

CONSENT ORDER SUMMARY

DFI Case Number: C-18-2391

Names:	Prime Choice Funding, Inc. (Prime Choice) Keith Carl McKay (Mr. McKay)
Order Number:	C-18-2391-18-CO01
Effective Date:	July 10, 2018
NMLS Numbers:	Prime Choice Funding, Inc. - 117375 Keith Carl McKay - 150966
License Effect (Stayed):	Prime Choice – Consumer loan company license revoked, with the revocation stayed for four (4) years contingent upon Respondents’ compliance with the Consent Order (CO), the Consumer Loan Act (CLA), or, if Prime Choice is licensed under the Mortgage Broker Practices Act (MBPA), with the MBPA. Mr. McKay – Mortgage loan originator license revoked, with the revocation stayed for four (4) years contingent upon Respondents’ compliance with the CO and the CLA, or, if Prime Choice is licensed under the MBPA, with the MBPA.
Prohibition (Stayed):	Prime Choice and Mr. McKay are prohibited from participating, in any capacity, in the conduct of the affairs of any consumer loan company or mortgage broker licensed by, or subject to licensure or regulation by, the Department, with the prohibitions stayed for four (4) years contingent upon Respondents’ compliance with the CO and the CLA, or, if Prime Choice is licensed under the MBPA, with the MBPA.

Investigation Costs:	\$ 10,000	Due: With delivery	Paid: <input checked="" type="checkbox"/> Y	Date: 7/10/18
Fine (Partially Stayed):	\$ 200,000	\$100,000 of the fine is to be paid over ten (10) months in \$10,000 monthly payments commencing the last day of the first month after the CO is entered, and continuing until the paid fine is paid in full. Payment of the \$100,000 balance of the fine is stayed for four (4) years contingent upon Respondents’ compliance with the CO and the CLA, or, if Prime Choice is licensed by the Department under the MBPA, with the MBPA.		

Other Terms

Admissions: Prime Choice and Mr. McKay admitted the Findings of Fact and Conclusions of Law identified in the CO, and further Agreed, and were Ordered, to not take any action or permit to be made any public statement creating the impression that the CO was without factual basis. Nothing in this paragraph affects Respondents’ right to take legal or factual positions in defense of litigation.

Future Compliance: Prime Choice and Mr. McKay Agreed, and were Ordered, to comply with the CLA and, if again licensed by the Department under the MBPA, with the MBPA.

Remedial Affirmative Action. Prime Choice Agreed, and was Ordered, to, retain, within 60 days of the entry of the CO, an in-house compliance manager to review all advertising for compliance with the CLA or, if applicable, the MBPA, prior to distribution in Washington. Prime Choice and Mr. McKay

further Agreed, and were Ordered, to retain all records relating to the review and approval of all advertising pursuant to CLA, and, if again licensed by the Department under the MBPA, the MBPA.

Advertising Compliance Examinations. Respondent Prime Choice Agreed, and was Ordered, to be subject to two (2) limited-scope advertising compliance examinations, at Respondents expense and at the Department's convenience, to be completed within four (4) years.

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
5 Whether there have been violations of the Consumer Loan Act
6 of Washington and the Mortgage Broker Practices Act of
7 Washington by:

8 PRIME CHOICE FUNDING, INC., NMLS No. 117375, and
9 KEITH CARL McKAY, Owner, President, and Mortgage
10 Loan Originator, NMLS No. 150966,

11 Respondents.

No. C-18-2391-18-CO01

CONSENT ORDER

12 COMES NOW the Director of the Department of Financial Institutions (Director), through her
13 designee Charles E. Clark, Division Director, Division of Consumer Services, Respondent Prime Choice
14 Funding, Inc. (Respondent Prime Choice), and Respondent Keith Carl McKay (Respondent McKay), by
15 and through their attorney, Seth A. Rosenberg, and finding that the issues raised in the above-captioned
16 matter may be economically and efficiently settled, agree to the entry of this Consent Order. This
17 Consent Order is entered pursuant to RCW 31.04, the Consumer Loan Act (CLA), RCW 19.146, the
18 Mortgage Broker Practices Act (MBPA), and RCW 34.05.060 of the Administrative Procedure Act
19 (APA), based on the following:

20 **I. FINDINGS OF FACT**

21 **1.1 Respondents.**

22 **A.** The Washington State Department of Financial Institutions (Department) licensed **Respondent**
23 **Prime Choice** as a consumer loan company under the CLA on or about July 3, 2017. The Department
24 had previously licensed Respondent Prime Choice as a mortgage broker under the MBPA from on or
about February 19, 2013, through on or about October 19, 2017, when it surrendered its MBPA license.
Accordingly, between July and October 2017, Respondent Prime Choice was dually licensed under the
CLA and the MBPA. Respondent Prime Choice continues to be licensed under the CLA to date.

