

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL

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| In the Matter of: |) | |
| |) | ASSURANCE OF DISCONTINUANCE |
| LINNEHAN ACCEPTANCE, |) | (5 M.R.S. § 210) |
| d/b/a LINNEHAN HOMES |) | |

This Assurance of Discontinuance (“Assurance”) is entered into by the Attorney General of the State of Maine (“Attorney General”), acting pursuant to 5 M.R.S. § 210 of the Unfair Trade Practices Act (5 M.R.S. §§ 205-A to 214), and Linnehan Acceptance, d/b/a Linnehan Homes (“LH” or “Respondent”).

BACKGROUND

1. LH is a Maine corporation with a main office located at 171 Bar Harbor Road in Ellsworth, Maine 04605.
2. In late 2013, LH began promoting its “American Dream Path to Home Ownership Plan” (the “Plan”) to Maine consumers who, in general, are unable to obtain a mortgage from a third-party lender due to low FICO scores or inadequate credit history, and who do not have sufficient resources to make a required down payment.
3. The Plan requires a participating consumer to pay LH a monthly rent for a home and to enter into a renewable 4-year option agreement to purchase the home. In addition to rent, the consumer pays LH a nonrefundable “down payment” on the option, and agrees to make an annual option payment. The option payments reduce the purchase price of the home should the consumer exercise his or her option to purchase.

4. LH buys housing through foreclosure sales, auctions, or other similar means. After reconditioning, LH makes the houses available to consumers whom it has approved for participation in the Plan.

5. In its promotion of the Plan, LH has made such statements as: "Everyone is approved;" "Nobody is ever turned down;" "You're approved now for what you can afford with our custom designed, path to Home Ownership Plan. THAT'S RIGHT . . . You're approved NOW."

6. In fact, LH's approval is conditional because it depends on a consumer meeting LH's conditions.

7. LH's application process for the Plan requires a consumer to submit detailed personal and financial information for LH's "underwriting," including employment history, credit report, income tax returns, household income and expenses, and assets and liabilities.

8. If LH approves a consumer for the Plan and an acceptable home is available, LH schedules a "closing" at which the consumer signs a number of documents including, but not limited to, a lease agreement, a renewable option to purchase agreement, an "Equity Building Account Agreement," a tax refund agreement, and a waiver and release agreement. LH options the home to the consumer on an "as is" basis unless LH agrees to make specified repairs. According to the option agreement, if the consumer renews the option at the end of the 4-year term for another 4-year term, the purchase price of the home is increased by 10%. Included in the documents that consumers receive is a disclosure which states that the Plan is "not a mortgage" nor is it an

“installment purchase plan” and that “unless and until [the consumer] exercise[s his or her] exclusive option to purchase the real estate ... [the consumer] is not the owner of the real estate.”

9. Often, LH bases the amount of the consumer’s annual option payment on the consumer’s anticipated state and federal tax refunds. LH requires the consumer to agree to pay its tax preparer to prepare the consumer’s returns, and to agree that LH will receive the refunds towards, or in satisfaction of, the consumer’s annual option payment. If a consumer’s refunds are not large enough, LH requires the consumer to agree to make additional option payments on an installment basis.

10. Except for the nonrefundable down payment, LH deposits option payments into the consumer’s Equity Building Account. These payments are applied towards the consumer’s annual option payment when it is due. Once the annual option payment is paid, it is nonrefundable.

11. As described in the applicable agreements, if a consumer voluntarily leaves the Plan, or is terminated by LH, without exercising his or her option, the option payments made to LH are non-refundable, with the exception of any funds that are in the consumer’s Equity Building Account, which are returned to the consumer less a 10% “cancellation fee.”

12. Several consumers have complained to the Attorney General that they believed that they were buying a home through the Plan, rather than renting a home and making option payments to be applied to the purchase price if they exercised their option.

13. As of August of 2017, LH represents that it had enrolled 86 consumers in its Plan. Of those, 42 were current, 38 were terminated, and 6 had “converted” to home ownership after obtaining a mortgage from a lender.

14. LH represents that it has improved its underwriting standards which, it believes, will increase the success rate for its participating consumers to obtain financing to buy their homes.

15. LH further represents that it currently intends to continue promoting its Plan on a much smaller scale and to limit consumer participation to approximately 6 properties a year.

