

Terms Completed

ORDER SUMMARY – Case Number: C-15-1647

Name: American Pacific Mortgage Corporation

Order Number: C-15-1647-16-CO01

Effective Date: September 9, 2016

License Number: NMLS No. 1850
Or NMLS Identifier [U/L]

License Effect: N/A

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: N/A

Investigation Costs	\$4,009.36	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$90,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments: Respondent agrees to cease and desist advertising in a manner that violates the Consumer Loan Act, chapter 31.04 RCW, and agrees to at least one, and as many as two, examinations to determine whether Respondent is in compliance with the consent order.

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

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IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

No.: C-15-1647-16-CO01

CONSENT ORDER

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AMERICAN PACIFIC MORTGAGE
CORPORATION, NMLS # 1850,

Respondent.

COMES NOW the Director of the Department of Financial Institutions (Director), through his
designee Charles E. Clark, Division Director, Division of Consumer Services, and American Pacific
Mortgage Corporation (Respondent), by and through its counsel, John L. Bley, and finding that the
issues raised in the above-captioned matter may be economically and efficiently settled, agree to the
entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.04 of the Revised
Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the
following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and
Respondent have agreed upon a basis for resolution of the matters alleged in Statement of Charges
No. C-15-1647-15-SC01 (Statement of Charges), entered March 16, 2016, (copy attached hereto).
Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the
Administrative Procedure Act, Respondent hereby agrees to the Department's entry of this Consent
Order and further agrees that the issues raised in the above-captioned matter may be economically
and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully
resolve the Statement of Charges.

1 Based upon the foregoing:

2 A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter
3 of the activities discussed herein.

4 B. **Waiver of Hearing.** It is AGREED that Respondent has been informed of the right to a
5 hearing before an administrative law judge, and hereby waives its right to a hearing and any and all
6 administrative and judicial review of the issues raised in this matter, or of the resolution reached
7 herein. Accordingly, Respondent, by the signatures of its representative below, withdraws its appeal
8 to the Office of Administrative Hearings.

9 C. **Cease and Desist and Compliance with the Act.** It is AGREED that Respondent shall
10 cease and desist from advertising in a manner that violates RCW 31.04.027(1), RCW 31.04.027(2),
11 RCW 31.04.135, RCW 31.04.284, WAC 208-620-420, WAC 208-620-620, WAC 208-620-622, and
12 WAC 208-620-710.

13 D. **License Revocation.** It is AGREED that Respondent's license to conduct business in
14 Washington as a consumer loan company is subject to revocation by the Department. It is further
15 AGREED that the revocation of Respondent's consumer loan company license is STAYED
16 contingent upon Respondent's compliance with the terms of this Consent Order for a period of two
17 years from the date of entry of this Consent Order.

18 E. **Fine.** It is AGREED that Respondent shall pay a fine to the Department in the amount of
19 \$90,000.00 upon entry of this Consent Order.

20 F. **Investigation Fee.** It is AGREED that Respondent shall pay to the Department an
21 investigation fee in the amount of \$4,009.36 upon entry of this Consent Order. It is further AGREED
22 that the Fine and Investigation Fee shall be paid together in one cashier's check in the amount of
23 \$94,009.36, made payable to the "Washington State Treasurer."

1 **G. Compliance Examination.** It is AGREED that:

- 2 1. Respondent shall be subject to at least one examination by the Department to
3 determine compliance with this Consent Order. Such examination shall be scheduled
4 based upon the Department's availability between one and twelve months from the
5 date of entry of this Consent Order.
- 6 2. The Department may elect to conduct a second examination to determine compliance
7 with this Consent Order. If the Department elects to conduct such an examination, the
8 examination shall be scheduled based upon the Department's availability between
9 twelve and twenty four months from the date of entry of this Consent Order.
- 10 3. If, within two years from the date of entry of this consent order, the Department elects
11 to conduct an examination of Respondent for any reason other than to determine
12 compliance with this Consent Order, the Department may elect to combine such an
13 examination with an examination to determine compliance with this Consent Order.
- 14 4. Respondent shall be liable for and shall pay all costs of the examinations authorized
15 by WAC 208-620-590.

