

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

Consumer Financial Protection Bureau  
and the People of the State of New  
York, by Letitia James, Attorney  
General for the State of New York,

Plaintiffs,

v.

Douglas MacKinnon, Amy MacKinnon,  
Mary-Kate MacKinnon, and Matthew  
MacKinnon,

Defendants.

**COMPLAINT**

The Consumer Financial Protection Bureau (the Bureau) and the People of the State of New York, by Letitia James, Attorney General for the State of New York (the State of New York) (together, the Government Plaintiffs), bring this action against Douglas MacKinnon, Amy MacKinnon, Mary-Kate MacKinnon, and Matthew MacKinnon and allege as follows.

**INTRODUCTION**

1. This action seeks to unwind Douglas MacKinnon's fraudulent conveyance of real property for nominal consideration to his wife, Amy MacKinnon, and daughter, Mary-Kate MacKinnon, which took place shortly after he learned that he was under investigation by the Government Plaintiffs for his illegal debt-collection activities.

2. Beginning in 2014, Douglas MacKinnon learned that companies he controlled were under investigation by the Bureau. Specifically, on or about March 13, 2014, the Bureau served a Civil Investigative Demand (CID) on Northern Resolution Group, LLC, one of Douglas MacKinnon's debt-collection companies and a defendant in the underlying lawsuit.

3. In 2014, the Bureau served several additional CIDs on companies affiliated with Douglas MacKinnon.

4. After receiving the Bureau's CIDs to companies he controlled, Douglas MacKinnon fraudulently conveyed real property to his wife and daughter for one dollar in consideration.

5. On November 2, 2016, the Government Plaintiffs sued Douglas MacKinnon and others for running a large-scale debt-collection operation that used illegal tactics to extort money from consumers.

6. On August 23, 2019, the United States District Court for the Western District of New York entered a Stipulated Final Judgment and Order (the Judgment) against MacKinnon and others. The Judgment imposed an injunction and ordered redress and a civil money penalty against MacKinnon totaling \$60,000,000. *See CFPB, et al. v. MacKinnon, et al.*, 16-cv-00880 (W.D.N.Y.). A copy of the Judgment is attached as Exhibit 1.

7. The Bureau brings this action to void the fraudulent conveyance under 28 U.S.C. § 2201 and 28 U.S.C. Chapter 176, the Federal Debt Collection Procedures Act of 1990.

8. The State of New York brings this action under 28 U.S.C. § 2201, Article 10 of the New York Debtor and Creditor Law (DCL), and Article 52 of the New York Civil Practice Law and Rules (CPLR).

### **JURISDICTION AND VENUE**

9. This Court has subject-matter jurisdiction over the Bureau's claims because this action presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

10. This Court has subject-matter jurisdiction over the State of New York's claims under 28 U.S.C. §§ 1331 and 1367.

11. Venue is proper in this District under 28 U.S.C. § 1391.

### **PARTIES**

12. The Bureau is an agency of the United States charged with regulating the offering and provision of consumer-financial products or services under "Federal consumer financial laws," 12 U.S.C. § 5491(a). The Bureau has independent litigating authority. 12 U.S.C. § 5564.

13. The State of New York is one of the 50 sovereign states of the United States.

14. Defendant Douglas MacKinnon is a natural person residing at 6575 Meghan Rose Way, East Amherst, New York 14051 and is a judgment debtor of the Government Plaintiffs.

15. Defendant Amy MacKinnon is a natural person residing at 6575 Meghan Rose Way, East Amherst, New York 14051 and is Douglas MacKinnon's wife.

16. Defendant Mary-Kate MacKinnon is a natural person residing at 6575 Meghan Rose Way, East Amherst, New York 14051 and is Douglas MacKinnon's daughter.

17. Defendant Matthew MacKinnon is a natural person residing at 1523 East Avenue, Rochester, New York 14610 and is Douglas MacKinnon's brother.

## **FACTS**

18. Douglas MacKinnon was, until entry of the Judgment, the head of a debt-collection enterprise who made millions of dollars by inflating the balances of debts owed and encouraging collectors acting at his behest to use illegal tactics.

19. The Government Plaintiffs' allegations of Douglas MacKinnon's illegal debt-collection tactics were resolved by the Court's August 23, 2019 entry of the \$60,000,000 Judgment against him and his businesses.

20. On December 19, 2019, the Government Plaintiffs filed an Abstract of Judgment with the Erie County Clerk. A copy of the Abstract of Judgment is attached as Exhibit 2.

21. Douglas MacKinnon has paid nothing toward satisfying the Judgment.

22. Douglas MacKinnon and Amy MacKinnon jointly owned, as tenants by the entirety, real property located at 6575 Meghan Rose Way, East Amherst, New York 14051 (the Property).

23. Douglas MacKinnon transferred his interest in the Property to his wife, Amy MacKinnon, and daughter, Mary-Kate MacKinnon, for the sum of one dollar by quitclaim deed dated April 22, 2015. The quitclaim deed was recorded with the Erie County Clerk on May 13, 2015.

24. A copy of the quitclaim deed is attached as Exhibit 3 and describes the metes and bounds of the Property.

25. The Property is a six-bedroom, seven-bathroom single-family home with a current assessed value of approximately \$1,600,000.

26. Douglas MacKinnon's conveyance of the Property for one dollar to his wife and daughter was made with the intent to hinder, delay, and defraud present and future creditors, including the Government Plaintiffs.

27. Amy MacKinnon was aware of the Government Plaintiffs' investigation into her husband, Douglas MacKinnon.

28. Amy MacKinnon received income from certain debt-collection companies associated with Douglas MacKinnon.

29. On May 12, 2015, Amy MacKinnon granted a mortgage for \$900,000 (the Mortgage) on the Property to Matthew MacKinnon, Douglas MacKinnon's brother. The Mortgage was recorded with the Erie County Clerk on May 13, 2015—the same day that the quitclaim deed transferring the Property was recorded. A copy of the Mortgage is attached as Exhibit 4.

30. The Mortgage was not granted in good faith. It was made with the intent to make it appear that the Property was encumbered and therefore not a potential source of recovery for Douglas MacKinnon's creditors.

31. Douglas MacKinnon's transfer of the Property to his wife and daughter, Amy and Mary-Kate MacKinnon, was a transfer to an insider.

