

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 15F-BD040-SBD

3 **LEAD FUNDING, LLC; VICTOR S.**  
4 **MITCHELL, CHIEF EXECUTIVE**  
5 **OFFICER; AND ANAMARIA MITCHELL,**  
6 **MANAGING MEMBER**

**ORDER TO CEASE AND DESIST;**  
**NOTICE OF OPPORTUNITY FOR**  
**HEARING; CONSENT TO ENTRY OF**  
**ORDER**

9375 E. Shea Blvd #281  
Scottsdale, AZ 85260

Respondents.

7  
8 The Superintendent of Financial Institutions for the State of Arizona (“Superintendent”),  
9 makes the following Findings of Fact and Conclusions of Law and enters the following Order  
10 pursuant to Arizona Revised Statutes (“A.R.S.”) § 6-137(A). Pursuant to Titles 6 and 41 of the  
11 Arizona Revised Statutes and Title 20, Chapter 4 of the Arizona Administrative Code (“A.A.C.”),  
12 Respondents are hereby notified that they are entitled to request a hearing to contest the allegations  
13 set forth in this Order. The Request for Hearing shall be filed with the Arizona Department of  
14 Financial Institutions (“Department”) pursuant to A.R.S. § 6-137(D) within **thirty (30) days** of  
15 service of this Order and shall identify with specificity the action or order being appealed in  
16 accordance with A.R.S. § 41-1092.03(B).

17 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or  
18 her own behalf or by counsel. If Respondents are represented by counsel, the information required  
19 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a  
20 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for  
21 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**  
22 **reasonable accommodations such as interpreters, alternative formats, or assistance with**  
23 **physical accessibility.** Requests for special accommodations must be made as early as possible to  
24 allow time to arrange the accommodations. If accommodations are required, call the Office of  
25 Administrative Hearings at (602) 542-9826.

1 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.  
2 § 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled  
3 hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an  
4 Informal Settlement Conference is requested, a person with the authority to act on behalf of the  
5 Department will be present (the "Department Representative"). Please note that in requesting an  
6 Informal Settlement Conference, Respondents waive any right to object to the participation of the  
7 Department Representative in the final administrative decision of this matter, if it is not settled. In  
8 addition, any written or oral statement made by Respondents at such informal settlement conference,  
9 including written documentation created or expressed solely for purposes of settlement negotiations,  
10 are inadmissible in any subsequent administrative hearing. (*See* A.R.S. § 41-1092.06 for rules  
11 regarding informal settlement conferences.) Conversely, any written or oral statement made by  
12 Respondent outside an Informal Settlement Conference is not barred from being admitted by the  
13 Department in any subsequent hearing.

14 If Respondents do not request a hearing, this Order shall become final. If Respondents  
15 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the  
16 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the  
17 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time  
18 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,  
19 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-  
20 132; (3) an order to pay restitution of any fees earned in violation of A.R.S. § 6-901 *et seq.*, pursuant  
21 to A.R.S. §§ 6-131(A)(3) and 6-137; and (4) an order or any other remedy necessary or proper for  
22 the enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S. § 6-941 *et seq.*

### 23 **FINDINGS OF FACT**

24 1. Respondent Lead Funding, LLC (hereafter referred to as "LFL" or "Respondent  
25 Company") is a Colorado limited liability company which has been registered with the Arizona  
26

1 Corporation Commission on or about February 3, 2011, and which has engaged in the business of a  
2 mortgage banker within the meaning of A.R.S. § 6-941 *et seq.*

3 2. Respondent Victor S. Mitchell (“Mr. Mitchell”) is the CEO of LFL and has,  
4 therefore, engaged in the business of a mortgage banker without the license required by A.R.S. § 6-  
5 941 *et seq.*

6 3. Respondent Anamaria Mitchell (“Ms. Mitchell”) is the Managing Member of LFL,  
7 and has, therefore, engaged in the business of a mortgage banker without the license required by  
8 A.R.S. § 6-941 *et seq.*

9 4. LFL, Mr. Mitchell and Ms. Mitchell (collectively referred to as “Respondents”) are  
10 not and were not, at any time material herein, authorized to transact business in Arizona as mortgage  
11 bankers. Respondents are not exempt from licensure as a mortgage banker pursuant to A.R.S. § 6-  
12 942.

