

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License of: No. 09F-BD091-SBD

3 **AMERICAN MORTGAGE GROUP, INC.**
4 **AND MARK R. BUSARD, PRESIDENT**
42104 N. Venture Court, D126
Anthem, Arizona 85086

CONSENT ORDER

5
6 Petitioners.

7
8 On May 28, 2009, the Arizona Department of Financial Institutions (“Department”) issued an
9 Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order, alleging
10 that Petitioners had violated Arizona law. Wishing to resolve this matter in lieu of an administrative
11 hearing, and without admitting liability, Petitioners consent to the following Findings of Fact and
12 Conclusions of Law, and consent to the entry of the following Order.

13 FINDINGS OF FACT

14 1. Petitioner American Mortgage Group, Inc. (“AMG”) is an Arizona corporation authorized
15 to transact business in Arizona as a mortgage banker, license number BK 0905839, within the
16 meaning of A.R.S. §§ 6-941, *et seq.* The nature of AMG’s business is that of making, negotiating,
17 or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by Arizona real
18 property within the meaning of A.R.S. § 6-941(5).

19 2. Petitioner Mark R. Busard (“Mr. Busard”) is President of AMG and is authorized to
20 transact business in Arizona as a mortgage banker within the meaning of A.R.S. § 6-941(5), as
21 outlined within A.R.S. § 6-943(F).

22 3. AMG and Mr. Busard are not exempt from licensure as mortgage bankers within the
23 meaning of A.R.S. §§ 6-942 and 6-941(5).

24 4. An examination of AMG conducted by the Department, beginning November 3, 2008, and
25 concluding February 23, 2009, revealed that Petitioners:

26 a. Failed to produce adequate evidence during their examination that reasonable

1 employee investigations had been conducted before certain employees were hired;
2 specifically:

- 3 i. Failed to inquire regarding an applicant's qualifications and competence for
4 the position prior to hiring at least seventeen (17) employees;
- 5 ii. Failed to consult with the applicant's most recent or next most recent employer
6 prior to hiring at least four (4) employees;
- 7 iii. Failed to conduct further investigation of two (2) employees with derogatory
8 credit reports; and
- 9 iv. Failed to correct these violations from their previous examination;

10 b. Failed to keep and maintain original documents or clearly legible copies of all
11 mortgage banking loan transactions; specifically:

- 12 i. Failed to maintain the HUD-1 settlement statement for the loan file of one (1)
13 borrower; and
- 14 ii. Failed to correct this violation from their previous examination;

15 c. Failed to use their name and license number, as issued on their principal place of
16 business license, within the text of all regulated advertising or business solicitations,
17 specifically:

- 18 i. Failed to include their license number of the principal place of business, but
19 rather listed only the branch license number, in its advertisement for "Native
20 Home Loans" in the Navajo Hopi Observer dated October 3, 2007;
- 21 ii. Failed to adequately disclose, in their flyer entitled "Reverse Mortgage
22 Educational Workshop," who is conducting the seminar by including language
23 that implies Reverse Mortgage of Arizona, an entity previously doing business
24 at Petitioners' address; and
- 25 iii. Failed to correct this violation from their previous examination;

26 d. Failed to comply with the disclosure requirements of Title I of the Consumer Credit

1 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
2 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
3 under these acts; specifically:

- 4 i. The Servicing Transfer Disclosure Statement was outdated in at least one (1)
5 borrower's loan file;
- 6 ii. Good Faith Estimates and Truth-in-Lending Statements were prepared on dates
7 between three (3) and twenty (20) days earlier than loan applications were
8 taken by the loan officer in at least five (5) borrowers' loan files;
- 9 iii. Loan Applications were signed and dated by the borrower on the same date as
10 the loan officer received said loan applications by telephone or mail in at least
11 five (5) borrowers' loan files; and
- 12 iv. Failed to correct this violation from their previous examination;
- 13 e. Petitioners allowed borrowers to sign regulated documents containing blank spaces
14 without the benefit of written authorization to complete the documents; specifically:
 - 15 i. Truth-in-Lending disclosures containing blank spaces were present in at least
16 eleven (11) borrowers' files;
 - 17 ii. Good Faith Estimates containing blank spaces were present in at least two (2)
18 borrowers' files;
 - 19 iii. Good Faith Estimate Provider Relationship disclosures containing blank spaces
20 were present in at least seventeen (17) borrowers' loan files;
 - 21 iv. Anti-Coercion Statements containing blank spaces were present in at least
22 thirteen (13) borrowers' loan files;
 - 23 v. Authorization to Complete Blank Spaces forms containing blank spaces were
24 present in at least two (2) borrowers' loan files;
 - 25 vi. Mortgage Loan Origination Agreements containing blank spaces were present
26 in at least five (5) borrowers' loan files; and