32. Defendants each have a close relationship with one another based on their familial relationship.

33. Following Douglas MacKinnon's transfer of the Property, he continued to reside at and exercise control over the Property for several years.

34. Shortly before Douglas MacKinnon's transfer of the Property, he learned that he was under investigation by the Government Plaintiffs for his illegal debt-collection practices.

35. At the time that Douglas MacKinnon transferred the Property, he was aware that the Government Plaintiffs would likely seek a judgment against him.

36. At the time that Douglas MacKinnon transferred the Property, he believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due.

37. Douglas MacKinnon has removed and concealed assets in an effort to render the Judgment obtained by the Government Plaintiffs uncollectable.

38. Douglas MacKinnon received one dollar in exchange for the Property. The consideration that Douglas MacKinnon received for the Property was not a

reasonably equivalent value for the Property, which has an assessed value of approximately \$1,600,000.

39. The consideration that Amy MacKinnon and Mary-Kate MacKinnon paid for the Property was plainly inadequate.

40. Because the Property was fraudulently transferred with intent to hinder, delay, or defraud a creditor, any tenancy by the entirety with respect to the Property has been terminated.

41. Because the Property was fraudulently transferred with intent to hinder, delay, or defraud a creditor, Defendants are not entitled to claim any homestead exemption, including any exemption under New York CPLR § 5206, with respect to the Property.

**COUNT I  
By the Bureau**

**Fraudulent Transfer Under the Federal Debt Collection Procedures Act  
(Douglas MacKinnon, Amy MacKinnon, and Mary-Kate MacKinnon)**

42. The Bureau realleges and incorporates by reference paragraphs 1–41.

43. Douglas MacKinnon transferred 6575 Meghan Rose Way, East Amherst, New York 14051 to Amy MacKinnon and Mary-Kate MacKinnon as tenants in common for one dollar on May 13, 2015.

44. Douglas MacKinnon's transfer of 6575 Meghan Rose Way, East Amherst, New York 14051 was made with the actual intent to hinder, delay, or defraud a creditor.

45. Douglas MacKinnon's transfer of 6575 Meghan Rose Way, East Amherst, New York 14051 was made without receiving a reasonably equivalent value in exchange for the transfer when Douglas MacKinnon believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due.

46. The Bureau seeks to void the transfer of 6575 Meghan Rose Way, East Amherst, New York 14051 in its entirety to partially satisfy the \$60 million judgment that Douglas MacKinnon owes to the Government Plaintiffs.

**COUNT II**  
**By the State of New York**  
**Conveyance Made with the Intent to Defraud**  
**Under New York Debtor and Creditor Law, Article 10**  
**(Douglas MacKinnon, Amy MacKinnon, and Mary-Kate MacKinnon)**

47. The State of New York realleges and incorporates by reference paragraphs 1–41.

48. Douglas MacKinnon transferred 6575 Meghan Rose Way, East Amherst, New York 14051 to Amy MacKinnon and Mary-Kate MacKinnon as tenants in common for one dollar on May 13, 2015.

49. Douglas MacKinnon's transfer of 6575 Meghan Rose Way, East Amherst, New York 14051 was made with the actual intent to hinder, delay, or defraud future creditors.

50. The State of New York seeks avoidance of the transfer of 6575 Meghan Rose Way, East Amherst, New York 14051 in its entirety to partially satisfy the \$60 million judgment that Douglas MacKinnon owes the Government Plaintiffs.

51. The State of New York seeks a money judgment against Amy MacKinnon and Mary-Kate MacKinnon for the value of the Property as transferees of the fraudulent conveyance of the Property.

**COUNT III**  
**By the State of New York**  
**Conveyance Made with the Intent to Defraud**  
**Under New York Debtor and Creditor Law, Article 10**  
**(Douglas MacKinnon, Amy MacKinnon, and Matthew MacKinnon)**

52. The State of New York realleges and incorporates by reference paragraphs 1–41.

53. On May 12, 2015, Amy MacKinnon granted a mortgage for \$900,000 on 6575 Meghan Rose Way, East Amherst, New York 14051 to Matthew MacKinnon.

54. The conveyance of the Mortgage was made with actual intent to hinder, delay, or defraud future creditors.

55. The State of New York seeks avoidance of the fraudulent Mortgage conveyance in its entirety.

56. In the alternative, in the event that Matthew MacKinnon contends that the Mortgage has been satisfied in full, the Court should enter an order directing Matthew MacKinnon to file a satisfaction of mortgage as to the Mortgage with the Erie County Clerk or entry of an order declaring the Mortgage to be satisfied.

**COUNT IV**  
**By the Government Plaintiffs**  
**Declaratory Judgment**  
**(All Defendants)**

57. The Government Plaintiffs reallege and incorporate by reference paragraphs 1–41.

58. The Government Plaintiffs seek a declaratory judgment that the transfer by Douglas MacKinnon of 6575 Meghan Rose Way, East Amherst, New York 14051 was fraudulent and is void.

59. The Government Plaintiffs seek a declaratory judgment that the Mortgage granted by Amy MacKinnon to Matthew MacKinnon was not made in good faith.

60. The Government Plaintiffs seek a declaratory judgment declaring that the fraudulent conveyance of the Property terminated any tenancy by the entirety in the Property.

61. The Government Plaintiffs seek a declaratory judgment declaring that the fraudulent conveyance of the Property terminated any homestead exemption in the Property.

62. The Government Plaintiffs seek a declaratory judgment declaring that the Property is subject to levy and execution to partially satisfy the Government Plaintiffs' Judgment.

