

ATTORNEY GENERAL OF THE STATE OF NEW YORK
CONSUMER FRAUDS AND PROTECTION BUREAU

In the Matter of

Assurance No. 21-006

Investigation by LETITIA JAMES,
Attorney General of the State of New York, of

Nationstar Mortgage LLC d/b/a Champion Mortgage,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation into Nationstar Mortgage LLC d/b/a Champion Mortgage’s (“Champion” or Respondent) residential mortgage servicing pursuant to N.Y. Executive Law § 63(12) and N.Y. General Business Law § 349. This Assurance of Discontinuance (“Assurance” or “AOD”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent (collectively, the “Parties”).

OAG’s FINDINGS

1. Champion is the reverse mortgage servicing division of Nationstar Mortgage LLC. Champion generally services reverse mortgages owned by securitization trusts.
2. Similar to a traditional mortgage, a reverse mortgage enables the borrower to borrow money using their home as collateral. However, unlike a traditional mortgage, reverse mortgage borrowers are not required to make monthly payments to their mortgage servicer. Although interest and fees accumulate monthly and are added to the debt, unless there is a default the debt is only due to be repaid when the borrower passes away or otherwise no longer

lives in the home (assuming the borrower does not violate any other provisions of the mortgage contract). *See* Consumer Financial Protection Bureau, *What Is A Reverse Mortgage?* (August 30, 2019), available at <https://www.consumerfinance.gov/ask-cfpb/what-is-a-reverse-mortgage-en-224/>. Reverse mortgage loans are only available to senior citizen homeowners, usually aged 62 or older, who live in the home being mortgaged and plan to continue living in the home.

3. The Department of Housing and Urban Development (HUD), through its Federal Housing Administration (FHA), provides insurance on the vast majority of reverse mortgages available in the nation. *See* HUD, 2019 Annual Report to Congress, p. 48 (Nov. 14, 2019), available at <https://www.hud.gov/sites/dfiles/Housing/documents/2019FHAAnnualReportMMIFund.pdf> (hereinafter “2019 Annual Report”). Any reverse mortgage that is insured by HUD is called a Home Equity Conversion Mortgage (HECM). *Id.* Through regulations, a Handbook, Mortgagee Letters and other directives (“HUD Guidelines”), HUD sets certain parameters that mortgage servicers must follow when servicing HECMs.¹ All of the reverse mortgage loans that Champion services in New York State are HECMs insured by HUD (or are generally serviced according to the HUD Guidelines for HECM servicing). Because HECMs are insured by HUD, Champion must service HECMs in accordance with HUD Guidelines.

4. A reverse mortgage borrower may default on a reverse mortgage loan if the borrower is no longer occupying the home as his or her primary residence; the borrower has failed to submit an annual certificate of occupancy; the borrower has died; the borrower has failed to make necessary repairs; and/or the borrower has failed to make required property-

¹ Because the HECMs are currently the dominant reverse mortgage product in the United States, *see 2019 Annual Report* at p. 14, this AOD will use the term HECM and reverse mortgage interchangeably.

related payments (including property taxes, homeowner's insurance, water/sewer charges, and/or Homeowners Association dues).

5. Although reverse mortgage borrowers typically do not make monthly interest payments, they are required to pay ongoing property charges (including property taxes and homeowner insurance). The borrower may be responsible for making those payments directly, or the servicer may make those payments out of available funds drawn from the borrower's home equity. *See* 24 C.F.R. § 206.205.

6. If a HECM borrower who is responsible for the direct payment of property taxes fails to pay those taxes in a timely manner, the mortgage servicer may (1) call the reverse mortgage due and payable or (2) advance those taxes to the taxing authority on the homeowner's behalf. If the mortgage servicer elects to advance property charges on behalf of the borrower, the mortgage servicer may then request that the HECM borrower reimburse the mortgage servicer for the tax payment and any other allowable expenses. If the HECM borrower fails to reimburse by a certain date, then the mortgage company may call the reverse mortgage due and payable and begin foreclosure proceedings.

7. As part of its business responsibilities, Champion is responsible for communicating with reverse mortgage borrowers who have defaulted (or in certain situations borrowers who are at risk of defaulting) on their loan terms, pursuant to HUD Guidelines.

8. Champion is also responsible for providing loss mitigation to HECM borrowers who are in default (or at risk of default), pursuant to HUD Guidelines. Loss mitigation in these circumstances may include providing borrowers with the opportunity to apply for a repayment plan or inviting borrowers to apply for other benefits offered by HUD (such as the At Risk

Extension program to eligible HECM borrowers) that may permit borrowers to avoid foreclosure.

