

ORDER SUMMARY
Consumer Services Division Case Number C-22-3370

Consent Orders resolve investigations. In these, companies and individuals work with us to agree to terms that resolve the alleged issues in the investigation.

Name(s)	Loyalty Funding, Inc., NMLS #1649726 Tam Thuy Nguyen, NMLS #1652531
Order Number	C-22-3370-23-CO01
Date issued	March 7, 2023

What does this Consent Order require?

- **All terms are complete.**
- Respondents have agreed to cease and desist from engaging in all violations of the Consumer Loan Act.
- Loyalty Funding, Inc.'s Consumer Loan license is surrendered.
- Agreement to comply with additional requirements if Respondents apply for a Washington Consumer Loan or Mortgage Broker license before 3/7/28.

Need more information?

You can contact the Consumer Services Division, Enforcement unit at (360) 902-9703 or cseforcecomplaints@dfi.wa.gov. *Please remember that we cannot provide financial or legal advice to members of the public. We also cannot release confidential information.*

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

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

No.: C-22-3370-23-CO01

CONSENT ORDER

5 LOYALTY FUNDING, INC., NMLS No.
1649726, and TAM THUY NGUYEN, Owner
6 and Chief Executive Officer, NMLS No.
1652531,

7 Respondents.

8
9 COMES NOW the Director of the Department of Financial Institutions (Director), through
10 his designee, Lucinda Fazio, Director, Division of Consumer Services, and Loyalty Funding, Inc.
11 (Respondent Loyalty), and Tam Thuy Nguyen (Respondent Nguyen), Owner and Chief Executive
12 Officer of Respondent Loyal Funding (collectively "Respondents"), by and through Respondents'
13 attorney, Julie Greenfield, and finding that the issues raised in the above-captioned matter may be
14 economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is
15 entered pursuant to Revised Code of Washington (RCW) 31.04, the Consumer Loan Act (Act), and
16 RCW 34.05.060 of the Administrative Procedure Act, based on the following:

17 I. FINDINGS OF FACT

18 1.1 Respondents.

19 A. Respondent Loyalty obtained a licensed from the Department of Financial
20 Institutions on February 21, 2019, to conduct the business of a consumer loan company. Respondent
21 Loyalty shut down its Washington consumer loan company business effective February 1, 2023.

22 B. Respondent Nguyen is the Chief Executive Officer and Owner of Respondent
23 Loyalty. Respondent Nguyen has never been licensed by the Department.

1 **1.2 2019 Statement of Charges.** On October 31, 2019, the Department entered a Statement of
2 Charges (2019 Charges) against Respondents, alleging among other things that Respondents had
3 violated the Act by engaging in unlicensed consumer loan activity prior to licensure, by engaging in
4 deceptive and misleading advertising, by failing to comply with the Department’s investigative
5 authority, by failing to provide copies of complete loan files, and by failing to maintain records for
6 Washington residential mortgage loans.

7 **1.3 2020 Consent Order.** On April 3, 2020, the Department entered into a Consent Order (2020
8 Consent Order) with Respondents resolving the 2019 Charges. Respondents agreed and were ordered
9 to take certain affirmative actions, including to retain all records required by the Act, and specifically
10 to retain copies of all required disclosures and loan agreements for loan files; to pay a fine of
11 \$100,000, with \$33,500 of the fine paid, and the remaining \$66,500 stayed for a period of three years
12 contingent on Respondents’ compliance with the 2020 Consent Order and compliance with the Act.
13 The 2020 Consent Order required a full scope compliance examination within two years to assess
14 Respondents’ compliance with the 2020 Consent Order and the Act.

15 **1.4 2022 Examination.** The Department conducted an examination of Respondent Loyalty in
16 2022 to ascertain compliance with the 2020 Consent Order, the Act, and related rules. The
17 examination scope was from December 1, 2020, to October 31, 2021. The Department reviewed four
18 (4) residential mortgage loan files, and noted in the Report of Examination (2022 ROE) 12 violations
19 related the loan files and advertising. Several of the violations noted were substantially similar to
20 violations alleged in the 2019 Charges, and are more fully described below.

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1 **1.5 Loan Files.**

2 A. During the 2022 Examination, the loan files provided to the Department consistently
3 lacked completeness. Numerous required disclosures and documents were not included in the files
4 despite the Department requesting the complete loan files. The Department made multiple requests
5 on the same files for additional documentation and still had not received requested documents for
6 loan files at the close of the exam.