1 **B.** The Department licensed **Respondent McKay** as a mortgage loan originator (MLO) sponsored
2 by Respondent Prime Choice on or about January 7, 2013, and he continues to be licensed by the
3 Department as a MLO to date. Respondent McKay has been the sole owner, officer, and director of
4 Respondent Prime Choice since it was first licensed by the Department.

5 **1.2 2016 Statement of Charges.** On or about October 17, 2016, the Department issued a Statement of
6 Charges against Respondent Prime Choice and Respondent McKay (hereinafter Respondents) charging
7 them with multiple alleged violations of the MBPA, including numerous counts of false, deceptive, and
8 misleading advertising.

9 **1.3 2017 Consent Order.** On or about February 22, 2017, the Department entered into a Consent
10 Order (2017 Order) with Respondents whereby they agreed to henceforth comply with the MBPA. In
11 addition, Respondents agreed to adopt written compliance policies, procedures, and testing systems
12 reasonably designed to detect and prevent the distribution of false, deceptive, or misleading advertising
13 in Washington. The 2017 Order was signed by Respondent McKay individually, and on behalf of
14 Respondent Prime Choice as its Owner, President, and Designated Broker, on February 7, 2017.

15 **1.4 2017 Advertising Violations.** Since entry of the 2017 Order, Respondent Prime Choice has
16 delivered more than 200,000 direct mail solicitations to Washington consumers. The solicitations,
17 delivered to consumers beginning in June 2017 and ending in December 2017, contained numerous
18 advertising violations in violation of the CLA, MBPA, and the 2017 Order.

19 **II. CONCLUSIONS OF LAW**

20 **2.1** Based on the above Findings of Fact, Respondent Prime Choice violated RCW 31.04.027(2), (3),
21 (7), and (13) of the CLA, RCW 19.146.0201(2), (3), (7), and (11) of the MBPA, and the 2017 Order, by:

- 22 **A.** Directly or indirectly engaging in an unfair or deceptive practice toward any person;
- 23 **B.** Directly or indirectly obtaining property by misrepresentation;

- 1 C. Making in any manner, any false or deceptive statement or representation with regard to
2 the rates, points, or other financing terms or conditions for a residential mortgage loan; and
3 D. Failing to comply with state and federal laws applicable to the activities governed by the
4 CLA or the MBPA.

III. AGREEMENT AND ORDER

5 **3.1** The Department and Respondents have agreed upon a basis for resolution of the Findings of Fact
6 and Conclusions of Law identified in this Consent Order. Pursuant to RCW 31.04, RCW 19.146, and
7 RCW 34.05.060 of the APA, Respondents hereby agree to the Department's entry of this Consent Order.

8 Based upon the foregoing:

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

11 **B. Waiver of Hearing.** It is AGREED that Respondents hereby waive any right they have to an
12 adjudicative hearing and any and all administrative and judicial review of the issues raised in this matter, or
13 of the resolution reached herein.

14 **C. Admissions.** It is AGREED that Respondents admit the Findings of Fact and Conclusions of Law
15 identified in this Consent Order. It is FURTHER AGREED and ORDERED that Respondents will not
16 take any action or permit to be made any public statement creating the impression that this Consent
17 Order is without factual basis. Nothing in this paragraph affects Respondents' right to take legal or
18 factual positions in defense of litigation.

19 **D. Cessation of Advertising and Future Compliance.** It is AGREED that Respondents have
20 represented and warranted to the Department that upon receipt of the subpoena issued in this matter
21 Respondent Prime Choice ceased all advertising in Washington. It is FURTHER AGREED and
22 ORDERED that upon commencing to advertise in Washington in the future, Respondents shall comply
23 with the CLA, and, if again licensed by the Department under the MBPA, with the MBPA.