16 **H. Lifting of Stay.** It is AGREED that:

- 17 1. If the Department determines Respondent has not complied with this Consent Order
18 and seeks to lift the stay and revoke Respondent's consumer loan company license,
19 the Department will first serve Respondent with a written notice of noncompliance.
- 20 2. The notice of noncompliance will include:
- 21 a. A description of the alleged noncompliance;
- 22 b. A statement that the Department seeks to lift the stay and revoke
23 Respondent's consumer loan company license and impose the stayed fine;
- 24 c. Notice that Respondent can contest the allegations of noncompliance by
 either requesting an adjudicative hearing in writing or by submitting a
 written response to the allegations of noncompliance; and
- d. Notice that the process for lifting the stay applies only to this Consent
 Order.
3. Respondent will be afforded ten business days from the date of service of the notice
 of noncompliance to submit to the Department either a written request for an
 adjudicative hearing or a written response to the allegations of noncompliance.
4. If requested, the adjudicative hearing will be expedited and held within 15 business
 days of the Department's receipt of a timely request for an adjudicative hearing, or

1 as soon thereafter as can be scheduled by the Office of Administrative Hearings.
2 The parties will accommodate the prompt scheduling and holding of the hearing.

- 3 5. The scope and issues of the adjudicative hearing are limited solely to whether or not
4 Respondent failed to comply with the terms of this Consent Order.
- 5 6. At the conclusion of the adjudicative hearing the Administrative Law Judge will
6 issue an initial decision. Either party may subsequently file a Petition for Review
7 with the Director of the Department.
- 8 7. In lieu of requesting an adjudicative hearing, within ten business days from the date
9 of service of the notice of noncompliance, Respondent may submit to the
10 Department's a written response to the allegations of noncompliance for
11 consideration by the Department. The response must include a waiver of the right
12 to an adjudicative hearing, may address the allegations of noncompliance, and may
13 seek an alternative resolution to lifting the stay and revoking Respondent's
14 consumer loan company license.
- 15 8. **Default.** If Respondent does not timely request an adjudicative hearing or submit a
16 written response to the notice of noncompliance, the Department may lift the stay
17 and revoke Respondent's consumer loan company license without further notice.

18 I. **Authority to Execute Order.** It is AGREED that the undersigned have represented and
19 warranted that they have the full power and right to execute this Consent Order on behalf of the
20 parties represented.

21 J. **Non-Compliance with Order.** It is AGREED that Respondent understands that failure to
22 abide by the terms and conditions of this Consent Order may result in further legal action by the
23 Director. In the event of such legal action, Respondent may be responsible to reimburse the Director
24 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

K. **Voluntarily Entered.** It is AGREED that Respondent has voluntarily entered into this
Consent Order, which is effective when signed by the Director's designee.

L. **Completely Read, Understood, and Agreed.** It is AGREED that Respondent has read
this Consent Order in its entirety and fully understand and agree to all of the same.

1 M. **Counterparts.** This Consent Order may be executed by the Respondent in any number of
2 counterparts, including by facsimile or e-mail of a .pdf or similar file, each of which shall be deemed
3 to be an original, but all of which, taken together, shall constitute one and the same Consent Order.
4

5 **RESPONDENT:**

6 American Pacific Mortgage Corporation

7 By:

8 

9 William L. Lowman
President and CEO

9/6/16

Date

10 Approved for Entry:

11 

12 John L. Bley, WSBA No. 15230
Foster Pepper PLLC
13 Attorney for Respondent

9/7/16

Date

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DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 9th DAY OF September, 2016.