## **DEMAND FOR RELIEF**

Wherefore, the Government Plaintiffs request that the Court enter an order:

1. declaring that the conveyance described in paragraph 23 be set aside as a fraudulent conveyance under 28 U.S.C. § 3306 and New York State Debtor and Creditor Law §§ 276 and 278;
2. declaring that the Judgment be declared a lien upon the Property under 28 U.S.C. § 3306 and the New York State Debtor and Creditor Law §§ 276 and 278;
3. declaring that the Mortgage was not made in good faith;
4. declaring that any tenancy by the entirety in the Property is terminated;
5. declaring that any homestead exemption in the Property is terminated, but, if the Court determines that any Defendant is entitled to assert a homestead exemption, awarding the State of New York relief under New York CPLR § 5206(e);
6. directing the levy and execution of the Judgment upon the Property and the sale of the Property by the United States Marshal or his representative, under 28 U.S.C. §§ 3306 and 2001, with the proceeds to be applied to the Judgment due to the Government Plaintiffs, together with interest to the date of the payment, plus costs and disbursement of this action or, alternatively, appointing a receiver to conduct a sale of the Property and thereafter pay over the proceeds of such sale to the Government Plaintiffs in partial satisfaction of the Judgment;
7. awarding a money judgment against Amy MacKinnon and Mary-Kate MacKinnon for the value of the Property received by them as transferees of the fraudulent conveyance of the Property;

8. awarding attorney's fees under DCL § 276-A; and
9. granting the Government Plaintiffs such other and further relief as is just and proper.

Dated: April 22, 2021

Respectfully submitted,

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**EXHIBIT 1**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

CONSUMER FINANCIAL PROTECTION  
BUREAU AND THE PEOPLE OF THE  
STATE OF NEW YORK, BY LETITIA  
JAMES, ATTORNEY GENERAL FOR THE  
STATE OF NEW YORK,

Plaintiffs,

v.

DOUGLAS MACKINNON, MARK GRAY,  
NORTHERN RESOLUTION GROUP, LLC,  
ENHANCED ACQUISITIONS, LLC,  
AND DELRAY CAPITAL, LLC,

Defendants.

No. 1:16-CV-00880-FPG-HKS

**STIPULATED FINAL  
JUDGMENT AND ORDER**



The Consumer Financial Protection Bureau (Bureau) and the People of the State of New York, by Letitia James, the Attorney General of the State of New York (NYAG) commenced this civil action on November 2, 2016, to obtain injunctive and monetary relief and civil penalties, from Douglas MacKinnon, Mark Gray, Northern Resolution Group, LLC (NRG), Enhanced Acquisitions, LLC (Enhanced), and Delray Capital, LLC (collectively, Defendants). The Complaint alleges violations of sections 1031(a) and 1036(a)(1) of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(a), 5536(a)(1); sections 807 and 808 of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692e, 1692f; New York Executive Law § 63(12), and New York General Business Law Article 22-A, § 349 and Article 29-H, § 602, in connection with Defendants' collection of Consumer Debt, placement of Consumer Debts for collection, and related activities.

Plaintiffs and Settling Defendants Douglas MacKinnon, NRG, and Enhanced agree to entry of this Stipulated Final Judgment and Order (Order), to settle and resolve all matters in dispute as alleged in the Complaint.

**THEREFORE, it is ORDERED:**

**FINDINGS**

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. The Complaint charges that Defendants engaged in unfair and deceptive Debt-collection practices in violation of sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1); sections 807 and 808 of the FDCPA, 15 U.S.C. §§ 1692e, 1692f; and N.Y. General Business Law Article 22-A § 349 and Article 29-H § 602.
3. For purposes of this Order, Settling Defendants admit the facts necessary to establish the Court's jurisdiction over them and the subject matter of this action.
4. Settling Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order and any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each party agrees to bear its own costs and expenses, including, without limitation, attorneys' fees.
5. Entry of this Order is in the public interest.

**DEFINITIONS**

6. The following definitions apply to this Order:
  - a. **“Affected Consumers”** means any Consumer from whom Defendants, or anyone acting on behalf of Defendants (including any Collection Shop), collected, or attempted to collect, a Debt during the Relevant Period.

- b. "**Collection Shop**" means any Person listed on Appendix 1 to this Order.
- c. "**Consumer**" means an individual or an agent, trustee, or representative acting on behalf of an individual.
- d. "**Consumer Financial Product or Service**" is synonymous in meaning and equal in scope to the definition of the term, as of the Effective Date, in Section 1002(5) of the CFPA, 12 U.S.C. § 5481(5), and, subject to applicable restrictions contained in the CFPA, includes, but is not limited to:
  - i. extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);
  - ii. providing financial advisory services to consumers on individual financial matters or relating to proprietary financial products or services, including providing credit counseling to any consumer or providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;
  - iii. collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a Consumer Financial Product or Service; or
  - iv. collecting debt related to any Consumer Financial Product or Service.

- e. "**Corporate Defendants**" means Northern Resolution Group, LLC and Enhanced Acquisitions, LLC, collectively, and their successors and assigns.
- f. "**Debt**" means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.
- g. "**Debt Collector**" means (i) any Person who uses an instrumentality of interstate commerce or the mail in any business the principal purpose of which is the collection of Debts or who regularly collects or attempts to collect, directly or indirectly, Debts owed or due or asserted to be owed or due another; (ii) any creditor who, in the process of collecting its own Debts, uses any name other than its own that would indicate that a third Person is collecting or attempting to collect the creditor's Debts; and (iii) any Person to the extent that such Person collects or attempts to collect any Debt that was in default at the time it was obtained by such Person.
- h. "**Debt-Relief Service**" means any good, program, or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of a Debt between an individual and one or more unsecured creditors, secured creditors, or Debt Collectors, including but not limited to a reduction in the balance, interest rate, or fees owed by an individual to an unsecured creditor, secured creditor, or Debt Collector.
- i. "**Effective Date**" means the date on which this Order is entered.
- j. "**Enforcement Director**" means the Assistant Director of the Office of Enforcement for the Bureau, or his or her delegate.

- k. "**Individual Defendant**" means Douglas MacKinnon and any other names by which he might be known.
- l. "**Payment Processing**" means facilitating payments on Debts owed or due or asserted to be owed or due another, or Debts purchased from another.
- m. "**Person**" means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.
- n. "**Related Consumer Action**" means a private action by or on behalf of one or more Consumers or an enforcement action by another governmental agency brought against a Defendant based on substantially the same facts as described in the Complaint.
- o. "**Relevant Period**" includes the period from January 1, 2009, to the Effective Date.
- p. "**Service Provider**" is synonymous in meaning and equal in scope to the definition of the term, as of the Effective Date, in section 1002(26) of the CFPA, 12 U.S.C. § 5481(26), and, subject to applicable restrictions contained in the CFPA, includes, but is not limited to any person that provides a material service to a person that is a "covered person" under the CFPA, 12 U.S.C. § 5481(6), in connection with the offering or provision by such covered person of a Consumer Financial Product or Service, including a person that:
  - i. participates in designing, operating, or maintaining the Consumer Financial Product or Service; or

- ii. processes transactions relating to the Consumer Financial Product or Service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of date of the same form as the person transmits or processes).
- q. "**Settling Defendants**" means the Individual Defendant and the Corporate Defendants, individually, collectively, or in any combination.

