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DEPT. OF FINANCIAL
INSTITUTIONS

ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Mortgage Banker License of:

**FIRST MORTGAGE CORPORATION AND
CLEMENT ZIROLI, JR., PRESIDENT**

928 West Chandler Boulevard, Suite 1
Chandler, Arizona 85225

Respondents.

No. 11F-BD071-SBD

CONSENT ORDER

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INSTITUTIONS

On October 13, 2010, the Arizona Department of Financial Institutions ("Department") issued an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order ("Cease and Desist Order"), alleging that Respondents had violated Arizona law. Wishing to resolve this matter in lieu of an administrative hearing, and without admitting liability, Respondents consent to the entry of the following Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

FINDINGS OF FACT

1. Respondent First Mortgage Corporation ("FMC") is a California corporation authorized to transact business in Arizona as a mortgage banker, license number BK 0901601, within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of FMC's business is that of making, negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by Arizona real property within the meaning of A.R.S. § 6-941(5).

2. Respondent Clement Zirolì, Jr. ("Mr. Zirolì") is the President of FMC and is authorized to transact business in Arizona as a mortgage banker within the meaning of A.R.S. § 6-941(5), as outlined within A.R.S. § 6-943(F).

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

4. An examination of FMC conducted by the Department, beginning October 11, 2007 and concluding August 24, 2009, revealed that Respondents:

- 1 a. Failed to obtain and/or renew a branch office license from the Superintendent for the
2 following five (5) office locations and failed to designate a person from each branch
3 to oversee the operations of that office prior to transacting business:
- 4 i. 3230 Fallow Field Drive, Suite 300, Diamond Bar, California;
 - 5 ii. 155 West Hospitality Lane, Suite 205, San Bernadino, California;
 - 6 iii. 290 North D Street, Suite 502, San Bernadino, California;
 - 7 iv. 15040 7th Street, Victorville, California;
 - 8 v. 2335 West Foothill Boulevard #20, Upland, California.
- 9 b. Failed to conduct the minimum elements of reasonable employee investigations prior to
10 hiring employees, specifically:
- 11 i. Failed to collect and review all documents authorized by the Immigration
12 Reform and Control Act of 1986 before hiring at least eighteen (18) employees;
 - 13 ii. Failed to obtain a signed, completed Employment Eligibility Verification (Form
14 I-9) before hiring at least eight (8) employees;
 - 15 iii. Failed to obtain a completed employment application before hiring at least one
16 (1) employee;
 - 17 iv. Failed to obtain a signed statement attesting to all of an applicant's felony
18 convictions, including information regarding each conviction, before hiring at
19 least fourteen (14) employees;
 - 20 v. Failed to consult with the applicant's most recent or next most recent employer
21 before hiring at least eighteen (18) employees;
 - 22 vi. Failed to inquire regarding the applicant's qualifications and competence for the
23 position before hiring at least eighteen (18) employees;
 - 24 vii. Failed to obtain a current credit report from a credit reporting agency before
25 hiring at least six (6) employees;
 - 26

- 1 viii. Failed to investigate further when information received for at least four (4)
2 employees raised questions as to the applicant's honesty, truthfulness, integrity
3 or competence; and
4 ix. Failed to update at least one (1) previous employee's file prior to rehiring the
5 employee; and
6 x. Respondents failed to correct this violation from their previous two (2)
7 examinations.
- 8 c. Failed to maintain originals or copies of loan transactions, specifically:
9 i. A document of final disposition was missing from two (2) loan files; and
10 ii. A loan application was missing from one (1) loan file.
- 11 d. Allowed borrowers to sign regulated documents containing blank spaces without
12 authorization, specifically:
13 i. Respondents allowed at least seven (7) borrowers to sign price protection
14 election disclosures containing blank spaces;
15 ii. Respondents allowed at least four (4) borrowers to sign price protection
16 confirmation disclosures containing blank spaces;
17 iii. Respondents allowed at least two (2) borrowers to sign affiliated business
18 arrangement disclosures containing blank spaces; and
19 iv. Respondents allowed at least six (6) borrowers to sign 4506-T and 4506
20 disclosures containing blank spaces.
- 21 e. Failed to comply with the disclosure requirements of Title I of the Consumer Credit
22 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
23 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
24 under these acts, specifically:
25 i. Respondents failed to ensure Servicing Transfer disclosures contained current
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- 1 statistics for at least fourteen (14) borrowers;
- 2 ii. Respondents failed to date at least twenty one (21) Servicing Transfer disclosures
- 3 and the Department's examiner was unable to determine that the Servicing
- 4 Transfer disclosures had been issued within three business days from the date of
- 5 the loan application, as statutorily required;
- 6 iii. Respondents failed to ensure at least five (5) loan applications were signed and
- 7 dated and the Department's examiner was unable to determine that Good Faith
- 8 Estimates, Truth in Lending and Servicing Transfer disclosures had been issued
- 9 within three business days from the date of the loan application, as statutorily
- 10 required;
- 11 iv. At least seventeen (17) Good Faith Estimates were missing or not issued within
- 12 three business days, as statutorily required;
- 13 v. At least seventeen (17) Truth in Lending disclosures were missing or not issued
- 14 within three business days, as statutorily required;
- 15 vi. At least one (1) Servicing Transfer disclosure was missing; and
- 16 vii. The annual percentage rate was not calculated on at least one (1) Truth in
- 17 Lending disclosure.
- 18 viii. In the course of origination and/or processing of at least eight (8) mortgage loans,
- 19 Respondent charged a "loan discount" fee for what purported to be a discounted
- 20 interest rate without actually providing a lower interest rate in exchange for such
- 21 a fee.
- 22 ix. Respondents have routinely charged borrowers a fee captioned "Administration
- 23 Fee." Since "administration" is not a service provided in mortgage loan
- 24 origination, use of the stated caption is a misrepresentation, specifically:
- 25 Respondents charged at least nine (9) borrowers administration fees; and
- 26

