

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU

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In the Matter of:

HOME CONSULTANTS, INC.,  
D/B/A HCI MORTGAGE

ASSURANCE OF  
DISCONTINUANCE  
PURSUANT TO  
EXECUTIVE LAW 63(15)  
AOD No. 08-160

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WHEREAS, pursuant to the provisions of 63(12) of the Executive Law, Andrew M. Cuomo, Attorney General of the State of New York ("OAG"), has made an inquiry into the mortgage brokerage practices of Home Consultants, Inc., d/b/a HCI Mortgage ("HCI"), within the State of New York;

WHEREAS, HCI is a Pennsylvania-based company licensed as a mortgage banker in New York, which authorizes the company to provide mortgage brokerage services;

WHEREAS, HCI conducts business in several states, and has retail branches throughout the country, including over 20 branches in the State of New York;

WHEREAS, from January 2005 through July 2007, HCI served as the mortgage broker for approximately 2000 residential mortgage loans within the State of New York, including over 800 loans that were made to African-American and Latino borrowers;

WHEREAS, the parties herein desire to obviate further investigation or litigation, and it is expressly understood that, with respect to the investigation of the OAG, that this is a compromise settlement entered into solely for the purposes of avoiding the expense and inconvenience of further investigation and litigation;

WHEREAS, in consideration of the covenants and understandings set forth herein and intending to be legally bound thereby, HCI and the OAG hereby agree as follows:

**I.**  
**DEFINITIONS**

1. Throughout this Assurance of Discontinuance, the following terms shall have the following meanings:
  - (a) “Assurance” means this Assurance of Discontinuance.
  - (b) “Basis Points” means one-hundredth of one percent of the loan amount, such that 100 Basis Points equal one percent of the loan amount.
  - (c) “Broker” means an Employee who is a mortgage loan originator, as that term is defined in N.Y. Banking Law § 599-b(1), and who solicits, processes, places or negotiates residential mortgage loans made by entities other than HCI.
  - (d) “Broker Fees” means all compensation, aside from the yield spread premium paid by the lender, received and retained by HCI for mortgage brokerage services provided in connection with a Loan, including but not limited to processing fees, application fees, and other charges imposed on a customer by a Broker.
  - (e) “Broker Service Fee” means the portion of the Broker Fee that does not include processing fees and application fees.
  - (f) “Effective Date” means the date this Assurance is executed by the parties hereto.
  - (g) “Employee” means any owner, shareholder, partner, officer, director, employee, agent, independent contractor, or representative of HCI.
  - (h) “HCI” means Home Consultants, Inc., d/b/a HCI Mortgage, and any of its owners,

shareholders, partners, officers, directors, employees, agents, consultants, independent contractors, and assignees.

- (i) “Including” means including but not limited to.
- (j) “Loan” means a residential mortgage loan brokered by any HCI branch office located in the State of New York or a residential mortgage loan brokered by HCI in connection with residential property located in the State of New York.
- (k) “Piggyback Loans” means a first lien Loan and a second lien Loan that were (i) provided to the same customer; (ii) secured by the same property; and (iii) closed within four weeks of each other.
- (l) “White” means Non-Latino White.
- (m) The use of the singular form of any word includes the plural and vice versa.

## **II.**

### **INVESTIGATION AND CONCLUSIONS**

- 2. In late 2007, the OAG launched an investigation into the mortgage brokerage practices of HCI. The investigation was designed to determine whether HCI charges African-American and/or Latino customers higher Broker Fees than White customers in the State of New York. Broker Fees, which are a component of the interest rate (APR) for a residential mortgage loan, are often left largely to the discretion of the individual broker.
- 3. As part of its investigation, the OAG, with the assistance of the New York State Banking Department (“Banking Department”), conducted statistical analyses of HCI’s Loans from January 2005 through July 2007 to assess whether there were racial or ethnic disparities

in the imposition of Broker Fees. The OAG also reviewed HCI's internal policies, procedures, and forms.

4. With respect to customers who received only a first lien Loan, the statistical analyses revealed the following:
  - (a) On average, HCI charged African-American customers about 46% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$2260 more in Broker Fees.
  - (b) On average, HCI charged Latino customers about 55% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$2680 more in Broker Fees.
5. With respect to customers who received Piggyback Loans, the statistical analyses revealed the following:
  - (a) On average, HCI charged African-American customers about 30% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$1960 more in Broker Fees.
  - (b) On average, HCI charged Latino customers about 22% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$1400 more in Broker Fees.
6. The racial and ethnic Broker Fee disparities could not be explained by controlling for race-and-ethnicity-neutral borrower, property, and loan characteristics that could potentially impact the amount of time and effort HCI took to arrange the loan.