1 vii. Fee/Document Agreements containing blank spaces were present in at least
2 one (1) borrower's loan file;

3 f. Petitioners made a false promise or misrepresentation or concealed an essential or
4 material fact in the course of the mortgage banker business; specifically:

5 i. Petitioners' loan officer Chad Thompson originated and funded a mortgage
6 loan for J.H. on August 31, 2007. An interview with the borrower disclosed
7 that she did not sign the original loan application or the disclosures. The
8 signatures on these documents were inconsistent with the final signature on the
9 closing package;

10 ii. The borrower's intention was to refinance her existing mortgage and lower her
11 monthly payment. Chad Thompson told her the refinance would lower her
12 payment. The mortgage J.H. received did not lower her payment. When she
13 signed her final documents, J.H. asked Chad Thompson why her payment was
14 not lowered as he earlier stated it would be. Chad Thompson informed J.H.
15 that the first three months the payment is higher to pay taxes and insurance.
16 That was not true as the payments remain the same for the life of the loan;

17 iii. The borrower's stated income was inaccurate on the application;

18 iv. The application also listed an automobile that J.H. does not own;

19 v. J.H. met the loan officer to sign her final documents at a car wash located at
20 2824 W. Bell Rd. in Phoenix. A notary public was not present;

21 vi. Chad Thompson also instructed J.H. to pre-date her final documents to close
22 the loan prior to month-end. The loan officer, by doing this, eliminated the
23 borrower's three day right of rescission; and

24 vii. Chad Thompson misrepresented that a \$3,175.00 discount fee was needed to
25 buy-down the interest rate, when in fact the interest rate was not reduced.
26 ...

- 1 c. A.R.S. §§ 6-943(N) and 6-946(E) by failing to use their name and license number, as
2 issued on their principal place of business license, within the text of all regulated
3 advertising or business solicitations;
- 4 d. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e) by failing to comply with the
5 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.
6 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§
7 2601 through 2617), and the regulations promulgated under these acts;
- 8 e. A.R.S. § 6-947(A) and A.A.C. R20-4-1808 by allowing borrowers to sign regulated
9 documents containing blank spaces without the benefit of written authorization to
10 complete the documents;
- 11 f. A.R.S. § 6-947(L) by making a false promise or misrepresentation or concealing an
12 essential or material fact in the course of the mortgage banker business; and
- 13 g. A.R.S. § 6-946(C) by using an unlawful appraisal disclosure that limits a borrower to
14 90 days in which the borrower may request a copy of an appraisal for which the
15 borrower has paid.

16 3. AMG and Mr. Busard violated the aforementioned rules and statutes in the conduct of
17 their mortgage banker business, which is grounds for the suspension or revocation of Petitioners'
18 mortgage banker license, pursuant to A.R.S. § 6-945(A)(7).

19 4. Pursuant to A.R.S. § 6-132, Petitioners' violations of the aforementioned statutes are
20 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for
21 each day.

22 5. The violations, set forth above, constitute grounds for: (1) the issuance of an order
23 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
24 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
25 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
26 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the

1 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-945; (4) an order to pay
2 restitution of any fees earned on loans made in violation of A.R.S. § 6-941, *et seq.*, pursuant to
3 A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or any other remedy necessary or proper for the
4 enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S. §§ 6-123 and
5 6-131.

6 **ORDER**

7 1. AMG and Mr. Busard shall immediately stop the violations set forth in the Findings of
8 Fact and Conclusions of Law. AMG and Mr. Busard:

- 9 a. Shall conduct the minimum elements of reasonable employee investigations prior to
10 hiring employees;
- 11 b. Shall keep and maintain original documents or clearly legible copies of all mortgage
12 banking loan transactions;
- 13 c. Shall use their name and license number, as issued on their principal place of business
14 license, within the text of all regulated advertising or business solicitations;
- 15 d. Shall comply with the disclosure requirements of Title I of the Consumer Credit
16 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
17 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
18 under these acts;
- 19 e. Shall not allow borrowers to sign regulated documents containing blank spaces
20 without the benefit of written authorization to complete the documents;
- 21 f. Shall not make a false promise or misrepresentation or conceal an essential or
22 material fact in the course of the mortgage banker business; and
- 23 g. Shall not use an unlawful appraisal disclosure that limits a borrower to 90 days in
24 which the borrower may request a copy of an appraisal for which the borrower has
25 paid.
- 26 ...