[Redacted signature]

CHARLES E. CLARK
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

[Redacted signature]

AMANDA J. HERNDON
Financial Legal Examiner

Approved by:

[Redacted signature]

STEVEN C. SHERMAN
Enforcement Chief

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

AMERICAN PACIFIC MORTGAGE
CORPORATION, NMLS # 1850,

Respondent.

No. C-15-1647-15-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER AN
ORDER TO CEASE AND DESIST, REVOKE
OR SUSPEND LICENSE, PROHIBIT FROM
INDUSTRY, TAKE AFFIRMATIVE
ACTION, IMPOSE FINE, AND COLLECT
INVESTIGATION FEE AND COSTS OF
PROSECUTION

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Charles E. Clark, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent. American Pacific Mortgage Corporation was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a consumer loan company on or about June 11, 2008, and continues to be licensed to date.

1.2 2011 Examination. In April and May 2011, the Department conducted a compliance examination of Respondent pursuant to the Act. The scope of the 2011 Examination included a review of Respondent's loans originated between April 30, 2009, to February 28, 2011, and Respondent's web advertisements online between April 19, 2011, and May 18, 2011. Based upon the

1 examination findings, the Department produced a Report of Examination (2011 ROE). In the 2011
2 ROE, the Department cited Respondent for the following violations:

- 3 A. Advertising rates or fees as the “lowest” or best;”
- 4 B. Transacting business using an unapproved trade name;
- 5 C. Failing to identify itself using its Washington consumer loan license name or an approved
6 trade name with the license name or license number;
- 7 D. Failing to include a link to the NMLS consumer access web site page for Respondent;
- 8 E. Failing to list the NMLS unique identifier for a mortgage loan originator (MLO)
9 immediately after the MLO’s name.

10 The Department mailed a copy of the 2011 ROE to Respondent on or about May 27, 2011. In
11 response to the 2011 ROE, Respondent stated that it corrected the violations and took steps to prevent
12 future violations.

13 **1.3 2013 Examination.** In March and April 2013, the Department conducted a supervisory watch
14 examination of Respondent pursuant to the Act. The scope of the 2013 Examination included a
15 review of Respondent’s web advertisements online between April 2, 2013, and April 3, 2013, to
16 determine whether Respondent implemented changes to correct violations identified in the 2011
17 ROE. Based upon the examination findings, the Department produced a Report of Examination
18 (2013 ROE). In the 2013 ROE, the Department cited Respondent for the following violations:

- 19 A. Advertising rates or fees as the “lowest” or best;”
- 20 B. Transacting business using an unapproved trade name;
- 21 C. Failing to identify itself using its Washington consumer loan license name or an approved
22 trade name with the license name and license number;
- 23 D. Failing to include a link to the NMLS consumer access web site page for Respondent;

1 E. Failing to list the NMLS unique identifier for a mortgage loan originator (MLO)
2 immediately after the MLO's name.

3 These are repeat violations from the 2011 ROE. The Department mailed a copy of the 2013 ROE to
4 Respondent on or about April 30, 2013. In response to the 2013 ROE, Respondent stated that it
5 corrected the violations and took steps to prevent future violations.

6 **1.4 2014 Examination.** In January 2014, the Department conducted a second supervisory watch
7 examination of Respondent pursuant to the Act. The scope of the 2014 Examination included a
8 review of Respondent's web advertisements online between January 22, 2014, and January 23, 2014,
9 to determine whether violations identified during previous examinations were corrected. Based upon
10 the examination findings, the Department produced a Report of Examination (2014 ROE). In the
11 2014 ROE, the Department cited Respondent for the following violations:

12 A. Advertising rates or fees as the "lowest" or best;"

13 B. Failing to list the NMLS unique identifier for a mortgage loan originator (MLO)
14 immediately after the MLO's name.

15 These are repeat violations from both the 2011 ROE and 2013 ROE. The Department mailed a copy
16 of the 2014 ROE to Respondent on or about February 19, 2014. In response to the 2014 ROE,
17 Respondent stated that it corrected the violations.