THE ATTORNEY GENERAL'S POSITION

16. The Attorney General contends that Respondent has made statements about, and used terminology in connection with, its Plan that have been misleading to consumers, in violation of 5 M.R.S. § 207.

17. The Attorney General contends that Respondent enrolled consumers in its Plan who could not afford it and who suffered financial loss when they left, or were terminated by LH from, the Plan, in violation of 5 M.R.S. § 207.

18. The Attorney General contends that Respondent did not make the disclosures to consumers required by 33 M.R.S. § 173 before they entered into option agreements with LH.

19. The Attorney General contends that LH's requirement that consumers pay LH's tax preparer to prepare their tax returns is unfair, in violation of 5 M.R.S. § 207.

20. The Attorney General contends that LH has failed to give consumers sufficient time to review LH's documents, or to have them reviewed by an attorney, before they sign them, in violation of 5 M.R.S. § 207.

21. The Attorney General contends that LH's disclosure to consumers that the Plan is "not a mortgage" or an "installment purchase plan," and that "unless and until [the consumer] exercise[s his or her] exclusive option to purchase the real estate . . . [the consumer] is not the owner of the real estate" is inadequate to overcome the misleading impression created by LH that consumers in the Plan are buying their homes, in violation of 5 M.R.S. § 207.

RESPONDENT'S POSITION

22. Respondent denies that it has violated any Maine laws.

AGREEMENT

23. To resolve the concerns of the Attorney General, Respondent agrees to the following acts or practices:

- A. LH shall not advertise or claim that everyone is approved to participate in its Plan if a consumer's approval is conditional on meeting LH's requirements.
- B. LH shall not use such words or terms as "closing," "Home Ownership Plan" or other similar words or terms, to describe its Plan that may mislead consumers into thinking that they are purchasing a home from LH, rather than renting a home with a separate option to purchase, which the consumer must properly exercise before he or she purchases the home from

LH. LH may continue to use the term "Path to Home Ownership Plan," but it shall clearly and conspicuously disclose on its web site and in its documents describing the Plan, that a consumer enrolled in the Plan is not purchasing a house from LH, but, rather, is renting a house with a separate option to purchase it.

C. LH shall clearly and conspicuously disclose to consumers that when they enroll in the Plan, they will be leasing their home from LH and paying for a separate option to purchase, which must be properly exercised by the consumer before the consumer can purchase the home.

D. LH shall not require a consumer entering into a lease agreement with LH to waive the warranty of habitability as a condition for entering into an option agreement with LH. However, LH's option agreement can require a consumer to purchase the subject property in as-is condition at the time the consumer exercises his or her option to purchase the property, subject to any rights the consumer may have as a tenant under 14 M.R.S. § 6021.

E. LH shall make all disclosures to consumers that are required by 33 M.R.S. § 173 at least 1 week before the consumer is scheduled to sign documents for the Plan.

- F. LH shall provide the consumer with each document required for participation in the Plan at least 1 week before the consumer is scheduled to sign documents for the Plan.
- G. LH may require a consumer to have his or her tax returns prepared by LH's preparer so long as LH pays for it.
- H. As part of its custom design of a consumer's participation in the Plan, LH shall collect from consumers their first month's rent; last month's rent; and the maximum amount for a security deposit permitted by 14 M.R.S. § 6032.
- I. Respondent shall not charge a consumer a cancellation fee for refunding a consumer who leaves, or is terminated by LH from, the Plan.
- J. If a consumer exercises his or her option to buy the home after the original purchase price has been increased pursuant to the option agreement, and an appraisal of the home does not support the increased purchase price, LH shall reduce the purchase price to either its appraised value or its original purchase price to facilitate the sale.
- K. LH shall refund to a consumer 50% of all option payments paid by the consumer, including any "down payment," if the consumer is terminated by LH, or leaves the Plan, within the first 24 months. The refund may take the form of cash payments made to the consumer, write-offs of rent owed to

LH, and payment of amounts owed by the consumer for such services as utilities.