9. Champion has in certain circumstances provided misleading information to borrowers, or failed to provide clear, accurate and non-misleading information needed to assist homeowners who are at risk of losing their homes due to one of the circumstances listed above.

10. For example, prior to April 2019, Champion sent approximately 3,041 “pre-foreclosure” letters to New York customers whose reverse mortgage was in default and/or had been accelerated but had not yet been sued by Champion for foreclosure. These letters nonetheless included language taken from the notifications that are required by New York law (pursuant to New York Real Property Actions and Proceedings Law (RPAPL) § 1303) at the time that a servicer files a foreclosure summons and complaint. This language instructed the homeowner to “read the summons and complaint carefully,” and warned: “If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home.” These letters thereby created the misleading impression that Champion had *already* sued the borrowers for foreclosure, potentially causing confusion and harm to the senior citizen homeowners who received these notices.

11. In some cases, without knowing that the mortgage servicer had already made a property tax payment, some HECM borrowers also made a payment to the taxing authority, resulting in the same property tax being paid twice. Champion’s payment of taxes without adequate notice also may have resulted in some borrowers’ inability to make other arrangements or to avoid the costs (or risk of default) associated with tax payments made by their loan servicer.

12. By virtue of the facts described above, the OAG finds that certain of Champion’s communications and actions were deceptive and unlawful.

13. As such, the OAG finds that Champion has engaged in conduct in violation of Executive Law § 63(12) and General Business Law Article 22-A, § 349.

14. Respondent neither admits nor denies the OAG's Findings, paragraphs (1)-(13) above.

15. Respondent has agreed to this Assurance in settlement of the OAG's Findings described above and to avoid the time, expense, and distraction of litigation.

16. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest.

THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) and General Business Law Article 22-A, § 349, based on the conduct described above.

RELIEF

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties, that:

General Relief

17. Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws and regulations, including but not limited to N.Y. Executive Law § 63(12) and N.Y. General Business Law § 349.

18. Champion shall fully comply with all State and Federal mortgage servicing regulations applicable to New York borrowers, including all procedural and substantive requirements for pre-foreclosure notices, foreclosure proceedings and loss mitigation set forth by New York law, and including by fully complying with Section 280-b of New York State's Real Property Law ("RPL").

Specific Practices

19. Where Champion chooses to pay the borrower's homeowners' insurance premium and/or property taxes, Champion shall not pay those premiums and/or taxes before they are in arrears.

20. Champion shall provide notification to borrowers prior to paying property taxes on their behalf. Such notifications shall include:

- a. Reminder letters sent to all New York borrowers approximately 30 days prior to their next property tax payment deadline; and
- b. Notifications sent to (1) defaulted borrowers which includes newly-defaulted borrowers and borrowers previously referred to foreclosure and (2) borrowers whose loans have a tax and insurance set aside account in order to alert such borrowers that Champion will begin making property tax payments on their behalf as part of its default servicing procedures.

Champion will make property tax payments consistent with the requirements of N.Y. RPAPL § 280-b(5).

21. Champion shall provide appropriate pre-foreclosure and filing notices as required by New York State law pursuant to RPAPL § 1303 and 1304, including ensuring that it does not send the "Help for Homeowners in Foreclosure" notice required by RPAPL § 1303, or any similar language that may mislead homeowners into believing that they have been sued for foreclosure, until a foreclosure complaint is filed.

22. Champion shall utilize best efforts to ensure that notifications sent to New York HECM borrowers (who have defaulted or are at risk of defaulting) advise borrowers in plain language regarding any actions that must be taken by the borrower to avoid default or

foreclosure, and any actions that Champion intends to take in connection with the default or potential default.

23. Champion shall provide an escalation contact (the “Champion NY Escalation Contact”) for not-for-profit housing counselors, government representatives, legal services organizations and attorneys. Champion shall grant permission for borrower-authorized non-profit housing counseling agencies, legal services organizations and attorneys to contact the Champion NY Escalation Contact directly for the purpose of inquiring about (1) the extent of any default; (2) how to cure any default; and (3) loss mitigation options and status of pending loss mitigation applications even if the borrower has been sued for foreclosure, and shall require its local counsel in New York State to execute a blanket authorization (using the form attached as Exhibit A or its substantive equivalent) permitting borrowers and their representatives to contact the Champion NY Escalation Contact for assistance on the above topics even if a foreclosure suit is pending. After a period of two (2) years, Champion may contact the OAG to request a modification or elimination of the Champion NY Escalation Contact required by this paragraph.