24 //

1 **E. Remedial Affirmative Action.** It is AGREED and ORDERED that, within 60 days of the entry of
2 this Consent Order, Respondent Prime Choice shall retain an in-house compliance manager to review all
3 advertising for compliance with the CLA, and, if again licensed by the Department under the MBPA, the
4 MBPA, prior to distribution in Washington. It is FURTHER AGREED and ORDERED that Respondents
5 shall retain all records relating to the review and approval of all advertising records pursuant to RCW
6 31.04.155 and WAC 208-620-520 of the CLA, and, if again licensed by the Department under the MBPA,
7 pursuant to RCW 19.146.060 and WAC 208-660-450 of the MBPA.

8 **F. Advertising Compliance Examinations.** It is AGREED and ORDERED that Respondent Prime
9 Choice shall be subject to two (2) limited-scope advertising compliance examinations, at Respondents
10 expense and at the Department's convenience, to be completed within four (4) years. The purpose of the
11 examinations shall be to ascertain compliance with this Consent Order, the CLA or, if Respondent Prime
12 Choice is licensed by the Department under the MBPA, to ascertain compliance with the MBPA.

13 **G. Consumer Loan Company License Revocation (Stayed).** It is AGREED AND ORDERED
14 that Respondent Prime Choice's consumer loan company license is revoked. It is FURTHER AGREED
15 and ORDERED that the revocation of Respondent Prime Choice's consumer loan company license shall
16 be stayed for a period of four (4) years from the date of entry of this Consent Order, contingent on
17 Respondents' compliance with this Consent Order, the CLA, or, if Respondent Prime Choice is licensed
18 by the Department under the MBPA, contingent on Respondents' compliance with the MBPA.

19 **H. Mortgage Loan Originator License Revocation (Stayed).** It is AGREED AND ORDERED
20 that Respondent McKay's MLO license is revoked. It is FURTHER AGREED and ORDERED that the
21 revocation of Respondent McKay's MLO license shall be stayed for a period of four (4) years from the
22 date of entry of this Consent Order contingent on Respondents' compliance with this Consent Order, the
23 CLA, or, if Respondent Prime Choice is licensed by the Department under the MBPA, contingent on
24 Respondents' compliance with the MBPA.

1 **I. Prohibition from Industry (Stayed).** It is AGREED AND ORDERED that Respondents are
2 prohibited from participating, in any capacity, in the conduct of the affairs of any consumer loan
3 company or mortgage broker licensed by, or subject to licensure or regulation by, the Department. It is
4 FURTHER AGREED and ORDERED that the prohibition of Respondents shall be stayed for four (4)
5 years contingent on Respondents' compliance with this Consent Order, the CLA, or, if Respondent Prime
6 Choice is licensed by the Department under the MBPA, contingent on Respondents' compliance with the
7 MBPA.

8 **J. Fine (Partially Stayed).** It is AGREED and ORDERED that Respondent Prime Choice
9 Funding, Inc. and Respondent Keith C. McKay are jointly and severally liable to the Department for a
10 fine of \$200,000. It is FURTHER AGREED and ORDERED that \$100,000 of the fine shall be paid
11 pursuant to Paragraph N, Payments, and that payment of the \$100,000 balance shall be stayed for four
12 (4) years contingent upon compliance with this Consent Order, the CLA, or, if Respondent Prime Choice
13 is licensed by the Department under the MBPA, contingent on Respondents' compliance with the MBPA.

14 **K. Expiration of Stayed Sanctions.** It is AGREED that absent an action by the Department to lift the
15 stays and impose the stayed sanctions pursuant to Paragraph L, the stayed sanctions shall expire four (4)
16 years from the date of entry of this Consent Order.

17 **L. Imposition of Stayed Sanctions.** It is AGREED AND ORDERED that:

- 18 1. If, during the four-year stayed revocations, prohibition, and fine (the stayed sanctions), the
19 Department determines Respondents have not complied with this Consent Order, the CLA,
20 or, if applicable, the MBPA, and the Department seeks to lift the stays and impose the
21 stayed sanctions, the Department will first serve Respondents with a written notice of
22 alleged noncompliance.
- 23 2. The Department's written notice of alleged noncompliance will include:
24 a. A description of the alleged noncompliance;
 b. A statement that the Department seeks to lift the stays and impose the stayed sanctions;
 c. Notice that Respondents can contest the notice of alleged noncompliance by either
 requesting an adjudicative hearing or, in lieu thereof, by submitting a written response
 to the Department contesting the alleged noncompliance; and
 d. Notice that the process for lifting the stays applies only to this Consent Order.