1 Respondents failed to correct this violation from their previous examination. In
2 the previous exam, dated February 4, 2002, it was noted and commented that
3 FMC must either fully disclose what services it provides for the "Administration
4 Fee" or use a caption that readily identifies said services. A letter from
5 Respondents dated February 26, 2002 represented that the administration fee
6 would be broken down into specific services.

- 7 f. Failed to use a statutorily correct written fee agreement signed by all parties in
8 connection with Loan #251890.
- 9 g. Failed to maintain a complete and accurate trust subsidiary ledger/verification,
10 specifically:
- 11 i. Respondents have received advance fees on Arizona loans, and they do maintain
12 a trust account for advance fees, but Respondents have not maintained a Trust
13 Subsidiary Ledger/Verification for each borrower. On October 28, 2008,
14 Respondents forwarded \$1,112.50 to the State of Arizona as unclaimed property,
15 from 53 separate advance fees collected on Arizona loans. Reconciliation for
16 each subsidiary ledger, monthly and at final disposition, will insure proper return
17 of borrower funds in the future.
- 18 h. Failed to obtain the approval of the Superintendent prior to storing their records at 1238
19 East Lexington Avenue, Pomona, California 91766, although Respondents were
20 approved on March 15, 2005 to store their records at 3230 Fallow Field Drive, Diamond
21 Bar, California or on a computer or mechanical record keeping system.
- 22 i. Failed to ensure their Responsible Individual, Paul Murphy ("Mr. Murphy"), was in
23 active management and knowledgeable of Respondents' Arizona activities, as
24 demonstrated by the violations cited herein.
- 25 j. Used an unlawful appraisal disclosure that limits a borrower to ninety (90) days in which
26

1 the borrower may request a copy of an appraisal for which the borrower has paid;

2 5. These Findings of Fact shall also serve as Conclusions of Law.

3 **CONCLUSIONS OF LAW**

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

7 2. By the conduct set forth in the Findings of Fact, First Mortgage Corporation and Mr. Zirol
8 violated the following:

- 9 a. A.R.S. § 6-944(D), by failing to obtain a branch office license from the Superintendent
10 and designate a person from each branch to oversee the operations of that office prior to
11 transacting business;
- 12 b. A.R.S. § 6-943(O) and A.A.C. R20-4-102, by failing to conduct the minimum elements
13 of reasonable employee investigations prior to hiring employees;
- 14 c. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B)(6), by failing to maintain originals or
15 copies of loan transactions;
- 16 d. A.R.S. § 6-947(A) and A.A.C. R20-4-1808, by allowing borrowers to sign regulated
17 documents containing blank spaces without authorization;
- 18 e. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e), by failing to comply with the
19 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§
20 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601
21 through 2617), and the regulations promulgated under these acts; and by imposing fees
22 or charges without explanation as to what services were rendered with respect to those
23 fees or charges;
- 24 f. A.R.S. § 6-946(C), by failing to use a statutorily correct written fee agreement signed by
25 all parties;
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- 1 g. A.A.C. R20-4-1806(B)(5), by failing to maintain a complete and accurate trust
2 subsidiary ledger/verification;
- 3 h. A.R.S. § 6-946(A), by failing to obtain the approval of the Superintendent prior to
4 storing their records at 1238 East Lexington Avenue, Pomona, California 91766;
- 5 i. A.R.S. § 6-943(F) and A.A.C. R20-4-102, by failing to ensure their Responsible
6 Individual, Paul Murphy ("Mr. Murphy"), was in active management and
7 knowledgeable of Respondents' Arizona activities; and
- 8 j. A.R.S. § 6-946(C), by using an unlawful appraisal disclosure that limits a borrower to
9 ninety (90) days in which the borrower may request a copy of an appraisal for which the
10 borrower has paid.

11 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant
12 to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and to take the
13 appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to
14 correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of
15 a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Respondents'
16 license pursuant to A.R.S. § 6-945; (4) an order to pay restitution of any fees earned in violation of
17 A.R.S. § 6-941, *et seq.*, pursuant to A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or any other
18 remedy necessary or proper for the enforcement of statutes and rules regulating mortgage bankers
19 pursuant to A.R.S. §§ 6-123 and 6-131.