24. Champion shall identify the Champion NY Escalation Contact to the OAG within fifteen (15) days of the effective date of this Assurance. Champion shall also share this contact information with the Center for New York City Neighborhoods (“CNYCN”) and Empire Justice Center (in their roles as anchor partners for the New York State Homeowner Protection Program (“HOPP”)), so that CNYCN and Empire Justice Center may distribute this contact information to New York State non-profit housing counseling and legal services organizations. Champion shall promptly provide the OAG, CNYCN and Empire Justice Center with any future changes to the Champion NY Escalation Contact’s name or contact information.

25. Champion shall ensure that all default notices and payoff letters to New York HECM borrowers include accurate and timely information, including with regard to any amounts that borrowers must pay to cure a default or how to obtain current amount that borrowers must pay to cure a default.

26. Champion and its local New York foreclosure counsel shall continue to include information in foreclosure complaints specifying the initial reason for default, if any (i.e., defaulted payments; non-occupancy; property maintenance or death of borrower), and any amounts past due to allow borrowers to seek necessary assistance.

Monetary Relief

27. Respondent shall pay \$500,000 in order to assist its New York HECM borrowers (the “Monetary Relief Amount”).

28. Within fifteen (15) days of the effective date of this Assurance, Respondent shall provide the Monetary Relief Amount to the Equitable Reverse Mortgage Assistance (ERMA) Program co-developed by the OAG. Pursuant to a written grant agreement between Respondent and the Center for New York City Neighborhoods, Inc. (CNYCN), Respondent shall deposit the Monetary Relief Amount with CNYCN, the administrator of the ERMA Program, to be held in a segregated account dedicated to benefitting Champion New York HECM borrowers. CNYCN, as the ERMA Program administrator, shall ensure that these resources effectively supplement the ERMA Program to assist Champion New York homeowners at risk of foreclosure.

29. The Parties understand that the ERMA Program shall disburse the Monetary Relief Amount funds to eligible Champion homeowners through the ERMA Program as soon as reasonably possible with a goal of disbursing all funds within two (2) years of the Effective Date

of this Assurance. Respondent shall agree with CNYCN on reasonable procedures for cooperating with respect to the ERMA Program.

MISCELLANEOUS

Subsequent Proceedings

30. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 36, and agrees and acknowledges that in such event:

- a. NYAG will, where possible, provide Champion with a notice of violation and a 30-day opportunity to cure said violation;
- b. Any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this Assurance for a period of two years;
- c. The OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the Effective Date of this Assurance;
- d. Any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- e. Evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

31. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining

such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance

32. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance.

33. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

34. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications

35. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-006, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to: John Fietz (John.Fietz@mr.cooper.com) or in his/her absence, to the person holding the title of Senior Vice-President/Assistant General Counsel.

If to the OAG, to: Mark Ladov (mark.ladov@ag.ny.gov) or Elizabeth Lynch (ElizabethM.Lynch@ag.ny.gov), or in his/her absence, to the person holding the title of Bureau Chief, Consumer Frauds and Protection Bureau.

Representations and Warranties

36. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and the OAG's own factual investigation as set forth in Findings, paragraphs (1)-(13) above. The Respondent represents and warrants that it has not made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent are later found to be inaccurate, this Assurance is voidable by the OAG in its sole discretion.

37. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

38. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Nationstar Mortgage LLC d/b/a/ Champion Mortgage, by Senior Vice-President/Assistant General Counsel, as the signatory to this AOD, is a duly authorized officer acting at the direction of the Board of Directors of Nationstar Mortgage LLC.

General Principles

39. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable State or Federal law or regulation or other applicable law.

40. To the extent that any State or Federal law or regulation makes it impossible for any party to comply with the terms of this AOD, those laws or regulations shall control.

41. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its Effective Date.

42. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

43. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

44. Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.


45. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

46. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

47. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

48. The Effective Date of this Assurance shall be March 1, 2021.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: 
Jane M. Azia, Esq.
Bureau Chief
Consumer Frauds & Protection Bureau

Nationstar Mortgage LLC d/b/a Champion Mortgage


By: 
John Fietz
Senior Vice-President/Assistant General Counsel

Exhibit A:

Sample Authorization Form for
Champion NY Escalation Contact

**AUTHORIZATION TO COMMUNICATE DIRECTLY WITH NON-PROFIT LEGAL SERVICES PROVIDERS IN
CASES IN WHICH PLAINTIFF IS REPRESENTED BY COUNSEL**

[SERVICER] as servicer of certain mortgage loans, has agreed with certain New York non-profit legal services providers to improve communications and the loss mitigation process between [SERVICER] and homeowners represented by those organizations.

