

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

COMMISSIONER OF BANKS  
MORTGAGE LENDER AND  
MORTGAGE BROKER  
LICENSING  
Docket No. 2021-0006

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In the Matter of )  
Mutual of Omaha Mortgage, Inc. )  
San Diego, CA )  
NMLS No. MC1025894 )  

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CONSENT ORDER

WHEREAS, Mutual of Omaha Mortgage, Inc. ("Mutual of Omaha" or the "Company"), with its main office located at 3131 Camino Del Rio North, Suite 3100, San Diego, California 92108, has been advised of its right to Notice and Hearing pursuant to Massachusetts General Laws (M.G.L.) chapter 255E, section 7(a), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER ("Consent Agreement") with representatives of the Division of Banks ("Division") dated February 7, 2022, whereby, solely for the purpose of settling this matter, and without admitting any allegations or implications of fact or the existence of any violation of state or federal laws and regulations governing the conduct and operation of a mortgage lender and mortgage broker, Mutual of Omaha agrees to the issuance of this CONSENT ORDER ("Consent Order") by the Commissioner of Banks ("Commissioner");

WHEREAS, the Division of Banks ("Division"), through the Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in the business of a mortgage lender and mortgage broker in Massachusetts pursuant to M.G.L. chapter 255E, section 2;

WHEREAS, Mutual of Omaha is, and at all relevant times, has been a foreign company conducting business in the Commonwealth of Massachusetts. The main office of Mutual of Omaha is located at 3131 Camino Del Rio North, Suite 3100, San Diego, California 92108;

WHEREAS, Mutual of Omaha is licensed by the Commissioner as a mortgage lender and mortgage broker under M.G.L. chapter 255E, section 2. According to records maintained on file with the Division, the Commissioner initially issued mortgage company license number MC1025894 to Mutual of Omaha, covering both mortgage broker and mortgage lender license types, on or about November 12, 2019;

WHEREAS, M.G.L. chapter 93A, section 2(a) states, “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”;

WHEREAS, regulation 940 Code of Massachusetts Regulations (C.M.R.) 8.06(1) states, “It is an unfair or deceptive act or practice for a mortgage broker or lender to make any representation or statement of fact in an advertisement if the representation or statement is false or misleading or has the tendency or capacity to be misleading, or if the mortgage broker or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.”;

WHEREAS, regulation 209 C.M.R. 42.12A(9) states, “It is a prohibited act or practice for a mortgage broker or mortgage lender to make false promises to influence, persuade, or induce a consumer to sign a mortgage loan application or mortgage loan documents.”;

WHEREAS, pursuant to M.G.L. chapter 255E, section (7)(b) and M.G.L. chapter 255E, section 11, the Commissioner issued a Temporary Order to Cease and Desist and Notice of Administrative Penalty ("Order"), Docket No. 2021-0006 against Mutual of Omaha on January 4,

2022, based upon information reflected in a solicitation ("Solicitation") sent by Mutual of Omaha to Massachusetts consumers;

WHEREAS, in recognition of the Division and Mutual of Omaha having reached the following mutual agreement under this Consent Order to fully resolve the matters raised by the Order, and without Mutual of Omaha admitting to any allegations or implications of fact contained therein, the Commissioner has terminated the Order on this 7th day of February, 2022; and

WHEREAS, the parties now seek to resolve by mutual agreement, the matters identified in the Order.

#### ORDER

NOW COME the parties in the above-captioned matter, the Division and Mutual of Omaha, and stipulate and agree as follows:

1. Mutual of Omaha shall revise its practices and procedures to ensure that all solicitations and advertising materials used by the Company do not contain any representations or statements that could be considered false, misleading, or have the tendency or capacity to be misleading.
  - a. Mutual of Omaha shall take all necessary steps to ensure that the Solicitation or any similar solicitations or advertisements will not be published or distributed to consumers in Massachusetts;
  - b. Mutual of Omaha shall review, revise, and enhance its system of internal controls to monitor the Company's compliance with the laws and regulations applicable to soliciting and advertising practices including, but not limited to M.G.L. 93A, section 2(a), M.G.L. 255E, section 4, the Division's regulations 209 C.M.R.

42.03(2)(c), 209 C.M.R. 42.06(2)(b)(2), and 209 C.M.R. 42.12A(9), and the Office of the Attorney General's regulation 940 CMR 8.06(1);

- c. Mutual of Omaha shall review, revise, and enhance its policies and procedures to ensure that all solicitations and advertisements are thoroughly reviewed by senior management prior to publication or distribution to consumers. Such procedures shall include a review of the criteria utilized to generate any advertisement or mailing list to ensure that targeted advertisements or solicitations are appropriate for the Massachusetts consumers to whom they are distributed; and
  - d. A copy of each solicitation and/or advertisement used by Mutual of Omaha shall be retained in the Company's books and records, and such records shall be made available to the Division during its examinations/inspections of the Company.
- 2. Mutual of Omaha has submitted a payment of twenty-five thousand dollars (\$25,000.00) in satisfaction of an administrative penalty collected in consideration of Mutual of Omaha's distribution of the Solicitation.
  - 3. Nothing in this Consent Order shall be construed as permitting the Company to violate any law, rule, regulation, or regulatory bulletin to which the Company is subject.
  - 4. Failure to comply with the terms of this Consent Order shall constitute grounds for formal regulatory action pursuant to applicable provisions of the General Laws of the Commonwealth of Massachusetts.
  - 5. This Consent Order shall become effective immediately upon the date of its issuance.
  - 6. The provisions of this Consent Order shall be binding upon the Company and their respective subsidiaries, officers and directors, successors and assigns, and those

- persons in active participation with them, directly or indirectly, acting individually or through any corporate or other entity.
7. In consideration of this Consent Order, the Division agrees not to pursue any other remedial measures, sanctions or penalties relative to this matter unless the Division is made aware of material information that is not addressed in this Consent Order, or if the Company fails to comply with the terms of this Consent Order.
  8. The provisions of this Consent Order shall not limit, estop, or otherwise prevent any other state agency or department, from taking any other action under separate authority affecting the Company, or any of their officers and directors, or their successors or assigns.
  9. The provisions of this Consent Order shall remain effective and enforceable except to the extent that, and until such time as the Commissioner or a court of competent jurisdiction modifies, terminates, suspends, or sets aside any provision of this Consent Order.
  10. In accordance with the terms of the Consent Agreement entered into by the Company and the Commissioner, the Company has waived all rights of appeal that they may have relative to this Consent Order or any of its provisions.
  11. This Consent Order and the Consent Agreement are the complete documents representing the resolution of this matter. There are no other agreements between the Division and Mutual of Omaha.

BY ORDER AND DIRECTION OF THE COMMISSIONER OF BANKS:

Dated at Boston, Massachusetts, this 7th day of February, 2022.

By:

/s/ Mary L. Gallagher

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Mary L. Gallagher  
Commissioner of Banks