

**ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
BEST INTEREST RATE MORTGAGE COMPANY, LLC
AND MICHAEL DIPLACIDO, INDIVIDUALLY**

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
In re: BEST INTEREST RATE MORTGAGE COMPANY Respondent: BEST INTEREST RATE MORTGAGE COMPANY, LLC A NEW JERSEY LIMITED LIABILITY COMPANY AND MICHAEL DIPLACIDO, INDIVIDUALLY	
JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, First Assistant Attorney General 1525 Sherman Street, 7 th Floor Denver, CO 80203 Phone: (303) 866-5079 Fax: (303) 866-4916 Email: Andrew.McCallin@state.co.us	
ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH BEST INTEREST RATE MORTGAGE COMPANY, LLC	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers, Attorney General and Best Interest Rate Mortgage Company, LLC ("Respondent" or "BIRMCO") and Michael DiPlacido, individually. This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2008), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Respondent.

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I. PARTIES

1. John W. Suthers is the duly elected Attorney General for the State of Colorado (“Attorney General”) and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), §§ 6-1-101, *et seq.*, C.R.S. (2008)

2. Respondent Best Interest Rate Mortgage Company, LLC is a New Jersey limited liability company with its principal place of business at 216 Haddon Ave, Suite 405, Westmont, New Jersey 08108. BIRMCO’s agent for service of process in Colorado is National Registered Agents Inc. BIRMCO is registered with the Colorado Secretary of State as a foreign entity. Michael DiPlacido is BIRMCO’s President.

3. BIRMCO and its employees, independent contractors, brokers, salespersons, or agents have negotiated or offered to negotiate loan modifications for Colorado consumers, and generated leads of Colorado consumers wishing to refinance or modify their existing mortgage loans.

II. FACTUAL BACKGROUND

4. Pursuant to the CCPA, Colorado Attorney General John W. Suthers has conducted an investigation into the advertising and business activities of Respondent.

A. Respondent allegedly sent misleading and deceptive direct mail solicitations to Colorado consumers.

5. Respondent sent an advertisement including the phrase “PAYMENT REDUCTION NOTIFICATION” to Colorado consumers. The Attorney General alleges that

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top portion of the direct mail piece was formatted to appear as a government document. See Exhibit A.

6. In the body of the advertisement it states "President Obama's new Homeowner Affordability and Stability Plan offers a number of options that BIRMCO can use on your behalf to lower your monthly payment..." Only the acronym "BIRMCO" is used to identify Respondent and BIRMCO's address is not provided. The Attorney General alleges that this was done to make it appear that BIRMCO is a government agency.

7. Respondent sent direct mail pieces to Colorado consumers who were in foreclosure. In order to use Respondent's services the consumer was required to pay an upfront fee, a portion of which was non-refundable. The Colorado Foreclosure Protection Act prohibits a foreclosure consultant from collecting an upfront fee. § 6-1-1107(1)(a), CRS.

B. Respondent's Agents Allegedly Acted as Mortgage Brokers Without Proper Licenses.

8. The Director of the Division of Real Estate takes the position that "persons who directly or indirectly negotiate, originate or offer or attempt to negotiate or originate loan modifications for a borrower and for a commission or other thing of value are required to be licensed as mortgage brokers" and that "persons who directly supervise individuals who negotiate, originate, or offer or attempt to negotiate or originate loan modifications for a

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commission or other thing of value are required to be licensed as mortgage brokers.” (Ex. B, Division of Real Estate, Position Statement MB 1.5 – Loan Modifications, Nov. 19, 2008.)

9. Although Respondent’s agents offered to negotiate or originate loan modifications for Colorado borrowers, Respondent does not have employees or independent contractors who are licensed as mortgage brokers by the Colorado Division of Real Estate.

10. As such, the Attorney General alleges that Respondent and their agents negotiated, originated, or offered to negotiate or originate loan modifications without mortgage broker licenses in violation of §§ 6-1-105(1)(z) and 12-61-903(1)(a), C.R.S. (2008).

C. Summary

11. The Attorney General alleges that the solicitations made by Respondent to Colorado consumers were misleading and deceptive, may have caused significant financial harm to Colorado consumers, and has the potential to continue.

12. The Attorney General also alleges that Respondent’s activities violate the CCPA, including but not limited to §§ 6-1-105(1) (c), (e), (u), (z), (uu), (xx) & (bbb) C.R.S. (2008) and § 6-1-1107(1)(a) and (b) C.R.S.(2008).

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III. CONSIDERATION

13. Respondent denies any wrongdoing, including specifically any violation of the CCPA, and this Assurance shall not be deemed an admission by Respondent of any violation for any purpose

14. Nevertheless, Respondent is willing to enter in this Assurance to avoid further costs and litigation.

15. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondent arising out of the conduct alleged in Section II, Factual Background, of this Assurance.