13 5. A person is engaging in the business of a “mortgage banker” if that person “for  
14 compensation or in the expectation of compensation either directly or indirectly makes, negotiates or  
15 offers to make or negotiate a mortgage banking loan or a mortgage loan.” *See* A.R.S. § 6-941(5).<sup>1</sup>

16 6. The term “compensation” means “anything of value or any benefit including points,  
17 commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding  
18 periodic interest resulting from the application of the note rate of interest to the outstanding principal  
19 balance remaining unpaid from time to time.” A.R.S. § 6-941(2).<sup>2</sup>

21 <sup>1</sup> The term “mortgage banking loan” means “a loan which is funded exclusively from the mortgage  
22 banker’s own resources, which is directly or indirectly secured by a mortgage or deed of trust or any lien  
23 interest on real estate located in this state and which is created with the consent of the owner of the real  
24 property.” A.R.S. § 6-941(6). The term “mortgage loan” means “any loan, other than a mortgage banking  
25 loan, secured by a mortgage or deed of trust or any lien interest on real estate located in this state and created  
26 with the consent of the owner of the real estate.” A.R.S. § 6-941(8).

<sup>2</sup> A.A.C. Rule 20-4-102(6) further defines the term “compensation” as “anything received in advance,  
after repayment, or at any time during a loan’s life,” excluding:

a. Charges or fees customarily received after a loan’s closing including prepayment penalties, termination  
fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension  
fees, and modification fees. However, extension fees and modification fees are compensation if the lender

1           7.       LFL, through its CEO and Managing Member, has made, negotiated or offered to  
2 make or negotiate mortgage loans for compensation while unlicensed as a mortgage banker.  
3 Specifically:

4           8.       In their advertising of LFL, Respondents have advertised that LFL is a hard money  
5 lender, see <http://www.leadfunding.com/resources/faqs/>, or a company whose “mission is to offer  
6 private financing to local investors with competitive rates, hassle-free and quick terms, and  
7 complimentary essential tools.”

8           9.       On its website, LFL states that it “has loaned in excess of \$50,000,000 directly to  
9 investors” and that its “Arizona Loan Rate Schedule” consists of four options: (1) 1 year note, fixed  
10 rate of 18%, prepay 1st 2 months of interest, and interest only payments beginning 60 days after date  
11 of closing; (2) 1 year note, fixed rate of 17%, prepay 1st 3 months of interest, and interest only  
12 payments beginning 90 days after date of closing; (3) 1 year note, an initial rate of 18% and prepay  
13 1st 4 months of interest, an annualized rate of 12% for the remaining 8 months, interest only  
14 payments beginning 120 days from date of closing; and (4) 3 year note, an initial rate of 18% and  
15 prepay 1st 6 months of interest, an annualized rate of 10% for the remaining 30 months, interest  
16 only payments beginning 180 days from date of closing.

17           10.      LFL’s website explains: “A hard money loan may be your solution if your credit is  
18 less than perfect. Yes, the interest rates are higher, but you have the ability to act quickly and rehab  
19 your investment property so you can flip and get your profit,” and “Be advised that if the property  
20 does not sell before the expiration of the finance term, you will have to pay another round of  
21 origination fees to extend your financing.”

22           11.      The review of ten (10) transactions funded by Respondents in 2011 revealed that LFL  
23  
24 advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or  
25 modification; b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit  
26 report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory  
fees, collection fees, servicing fees, escrow fees, and trustee’s fees; c. Insurance commissions; d. Contingent  
or additional interest, including interest based on net operating income; or e. Equity participation.”

1 made mortgage banker loans, collecting a total sum of \$174,033.00 in those ten transactions, as  
2 compensation, as follows: \$15,600.00 as origination fees, \$2,000 as a loan setup fee, \$3,600 as a  
3 service fee, \$118,133 as prepaid interest, and \$34,700 as additional prepaid interest and fees in 2012  
4 through 2013. Specifically:

- 5 a. Timothy H. and Linda H. agreed to take out a loan requiring them to pay LFL “two  
6 (2) points of the outstanding loan amount (\$3,600 U.S. dollars) and prepay the first  
7 two months of interest (\$3,600 U.S. Dollars),” with all interest payments and points  
8 being non-refundable, according to the First Amendment to Deed of Trust recorded  
9 on January 12, 2012, and “two (2) points of the outstanding loan amount (\$3,600 U.S.  
10 dollars) and prepay the first two months of interest (\$3,600 U.S. Dollars) and a non-  
11 refundable document fee of (\$500 U.S. dollars),” with all interest payments and  
12 points being non-refundable, according to the Second Amendment to Deed of Trust  
13 recorded on January 9, 2013.
- 14 b. According to the Settlement Statement (HUD-1) with the settlement date of February  
15 22, 2011, Sean Z. agreed to take out a loan requiring him to pay to LFL: a non-  
16 refundable prepaid interest in the amount of \$4,000, a service fee in the amount of  
17 \$3,600, and a loan set up charge in the amount of \$500. Subsequently, pursuant to  
18 First Amendment to Deed of Trust recorded on March 1, 2013, LFL agreed to extend  
19 the terms of the loan, and Sean S. agreed to pay LFL \$10,800 in non-refundable  
20 prepaid interest.
- 21 c. According to the Settlement Statement (HUD-1) with the settlement date of February  
22 25, 2011, Sean Z. agreed to take out a loan requiring him to pay to LFL: a non-  
23 refundable prepaid interest in the amount of \$3,333, loan points (an origination fee) in  
24 the amount of \$3,000, and a loan set up charge in the amount of \$500.
- 25 d. According to the Settlement Statement (HUD-1) with the settlement date of March 9,  
26