18 **1.5 Post-Examination Violations.** The Department visited Respondent's web sites on or about
19 October 28, 2014, September 2, 2015, December 3, 2015, and January 22, 2016, to determine
20 whether violations identified during the examinations were corrected. The following violations were
21 identified and continue to date:

22 A. Advertising rates or fees as the "lowest" or best;"

23 B. Transacting business using an unapproved trade name;

- 1 C. Failing to identify itself using its Washington consumer loan license name or an approved
2 trade name with the license name and license number;
- 3 D. Failing to include a link to the NMLS consumer access web site page for Respondent;
- 4 E. Failing to list the NMLS unique identifier for a mortgage loan originator (MLO)
5 immediately after the MLO's name.

6 These are repeat violations from the 2011 ROE, 2013 ROE, and 2014 ROE.

7 **1.6 Advertising Rates or Fees as the "Best" or "Lowest."** Between at least April 19, 2011, and
8 January 21, 2016, Respondent advertised online that Respondent's loans, loan terms, or loan rates
9 were the "best" or "lowest" on numerous web sites.

10 **1.7 Doing Business Using Unapproved Trade Names.** Between at least March 29, 2010, and
11 January 22, 2016, Respondent transacted business using trade names that the Department had not
12 approved, including www.davidhaleymortgage.com, The Viewmont Group, and Treehouse
13 Mortgage.

14 **1.8. Failing to Properly Identify Itself.** Between at least May 4, 2011, and December 3, 2015,
15 Respondent failed to identify itself by its Washington consumer loan license name or, when using an
16 approved trade name, failed to include its main office license number and main office license name.

17 **1.9 Failing to include NMLS Consumer Access Link.** Between at least April 19, 2011, and
18 January 21, 2016, Respondent failed to contain a link to the NMLS consumer access web site page
19 for the company on its home web page, branch office web pages, or loan originators' web pages.

20 **1.10 Failing to Display MLO Unique Identifier.** Between at least April 19, 2011, and January
21 21, 2016, Respondent failed to display MLOs' unique identifier closely following MLOs' license
22 name in advertisements and web sites.

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1 **1.11 On-Going Investigation.** The Department's investigation into the alleged violations of the
2 Act by Respondent continues to date.

3 **II. GROUNDS FOR ENTRY OF ORDER**

4 **2.1 False or Misleading Scheme, Artifice, or Device.** Based on the Factual Allegations set forth
5 in Section I above, Respondent is in apparent violation of RCW 31.04.027(1) for directly or
6 indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or
7 any person.

8 **2.2 Unfair or Deceptive Practices.** Based on the Factual Allegations set forth in Section I
9 above, Respondent is in apparent violation of RCW 31.04.027(2) for directly or indirectly engaging
10 in any unfair or deceptive practice toward any person.

11 **2.3 Unauthorized Trade Name.** Based on the Factual Allegations set forth in Section I above,
12 Respondent is in apparent violation of RCW 31.04.027(2), WAC 208-620-420, and WAC 208-620-
13 620 for engaging in an unfair or deceptive practice toward any person by failing to apply for or obtain
14 approval of the director for a trade name or for advertising with a trade name not approved by the
15 Director.

16 **2.4 False, Misleading, or Deceptive Advertisements.** Based on the Factual Allegations set forth
17 in Section I above, Respondent is in apparent violation of RCW 31.04.135 for advertising or
18 permitting to be advertised, in any manner whatsoever, any statement or representation with regard to
19 rates, terms, or conditions for the lending of money that is false, misleading, or deceptive.

20 **2.5 Failure to Display MLO Unique Identifier.** Based on the Factual Allegations set forth in
21 Section I above, Respondent is in apparent violation of RCW 31.04.284, WAC 208-620-622, and
22 WAC 208-620-710 for not clearly displaying the unique identifier of any mortgage loan originator on
23 all advertisements or websites.