**ORDER**

**CONDUCT RELIEF**

**I**

**Permanent Ban on Debt Collection**

**IT IS ORDERED that:**

- 7. Each Settling Defendant, whether acting directly or indirectly, is permanently restrained and enjoined from:
  - a. acting as a Debt Collector;
  - b. receiving any remuneration or other consideration from, or holding any ownership interest in, any Person acting as a Debt Collector or a Service Provider to a Debt Collector;
  - c. providing services or assistance to, or working in any capacity for, a Debt Collector, including but not limited to acting as a Service Provider, employee, or independent contractor to a Debt Collector;
  - d. advertising, marketing, promoting, offering for sale, selling, or buying any Debt or any information related to a Debt; and
  - e. engaging in Payment Processing.

Nothing in this Order shall be read as an exception to this Paragraph.

**II**

**Prohibition on Misrepresentations Concerning  
Consumer Financial Products or Services**

**IT IS FURTHER ORDERED that:**

8. Each Settling Defendant, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who have actual notice of this Order, whether acting directly or indirectly, in connection with any Consumer Financial Product or Service, is permanently restrained and enjoined from:
  - a. misrepresenting, omitting, or assisting others in misrepresenting or omitting, expressly or by implication, any material fact, including but not limited to:
    - i. the terms or rates that are available for any loan or other extension of credit;
    - ii. a Consumer's ability to improve or otherwise affect the Consumer's credit record, credit history, credit rating, or ability to obtain credit;
    - iii. that a Consumer can improve the Consumer's credit record, credit history, or credit rating by permanently removing negative information from the Consumer's credit record, credit history, or credit rating, even where such information is accurate and not obsolete;
    - iv. any aspect of a Debt-Relief Service, including but not limited to how much a Consumer will save from purchasing, using, or enrolling in such Debt-Relief Service; how long it will take to settle any Debts; or the reduction or cessation of collection attempts;
    - v. that a Consumer will receive legal representation;

- vi. the likelihood of any particular outcome or result from a Consumer Financial Product or Service;
  - vii. the nature or terms of any refund, cancellation, exchange, or repurchase policy, including but not limited to the likelihood of a Consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be provided to the Consumer; and
- b. advertising or assisting others in advertising credit terms other than those terms that actually are or will be arranged or offered by a creditor or lender.

### III

#### **Customer Information**

#### **IT IS FURTHER ORDERED that:**

9. Settling Defendants, and their officers, agents, servants, employees, and attorneys and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

- a. disclosing, using, or benefiting from Consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a Consumer's account (including a credit card, bank account, or other financial account), that a Defendant obtained before the Effective Date in connection with the purchase, sale, collection, or placement for collection of Debt; and

- b. failing to destroy such Consumer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Bureau or the NYAG.

*Provided however,* that Consumer information need not be disposed of, and may be disclosed, if requested by a government agency or required by law, regulation, or court order.

## **MONETARY PROVISIONS**

### **IV**

#### **Order to Pay Redress**

##### **IT IS FURTHER ORDERED that:**

10. A judgment for monetary relief is entered in favor of Plaintiffs and against Settling Defendants, jointly and severally, in the amount of FORTY MILLION DOLLARS (\$40,000,000).

11. Within 10 days of the Effective Date, Settling Defendants must pay to Plaintiffs, by wire transfer to Plaintiffs or to Plaintiffs' agents, and according to Plaintiffs' wiring instructions, FORTY MILLION DOLLARS (\$40,000,000) in full satisfaction of the judgment as ordered in Paragraph 10 of this Section.

12. Any funds received by Plaintiffs in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or NYAG or either's agent according to applicable statutes and regulations to be used for redress for Affected Consumers, including but not limited to refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.

13. If the Bureau determines, in its sole discretion, that redress to Consumers is wholly or partially impracticable or if funds deposited into a fund or funds administered by the

Bureau or its agent remain after redress is completed, the Bureau shall deposit the remaining funds in its possession in the U.S. Treasury as disgorgement. Settling Defendants will have no right to challenge any actions that the Bureau or its representatives may take under this section.

14. If the NYAG determines, in its sole discretion, that redress to Consumers is wholly or partially impracticable or if funds deposited into a fund or funds administered by the NYAG or its agent remain after redress is completed, the NYAG shall deposit the remaining funds in its possession with the New York State Comptroller as disgorgement. Settling Defendants will have no right to challenge any actions that the NYAG or its representatives may take under this section.

15. Payment of redress to any Affected Consumer under this Order may not be conditioned on that Affected Consumer waiving any right.

V

**Order to Pay Civil Money Penalty to the Consumer Financial Protection Bureau**

**IT IS FURTHER ORDERED that:**

16. Under Section 1055(c) of the CFPB, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Complaint and continuing until the Effective Date, and taking into account the factors in 12 U.S.C. § 5565(c)(3), a judgment for a civil money penalty is entered in favor of the Bureau and against Settling Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS (\$10,000,000).

17. Within 10 days of the Effective Date, Settling Defendants must pay the civil money penalty to the Bureau by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

18. The civil money penalty paid under this Order will be deposited in the Civil Penalty Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

19. Settling Defendants must treat the civil money penalty paid under this Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Settling Defendants may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or
- b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

20. Individual Defendant agrees that the civil penalty to the Bureau imposed by the Order represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, thus, as to Individual Defendant, is not subject to discharge under the Bankruptcy Code under 11 U.S.C. § 523(a)(7).

## VI

### **Order to Pay Civil Money Penalty to the State of New York**

#### **IT IS FURTHER ORDERED that:**

21. Under N.Y. General Business Law § 350-d, a judgment for a civil money penalty is entered in favor of the NYAG and against Settling Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS (\$10,000,000).

22. Within 10 days of the Effective Date, Settling Defendants must pay the civil money penalty to the NYAG by wire transfer to the NYAG or to the NYAG's agent in compliance with the NYAG's wiring instructions.