7. Based on the foregoing, the OAG has determined that HCI has engaged in a pattern and practice of unlawful discrimination in violation of Section 296-a of the New York State Human Rights Law (N.Y. Executive Law § 296-a) and Section 805 of the federal Fair Housing Act (42 U.S.C. § 3605).

IT NOW APPEARING THAT HCI desires to settle and resolve the investigation without admitting or denying the OAG's findings, the OAG and HCI hereby enter into this Assurance.

**III.**  
**COMPLIANCE WITH THE LAW**

8. HCI will comply fully with the obligations, terms, and conditions of Section 296-a of the New York State Human Rights Law (N.Y. Executive Law § 296-a) and Section 805 of the federal Fair Housing Act (42 U.S.C. § 3605).

**IV.**  
**COMPENSATION OF NEW YORK AFRICAN-AMERICAN  
AND LATINO CUSTOMERS**

9. HCI will pay to the OAG the sum of \$540,000. HCI shall make this payment in four installments according to the following schedule:

\$25,000 must be paid by December 31, 2008

\$125,000 must be paid by March 31, 2009

\$125,000 must be paid by June 30, 2009

\$125,000 must be paid by September 30, 2009

\$140,000 must be paid by December 31, 2009

Payment will be in the form of certified or bank checks made out to the New York State Department of Law and forwarded to the Office of Attorney General, Civil Rights

Bureau, 120 Broadway, New York, New York 10271, Attention: Jeffrey K. Powell,  
Section Chief.

10. The OAG will use these funds to provide restitution to certain African-American and Latino customers who (a) received Loans arranged by HCI from January 2005 through July 2007 and (b) were charged significantly higher Broker Fees than the average amount charged to White customers. The limited number of HCI customers who already received restitution pursuant to the Assurance of Discontinuance executed by the OAG and GreenPoint Mortgage Funding Inc., dated March 26, 2007, will not receive additional restitution under this Assurance.
11. The OAG will determine, in a fair and equitable manner and as the OAG deems appropriate, whether an African-American or Latino customer is entitled to compensation and, if so, in what amount. The OAG will then disburse the funds accordingly. Any funds remaining after restitution is paid shall be distributed by the OAG cy pres to not-for-profit corporations or organizations to provide consumer financial education or assistance to homeowners facing foreclosure within the State of New York.
12. Upon request, HCI will provide the OAG with any information within HCI's possession, custody, or control that will assist the OAG in identifying, locating, and disbursing funds to the African-American and Latino customers that the OAG determines are entitled to restitution.

**V.**  
**BROKER FEE POLICIES AND PROCEDURES**

13. Within 10 days of the Effective Date, HCI will develop and provide to the OAG and the Banking Department written policies and procedures governing the imposition of Broker Fees (“Broker Fee Policy”). The policies and procedures will include the following elements:
- (a) A fee schedule that sets forth the standard amounts to be charged for each component of the Broker Fee (“Fee Schedule”), including but no limited to:
    - (i) The standard processing fee, which shall be expressed as a lump sum (“Standard Processing Fee”);
    - (ii) The standard application fee, which shall be expressed as a lump sum (“Standard Application Fee”); and
    - (iii) The standard Broker Service Fee, which shall be expressed as a percentage of the loan amount and may vary for different loan amount ranges and for different types of loans if such types of loans customarily require significantly more work to arrange than more common fixed rate loans (e.g., non-conforming loans, ARM loans) (“Standard Broker Service Fee”).
  - (b) A requirement that Brokers charge the Standard Processing Fee and the Standard Application Fee for each Loan unless exceptional circumstances exist, which must be documented in the customer’s file and be subject to the written approval of the branch manager prior to the Loan being closed. Examples of such exceptional

circumstances include the identification of a cloud on the property's title or a change in the condition of the property that affects its estimated value.

(c) A requirement that Brokers charge the Standard Broker Service Fee for each Loan unless either of the following circumstances apply:

(i) The nature of the mortgage brokerage services provided in connection with the Loan is substantially different from the services typically provided in connection with similar Loans, and the Broker documents in detail in the customer's file: (i) the services provided in connection with the Loan; (ii) why such services justify a departure from the Standard Broker Fee; and (iii) the amount of time the Broker spent working on each task performed in connection with the Loan. Under these circumstances, the Broker Service Fee may depart from the Standard Broker Service Fee by no more than 20%.

