

**UNITED STATES OF AMERICA  
CONSUMER FINANCIAL PROTECTION BUREAU**

**Administrative Proceeding  
File No. 2014-CFPB- 0001**

**In the Matter of**

**Fidelity Mortgage Corporation  
and Mark Figert**

**CONSENT ORDER**

The Consumer Financial Protection Bureau (Bureau) has reviewed the business practices of Fidelity Mortgage Corporation (Fidelity) and its president, Mark Figert (collectively, Respondents), and has identified violations of Section 8 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, and its implementing regulation, Regulation X, 12 C.F.R. § 1024.14 (formerly codified at 24 C.F.R. § 3500.14) (collectively, RESPA). Under Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565, and Section 8 of RESPA, 12 U.S.C. § 2607, the Bureau issues this Consent Order (Order).

**I**

**JURISDICTION**

1. The Bureau has jurisdiction over this matter under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, and Section 8 of RESPA, 12 U.S.C. § 2607.

## II

### STIPULATION

2. Respondents have executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated January 13, 2014 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondents have consented to the issuance of this Order by the Bureau under Sections 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563, 5565, and Section 8 of RESPA, 12 U.S.C. § 2607, without admitting or denying any of the below findings of fact or conclusions of law, except that Respondents admit that the Bureau has jurisdiction over them and the subject matter of this action.

## III

### DEFINITIONS

For purposes of this Order, the following definitions shall apply:

3. “Effective Date” shall mean the date on which the Order is entered.
4. “Respondents” shall mean Fidelity Mortgage Corporation and its president,

Mark Figert.

## IV

### FINDINGS AND CONCLUSIONS

The Bureau finds the following:

#### **Background**

5. Fidelity Financial Mortgage Corporation (FFMC) was a company located in St. Louis, Missouri that originated federally related residential-mortgage loans. Mark Figert was the owner and president of FFMC.

6. Bank of Sullivan, located in Sullivan, Missouri, created Fidelity and caused it, in the spring of 2012, to purchase certain assets and assume certain liabilities from FFMC. Fidelity is a “covered person” as defined by 12 U.S.C. § 5481(6).

7. Fidelity retained Figert as its president, assumed and operated one of FFMC’s offices in the St. Louis metropolitan area, and engaged in the business of originating federally related residential-mortgage loans.

8. Throughout the relevant period, Figert had managerial responsibility for Fidelity and materially participated in the conduct of its affairs. Figert is therefore a “related person” under the CFPA, 12 U.S.C. § 5481(25)(C)(i)-(ii).

#### **RESPA**

9. RESPA’s Section 8(a) prohibits giving a “fee, kickback, or thing of value” in exchange for a referral of business related to a real-estate-settlement service. 12 U.S.C. § 2607(a). RESPA’s implementing regulations provide that “[w]hen a thing of value is . . . connected in any way with the volume or value of the business referred,” it is evidence that it was given in exchange “for the referral of business.” 12 C.F.R. § 1024.14(e). Section 8(c) of RESPA lists exemptions to the prohibitions, including one that permits “payment for goods or facilities actually furnished or for services actually performed.” 12 U.S.C. § 2607(c)(2).

10. In 1996, HUD issued a policy statement that analyzed this exemption in the context of office-rental agreements. It concluded that in determining whether above-market rent might be a “disguised referral fee,” it would consider the “general market value” of the property, not the value of the property to a settlement services provider. *HUD Statement of Policy 1996-3*, 61 Fed. Reg. 29264 (June 7, 1996). HUD defined “general market value” as

“the rent that a *non-settlement service provider* would pay for the same amount of space and services in the same or a comparable building.” *Id.* (emphasis added).

### **The Office Space Lease Agreement**

11. In early 2010, about two years before the formation of Fidelity, Figert and FFMC approached a Missouri bank with a written proposal urging it to enter into a “joint venture” with FFMC. FFMC proposed that the bank outsource its residential-mortgage lending to FFMC by referring customers seeking loans. In turn, FFMC would lease an office at the bank as needed to meet borrowers referred by the bank, complete applications, and close loans.

12. Figert and FFMC rejected an office-lease agreement with a flat monthly rental payment, and insisted on an agreement that tied payments to loan volume and FFMC’s purported use of the office. Figert promoted this structure because the bank’s “bottom line increases with every mortgage transaction completed.”

13. The parties discussed “anticipated [loan] volume” and a “pipeline” of referrals. They negotiated a daily rental rate of \$200, as well as an exclusivity clause requiring the bank to promote only FFMC and vice-versa. Thus, the parties had an exclusive *quid pro quo* relationship – the bank referred to FFMC customers who wanted residential mortgages, while FFMC referred to the bank customers who wanted traditional banking services.

