DEPARTMENT OF REAL ESTATE
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FILED

JUL 29 2009

DEPARTMENT OF REAL ESTATE

By

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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TO: MORTGAGE DELINQUENCY SOLUTIONS LLC, DAVID WAYNE WHEELER, and ALLEN CARL KAPLAN	NO. H-2407 FRESNO ORDER TO DESIST AND REFRAIN (B&P Code Section 10086)

The Commissioner (hereinafter "Commissioner") of the California Department of Real Estate (hereinafter "Department") caused an investigation to be made of the activities of MORTGAGE DELINQUENCY SOLUTIONS LLC (MDS), DAVID WAYNE WHEELER (Wheeler), and ALLEN CARL KAPLAN (Kaplan). Based on that investigation, the Commissioner has determined that MDS, Wheeler, and Kaplan have engaged in, are engaging in, or are attempting to engage in, acts or practices constituting violations of the California Business and Professions Code (hereinafter "Code") and/or Title 10, California Code of Regulations (hereinafter "Regulations"), including engaging in the business of, acting in the

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capacity of, advertising, or assuming to act as, a real estate broker in the State of California within the meaning of Section 10131(d) (performing services for borrowers or lenders in connection with loans secured by real property) of the Code. Based on the findings of that investigation, as set forth below, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under authority of Section 10086 of the Code.

FINDINGS OF FACT

1. At no time mentioned herein has MDS been licensed by the Department in any capacity. MDS is, and has been, owned and operated by Wheeler and Kaplan.

2. Wheeler is licensed by the Department as a real estate salesperson, and his license expires on December 6, 2010. Wheeler is licensed to real estate broker Salvatore Frank Rombi. Wheeler's license has been disciplined by the Department in case number H-7634 SF, effective April 12, 1999. Kaplan is licensed by the Department as a real estate broker, and his license expires on September 24, 2009.

3. Whenever reference is made in this Desist and Refrain Order to an act or omission of MDS, such reference shall be deemed to mean that the owners, officers, directors, employees, agents, partners, joint venturers, affiliates, associates, and real estate licensees employed by or associated with said entity committed such act or omission while engaged in the furtherance of the business or operations of said entity and while acting within the course and scope of their corporate or other authority and employment.

4. For an unknown period of time prior to March 13, 2008, until and including the date of filing this Desist and Refrain Order, MDS, Wheeler, and Kaplan, for or in expectation of compensation, solicited borrowers in general by advertising in the Monterey

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Herald, offering the services of MDS to help borrowers who were delinquent in their mortgage payments implement a plan and scheme whereby the borrowers would do one or more of the following acts: transfer their interest in the borrowers' real property to MDS; remain in their home after it had been transferred to MDS; and repurchase their home from MDS at a substantially reduced price. As a part of the plan and scheme, MDS agreed to do one or more of the following acts: reduce or eliminate all mortgage payments the borrowers had to pay for the property; negotiate the reduction of all liens on the borrower's property; pay all liens and clear title to the property; allow the borrower to share in any profits from the sale of the property to a third party; and allow the borrower to repurchase the property from MDS. In connection with the services offered by MDS, Wheeler, and Kaplan, MDS charged and collected an advance fee, as that term is defined in Section 10026 of the Code, of between $495 and $1,995 for their proposed services, as set out above. All of the acts mentioned above fall under the category of "performing services for borrowers or lenders in connection with a loan secured by an interest in real property", acts which require a real estate license under Section 10131(d) of the Code. In addition, the charging and collection of an advance fee requires both a current California real estate broker license, and also treatment of the advance fees collected as "trust funds", as provided in Sections 10145 and 10146 of the Code and Section 2832 of the Regulations.

5. MDS and each of its agents, affiliates and employees, including Wheeler and Kaplan, who were doing the acts referred to in paragraph 4 above in the name of and/or on behalf of MDS, violated Section 10130 of the Code by engaging in the activities described in Paragraph 4, above, in the name of or on behalf of MDS without first obtaining a real estate broker license for MDS from the Department. MDS also violated Section 10138 of the Code by compensating Wheeler for any of the acts referred to in paragraph 4 above at a time that Wheeler was not licensed as a real estate broker. MDS also violated Section 10131.2 of the Code by charging and collecting advance fees when it was not licensed as a real estate broker.

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6. Wheeler violated Section 10137 of the Code by engaging in the activities described in Paragraph 4, above, specifically by being employed by MDS and/or accepting compensation from anyone other than Wheeler's employing real estate broker on the Department's records.