23. The civil money penalty paid to the NYAG under this Order will be deposited with the New York State Comptroller in accordance with New York state laws and regulations.

24. Settling Defendants must treat the civil money penalty paid under this Order as a penalty paid to the government for all purposes. Regardless of how the NYAG ultimately uses those funds, Settling Defendants may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or
- b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

25. Individual Defendant agrees that the civil penalty to the NYAG imposed by the Order represents a civil penalty owed to the State of New York, is not compensation for actual pecuniary loss, and, thus, as to Individual Defendant, is not subject to discharge under the Bankruptcy Code under 11 U.S.C. § 523(a)(7).

## VII

### **Additional Monetary Provisions**

#### **IT IS FURTHER ORDERED that:**

26. In the event of any default on Settling Defendants' obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment and will immediately become due and payable.

27. Settling Defendants relinquish all dominion, control, and title to the funds, and all other assets transferred or paid to Plaintiffs in satisfaction of the monetary judgments contained

in this Order to the fullest extent permitted by law and no part of the funds, or other assets, may be returned to Settling Defendants.

28. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding based on or arising out of, this Order, or in any subsequent civil litigation by or on behalf of Plaintiffs in a proceeding to enforce their rights under this Order, including the injunctive provisions of this Order, and any payment or monetary judgment under this Order, such as a nondischargeability complaint in any bankruptcy case.

29. The facts alleged in the Complaint establish all elements necessary to sustain an action by Plaintiffs under to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and for such purposes this Order will have collateral estoppel effect against each Settling Defendant, even in such Settling Defendant's capacity as debtor-in-possession.

30. Settling Defendants agree to waive any statute of limitations or other time-related defenses in any action brought to enforce compliance with the requirements of this Order.

31. Under 31 U.S.C. § 7701, Settling Defendants, unless they already have done so, must furnish to Plaintiffs their respective taxpayer identifying numbers within 10 days of the Effective Date, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

32. Within 30 days of the entry of a final judgment, order, or settlement in a Related Consumer Action, Settling Defendants must notify the Enforcement Director and the NYAG of the final judgment, order, or settlement in writing. That notification must indicate the amount of redress, if any, that a Settling Defendant paid or is required to pay to Consumers and describe the Consumers or classes of Consumers to whom that redress has been or will be paid. To preserve

the deterrent effect of the civil money penalty in any Related Consumer Action, Settling Defendants may not argue that any Settling Defendants are entitled to, nor may any Settling Defendants benefit by, any offset or reduction of any monetary remedies imposed in the Related Consumer Action because of the civil money penalties paid in this action. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against a Settling Defendant based on the civil money penalties paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, the Settling Defendant must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalties imposed in this action.

33. Under Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any Consumer reporting agency may furnish a Consumer report concerning any Settling Defendant to Plaintiffs, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

## **COMPLIANCE PROVISIONS**

### **VIII**

#### **Reporting Requirements**

**IT IS FURTHER ORDERED that:**

34. Settling Defendants must notify the Bureau and the NYAG of any development that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in

any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against a Settling Defendant; or a change in a Settling Defendant's name or address.

Settling Defendants must provide this notice at least 30 days before the development or as soon as practicable after learning about the development, whichever is sooner.

35. Within 7 days of the Effective Date, each Settling Defendant must submit to Plaintiffs an accurate report sworn to under the penalty of perjury:

- a. designating at least one telephone number and email, physical, and postal address as points of contact, which Plaintiffs may use to communicate with Settling Defendant;
- b. identifying all businesses for which Settling Defendant is the majority owner, or that Settling Defendant directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
- c. describing the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
- d. identifying Individual Defendant's telephone numbers and all email, Internet, physical, and postal addresses, including all residences; and
- e. describing in detail Individual Defendant's involvement in any business for which he performs services in any capacity or which he wholly or partially owns, including Individual Defendant's title, role, responsibilities, participation, authority, control, and ownership.

36. Settling Defendants must report any change in the information required to be submitted under Paragraph 35 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

37. Within 90 days of the Effective Date, and again one year after the Effective Date, each Settling Defendant must submit to the Enforcement Director and the NYAG an accurate written compliance progress report sworn to under penalty of perjury (Compliance Report), which, at a minimum:

- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Settling Defendant has complied with each such paragraph and subparagraph of this Order;
- b. attaches a copy of each Order Acknowledgment obtained under Section IX, unless previously submitted to Plaintiffs.

## **IX**

### **Order Distribution and Acknowledgment**

#### **IT IS FURTHER ORDERED that:**

38. Within 7 days of the Effective Date, each Settling Defendant must submit to the Enforcement Director and the NYAG an acknowledgment of receipt of this Order, sworn under penalty of perjury.

39. Within 30 days of the Effective Date, Settling Defendants, and any business for which a Settling Defendant is the majority owner or which a Settling Defendant directly or indirectly controls, must deliver a copy of this Order to each of its board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Order.

40. For 5 years from the Effective Date, Settling Defendants, and any business for which a Settling Defendant is the majority owner or which a Defendant directly or indirectly controls, must deliver a copy of this Order to any business entity resulting from any change in

structure referred to in Section VIII, any future board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who will have responsibilities related to the subject matter of the Order before they assume their responsibilities.

41. Settling Defendants must secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 et seq., within 30 days of delivery, from all Persons receiving a copy of this Order under this Section.

**X**

**Recordkeeping**

**IT IS FURTHER ORDERED that:**

42. Each Settling Defendant must create, for at least 10 years from the Effective Date, for any business of which it is the majority owner or that it directly or indirectly controls, all documents, records, and data necessary to demonstrate full compliance with each provision of this Order. Each Settling Defendant must retain these documents for at least 10 years after creation and make them available to Plaintiffs upon request.

43. Each Settling Defendant must maintain for any business for which a Defendant is a majority owner or controls directly or indirectly, for at least 10 years from the Effective Date or 5 years after creation, whichever is longer:

- a. accounting records showing the gross and net revenues from all goods or services sold;
- b. records showing the amounts collected for each individual Affected Consumer;

- c. personnel records showing, for each Person providing services, whether as an employee or otherwise, that Person's name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- d. records of all Consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response; and
- e. a copy of each unique advertisement or other marketing material.