1 2011, Neil M. agreed to take out a loan requiring him to pay to LFL: a non-refundable  
2 prepaid interest in the amount of \$28,000, and a loan set up charge in the amount of  
3 \$1,000.

4 e. According to the Settlement Statement (HUD-1) with the settlement date of April 8,  
5 2011, Sean Z. agreed to take out a loan requiring him to pay to LFL a non-refundable  
6 prepaid interest in the amount of \$6,000. Subsequently, pursuant to Second  
7 Amendment to Deed of Trust recorded on March 1, 2013, LFL agreed to extend the  
8 terms of the loan and Sean S. agreed to pay LFL \$9,000 in non-refundable prepaid  
9 interest.

10 f. According to the Settlement Statement (HUD-1) with the settlement date of June 10,  
11 2011, Sean Z. agreed to take out a loan requiring him to pay to LFL: a non-refundable  
12 prepaid interest in the amount of \$9,000.

13 g. According to the Settlement Statement (HUD-1) with the settlement date of June 29,  
14 2011, Terry L. and Patricia L. agreed to take out a loan requiring them to pay to LFL:  
15 a non-refundable prepaid interest in the amount of \$9,900.

16 h. According to the Settlement Statement (HUD-1) with the settlement date of August  
17 10, 2011, Donna K. agreed to take out a loan requiring her to pay to LFL: a non-  
18 refundable prepaid interest in the amount of \$14,700.

19 i. According to the Settlement Statement (HUD-1) with the settlement date of  
20 September 2, 2011, Equity P. LLC agreed to take out a loan requiring it to pay to  
21 LFL: a non-refundable prepaid interest in the amount of \$9,900.

22 j. According to the Settlement Statement (HUD-1) with the settlement date of  
23 September 2, 2011, Equity P. LLC agreed to take out a loan requiring her to pay to  
24 LFL: a non-refundable prepaid interest in the amount of \$26,100.

25 12. The non-refundable prepaid interest collected by LFL is being paid from the  
26

1 borrowers' funds at settlement as compensation to LFL, and is not applied as a "periodic interesting  
2 resulting from the application of the note rate of interest to the outstanding principal balance  
3 remaining unpaid from time to time," within the meaning of A.R.S. § 6-941(2).

4 13. On July 17, 2013, the Department issued a letter to Respondents requesting  
5 information and a response regarding possible unlicensed mortgage banker activity in Arizona. The  
6 letter requested that Respondents provide the information to the Department by August 2, 2013. In  
7 response to the Department's request, on or about July 24, 2013, Mr. Mitchell stated that  
8 Respondents are not aware of any violations because the company "only does INTEREST ONLY  
9 loans to businesses," and that LFL does not charge "fees, points, or other charges which may require  
10 [LFL] to be regulated under the Arizona Revised Statutes Section 6-941 *et seq.*"

11 14. The above-referenced practices of Respondents of charging prepaid non-refundable  
12 interest as well as points, document fees, etc. demonstrate that LFL and/or LFL's Managers have  
13 engaged in the business of a mortgage banker, even though they are not licensed by the Department.

14 15. These Findings of Fact shall also serve as Conclusions of Law.

#### 15 CONCLUSIONS OF LAW

16 1. Pursuant to A.R.S. § 6-941 *et seq.*, the Superintendent has the authority and duty to  
17 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,  
18 rules and regulations relating to mortgage bankers.

19 2. Respondents had engaged and/or are engaging in unlicensed activity as a mortgage  
20 banker. By the conduct set forth in the Findings of Fact, Respondents have violated A.R.S. § 6-  
21 943(A), by acting as a mortgage banker in Arizona without having first applied for and obtained a  
22 mortgage banker license.