(ii) The customer clearly expresses a desire to pay a higher yield spread premium, which will result in a higher APR for the Loan, in exchange for paying a Broker Service Fee lower than the Standard Broker Service Fee. HCI may not depart from the Standard Broker Service Fee unless: (A) HCI clearly discloses to the customer the extent to which the APR for the Loan will be increased as a result of the reduced Broker Service Fee; and (B) the customer signs a document acknowledging that he or she has voluntarily chosen to pay a higher APR for the Loan in exchange for paying a lower Broker Service Fee and that he or she has been informed of

the extent to which the APR for the Loan will be increased as a result of this decision. This executed document must be maintained in the customer's file. Under these circumstances, the additional yield spread premium received by HCI due to the reduction in the Broker Service Fee may be no greater than the difference between the Standard Broker Service Fee for the Loan and the actual Broker Service Fee received.

14. The Broker Fee Policy shall be subject to the approval of the OAG and the Banking Department, which shall not be unreasonably withheld. Upon the approval of the OAG and the Banking Department, HCI shall adopt and implement the Broker Fee Policy, and provide it to all Brokers and HCI management personnel. The HCI Mortgage Compliance Guide shall be amended to include the Broker Fee Policy.
15. HCI shall prominently post the Fee Schedule on its website and in each of the offices of its branches in the State of New York. The posting in the offices shall be no smaller than 18 inches x 22 inches, in bold lettering, and in no less than 28 point font.
16. HCI may amend the initial approved Fee Schedule provided that the amended Fee Schedule is consistent with the terms of Section V of this Assurance and the amended Fee Schedule is provided to the OAG and the Banking Department within five days of its implementation.

## **VI.** **TRAINING**

17. Within 90 days of the Effective Date, all Brokers shall participate in a fair lending training program to be conducted by a qualified organization. The selection of the

organization shall be subject to the approval of the OAG and the Banking Department.

The training program shall cover the requirements of federal and state fair lending laws, including the prohibition on charging higher Broker Fees based on race and/or ethnicity.

The training may be in addition to or part of any training mandated by the continuing education requirements of the Secure and Fair Enforcement Mortgage Licensing Act of 2008.

18. All new Brokers shall attend this fair lending training program within 60 days from their date of hire as a condition of employment.
19. All Brokers who attend the fair lending training program shall acknowledge in writing that they have done so.
20. Any Broker who violates this Assurance or otherwise engages in discriminatory lending practices prohibited by federal or state law shall be subject to appropriate discipline, up to and including termination.

## **VII.** **MONITORING OF BROKER FEES**

21. Within 30 days of the close of each of the three Reporting Periods defined in Part IX, HCI will conduct the following analyses for all Loans brokered during the Reporting Period:
  - (a) HCI shall calculate the average Broker Fee (in Basis Points) charged to African-American customers (“African-American Average Broker Fee”), Latino customers (“Latino Average Broker Fee”), and White customers (“White Average Broker Fee”).<sup>1</sup> HCI shall calculate these averages statewide, as well as for each

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<sup>1</sup> A Loan will be deemed to have been made to an African-American customer if at least one of the applicants is African-American. A Loan will be deemed to have been made to a

of its branch offices in the State of New York. For the purposes of this calculation, the Broker Fee for Piggyback Loans shall be calculated by aggregating the Broker Fee charged for the first lien Loan and the second lien Loan.

- (b) HCI shall calculate the frequency with which Brokers (i) departed from the Standard Application Fee (“Standard Application Fee Departure Percentage”); (ii) departed from the Standard Processing Fee (“Standard Processing Fee Departure Percentage”); and (iii) departed from the Standard Broker Service Fee (“Standard Broker Service Fee Departure Percentage”). HCI shall calculate these percentages statewide, as well as for each of its branch offices in the State of New York. The statewide and branch office percentages shall be broken down by the race and ethnicity of the customers.

22. If HCI’s statewide African-American Average Broker Fee or the statewide Latino Average Broker Fee exceeds HCI’s statewide White Average Broker Fee by more than 20 Basis Points, HCI will take appropriate follow-up and corrective actions to address the racial and/or ethnic disparity, including identifying whether any particular Broker’s or branch’s practices caused the disparity, determining whether the disparity was caused by the fact that African-American and/or Latino customers disproportionately received a specific type of loan or loan amount that allowed for higher Broker Fees under the Fee

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Latino customer if at least one of the applicants is Latino. A Loan will be deemed to have been made to a White customer if at least one of the applicants is White and no applicant is African-American or Latino.

Schedule, providing additional training or counseling, and taking appropriate disciplinary actions.