7 B. All four of the loan files contained residential mortgage loan applications that did not
8 include the date the application was taken or revised.

9 C. In all four of the loan files Respondent Loyalty failed to provide the borrowers with
10 required rate lock agreements disclosing the terms of the interest rate lock.

11 D. In one of the loan files, Respondent Loyalty charged at closing more in discount
12 points under origination charges than the amount disclosed to the borrower on the Loan Estimate
13 without a valid changes of circumstance. Respondent Loyalty charged this borrower more than they
14 were allowed to under Regulation Z's zero tolerance limit that prohibits increases to fees paid to the
15 lender for origination charges after the Loan Estimate is provided unless there is a valid change of
16 circumstance. Per the Department's request during the examination, Respondent Loyalty issued a
17 refund to this borrower for the increase in fee.

18 **1.6 False, Deceptive, and Misleading Advertising.** In October of 2021, Respondent Loyalty
19 distributed 9,768 direct mail advertisements offering residential mortgage loan refinances to
20 consumers located in Washington. The direct mail advertisements contained the following deceptive
21 and misleading representations:

22 A. Offered the recipient a "\$0 appraisal" when Respondent Loyalty offered the borrower
23 the option to finance the cost of the appraisal and the cost of the appraisal was paid
for by the borrower as part of the transaction;

- B. Advertised a discounted interest rate without clearly and conspicuously disclosing that the rate was discounted and the cost of the discount to the borrower;
- C. Advertised a simple interest rate without stating in conjunction with it the corresponding APR;
- D. Advertised “Cash in hand as fast as 10 days!” and “we close in 10 business days” when Respondent Loyalty failed to substantiate those claims were true;
- E. Claimed that “Borrowers who obtain an additional quote find they can save thousands off their original Loan Estimate” when Respondent Loyalty failed to substantiate this was true;
- F. Offered interest rates that Respondent Loyalty failed to substantiate were actually available at the time advertised.

II. CONCLUSIONS OF LAW

2.1 Based on the above Findings of Fact, Respondents violated RCW 31.04.145 by failing to give the Department free access to Respondents’ records during an examination and by failing to timely provide required records.

2.2 Based on the above Findings of Fact, Respondents violated RCW 31.04.027(1)(b) by directly or indirectly engaging in any unfair or deceptive practice toward any person, and WAC 208-620-550(18) by failing to indicate on all residential mortgage loan applications the date the application was taken or revised.

2.3 Based on the above Findings of Fact, Respondents violated RCW 31.04.027(1)(b) by directly or indirectly engaging in any unfair or deceptive practice toward any person, and WAC 208-620-510(3)(b) and (c) by failing to provide rate lock agreements to borrowers.

2.4 Based on the above Findings of Fact, Respondents violated RCW 31.04.027(1)(m), by violating an applicable federal law or rule, specifically, the Truth in Lending Act, 15 U.S.C. §1601 *et seq.*, implemented by Regulation Z, 12 C.F.R. §1026.19(e)(3)(i), which prohibits Respondents from charging a borrower more for origination fees than disclosed on the Loan Estimate absent a valid change in circumstance.

1 **2.5** Based on the above Findings of Fact, Respondents violated RCW 31.04.027(1)(b), (g), and
2 (m) by engaging in false, deceptive, and misleading advertising, and by failing to comply with
3 applicable federal law and rules, specifically, the Truth in Lending Act, 15 U.S.C. §1601 *et seq.*,
4 implemented by Regulation Z, 12 C.F.R. §1026.24(c), which requires disclosure of a corresponding
5 APR in conjunction with the simple interest rate.

6 **III. AGREEMENT AND ORDER**

7 The Department and Respondents have agreed upon a basis for resolution of the Findings of
8 Fact and Conclusions of Law identified in this Consent Order. Pursuant to RCW 31.04.093(7) and
9 RCW 34.05.060, Respondents and the Department agree to entry of this Consent Order and further
10 agree that the matters alleged herein may be economically and efficiently settled by the entry of this
11 Consent Order. The parties intend this Consent Order to fully and completely resolve all the
12 violations of the 2020 Consent Order, and all violations noted in the 2022 ROE.

13 Based upon the foregoing:

14 **3.1 Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the
15 activities discussed herein.

16 **3.2 Waiver of Hearing.** It is AGREED that Respondents hereby waive any rights to a hearing and
17 any and all administrative and judicial review of the issues raised in this matter or the resolution reached.