7. MDS, Wheeler and Kaplan are in violation of Sections 10130, 10137 and 10138 of the Code by engaging in the activities described in Paragraphs 4 through 6, above, in the name of or on behalf of MDS without MDS first obtaining a real estate broker license from the Department.

CONCLUSIONS OF LAW

8. Based on the information contained in paragraphs 1 through 7, MDS, Wheeler, and Kaplan

a) solicited borrowers or lenders, negotiated loans, and/or performed services for those borrowers and/or those borrowers' lenders in connection with loans secured or to be secured directly or collaterally by one or more liens on real property, which requires a real estate license under Section 10131(d) of the Code in the name of or on behalf of MDS, during a period of time when MDS did not have a real estate broker licensee pursuant to Sections 10130 of the Code, and when Wheeler was not licensed by the Department under a broker license properly issued to MDS as Wheeler's employer; and

b) charged and collected advance fees in the name of or on behalf of MDS while MDS was not licensed as a real estate broker, as required by Section 10131.2 of the Code.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein:

A. MORTGAGE DELINQUENCY SOLUTIONS LLC, doing business under your own name, or any other names, IS HEREBY ORDERED to:

1. Immediately desist and refrain from performing any acts within the State

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of California for which a real estate broker license is required. In particular you are ordered to desist and refrain from soliciting borrowers or lenders and/or performing services for borrowers or lenders in connection with loans secured or to be secured directly or collaterally by one or more liens on real property, and particularly with respect to loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services.

2. Immediately desist and refrain from employing individuals to perform any acts within the State of California for which a real estate broker license is required, unless and until such individuals obtain a real estate broker license issued by the Department.

3. Immediately desist and refrain from demanding or collecting advance fees, as that term is defined in Section 10026 of the Code, in any form and particularly with respect to loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services, unless and until you demonstrate and provide evidence satisfactory to the Commissioner that you have:

(a) Been properly licensed by the Department as a real estate broker;

(b) An advance fee agreement which has been submitted to the Department and which is in compliance with Sections 2970 and 2972 of the Regulations;

(c) Placed all previously collected advance fees into a trust account for that purpose and are in compliance with Section 10146 of the Code; and

(d) Provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations.

B. DAVID WAYNE WHEELER IS HEREBY ORDERED to:

1. Immediately desist and refrain from performing any acts within the State of California for which a real estate broker license is required unless and until you either obtain a real estate broker licensee; a real estate broker/officer license pursuant to Sections 10159 and 10211 of the Code if you work for or on behalf of a corporate real estate broker; or until you

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work under the direct supervision and control of a properly licensed individual California real estate broker to whom you are licensed on the records of the Department. In particular you are ordered to desist and refrain from soliciting borrowers or lenders and/or performing services for borrowers or lenders in connection with loans secured or to be secured directly or collaterally by one or more liens on real property, and particularly with respect to loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services.

2. Immediately desist and refrain from demanding or collecting advance fees, as that term is defined in Section 10026 of the Code, in the name of or on behalf of MDS or any other entity, except a California real estate broker to whom you are properly licensed, and by whom you are employed and directly supervised.

C. ALLEN CARL KAPLAN IS HEREBY ORDERED to:

1. Immediately desist and refrain from performing any acts within the State of California for which a real estate broker license is required in the name of or on behalf of MDS unless and until MDS obtains a corporate real estate broker licensee. In particular you are ordered to desist and refrain from soliciting borrowers or lenders and/or performing services for borrowers or lenders, in the name of or on behalf of MDS, in connection with loans secured or to be secured directly or collaterally by one or more liens on real property, and particularly with respect to loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services; and,

2. Immediately desist and refrain from demanding or collecting advance fees, as that term is defined in Section 10026 of the Code, in the name of or on behalf of MDS, in any form and particularly with respect to loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services, unless and until you demonstrate and provide evidence satisfactory to the Commissioner that MDS has:

(a) Been properly licensed by the Department as a real estate broker;

(b) An advance fee agreement which has been submitted to the Department and which is in compliance with Sections 2970 and 2972 of the Regulations;

(c) Placed all previously collected advance fees into a trust account for that purpose and are in compliance with Section 10146 of the Code; and

(d) Provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations.

DATED: 7-27-09

JEFF DAVI
Real Estate Commissioner

By _____
BARBARA BIGBY
Chief Deputy Commissioner

-NOTICE-

Business and Professions Code Section 10139 provides that "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000). . . ."

cc: Mortgage Delinquency Solutions LLC
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