23. If HCI's African-American Average Broker Fee or HCI's Latino Average Broker Fee for a particular branch office exceeds HCI's White Average Broker Fee for that branch office by more than 20 Basis Points, HCI will take appropriate follow-up and corrective actions with respect to that branch office to address the racial and/or ethnic disparity, including identifying whether any particular Broker's practices caused the disparity, determining whether the disparity was caused by the fact that African-American and/or Latino customers disproportionately received a specific type of loan or loan amount that allowed for higher Broker Fees under the Fee Schedule, providing additional training or counseling at the branch office, and taking appropriate disciplinary actions.
24. If HCI's statewide African-American Average Broker Fee or HCI's statewide Latino Average Broker Fee exceeds HCI's statewide White Average Broker Fee by more than 30 Basis Points, HCI will provide a refund to each African-American and/or Latino customer who was charged more than the White Average Broker Fee during the Reporting Period, subject to the provisions of Subparagraph 24(c).
  - (a) Each customer's refund will be calculated based on the Basis Point differential between the customer's Broker Fee and the White Average Broker Fee.
  - (b) HCI will send the refund by mail to each customer's last known address within 45 days of the close of the Reporting Period.
  - (c) HCI shall not be required to provide refunds to customers if the racial and/or ethnic Broker Fee disparity can be fully explained through statistical regression

analyses that control for race-and-ethnicity-neutral borrower, property, and loan characteristics that could potentially impact the amount of time and effort HCI takes to arrange residential mortgage loans. Such analyses may control only for the following factors: loan amount, whether the loan is a non-conforming loan, loan purpose, credit score, debt-to-income ratio, loan-to-value ratio, lien status, documentation level, property type, loan date, occupancy status (*e.g.*, investor purchase, second home), the number of loan applicants, and employment status (*e.g.*, unemployed, retired). The methodology used to conduct the regression analyses will be subject to the approval of the OAG and the Banking Department. Absent such approval, which shall not be unreasonably withheld, HCI will provide refunds to customers as set forth above.

#### **VIII.** **COMPLAINT PROCEDURE**

25. Within ten days after receiving any customer complaint, whether written or oral, alleging discrimination involving the provision of mortgage brokerage services or mortgage banking services, HCI will complete a thorough investigation of the complaint and prepare a report setting forth the name and contact information of the complainant, the nature of the complaint, the Employees involved, the investigation conducted, the results of the investigation, and any actions taken as a result of the investigation. The investigation shall be conducted by an HCI management Employee designated to handle customer discrimination complaints.

26. Within seven days of completing the investigation, HCI will inform the complainant of any action taken in response to the complaint. Within fourteen days of receiving any complaint, HCI will provide to the OAG and the Banking Department copies of all documents relating to the complaint.

**IX.**  
**RECORD-KEEPING AND REPORTING**

27. HCI will maintain the following records for the duration of the Assurance:
- (a) All documents and data, including records maintained in an electronic form, relating to Loans, including but not limited to Loan application files, the centralized application log required to be maintained pursuant to 3 N.Y.C.R.R. § 410.8(a)(1), U.S. Department of Housing and Urban Development Settlement Statements (“HUD-1 Form”), Uniform Residential Loan Applications (“Form 1003”), Uniform Underwriting Transmittal Summaries, all documents reflecting disclosures and notices that are legally required to be provided to customers, and all other documents and data reflecting Broker Fees, yield spread premiums, and the race and ethnicity of customers.
  - (b) All documents and data, including records maintained in an electronic form, relating to the fair lending monitoring analyses referenced in Part VII and any other fair lending monitoring analyses performed by HCI; and
  - (c) The Fee Schedules referenced in Part V.
28. HCI will prepare reports and provide them to the OAG and the Banking Department within 45 days of the close of each of the three Reporting Periods. The first Reporting

Period shall begin on the Effective Date and end 12 months thereafter. The remaining Reporting Periods shall begin at the close of the prior Reporting Period and end 12 months thereafter. The reports shall include:

- (a) The total number of Loans brokered during the Reporting Period, broken down by branch office and the race and ethnicity of the customer;
- (b) The number of Piggyback Loans brokered during the Reporting Period, broken down by branch office and the race and ethnicity of the customer;
- (c) The results of the analyses required by Paragraph 21, and a detailed written summary of any follow-up and corrective actions taken in response to these results as required by Paragraphs 22-23;
- (d) In the event that customer refunds are required under Paragraph 24, a chart reflecting the name of each customer who received a refund, the address where the refund was sent, the date the refund was sent, and the amount of the refund and how this amount was calculated;
- (e) In the event that HCI asserts that the customer refunds required under Paragraph 24 are not required because of the results of the statistical regression analyses referenced in Subparagraph 24(c), a detailed written summary setting forth the results of these analyses and the methodology used; and
- (f) Copies of the written acknowledgments executed by Brokers who received the fair lending training referenced in Part VI during the Reporting Period.