IV. ASSURANCES

16. The Assurances in this Section IV and enforcement provisions in Section V shall apply to Respondent, its principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, any person acting on behalf of Respondent and to DiPlacido.

17. Respondent will not target advertisements directly to Colorado consumers. The term "advertisements" includes all advertisements, marketing or promotional materials issued by Respondent, including but not limited to, newspaper and magazine advertisements, direct mail solicitations, flyers, brochures, emails, faxes, telemarketing, billboards, envelopes, and banner or pop-up advertising that is disseminated electronically.

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18. Respondent will not solicit for or accept any new customers for mortgage modifications in Colorado.

19. Respondent will use its best efforts to obtain a mortgage modification for the Colorado consumers listed on Exhibit C, or enroll such Colorado consumer in the Trial Period of the Federal H.A.M.P. program, in either case no later than December 31, 2009. If, for any such Colorado consumer, neither a modification nor Trial Period enrollment is in place as of such date, Respondent will refund the fees paid to BIRMCO by the consumer minus four hundred dollars which may be retained by Respondent for the work performed. The Parties agree that Exhibit C will remain confidential pursuant to § 6-1-110(2), CRS and that the identities or other information related to these consumers will not be disclosed to anyone.

20. Respondent shall provide monthly status reports by the 15th day of October, November, and December to the Colorado Attorney General as to the status of modifications or when refunds have been issued for each consumer identified in Exhibit C.

21. Respondent will provide a final status report due on Jan 15th, 2010 to show final disposition on all Colorado consumers to show date modified or refund issued.

22. Respondent shall comply with the CCPA as now constituted or as may be amended in conducting business in the State of Colorado; the federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* ("TILA"); the Uniform Consumer Credit Code, §§ 5-1-101 through 5-13-

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105, C.R.S. (2008) (“UCCC”); and the Colorado Mortgage Broker Licensing Act, §§ 12-61-101, *et seq.*

23. Respondent shall comply with all applicable rules and regulations implementing the laws set forth in the preceding paragraph.

24. Within ten (10) business days of executing this Assurance, Respondent will provide the Colorado Attorney General with the names, company names, addresses telephone numbers, and email addresses of all persons other than employees of Respondent who assisted it in creating and/or disseminating the direct mail solicitation attached as Exhibit A.

V. ENFORCEMENT

25. The obligations set forth in this Assurance are continuing under this Assurance.

26. Proof of a violation of any of the terms of this Assurance by a preponderance of the evidence shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2008). Upon a violation of any of the terms of this Assurance by Respondent, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

27. In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Respondent as if the parties

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had fully litigated all issues contained herein, upon a showing by the Attorney General of a violation by Respondent of this Assurance. In such event, Respondent agree to waive any and all defenses and counterclaims it may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

28. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2008), or under any other statutes through claims or actions in common law, provided that this Assurance shall not in any way be construed in such an action as an admission on the part of Respondent.

29. Nothing in this Assurance shall be construed to release claims held by any other governmental authority, except claims arising from alleged violations by Respondent of the Colorado Consumer Protection Act or the Colorado Foreclosure Protection Act.

30. Pursuant to § 6-1-110(2), C.R.S. (2008), this Assurance shall be a matter of public record.

31. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute the Assurance.

32. The person who signs this Assurance in a representative capacity for Respondent warrants that he or she is duly authorized to do so. Respondent acknowledge that it has had a full opportunity to review this Assurance and consult with legal counsel regarding same. Respondent agrees and represents that it has read and understands this Assurance, that it

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accepts the legal consequences involved in signing it, and that there are no other representations, agreements or understandings between Respondent and the Attorney General that are not stated in writing herein.

33. Respondent and its principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, and any person acting on behalf of Respondent agrees to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to enforce the CCPA against any other entity. Included within this cooperation agreement are the obligations to:

- a) Appear for hearings, depositions or provide testimony in any form, including affidavits. All such testimony shall be truthful;
- b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Attorney General; and
- c) Accept a subpoena from the Attorney General without the need for service of process, if a copy of such subpoena is sent to Markley S. Roderick, Esq. at the address set forth below.

34. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

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To: Respondent Best Interest Rate Mortgage Company, LLC

216 Haddon Avenue, Suite 405
Westmont, NJ 08108
Email: miked@birmco.com
Phone: (856)854-3355
Fax: (856)854-1771

With a copy to:

Markley S. Roderick, Esq.
Flaster/Greenberg P.C.
1810 Chapel Avenue West
Cherry hill, NJ 08002
Phone: (856)661-2265
Fax: (856) 661-1919
Email: mark.roderick@falstergreenberg.com

To The Attorney General at:

Andrew McCallin
First Assistant Attorney General
Antitrust, Tobacco, and Consumer Protection Unit
Consumer Protection Section
1525 Sherman Street – 7th Floor
Denver, CO 80203
Email: Andrew.McCallin@state.co.us
Phone: (303) 866-5134
Fax: (303) 866-4916

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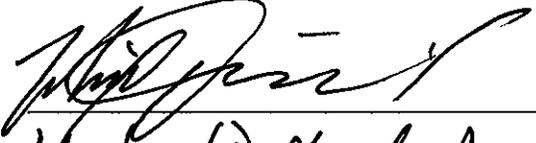
Dated: 10/26/09

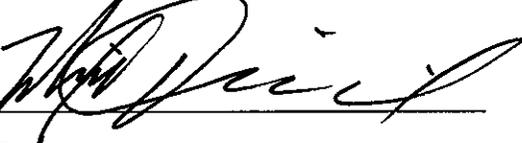
Dated: 10/26/09

RESPONDENT:

BEST INTEREST RATE
MORTGAGE COMPANY, LLC

MIKE DIPLACIDO
INDIVIDUALLY

By: 

By: 

Michael DiPlacido, President
Print Name and Title

Dated: 11/3/09

JOHN W. SUTHERS
Attorney General



ANDREW P. MCCALLIN
First Assistant Attorney General
Consumer Protection Section

STATE OF COLORADO

Division of Real Estate
Erin Toll
Director

Department of Regulatory Agencies
D. Rico Munn
Executive Director



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www.dora.state.co.us/real-estate

Bill Ritter, Jr.
Governor

Department of Regulatory Agencies

Division of Real Estate

Position Statement

MB 1.5 – Loan Modifications

- Section 1. Scope and Purpose
- Section 2. Definitions
- Section 3. Applicability
- Section 4. Position Statement
- Section 5. Issuance Date

Section 1. Scope and Purpose

The Director of the Division of Real Estate finds that a position statement regarding loan modifications is necessary in order to provide clarity to the industry. The Director has learned of individuals negotiating loan modification terms for borrowers and has received many inquiries regarding the applicability of current mortgage broker law. Specifically, individuals are communicating directly with borrowers and borrowers' lenders in order to negotiate terms of a loan modification. In many instances, Colorado consumers are being charged high up front fees regardless of services rendered. The Director has also learned that consumers are being advised to cease making mortgage payments, even when already delinquent on payments. Additionally, there are existing loan modification services that are offered by U.S. Department of Housing and Urban Development (HUD) approved non-profit 501(c)3 agencies which employ housing counselors around the State of Colorado. Such HUD-approved services are offered by housing counselors for free and are not associated with any compensation or other benefit from the borrower to the housing counselor. The purpose of this position statement is to clearly notify loan modifiers (those who engage in the act of directly or indirectly negotiating a loan modification) of the applicability of Colorado mortgage broker law.

Section 2. Definitions

1. Short sale - A short sale is the sale of a real property for less than the mortgage loan balance. In the settlement of the short sale transaction the existing mortgage is extinguished. Any deficiency created from the settlement of the transaction may be transformed into a promissory note, charged off, forgiven, or pursued as a judgment against the previous owner.



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2. Loan modification - A Loan Modification is a permanent change in one or more of the terms of a mortgagor's existing loan, allows the loan to be reinstated, and often results in a more affordable mortgage payment. The borrower retains ownership of the real property and the mortgage note and deed of trust remain intact.

Section 3. Applicability

This position statement concerns individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 4. Position Statement – MB 1.5 – Loan Modifications

1. Section 12-61-902(2), C.R.S. defines brokering a mortgage as meaning to directly or indirectly act as a mortgage broker. It is the Director's position that individuals offering or negotiating loan modifications are, at a minimum, indirectly acting as mortgage brokers. Pursuant to section 12-61-903(1)(a), Colorado Revised Statutes, all persons who meet the definition of broker a mortgage are required to be licensed. As a result, persons who directly or indirectly negotiate, originate or offer or attempt to negotiate or originate loan modifications for a borrower, and for a commission or other thing of value are required to be licensed as mortgage brokers.
2. Additionally, persons who directly supervise individuals who negotiate, originate, or offer or attempt to negotiate or originate loan modifications for a commission or other thing of value are required to be licensed as mortgage brokers.
3. In addition to the licensing requirements, all individuals who directly or indirectly negotiate loan modifications for borrowers and their direct supervisors are required to comply with all other provisions of Colorado mortgage broker law and Director rules. This includes, but is not limited to:
 - a. A duty of good faith and fair dealing in all communications and transactions with borrowers;
 - b. A prohibition against making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;

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