To that end, in any foreclosure case filed in New York State the undersigned parties hereby consent and agree to allow defendant's legal counsel at, or working through one of the non-profit legal services providers listed below, to communicate directly with [SERVICER] concerning such foreclosure actions handled by the undersigned law firm. Consent to communicate directly with [SERVICER] is extended to all persons employed by the legal services organization. Consent is also extended to all lawyers who are not employees of the legal services organization, but who are working with homeowners through a pro bono program. [SERVICER] may request defendant's counsel to provide a written authorization from the lawyer's client for the lawyer to speak with [SERVICER] on their behalf. The list of legal services providers to whom permission is granted is listed on page 2.

Pursuant to the Rules of Professional Conduct of the NYS Unified Court System, Rule 4.2, the lawyer representing [SERVICER] (or the plaintiff for whom [SERVICER] acts as servicer or controls the foreclosure action) hereby gives prior consent to defendant's counsel at the respective legal services organization listed below to communicate directly with [SERVICER] regarding any case in which [SERVICER] is involved.

By signing this document, the law firm representative represents that he or she is fully authorized to provide the consent required in Rule 4.2 of the Rules of Professional Conduct of the NYS Unified Court System on behalf of all lawyers within the law firm. [SERVICER]'s representative represents that he or she is fully authorized to provide this consent on behalf of [SERVICER] and plaintiff (if different from [SERVICER]).

FOR SERVICER:

By: _____

Title:

Date:

FOR PLAINTIFF'S COUNSEL:

By: _____

Title:

Law Firm Name:

Address:

Date:

List of legal services providers where permission is granted (updated as of March 1, 2021)

1. Legal Services NYC
2. Bronx Legal Services (formerly known as Legal Services NYC-Bronx)
3. Brooklyn Legal Services (including entities formerly known as Bedford Stuyvesant Community Legal Services, South Brooklyn Legal Services and Legal Services NYC-Brooklyn Branch)
4. Queens Legal Services
5. Staten Island Legal Services
6. Brooklyn Bar Association Volunteer Lawyers Project
7. Brooklyn Legal Services Corp. A (BKA)
8. CAMBA Legal Services
9. Center for Elder Law and Justice (formerly known as legal Services for the Elderly, Disabled or Disadvantaged of Western New York)
10. Central Islip Civic Council
11. New York City Bar Association/City Bar Justice Center
12. District Council 37 Municipal Employees legal Services (MELS)
13. Empire Justice Center
14. Grow Brooklyn
15. Hiscock Legal Aid Society
16. JASA/Legal Services for Elder Justice.
17. Labor & Industry for Education, Inc.
18. Legal Aid Bureau of Buffalo
19. Legal Aid Society of Mid-New York, Inc., including
 - a. Legal Aid Society of Mid New York - Binghamton
 - b. Legal Aid Society of Mid New York -Utica Office
 - c. Legal Aid Society of Mid New York -Watertown Office
20. Legal Aid Society of Northeastern New York, Inc., including
 - a. Legal Aid Society of Northeastern New York -Amsterdam Office
 - b. Legal Aid Society of Northeastern New York -Canton Office
 - c. Legal Aid Society of Northeastern New York -Plattsburg Office
 - d. Legal Aid Society of Northeastern New York -Saratoga Office
21. Legal Aid Society of Rochester
22. Legal Aid Society of Rockland County, Inc.
23. Legal Assistance of Western New York, Inc. (LAWNY), including
 - a. Legal Assistance of Western New York -Bath Office
 - b. Legal Assistance of Western New York -Elmira Office
 - c. Legal Assistance of Western New York -Geneva Office
 - d. Legal Assistance of Western New York -Ithaca Office
 - e. Legal Assistance of Western New York -Jamestown Office
 - f. Legal Assistance of Western New York -Olean Office
24. Legal Services for the Elderly

25. Legal Services of Central New York, Inc.
26. Legal Services of the Hudson Valley
27. Legal Services Plan - Local 237, IBT
28. Long Island Housing Services, Inc.
29. Mobilization for Justice, Inc.
30. Nassau Bar Foundation, Inc.
31. Nassau County Bar Association Volunteer Lawyers Project
32. Nassau Suffolk Law Services Committee, Inc. (also known as Nassau Suffolk Law Services), including
 - a. Nassau Suffolk Legal Services -Hempstead Office
 - b. Nassau Suffolk Legal Services -Islandia Office
 - c. Nassau Suffolk Legal Services -Riverhead Office
33. New York Legal Assistance Group (NYLAG)
34. Queens Volunteer Lawyers Project, Inc.
35. The Legal Aid Society
36. The Legal Project
37. Touro Law Center
38. Southern Tier Legal Services
39. St. Vincent DePaul legal Program, Inc., Consumer Justice for the Elderly Litigation Clinic, St. John's University School of Law
40. Western New York Law Center