23 3. The violations set forth above constitute grounds for: (1) the issuance of an order  
24 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and  
25 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
26

1 Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions;  
2 (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132; and (3) an order or any  
3 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage  
4 bankers pursuant to A.R.S. §§ 6-941 *et seq.*

5 **ORDER**

6 1. Respondents shall immediately stop the violations set forth in the Findings of Fact  
7 and Conclusions of Law.

8 2. Respondents shall immediately cease all mortgage banker business in Arizona until  
9 such time as they have obtained mortgage banker license from the Superintendent as prescribed by  
10 A.R.S. § 6-941 *et seq.*

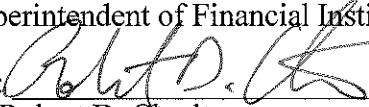
11 3. Respondents shall immediately pay to the Department a civil money penalty in the  
12 amount of **twenty-five thousand dollars (\$25,000.00)**. Respondents are jointly and severally liable  
13 for payment of the civil money penalty.

14 4. The provisions of this Order shall be binding upon Respondents, their employees,  
15 agents and other persons participating in the conduct of the affairs of Respondents.

16 5. This Order shall become effective upon service, and shall remain effective and  
17 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated  
18 or set aside.

19 SO ORDERED this 23rd day of October, 2014.

20 Lauren W. Kingry  
21 Superintendent of Financial Institutions

22 By:   
23 Robert D. Charlton  
24 Assistant Superintendent

25 **CONSENT TO ENTRY OF ORDER**

26 1. Respondents acknowledge that they have been served with a copy of the foregoing  
Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the



1 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

2 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of  
3 the foregoing Findings of Fact, Conclusions of Law, and Order.

4 3. Respondents state that no promise of any kind or nature has been made to induce  
5 them to consent to the entry of this Order, and that they have done so voluntarily.

6 4. Respondents agree to immediately cease and desist from engaging in the violative  
7 conduct set forth above in the Findings of Fact and Conclusions of Law.

8 5. Failure to comply with this Order and any future findings of violations shall result in  
9 disciplinary actions which may include a higher civil money penalty and/or license revocation.

10 6. Respondents acknowledge that the acceptance of this Consent to Entry of Order by  
11 the Superintendent is solely to settle this matter and does not preclude this Department, any other  
12 agency or officer of this state or subdivision thereof from instituting other proceedings as may be  
13 appropriate now or in the future.

14 7. Victor S. Mitchell, individually and on behalf of Lead Funding, LLC, represents that  
15 he is a CEO of Lead Funding, LLC, and that, as such, has been authorized to consent to the entry of  
16 this Order on its behalf.

17 8. Anamaria Mitchell, individually and on behalf of Lead Funding, LLC, represents that  
18 she is a Managing Member of Lead Funding, LLC, and that, as such, has been authorized to consent  
19 to the entry of this Order on its behalf.

20 9. Respondents waive all rights to seek judicial review or otherwise to challenge or  
21 contest the validity of this Cease and Desist Order.

22 DATED this \_\_\_\_ day of \_\_\_\_\_, 2014.

23 By: \_\_\_\_\_  
Victor S. Mitchell, CEO of Lead Funding, LLC

24 By: \_\_\_\_\_  
25 Anamaria Mitchell, Managing Member  
26 Lead Funding, LLC

1 ORIGINAL of the foregoing filed this 23rd  
2 day of October, 2014, in the office of:

3 Lauren W. Kingry, Superintendent of Financial Institutions  
4 Arizona Department of Financial Institutions  
5 ATTN: Sabrina Zimmerman  
6 2910 N. 44th Street, Suite 310  
7 Phoenix, AZ 85018  
8 Sabrina.Zimmerman@azdfi.gov

9 COPY mailed/delivered same date to:

10 Natalia A. Garrett, Assistant Attorney General  
11 Office of the Attorney General  
12 1275 W. Washington St.  
13 Phoenix, AZ 85007  
14 Natalia.Garrett@azag.gov

15 Robert D. Charlton, Assistant Superintendent  
16 Richard Traveler, Senior Examiner  
17 Arizona Department of Financial Institutions  
18 2910 N. 44th Street, Suite 310  
19 Phoenix, AZ 85018

20 AND COPY MAILED SAME DATE by  
21 Certified Mail, Return Receipt Requested, to:

22 Victor S. Mitchell, CEO  
23 Anamaria Mitchell, Managing Member  
24 Lead Funding, LLC  
25 4601 DTL BLVD, Suite 130  
26 Denver, Colorado 80237

Ken O'Donnell  
9375 E. Shea Blvd., Suite 130  
Scottsdale, AZ 85260  
Statutory Agent for Respondent Company

By: 

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