14. Figert, on behalf of FFMC, executed an Office Space Lease Agreement, dated April 15, 2010 (the Agreement).

15. The leased office was an interior office surrounded by bank personnel.



16. In the spring of 2012, Fidelity reviewed the Agreement, assumed it in writing, retained Figert and other key personnel, and continued to perform the Agreement.

17. Fidelity did not exclusively use the bank's office to meet bank-related borrowers. Fidelity also met borrowers at a variety of locations, including an office in St. Charles, Missouri; Fidelity's offices in St. Louis; the borrower's home or business; and coffee shops.

18. From March 2012 through November 2012, Fidelity originated about 20 loans that had been referred by the bank under the Agreement and collected \$27,076 in origination fees from those loans. Fidelity paid the bank monthly amounts ranging from \$800 - \$2,000, with an average of \$1,350.

19. Monthly rents for comparable space not located in the middle of a bank ranged from about \$600 - \$900 a month, substantially lower than the average monthly amount paid by Fidelity under the Agreement.

20. Based on the foregoing facts, the Bureau finds that Respondents violated the anti-kickback provisions of RESPA, 12 U.S.C. § 2607(a); 12 C.F.R. § 1024.14(e).

## V

### ORDER

**IT IS HEREBY ORDERED** that Respondents shall refrain from committing violations of Section 8 of RESPA or any other provision of a "Federal consumer financial law," as defined by 12 U.S.C. § 5481(14).

**IT IS HEREBY ORDERED** that Fidelity shall pay \$27,076 as disgorgement for its origination fees collected from March 2012 through November 2012. Within 10 calendar

days of the Effective Date, Fidelity is ordered to pay the disgorgement amount to the Bureau in the form of a wire transfer or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau. The payment shall be deposited in the United States Treasury as disgorgement.

**IT IS HEREBY ORDERED** that under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law set forth in Section IV of this Order, and taking into account the factors set forth in 12 U.S.C. § 5565(c)(3), Respondents, jointly and severally, shall pay a civil money penalty of \$54,000 to the Bureau, as directed by the Bureau and as set forth herein:

- A. Within 10 calendar days of the Effective Date, Respondents shall pay the civil money penalty in the form of a wire transfer to the Bureau or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau;
- B. The civil money penalty paid under this Order shall be deposited in the Civil Penalty Fund of the Bureau in accordance with Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d);
- C. Respondents shall treat the civil money penalty as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondents shall not:
  - i. claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any civil money penalty that Respondents pay under this Order; or

- ii. 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 that Respondents pay under this Order.

## VI

### ADMINISTRATIVE PROVISIONS

21. The provisions of this Order shall not bar, estop, or otherwise prevent the Bureau, or any other federal or state agency or department, from taking any other action against Respondent subject to the Stipulation and release set forth in this Order.

22. This Order shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

23. This Order is intended to be, and shall be construed to be, a final order issued under 12 U.S.C. § 5563(b), and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

24. This Order constitutes a settlement of the administrative proceeding against Respondent contemplated by the Bureau, based on the Bureau's findings described in Section IV of this Order.

25. The Bureau releases and discharges Respondent from all potential liability (other than as set forth in this Order) for violations that have been or might have been asserted by the Bureau based on Respondents' conduct, as described in Section IV of this Order, to the extent such practices occurred before the Effective Date and are known to the

Bureau as of the Effective Date of the Order. Notwithstanding the foregoing, the practices described in Section IV of this Order may be used by the Bureau in future enforcement actions against Respondent and its affiliates for the sole purpose of establishing a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release shall not preclude or affect any right of the Bureau to determine and ensure compliance with the terms and provisions of the Order or to seek penalties for any violations thereof.

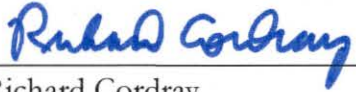
26. The provisions of this Order shall be enforceable by the Bureau. Any violation of this Order may result in the imposition by the Bureau of civil money penalties as set forth in Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c).

27. This Order and the accompanying Stipulation contain the complete agreement between the parties. No promises, representations, or warranties other than those set forth in this Order and the accompanying Stipulation have been made by any of the parties. This Order, the Attachments, and the accompanying Stipulation supersede all prior communications, discussions, or understandings, if any, of the parties, whether oral or in writing.



28. Nothing in this Order or the accompanying Stipulation shall be construed as allowing Respondents, its officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 15<sup>th</sup> day of January, 2014.



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Richard Cordray  
Director  
Consumer Financial Protection Bureau