- 1 **3.** Respondents have twenty (20) days from the date of service of the notice of alleged
2 noncompliance to submit a written request to the Department for an adjudicative hearing
3 or, in lieu thereof, a written response to the Department contesting the alleged
4 noncompliance.
- 5 **4.** The scope and issues of the adjudicative hearing, if requested, will be limited solely to
6 whether or not Respondents are in violation of the terms of this Consent Order, the CLA,
7 or, if applicable, the MBPA.
- 8 **5.** At the conclusion of the adjudicative hearing the hearing officer will issue an initial
9 decision. Any party may file a Petition for Review of that initial decision with the Director.
- 10 **6.** In lieu of requesting a hearing, within twenty (20) days from the date of service of the
11 notice of alleged noncompliance, Respondents may submit a written response for
12 consideration by the Department contesting the alleged noncompliance. The response must
13 include each Respondent’s waiver of the right to an adjudicative hearing, may address the
14 alleged noncompliance, and may seek an alternative resolution to lifting any stays.
- 15 **7. Default.** If Respondents do not timely request an adjudicative hearing or submit a written
16 response contesting the notice of alleged noncompliance, the Department may lift the stays
17 and impose the stayed sanctions without further notice.

18 **M. Investigation Fee.** It is AGREED and ORDERED that Respondent Prime Choice Funding, Inc.
19 and Respondent Keith C. McKay shall jointly and severally be liable for and shall pay to the Department
20 an investigation fee of \$10,000 pursuant to Paragraph N, Payments.

21 **N. Payments.** It is AGREED and ORDERED that Respondents shall pay the investigative fee upon
22 delivery to the Department of this signed Consent Order in the form of a \$10,000 cashier’s check made
23 payable to the “Washington State Treasurer.” It is FURTHER AGREED and ORDERED that beginning
24 on the last day of the month immediately following entry of this Consent Order, Respondents shall
25 commence making monthly payments of \$10,000 to the Department, in the form of cashier’s checks
26 made payable to the “Washington State Treasurer,” until the \$100,000 paid fine is paid in full.

27 **O. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to abide
28 by the terms and conditions of this Consent Order may result in further legal action by the Director. In
29 the event of such legal action, Respondents may be responsible to reimburse the Director for the cost
30 incurred in pursuing such action, including but not limited to, attorney fees.

1 **P. Voluntarily Entered.** It is AGREED that Respondents have voluntarily entered into this
2 Consent Order, which is effective when signed by the Director's designee.

3 **Q. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read this
4 Consent Order in its entirety and fully understand and agree to all of the same.

5 **R. Authority to Execute Order.** It is AGREED that Respondent McKay has represented and
6 warranted to the Department that he has the full power and right to execute this Consent Order on behalf
7 of Respondent Prime Choice.

8
9 PRIME CHOICE, FUNDING, INC.

10 By:

11 /s/
12 Keith Carl McKay, Owner and President
13 Prime Choice Funding, Inc.

6/22/18
Date

14
15 /s/
16 Keith Carl McKay, Individually
17 APPROVED FOR ENTRY:

6/22/18
Date

18
19 /s/
20 Seth A. Rosenberg, Esq., WSBA No. 41660
21 The Rosenberg Law Group, PLLC
Attorneys for Respondents Prime Choice Funding, Inc. and Keith Carl McKay

6/29/18
Date

22 DO NOT WRITE BELOW THIS LINE

1 THIS ORDER ENTERED THIS 10th DAY OF JULY 2018.

2
3 /s/
4 CHARLES E. CLARK
5 Director, Division of Consumer Services
6 Department of Financial Institutions
7

8 Presented by:

Approved By:

9 /s/
10 ANTHONY W. CARTER
11 Senior Legal Examiner
12 Division of Consumer Services
13 Department of Financial Institutions
14

/s/
15 STEVEN C. SHERMAN
16 Enforcement Chief
17 Division of Consumer Services
18 Department of Financial Institutions
19
20
21
22
23
24