- L. For those consumers who left the Plan or were terminated by LH, within 24 months, LH shall provide a refund to each such consumer of 50% of the total of any security deposit and all option payments paid by the consumer, including any "down payment," less any monies already paid to, or on behalf of, the consumer by LH, write-offs of rent owed to LH, and 20% of LH's costs to repair the home after the consumer vacated. Upon execution of this Assurance and no later than by January 11, 2019, LH shall provide a bank check in the amount of \$18,326.93 to the Attorney General, who shall distribute the funds to each consumer listed in Exhibit A, which is attached hereto, in the amount specified. LH shall provide the Attorney General with a copy of any release or settlement agreement between LH and any of these consumers. The Attorney General shall provide LH with a copy of the letters to consumers notifying them of the refund they will receive pursuant to this Assurance.

GENERAL PROVISIONS

24. Nothing contained herein may be construed as an admission of any violation of law, or of any liability or wrongdoing by Respondent. No part of this Assurance shall constitute evidence against Respondent, its employees, agents,

or officers in any action brought by any person for any violation of law, except in an action brought by the Attorney General for violation of any of the terms of this Assurance by Respondent. Respondent's employees, agents, and officers shall be included in this Assurance only to the extent that they continue to comply with all applicable laws, and there has been no finding of liability against them.

25. This Assurance constitutes a complete settlement and release on behalf of the State of Maine against Respondent and its employees, agents, and officers with respect to all claims, causes of action, penalties and costs that were or could have been asserted prior to the effective date of this Assurance, and relating to, or based upon, the subject matter of this Assurance.

Notwithstanding the foregoing, the Attorney General may institute an action or proceeding for violation of any provision of this Assurance, or for Respondent's future conduct.

26. This Assurance does not constitute an approval by the Attorney General of any of Respondent's business practices, and Respondent shall make no representation to the contrary.

27. Pursuant to 5 M.R.S. § 210, any material violation of this Assurance shall constitute *prima facie* evidence of an act or practice declared to be unlawful by 5 M.R.S. § 207. If the Attorney General believes that any violation of this Assurance has taken place, the Attorney General will notify Respondent in writing of the alleged violation, and Respondent agrees to act in good faith to address such alleged violation within sixty (60) days. The Attorney General, however, reserves all rights to pursue any appropriate remedy if she is not

satisfied with the actions that Respondent has taken to correct the alleged violation.

28. This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel concerning the subject matter addressed herein. Any amendment or modification of this Assurance must be in writing and signed by duly authorized representatives of all the parties hereto.

29. This Assurance shall be binding upon, and inure to the benefit of, the parties and their successors-in-interest.

30. Jurisdiction is retained by the Kennebec County Superior Court in the event that this matter is reopened by the Attorney General for further proceedings in the public interest.

31. Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Assurance and to legally bind such party to the terms and conditions of this Assurance.

EFFECTIVE DATE

32. The effective date of this Assurance is the date that it is filed in the Kennebec County Superior Court.

IN WITNESS WHEREOF, we, the undersigned, have the authority to consent and sign on behalf of the parties in this matter, and hereby consent to the form and contents of this Assurance, and to its entry.

JANET T. MILLS
ATTORNEY GENERAL

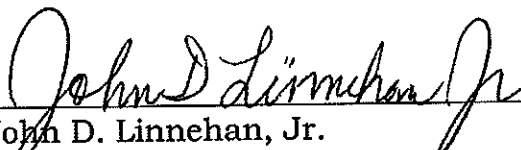
Date:

1/02/19



Carolyn A. Silsby, Bar No. 3080
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8800

Date:



John D. Linnehan, Jr.
Individually and as President of Linnehan
Acceptance, d/b/a Linnehan Homes

Exhibit A

CONSUMERS RECEIVING REFUND FROM LINNEHAN HOMES

| | | |
|-----|--------------------------|-------------|
| 1. | Velvet A. Brown | \$ 560.50 |
| 2. | Gary D. Faulkner, Jr. | \$ 547.00 |
| 3. | Millie Joe E. Billington | \$ 55.54 |
| 4. | Stanley W. Howard | \$ 3,914.69 |
| 5. | Crystal J. Beal | \$ 226.93 |
| 6. | Wendy A. Seymour | \$ 2,405.98 |
| 7. | Michael S. Scholes | \$ 1,975.62 |
| 8. | Michael P. Larrabee | \$ 1,091.76 |
| 9. | Natalie R. McClenning | \$ 3,315.20 |
| 10. | Dalton T. Wilbur | \$ 2,257.90 |
| 11. | Daniel M. Pelkey | \$ 1,975.81 |
| | TOTAL | \$18,326.93 |