies, violations, or defects would constitute violations of R.C. 1322.02(A) and (B).
7. Should DFI discover that RFC has provided DFI with false, fraudulent, misleading, or incomplete information pertaining to this Memorandum of Understanding, Respondent agrees that such evidence is grounds for revocation of the letter of exemption.
8. This Memorandum of Understanding contains the entire Memorandum of Understanding between the parties. There is no other Memorandum of Understanding of any kind, verbal or otherwise, on the issues considered herein, which varies the terms of the Memorandum of Understanding.

#### **FAILURE TO COMPLY**

If, in the discretion of DFI, Respondent appears to have violated or breached any term or condition of this Memorandum of Understanding, DFI reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of any law occurring before, on, or after the effective date of this Memorandum of Understanding.

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

RFC 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 Memorandum of Understanding.

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

This Memorandum of Understanding 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. Notwithstanding the foregoing, the Division shall not issue a press release specific to this Memorandum of Understanding.

This Memorandum of Understanding in no way binds or limits future actions DFI may take with respect to RFC or any other person, individual, or company, for the same or similar violations.

### EFFECTIVE DATE

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

The Memorandum of Understanding must be signed by: the owner if the mortgage banker is a sole proprietor; all partners if the mortgage banker 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 licensee is a corporation. **The ORIGINAL, signed Memorandum of Understanding with all pages attached must be returned.** Keep a copy for your records.

PRINTED Name and Title of Authorized Signor #1: HUGH MILLER, PRESIDENT, CEO, MEMBER  
SIGNATURE of Authorized Signor #1: \_\_\_\_\_  
Date 6/29/2010

PRINTED Name and Title of Authorized Signor #2: \_\_\_\_\_  
SIGNATURE of Authorized Signor #2: \_\_\_\_\_  
Date \_\_\_\_\_

LEIGH A. WILLIS  
Deputy Superintendent for Consumer Finance  
Ohio Division of Financial Institutions  
Date 6/29/10

ANTHONY D. SICILIANO  
Consumer Finance General Counsel  
Ohio Division of Financial Institution  
Date 6/29/10