Settling Defendants must make these materials available to Plaintiffs upon a request by the Bureau or the NYAG. The recordkeeping requirements of this paragraph do not apply to any materials Settling Defendants are directed to destroy pursuant to paragraph 9(b) of this Order.

## XI

### Notices

**IT IS FURTHER ORDERED that:**

44. Unless otherwise directed in writing by Plaintiffs, Settling Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, "*CFPB, et al. v. MacKinnon, et al.*, Case No. 16-cv-00880," and send them by overnight courier or first-class mail to the below addresses and contemporaneously by email to:

**a. Bureau**

Assistant Director for Enforcement  
Bureau of Consumer Financial Protection  
ATTENTION: Office of Enforcement  
1700 G Street, N.W.  
Washington D.C. 20552  
Enforcement\_Compliance@cfpb.gov

**b. NYAG**

New York State Office of the Attorney General  
ATTENTION: Bureau of Consumer Frauds  
350 Main Street, Suite 300A  
Buffalo, New York 14222  
Christopher.Boyd@ag.ny.gov

**XII**

**Cooperation**

**IT IS FURTHER ORDERED that:**

45. Settling Defendants must cooperate fully to provide sufficient information to enable the Bureau and the NYAG to efficiently administer Consumer redress, including the determination of the identity and location of, the amount paid to Defendants by, and the amount of any other injury sustained by, each Affected Consumer. Settling Defendants must provide such information in its or its agents' possession, custody, or control within 14 days of receiving a written request from the Bureau or the NYAG.

46. Settling Defendants must cooperate fully with Plaintiffs in this matter and in any investigation related to or associated with the conduct described in the Complaint, or arising therefrom. Settling Defendants must provide truthful and complete information, evidence, and testimony. Individual Defendant must appear and Corporate Defendants must cause such Defendants' officers, employees, representatives, or agents to appear for interviews, discovery, depositions, hearings, trials, and any other proceedings that the Bureau or the NYAG may reasonably request upon 10 days written notice, or other reasonable notice, at such places and times as the Bureau or the NYAG may designate, without the service of compulsory process.

### XIII

#### **Compliance Monitoring**

**IT IS FURTHER ORDERED** that, to monitor Settling Defendants' compliance with this Order, including:

47. Within 14 days of receipt of a written request from the Bureau or the NYAG, Settling Defendants must submit additional compliance reports or other requested non-privileged information, related to requirements of this Order, which must be sworn under penalty of perjury; provide sworn testimony related to requirements of this Order and Settling Defendants' compliance with those requirements; or produce non-privileged documents related to requirements of this Order and Settling Defendants' compliance with those requirements.

48. For matters concerning, or arising from, this Order, the Bureau or the NYAG may communicate directly with Settling Defendants, their employees, and agents, unless Settling Defendants retain counsel related to these communications.

49. Settling Defendants must permit Bureau or NYAG representatives to interview about the requirements of this Order and Settling Defendants' compliance with those requirements any employee or other Person affiliated with Defendants who has agreed to such an interview. The Person interviewed may have counsel present.

50. The Bureau and NYAG may use all other lawful means of gathering information, including posing, through its representatives, as Consumers, suppliers, or other individuals or entities, to Settling Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice.

51. Nothing in this Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6 or the NYAG's use of its subpoena power.

**XIV**

**Miscellaneous**

**IT IS FURTHER ORDERED that:**

52. If any clause, provision, or section of this Order shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other clause, provision, or section of this Order and this Order shall be construed and enforced as if such invalid, illegal, or unenforceable clause, provision, or section had not been contained herein.

53. Nothing contained herein shall be construed as to deprive any Person, not a party to this case, of any private right under the law.

54. Plaintiffs may serve Settling Defendants, directly or through their attorneys, via electronic mail any written notices required or permitted to be served pursuant to this Order.

**XV**

**Entry of Judgment**

**IT IS FURTHER ORDERED that:**

55. There is no just reason for delay of entry of this judgment, and under Federal Rule of Civil Procedure 54(b), the Clerk immediately shall enter this Order as a final judgment as to Settling Defendants Douglas MacKinnon, Northern Resolution Group, LLC; and Enhanced Acquisitions, LLC.

**XVI**

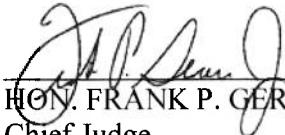
**Retention of Jurisdiction**

**IT IS FURTHER ORDERED that:**

56. The Court will retain jurisdiction of this matter for the purpose of enforcing this Order and corresponding final judgments.

**IT IS SO ORDERED.**

DATED: August 22, 2019



HON. FRANK P. GERACI, JR.  
Chief Judge  
United States District Court

**EXHIBIT 2**

## ABSTRACT OF JUDGMENT

Re: CFPB et al. v. MacKinnon et al.

Case Number: 16-cv-00880

FILED  
DEC 19 2019

ERIE COUNTY CLERK'S OFFICE

Name(s) and Address(es) of Parties against whom Judgment(s) have been obtained	Name(s) and Address(es) of Parties in whose favor Judgment(s) have been obtained
Douglas MacKinnon 6575 Megan Rose Way East Amherst, NY 14051	Consumer Financial Protection Bureau ("CFPB")  People of the State of New York by Letitia James, Attorney General for the State of New York ("NYAG")

Amount of Judgment(s)	Name(s) and Address(es) of Attorney(s)	Entry Date of Judgment(s)
\$60,000,000 (amount) plus interest	For the CFPB Jade A. Burns 1700 G Street, NW Washington, DC 20552 Tel: 212-328-7017	August 23, 2019
Comprised of \$40,000,000 owed to CFPB and NYAG jointly and severally, \$10,000,000 owed to the CFPB and \$10,000,000 owed to the NYAG	For the NYAG Christopher L. Boyd 350 Main Street, Suite 300A Buffalo, NY 14202 Tel: 716-853-8457	

2019 DEC 26 AM 2:06  
RECEIVED  
ERIC BURKE, CLERKUNITED STATES OF AMERICA,  
CLERK'S OFFICE U.S. DISTRICT COURT FOR  
THE WESTERN DISTRICT OF NEW YORK

I CERTIFY that the foregoing is a correct Abstract of the Judgment

Dated: Buffalo , New York

MARY C. LOEWENGUTH, Clerk of Court

By, \_\_\_\_\_ Deputy Clerk

NOTICE:

Pursuant to Title 28, United States Code, Section 3201, this judgment, upon the filing of this Abstract in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of 26 U.S.C. § 6323(f), creates a lien on all real property of the defendant(s) and has priority over all other liens or encumbrances which are perfected later in time. The lien created by this section is effective, unless satisfied, for a period of 20 years and may be renewed by filing a notice of renewal. If such notice of renewal is filed before the expiration of the 20-year period to prevent the expiration of the lien and the court approves the renewal, the lien shall relate back to the date the judgment is filed.