29. Within 14 days after receiving a written request from the OAG or the Banking Department, HCI will provide to the OAG or the Banking Department any documents

that it is required to maintain under the terms of this Assurance or that relate to obligations under the Assurance, and representatives of the OAG or the Banking Department shall be permitted to inspect and copy all such records at any and all reasonable times.

30. This Assurance does not in any way impair or affect the right of the OAG to seek to obtain documents from HCI pursuant to a subpoena.

#### **X.**

#### **SCOPE OF THE ASSURANCE, JURISDICTION, AND ENFORCEMENT PROVISIONS**

31. This Assurance shall expire three years and two months after the Effective Date.
32. Notwithstanding any provision of this Assurance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for HCI to comply with any provision of this Assurance.
33. The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all appropriate action required or permitted to be taken pursuant to this Assurance to effectuate its terms.
34. The OAG may seek to enforce this Assurance through enforcement proceedings including a civil action in federal or state court seeking appropriate relief, such as specific performance of the provisions of this Assurance. Pursuant to New York State Executive Law § 63(15), evidence of a violation of the Assurance will constitute *prima facie* proof of a violation of applicable state and federal statutes that prohibit discrimination in the extension of credit, such as New York Executive Law § 296-a, in any civil action or proceeding hereafter commenced by the OAG. In the event of a dispute among the

- parties regarding any issue arising hereunder, the parties will attempt in good faith to resolve the dispute before seeking judicial intervention.
35. Any failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.
  36. If any provision, term, or clause of this Assurance is declared illegal, unenforceable, or ineffective in a legal forum, such provision, term, or clause shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the parties.
  37. This Assurance constitutes the entire agreement between HCI and the OAG on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party that is not contained in this Assurance shall be enforceable.
  38. Nothing in this Assurance is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.
  39. Nothing in this Assurance is intended to, nor shall, limit the OAG's or the Banking Department's investigatory or compliance review powers otherwise provided by law or this Assurance.
  40. This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
  41. This Assurance is final and binding on the parties, including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. No

assignment by any party hereto shall operate to relieve such party of its obligations herewith.

42. HCI agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects HCI's:  
(a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.
43. Any payments and all correspondence related to this Assurance shall reference AOD No. 08-160.
44. All communications and notices regarding this Assurance shall be sent by first-class mail and, if 25 pages or fewer in length, by facsimile, to:

Office of the Attorney General:  
Jeffrey K. Powell, Section Chief  
Civil Rights Bureau  
Office of the NYS Attorney General  
120 Broadway, 3<sup>rd</sup> Floor  
New York, New York 10271  
Tel. (212) 416-6396  
Fax (212) 416-8074

Home Consultants, Inc. d/b/a HCI Mortgage  
Richard Harsche, President  
Home Consultants, Inc. d/b/a HCI Mortgage  
473 Easton Turnpike, Suite A  
Lake Ariel, Pennsylvania 18436  
Tel. (570) 689-3353 ext. 229  
Fax(570) 503-0012

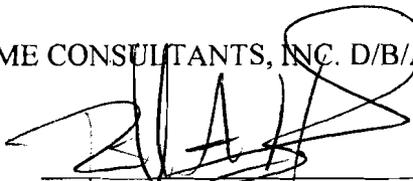
*With a copy to:*

Reginald S. Evans  
Shumaker Williams, P.C.  
P.O. Box 88  
Harrisburg, Pennsylvania 17108  
Tel: (717) 909-1652  
Fax: (717) 763-7419

IN WITNESS THEREOF, the undersigned subscribe their names:.

Dated: Lake Ariel, Pennsylvania  
November 12, 2008

HOME CONSULTANTS, INC. D/B/A HCI MORTGAGE

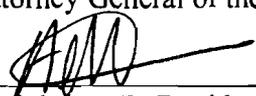
By: 

Richard Harsche, President  
Home Consultants, Inc. d/b/a HCI Mortgage

CONSENTED TO:

Dated: New York, New York  
~~November 5~~, 2008  
JANUARY

ANDREW M. CUOMO  
Attorney General of the State of New York

By: 

Alphonso B. David  
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Civil Rights Bureau

  
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