1 2. AMG and Mr. Busard shall comply with all Arizona statutes and rules regulating Arizona
2 mortgage bankers (A.R.S. §§ 6-941 *et seq.*) and loan originators (A.R.S. §§ 6-991 *et seq.*).

3 3. AMG and Mr. Busard shall immediately pay to J.H. restitution in the amount of three
4 thousand one hundred seventy five dollars (\$3,175.00) which represents discount points paid.

5 4. AMG and Mr. Busard shall immediately pay to the Department a civil money penalty in
6 the amount of two thousand five hundred dollars (\$2,500.00). AMG and Mr. Busard are jointly and
7 severally liable for payment of the civil money penalty.

8 5. AMG and Mr. Busard shall immediately pay to the Department the examination fee in
9 the amount of eight thousand four hundred dollars (\$8,400.00).


10 6. The provisions of this Order shall be binding upon Petitioners, their employees, agents,
11 and other persons participating in the conduct of the affairs of American Mortgage Group, Inc.

12 7. The provisions of this Order shall be binding upon American Mortgage Group, Inc. and
13 Mr. Busard, resolves the Notice of Hearing to Revoke, subject to Petitioners' compliance with the
14 requirements of this Order, as well as all other statutes and rules regulating mortgage bankers.

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

18 SO ORDERED this 27th day of July, 2009.

19 Felecia A. Rotellini
20 Superintendent of Financial Institutions

21 By 
22 Robert D. Charlton
23 Assistant Superintendent of Financial Institutions

24 **CONSENT TO ENTRY OF ORDER**

25 1. Petitioners acknowledge that they have been served with a copy of the foregoing
26 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
same, are aware of their right to an administrative hearing in this matter, and have waived the same.

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

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

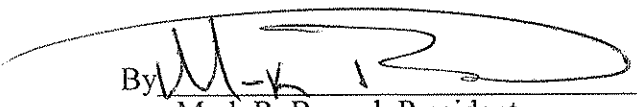
5 4. Petitioners agree to cease from engaging in the violative conduct set forth above in the
6 Findings of Fact and Conclusions of Law.

7 5. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent is
8 solely to settle this matter and does not preclude this Department, any other agency or officer of this
9 state or subdivision thereof from instituting other proceedings as may be appropriate now or in the
10 future.

11 6. Mark R. Busard, on behalf of American Mortgage Group, Inc. and himself, represents
12 that he is the President, and that, as such, has been authorized by American Mortgage Group, Inc. to
13 consent to the entry of this Order on its behalf.

14 7. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest the
15 validity of this Order.

16 DATED this 21st day of July, 2009.

17
18
19 By 
20 Mark R. Busard, President
21 American Mortgage Group, Inc.

22 ORIGINAL of the foregoing filed this 27th
23 day of July, 2009, in the office of:

24 Felecia A. Rotellini, Superintendent of Financial Institutions
25 Arizona Department of Financial Institutions
26 ATTN: Susan L. Longo
 2910 N. 44th Street, Suite 310
 Phoenix, AZ 85018

1 COPY mailed same date to:

2 Lewis D. Kowal
3 Administrative Law Judge
4 Office of the Administrative Hearings
5 1400 West Washington, Suite 101
6 Phoenix, AZ 85007

7 Craig A. Raby
8 Assistant Attorney General
9 Office of the Attorney General
10 1275 West Washington
11 Phoenix, AZ 85007

12 Robert D. Charlton, Assistant Superintendent
13 Brian Naig, Examiner in Charge
14 Arizona Department of Financial Institutions
15 2910 N. 44th Street, Suite 310
16 Phoenix, AZ 85018

17 AND COPY MAILED SAME DATE by
18 Certified Mail, Return Receipt Requested, to:

19 Mark R. Busard, President
20 American Mortgage Group, Inc.
21 42104 N. Venture Court, D126
22 Anthem, Arizona 85086
23 Petitioners

24 
25 _____
26 504538, PHX-AGN-2009-0288