1 **2.6 Negligent False Statements.** Based on the Factual Allegations set forth in Section I above,
2 Respondent is in apparent violation of RCW 31.04.027(8) for negligently making false statements to
3 the Department.

4 **2.7 Responsibility for Conduct of Employees.** Pursuant to RCW 31.04.027(2) and WAC 208-
5 620-372, a consumer loan licensee is responsible for any conduct violating the Act or the associated
6 rules by any person employed, or engaged as an independent contractor, to work in the business
7 covered by the consumer loan license.

8 III. AUTHORITY TO IMPOSE SANCTIONS

9 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the
10 Director may issue orders directing a licensee to cease and desist from conducting business in a
11 manner that is injurious to the public or violates any provision of the Act.

12 **3.2 Authority to Suspend License.** Pursuant to RCW 31.04.093(3)(b), the Director may revoke
13 or suspend a license if a licensee violates any provision of the Act or any rule adopted under the Act
14 either knowingly or without exercise of due care.

15 **3.3 Authority to Prohibit from Industry.** Pursuant to RCW 31.04.093(6), the Director may
16 issue an order removing from office or prohibiting from participation in the affairs of any licensee, or
17 both, any officer, principal, employee or loan originator, or any person subject to this chapter for a
18 violation of RCW 31.04.027.

19 **3.4 Authority to Order Affirmative Action.** Pursuant to RCW 31.04.093(5)(b), the Director
20 may issue an order directing a licensee to take such affirmative action as is necessary to comply with
21 the Act.

22 **3.5 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
23 up to one hundred dollars per day, per violation, upon the licensee for any violation of the Act.

1 **3.6 Authority to Charge Examination Fee and Investigation Fee.** Pursuant to RCW
2 31.04.145(3) and WAC 208-620-590, every licensee investigated by the Director or the Director's
3 designee shall pay for the cost of the investigation, calculated at the rate of \$69.01 per staff hour
4 devoted to the investigation.

5 **3.7 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director
6 may recover the state's costs and expenses for prosecuting violations of the Act.

7 **IV. NOTICE OF INTENTION TO ENTER ORDER**

8 Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
9 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
10 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and
11 RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

- 12 **4.1** Respondent American Pacific Mortgage Corporation cease and desist from advertising
13 in a manner that violates the Act.
- 14 **4.2** Respondent American Pacific Mortgage Corporation's consumer loan license be
15 revoked.
- 16 **4.3** Respondent American Pacific Mortgage Corporation be prohibited from participating
17 in the affairs of any consumer loan company subject to licensure by the Department.
- 18 **4.4** Respondent American Pacific Mortgage Corporation pay a fine. As of the date of this
19 Statement of Charges, the fine totals \$100,000.
- 20 **4.5** Respondent American Pacific Mortgage Corporation pay an investigation fee. As of
21 the date of this Statement of Charges, the investigation fee totals \$4,009.36.
- 22 **4.6** Respondent American Pacific Mortgage Corporation pay the Department's costs and
23 expenses for prosecuting violations of the Act in an amount to be determined at
24 hearing or by declaration with supporting documentation in event of default by
Respondent.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist,
3 Revoke or Suspend License, Prohibit from Industry, Take Affirmative Action, Impose Fine, and
4 Collect Investigation Fee and Costs of Prosecution (Statement of Charges) is entered pursuant to the
5 provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject
6 to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent may make
7 a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND
8 OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

9
10 Dated this 16th day of March, 2016.



11 [Redacted Signature]
12 CHARLES E. CLARK
13 Director
14 Division of Consumer Services
15 Department of Financial Institutions

16 Presented by:

17 [Redacted Signature]
18 AMANDA J. HERNDON
19 Financial Legal Examiner

20 Approved by:

21 [Redacted Signature]
22 STEVEN C. SHERMAN
23 Enforcement Chief