20 **ORDER**

21 1. First Mortgage Corporation and Mr. Zirolì shall immediately stop the violations set forth
22 in the Findings of Fact and Conclusions of Law. Respondents:

23 a. Shall obtain a branch office license from the Superintendent and designate a
24 person from each branch to oversee the operations of that office prior to transacting business;
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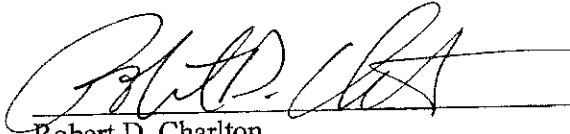
- 1 b. Shall conduct the minimum elements of reasonable employee investigations prior
2 to hiring employees;
- 3 c. Shall maintain originals or copies of loan transactions;
- 4 d. Shall not allow borrowers to sign regulated documents containing blank spaces
5 without authorization;
- 6 e. Shall comply with the disclosure requirements of Title I of the Consumer Credit
7 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12
8 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts, and shall cease
9 imposing fees or charges without disclosing what services were rendered in exchange for those fees or
10 charges.
- 11 f. Shall use a statutorily correct written fee agreement signed by all parties;
- 12 g. Shall maintain a complete and accurate trust subsidiary ledger/verification;
- 13 h. Shall obtain the approval of the Superintendent prior to storing their records at
14 1238 East Lexington Avenue, Pomona, California 91766;
- 15 i. Shall ensure their Responsible Individual is in active management and
16 knowledgeable of Respondents' Arizona activities; and
- 17 j. Shall not use an unlawful appraisal disclosure that limits a borrower to ninety
18 (90) days in which the borrower may request a copy of an appraisal for which the borrower has paid.
- 19 2. First Mortgage Corporation and Mr. Zirolì shall immediately pay to the Department a
20 civil money penalty in the amount of thirty five thousand dollars (\$35,000.00). Respondents are jointly
21 and severally liable for payment of the civil money penalty.
- 22 3. Respondents shall pay to the Department, within thirty (30) days of the date of this
23 Order, the examination fee of four thousand, five hundred eighty two dollars and fifty cents
24 (\$4,582.50), pursuant to A.R.S. § 6-125.
- 25 4. Mr. Zirolì shall comply with all Arizona statutes and rules regulating Arizona mortgage
26 bankers, A.R.S. §§ 6-941, et seq.

1 5. The provisions of this Order shall be binding upon Respondents, their employees,
2 agents, and other persons participating in the conduct of the affairs of Respondents.

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

6 SO ORDERED this 29 day of December 2010.

7 Lauren W. Kingry
8 Superintendent of Financial Institutions

9 

10 Robert D. Charlton
11 Assistant Superintendent of Financial Institutions

12 CONSENT TO ENTRY OF ORDER

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

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

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

20 4. Respondents agree, without admitting liability, to cease from engaging in the violative
21 conduct set forth above in the Findings of Fact and Conclusions of Law.

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

26 6. Mr. Zirolì, on behalf of First Mortgage Corporation and himself, represents that he is the

1 President, and that, as such, has been authorized by First Mortgage Corporation to consent to the entry
2 of this Order on its behalf.

3 7. Respondents waive all rights to seek judicial review or otherwise to challenge or contest
4 the validity of this Consent Order.

5 DATED this 22nd day of December, 2010.

6
7 By 
8 Clement Ziroti, Jr., President
9 First Mortgage Corporation
10

11 **ORIGINAL** of the foregoing filed ~~to~~
12 this 29th day of December, ~~2009~~ in the office of:

13 Lauren W. Kingry
14 Superintendent of Financial Institutions
15 Arizona Department of Financial Institutions
16 Attention: Sabrina Hampton
17 2910 North 44th Street, Suite 310
18 Phoenix, AZ 85018

19 **COPY** of the foregoing mailed or
20 hand-delivered this 29th day of December, 2010 to:

21 Natalia A. Garrett
22 Assistant Attorney General
23 Office of the Attorney General
24 1275 West Washington Street
25 Phoenix, AZ 85007

26 Robert Charlton, Assistant Superintendent
Judith Moss, Senior Examiner
Arizona Department of Financial Institutions
2910 North 44th Street, Suite 310
Phoenix, AZ 85018

COPY of the foregoing mailed Certified,
Return Receipt this 29th day of December, 2010 to:

Mike A. Abel, Esq.
25030 S. 190th Street
Queen Creek, AZ 85142
Attorney for Respondents

1 Attn: Clement Zirolu, Jr., President
2 First Mortgage Corporation
3 3230 Fallow Field Dr.
4 Diamond Bar, CA 91765
5 Respondents

6 Jeffrey J. Miller, Statutory Agent for:
7 First Mortgage Corporation
8 2 N. Central Ave.
9 Phoenix, AZ 85004

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12 #1434751

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