18 **3.3 No Admission of Liability.** It is AGREED that Respondents neither admit nor deny any
19 wrongdoing by the entry of this Consent Order.

20 **3.4 Cease and Desist and Future Compliance.** It is AGREED that Respondents have
21 represented and warranted to the Department that they have ceased and desisted from engaging in all
22 violations of the Act, the Rules, and applicable federal laws and regulations noted in the 2022 ROE
23

1 and this Consent Order. It is FURTHER AGREED and ORDERED that Respondents shall
2 henceforth comply with the Act and Rules.

3 **3.5 Consumer Loan Company License.** It is AGREED that Respondent Loyalty's consumer
4 loan company license is surrendered effective on the date of entry of this Consent Order.

5 **3.6 Record Retention.** It is AGREED and ORDERED that Respondent Loyalty, its officers,
6 employees, and agents shall maintain records in compliance with the Act and provide the Director
7 with the location of the books, records and other information relating to Respondent Loyalty's
8 consumer loan business conducted prior to license surrender, and will provide the Department the
9 name, address and telephone number of the individual responsible for maintenance of such records.

10 **3.7 Affirmative Action.** It is AGREED and ORDERED that for a period of five (5) years from
11 the date of entry of this Consent Order, should Respondent Loyalty apply to the Department to
12 engage in the business of a consumer loan company or mortgage broker, or should Respondent
13 Nguyen seek to be an owner, control person, or executive officer, of a consumer loan company or
14 mortgage broker company subject to regulation by the Department, in addition to meeting all the
15 regular licensing requirements, Respondent Loyalty and Respondent Nguyen shall be required to take
16 the following affirmative action in order to participate in the business of a consumer loan company or
17 mortgage broker subject to regulation by the Department:

- 18 A. Respondent Loyalty and Respondent Nguyen shall timely and completely respond to
19 all requests for documents and information made by the Department as part of an
20 application, examination or investigation.
- 21 B. Respondent Loyalty and Respondent Nguyen shall maintain records in compliance
22 with the Act, including, but not limited to maintain records for all required loan
23 disclosures and agreements for Washington residential mortgage loans.
- 24 C. Respondent Loyalty and Respondent Nguyen shall have all loan files for Washington
residential mortgage loans reviewed by an outside compliance consultant. The outside
compliance consultant shall review all Washington residential mortgage loan files
both prior to closing, and post funding for compliance with all applicable laws and
rules, including, but not limited to, for completeness of the file to ensure it includes
records of all required disclosures and rate lock agreements, and shall review the file
for compliance with the TILA-RESPA Integrated Disclosure Rule.

- D. Respondent Loyalty and Respondent Nguyen shall promptly issue any refunds to consumers identified by the outside compliance consultant as necessary to comply with the TILA-RESPA Integrated Disclosure Rule.
- E. Respondent Loyalty and Respondent Nguyen shall have all advertising related to Washington residential mortgage loans reviewed by an outside compliance consultant before distribution.
- F. Respondent Loyalty and Respondent Nguyen shall retain all records related to the outside compliance consultant's review to prove compliance with items C-E and shall promptly produce such records to the Department upon request.

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

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

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

3.11 Authority to Execute Order. It is AGREED that the undersigned authorized representative has represented and warranted that he has the full power and right to execute this Consent Order on behalf of Respondent Loyalty.

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

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1 **RESPONDENTS:**
Loyalty Funding, Inc., by:

2 [Redacted]
3 [Redacted]

4 Tam Thuy Nguyen
Owner and Chief Executive Officer

02-23-23
Date

6 [Redacted]

7 Tam Thuy Nguyen
Individually

02-23-23
Date

8 APPROVED FOR ENTRY BY:

10 [Redacted]

11 Julie Greenfield
Attorney for Respondents

2/18/23
Date

12 DO NOT WRITE BELOW THIS LINE

13 THIS ORDER ENTERED THIS 7th DAY OF March, 2023.



15 /s/ _____
16 Lucinda Fazio, Director
17 Division of Consumer Services
Department of Financial Institutions

18 Presented by:
19 /s/ _____
20 KENDALL FREED
Financial Legal Examiner

21 Approved by:
22 /s/ _____
23 JACK McCLELLAN
Enforcement Chief

24 CONSENT ORDER
C-22-3370-23-CO01
RESPONDENT LOYALTY FUNDING AND TAM THUY
NGUYEN