**EXHIBIT 3**

ERIE COUNTY CLERK'S OFFICE



## County Clerk's Recording Page

Return to:

RODNEY GIOVE ESQ  
 727 MAIN ST STE 200  
 NIAGARA FALLS, NY 14301

Party 1:  
 MACKINNON DOUGLAS

Party 2:  
 MACKINNON AMY

**Book Type: D Book: 11279 Page: 5020**

Page Count: 3  
 Doc Type: DEED  
 Rec Date: 05/13/2015  
 Rec Time: 02:32:34 PM  
 Control #: 2015093813  
 UserID: Janet H  
 Trans #: 15075576  
 Document Sequence Number  
 TT2014018330

Recording Fees:

RECORDING	\$35.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
RP5217 CNTY \$9	\$9.00
RP5217 ST-RES \$116	\$116.00
TP584	\$10.00

**Consideration Amount: 1.00**

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

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**Total: \$190.00**

STATE OF NEW YORK  
 ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Christopher L. Jacobs  
 County Clerk

## QUITCLAIM DEED

**THIS INDENTURE**, made the 22nd of April, 2015, between

**DOUGLAS MACKINNON and AMY MACKINNON**, 6575 Meghan Rose Way, E. Amherst, New York 14051, party of the first part, and

**AMY MACKINNON and MARY KATE MACKINNON**, as tenants in common, 6575 Meghan Rose Way, E. Amherst, New York 14051, party of the second part,

**WITNESSETH**, that the party of the first part, in consideration of one (\$1.00) and more dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

**ALL THAT CERTAIN PIECE OR PARCEL OF LAND**, situate, lying and being in the Town of Clarence, County of Erie and State of New York, being part of Lot 1, Section 16, Township 12, Range 6 of the Holland Land Company's Survey and being more particularly bounded and described as follows:

COMMENCING at a point in the north line of said Lot 1, 1337.16 feet west of the northeast corner of said Lot 1, said line also being the centerline of County Road (90 feet wide); thence S 00° 29' 02" E and along a line parallel to the east line of said Lot 1, 1892.26 feet to a point; thence S 90° 00' 00", 972.66 feet to the principal place of beginning; thence continuing S 90° 00' 00" W and along a line parallel by deed to the south line of said Lot 1, 111.18 feet to a point; thence N 01° 21' 28" W and parallel to the west line of said Lot 1, 28.59 feet to a point; thence N 90° 00' 00" W, 338.82 feet to the northwest corner of land conveyed by deed recorded in Erie County Clerk's Office on Liber 6463 of Deeds at page 145; thence N 01° 21' 28" W and parallel to the west line of said Lot 1, 350.00 feet to a point; thence N 90° 00' 00" E, 430.36 feet to a point in the west line of Meghan Rose Way; thence southerly along the west line of said Meghan Rose Way and along a curve to the right, having a radius of 58.00 feet, an arc distance of 50.58 feet to a point; thence S 01° 21' 28" E, 334.17 feet to the point or place of beginning.

Being and intended to be Lot No. 4 as shown on a map attached as Schedule A-1 to the Declaration recorded in the Erie County Clerk's Office on April 21, 2005 in Liber 11094 of Deeds at page 533.

Together with the benefits and subject to the burdens of the Declaration recorded in the Erie County Clerk's Office on April 21, 2005 in Liber 11094 of Deeds at page 533, as amended from time to time

**THIS CONVEYANCE IS MADE FOR ESTATE PLANNING PURPOSES AND DOES NOT RENDER THE GRANTOR DOUGLAS MACKINNON INSOLVENT AND IS NOT MADE TO DEFRAUD CREDITORS.**

**TOGETHER** with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

*gj Deed-2 93813  
CLA*

**TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

**TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

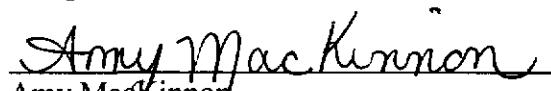
**AND** the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the costs of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

**IN WITNESS WHEREOF**, the party of the first part has duly executed this deed the day and year first above written.



Douglas MacKinnon



Amy MacKinnon

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss.:

On the 12 day of May in the year 2015, before me, the undersigned, personally appeared, Douglas MacKinnon and Amy MacKinnon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that they executed the same in their capacity(ies), and that by their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

RODNEY A. GIOVE  
Notary Public, State of New York  
Qualified in Niagara County  
Commission expires March 11, 20 



**EXHIBIT 4**

ERIE COUNTY CLERK'S OFFICE



## County Clerk's Recording Page

Return to:

RODNEY GIOVE ESQ  
 727 MAIN ST STE 200  
 NIAGARA FALLS, NY 14301

Party 1:  
 MACKINNON AMY

Party 2:  
 MACKINNON MATTHEW

**Book Type: M Book: 13721 Page: 3356**

Page Count: 5  
 Doc Type: MORTGAGE  
 Rec Date: 05/13/2015  
 Rec Time: 02:32:34 PM  
 Control #: 2015093814  
 UserID: Janet H  
 Trans #: 15075576  
 Document Sequence Number  
 MTDG2015003421

Recording Fees:

RECORDING	\$45.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
MTG AFF \$5	\$5.00

**Consideration Amount: 900000.00**

BASIC MT	\$4,500.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$2,225.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

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**Total: \$6,795.00**

STATE OF NEW YORK  
 ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Christopher L. Jacobs  
 County Clerk

R+R : Rodney Fine Esq.  
Case 1:21-cv-00537 Document 1-4 Filed 04/22/21 Page 3 of 7  
727 Main St. Suite 200  
Niagara Falls, NY 14301

## MORTGAGE

**THIS MORTGAGE**, made the 12th day of May, 2015, between AMY MACKINNON, 6575 Meghan Rose Way, E. Amherst, New York 14051, the mortgagor, and MATTHEW MACKINNON, 1523 East Avenue, Rochester, New York 14610, the mortgagee.

**WITNESSETH**, that to secure the payment of an indebtedness in the sum of Nine Hundred Thousand Dollars (\$900,000.00) and No Cents, lawful money of the United States, to be paid according to a certain Note bearing the same date herewith, the mortgagor hereby mortgages to the mortgagee property commonly referred to as 6575 Meghan Rose Way, E. Amherst, New York 14051, and more specifically described as follows:

**ALL THAT CERTAIN PIECE OR PARCEL OF LAND**, situate, lying and being in the Town of Clarence, County of Erie and State of New York, being part of Lot 1, Section 16, Township 12, Range 6 of the Holland Land Company's Survey and being more particularly bounded and described as follows:

COMMENCING at a point in the north line of said Lot 1, 1337.16 feet west of the northeast corner of said Lot 1, said line also being the centerline of County Road (90 feet wide); thence S 00° 29' 02" E and along a line parallel to the east line of said Lot 1, 1892.26 feet to a point; thence S 90° 00' 00", 972.66 feet to the principal place of beginning; thence continuing S 90° 00' 00" W and along a line parallel by deed to the south line of said Lot 1, 111.18 feet to a point; thence N 01° 21' 28" W and parallel to the west line of said Lot 1, 28.59 feet to a point; thence N 90° 00' 00" W, 338.82 feet to the northwest corner of land conveyed by deed recorded in Erie County Clerk's Office on Liber 6463 of Deeds at page 145; thence N 01° 21' 28" W and parallel to the west line of said Lot 1, 350.00 feet to a point; thence N 90° 00' 00" E, 430.36 feet to a point in the west line of Meghan Rose Way; thence southerly along the west line of said Meghan Rose Way and along a curve to the right, having a radius of 58.00 feet, an arc distance of 50.58 feet to a point; thence S 01° 21' 28" E, 334.17 feet to the point or place of beginning.

**TOGETHER** with all right, title and interest of the mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises;

**TOGETHER** with all fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning, and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other equipment and machinery, appliances, fitting, and fixtures of every kind in or used in the operation of the buildings standing on said premises, together with any and all replacements thereof and additions thereto;

9381X *[Signature]* MTG - 4 253 aff.  
CL.A

**TOGETHER** with all awards heretofore and hereafter made to the mortgagor for taking by eminent domain the whole or any said part of said premises or any easement therein, including any awards for changes of grades of street, which said awards are hereby assigned to the mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefore, and to apply the same towards the payment of the mortgage debt, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said mortgagor hereby agrees, upon request, to make execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

**AND THE MORTGAGOR COVENANTS WITH THE MORTGAGEE AS FOLLOWS:**

1. That the mortgagor will pay the indebtedness as hereinbefore provided.
2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.
3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.
4. That the whole of said principal sum and interest shall become due at the option of the mortgagee: after default in the payment of any installment of principal or of interest for 15 days; or after default in the payment of any tax, water rate or assessment for 15 days after notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided.
5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver along with reasonable attorney fees.
6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.
7. That the mortgagor within 15 days upon request in person or within 15 days upon request by mail will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt.

8. That notice and demand or request may be in writing and may be served in person or by mail.
9. That the mortgagor warrants the title to the premises.
10. That the mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.
11. That as additional security, at the time of executing this mortgage, the mortgagor is also executing a deed in lieu of foreclosure which is to be held in escrow by the mortgagee. In the event that the mortgagor is in default for the payments of any monies due under this mortgage, then the mortgagee shall give the mortgagor thirty (30) days written notice by certified mail of the default and if the default is not cured within the thirty (30) days, then the mortgagee, at their option, may record the deed in lieu of the foreclosure without the need for any additional notice to be provided to the mortgagor.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

Amy MacKinnon  
Amy MacKinnon

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss.:  
                        )

On the 12 day of May in the year 2015, before me, the undersigned, personally appeared Amy MacKinnon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(signature and office of individual taking acknowledgment)

RODNEY A. GROVE  
Notary Public, State of New York  
Qualified in Niagara County  
Commission expires March 11, 2018

**SCHEDULE A**

**ALL THAT TRACT OR PARCEL OF LAND** situate in the City of Lockport, County of Niagara and State of New York, being part of Lots 7 and 9, Section 15, Township 14, Range 6 of the Holland Land Company's Survey and according to a certain map prepared by Jesse P. Haines in 1845 with additional in 1866 and filed in the Niagara County Clerk's Office on November 21, 1866 in Book 25 of Microfilmed Maps page 2433, is known as Lot 25 on the northwest side of Olcott Street.

**This property is, or will be, improved by  
a one or two family residence or dwelling.**

**EXEMPTION AFFIDAVIT—TAX LAW § 253.1-a**

STATE OF NEW YORK )  
                         ) ss:  
COUNTY OF NIAGARA )

Rodney A. Giove, being duly sworn, deposes and says as follows:

1. That I am an attorney practicing law at Giove Law Office, P.C., Niagara Falls, New York, and am familiar with the mortgage hereinafter described and the facts therein set forth.
2. That the following Mortgage was executed and is being presented for recording in the Erie County Clerk's Office:

MORTGAGOR(S): Amy MacKinnon

MORTGAGEE(S): Matthew MacKinnon

PROPERTY: 6575 Meghan Rose Way, E. Amherst, New York

AMOUNT OF MORTGAGE: \$900,000.00

3. That the premises described in the Mortgage consist of real property:

X Improved by a structure which contains one to six dwelling units with separate cooking facilities;

— Vacant Land which will be improved by a structure which shall contain one to six dwelling units with separate cooking facilities.

4. The Mortgagee(s) are natural persons.

5. Exemption from the special additional Mortgage Tax described in Section 253.1-a of Article 11 of the Tax Law of the State of New York is hereby claimed.

Rodney A. Giove

STATE OF NEW YORK )  
                         ) ss.:  
COUNTY OF NIAGARA )

On the D day of May in the year 2015, before me, the undersigned, personally appeared Rodney A. Giove, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public

**Jaclyn Pendola**  
Commissioner of Deed  
City of Niagara Falls  
Commission Expires March 31, 2016