

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Broker License of:

No. 10F-BD108-SBD

3 **SELECT MORTGAGE, INC.**  
4 3131 North Country Club Road, Suite 107  
Tucson, Arizona 85716

**CONSENT ORDER**

5 Respondent.

6 On January 28, 2010, the Arizona Department of Financial Institutions ("Department")  
7 issued an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order  
8 ("Cease and Desist Order") alleging that Respondent had violated Arizona law. Wishing to resolve  
9 this matter in lieu of an administrative hearing, Respondent does not contest the following Findings  
10 of Fact and Conclusions of Law, and consent to the entry of the following Order.

11 **FINDINGS OF FACT**

12 1. Respondent Select Mortgage, Inc. ("Select"), is an Arizona corporation that is authorized to  
13 transact business in Arizona as a mortgage broker (license number MB 0903651) within the meaning  
14 of A.R.S. §§ 6-901, *et seq.* The nature of Select's business is that of a mortgage broker, within the  
15 meaning of A.R.S. § 6-901(11).

16 2. Richard Dunbar ("Mr. Dunbar") is the President of Select. Mr. Dunbar is authorized to  
17 transact business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-903(H).

18 3. Select is not exempt from licensure as a mortgage broker within the meaning of A.R.S. § 6-  
19 902.

20 4. An examination of Select conducted by the Department, beginning May 7, 2009 and  
21 concluding June 3, 2009, revealed that Respondent:

22 a. Failed to obtain a branch office license, specifically:

23 i. Respondent originated loans at an unlicensed location: 7594 E. Palo Verde  
24 street, Suite C, Prescott Valley, Arizona.

25 b. Failed to comply with advertising requirements, specifically:  
26

- i. Respondent stated the interest rate as an annual percentage rate;
  - ii. Respondent failed to disclose the principal place of business license number in one (1) advertisement;
  - iii. Respondent incorrectly used the mortgage broker branch license number in one (1) advertisement, instead of the principal place of business license; and
  - iv. Respondent failed to provide complete information when advertising terms which require additional disclosures, finance charges, or costs, in two (2) advertisements;
- c. Failed to conduct the minimum elements of reasonable employee investigations prior to hiring employees, specifically:
- i. Respondent failed to obtain all Immigration Reform and Control Act documents before hiring at least three (3) employees;
  - ii. Respondent failed to obtain a completed Employment Eligibility Verification (Form I-9) before hiring at least five (5) employees;
  - iii. Respondent failed to obtain a completed and signed employment application before hiring at least three (3) employees;
  - iv. Respondent failed to obtain a signed statement attesting to all of an applicant's felony convictions, including information regarding each conviction, before hiring at least one (1) employee;
  - v. Respondent failed to consult with the applicant's most recent or next most recent employer before hiring at least five (5) employees;
  - vi. Respondent failed to inquire regarding the applicant's qualifications and competence for the position before hiring at least five (5) employees;
  - vii. Respondent failed to obtain a current credit report from a credit reporting agency before hiring at least five (5) employees; and
  - viii. Respondent failed to correct this violation from the previous examination;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

- d. Failed to maintain originals or copies of loan transactions, specifically:
  - i. Respondent failed to maintain the initial loan applications in at least four (4) mortgage transactions;
  - ii. Respondent failed to maintain documents showing the applications' final dispositions in at least six (6) mortgage transactions;
  - iii. Respondent failed to maintain good faith estimate disclosures in at least one (1) mortgage transaction; and
  - iv. Respondent failed to maintain final truth-in-lending disclosures in at least one (1) mortgage transaction;
- e. Had parties sign documents containing blank spaces without obtaining proper authorizations, specifically:
  - i. Respondent failed to obtain authorizations to complete blank spaces on at least ten (10) 4506-T documents;
  - ii. Respondent failed to obtain authorization to complete blank spaces on at least one (1) truth-in-lending document; and
  - iii. Respondent failed to obtain authorization to complete blank spaces on at least one (1) borrower's option to lock document;
- f. Failed to comply with federal disclosure requirements, specifically:
  - i. Respondent failed to provide complete truth-in-lending disclosures within the required time for at least twelve (12) loan transactions;
  - ii. Respondent failed to provide complete good faith estimates in a timely manner for at least eight (8) loan transactions;
  - iii. Respondent failed to complete initial applications in at least four (4) loan transactions;
  - iv. Respondent failed to provide annual percentage rate calculations for at least two (2) loan transactions; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

v. Respondent failed to disclose yield spread premiums for at least two (2) loan transactions;

g. Respondent made false promises, misrepresentations and/or concealed material facts, specifically:

i. In one case, a borrower closed two (2) mortgage loan transactions with the licensee, on two (2) different properties. The loan officer on both transactions was the same. The first property was closed in the borrower's name on 04-30-07. The mortgage file for the second property contained a Fannie Mae loan application (form 1003), dated 05-29-07, which failed to disclose the ownership of the investment purchase from the first property on the schedule of real estate owned. The failure to disclose the first property concealed a mortgage obligation of \$216,000.00 from the lender for the second property. In order for a lender to make a prudent underwriting decision it must know all liabilities and potential liabilities of the borrower. It also affects the amount of money available to close the loans and the required reserves after the loans close;

ii. In another case, a borrower closed two (2) mortgage loan transactions, with the licensee, on two (2) different properties. The loan officer on both transactions was the same. Both transactions were for the purchase of an owner-occupied home. Both files were originated and included an initial Fannie Mae loan application (form 1003), dated 09-17-07. The mortgage file for the first property contains a real estate sales contract dated 09-17-07. The mortgage file for the second property contains a real estate sales contract dated 09-21-07. The first property's documents contain a final loan application (form 1003), dated 09-24-07, which discloses the purchase as owner-occupied but does not disclose the additional owner-occupied pending

1 purchase of the second property. The second property's documents contain a  
2 final loan application (form 1003), dated 10-09-07, which discloses the  
3 purchase as owner-occupied and discloses the first property as an investment  
4 rental home. The second property's documents contain a lease/rental  
5 agreement dated 10-1-07. The first and second properties' mortgage loans  
6 were sent to different lenders, concealing the existence of the second  
7 transaction from the lender in the first transaction. That the first obligation  
8 was obtained as an owner-occupied mortgage was then concealed from the  
9 second lender a mortgage obligation of \$154,000.00. The licensee originated  
10 two (2) owner-occupied transactions for the same borrower. A borrower can  
11 only have one owner-occupied home. In order for a lender to make a prudent  
12 underwriting decision it must know all liabilities and potential liabilities of the  
13 borrower. It also affects the amount of money available to close the loans and  
14 the required reserves after the loans close; and

- 15 h. Failed to use a statutorily correct written document agreement, specifically:
- 16 i. Respondent's written agreement form failed to contain a provision for  
17 accepting documents in connection with an application for a mortgage loan;  
18 and
- 19 ii. The examiner noted that Respondent is using a disclosure which states "that  
20 3<sup>rd</sup> party fees will be non-refundable," in violation of the Real Estate  
21 Settlement Procedures Act (12 U.S.C. § 3500(14)(c));

22 5. The Department's records reflect that Select surrendered its mortgage broker's license, no.  
23 MB 0903651, on December 8, 2009.

24 6. These Findings of Fact shall also serve as Conclusions of Law.

25 **CONCLUSIONS OF LAW**

26 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to

1 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,  
2 rules and regulations relating to mortgage brokers.

3 2. By the conduct set forth in the Findings of Fact, Select Mortgage, Inc. has committed the  
4 following violations:

- 5 a. A.R.S. § 6-904(F), by failing to obtain a branch office license;
- 6 b. A.R.S. §§ 6-903(P) and 6-906(D), by failing to fully comply with advertising  
7 requirements;
- 8 c. A.R.S. § 6-903(Q) and A.A.C. R20-4-102, by failing to conduct the minimum  
9 elements of reasonable employee investigations prior to hiring employees;
- 10 d. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6), by failing to maintain originals or  
11 copies of loan transactions;
- 12 e. A.R.S. § 6-909(A) and A.A.C. R20-4-921, by allowing borrowers to sign regulated  
13 documents containing blank spaces without authorization;
- 14 f. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e), by failing to comply with the  
15 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.  
16 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§  
17 2601 through 2617), and the regulations promulgated under these acts;
- 18 g. A.R.S. § 6-909(L), by making false promises or misrepresentations or concealing  
19 essential or material facts in the course of the mortgage broker business; and
- 20 h. A.R.S. § 6-906(C), by failing to use a statutorily correct written document agreement;

21 3. The violations set forth above constitute grounds for: (1) the issuance of an order  
22 pursuant to A.R.S. § 6-137 directing Respondent to cease and desist from the violative conduct and  
23 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
24 Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions;  
25 (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132; (3) the suspension or  
26 revocation of Respondent's license pursuant to A.R.S. § 6-905; (4) an order to pay restitution of any

1 fees earned on loans made in violation of A.R.S. § 6-901, *et seq.*, pursuant to A.R.S. §§ 6-131(A)(3)  
2 and 6-137; and (5) an order or any other remedy necessary or proper for the enforcement of statutes  
3 and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

4 **ORDER**

5 1. Respondent shall not accept any further mortgage broker business.

6 2. Respondent shall immediately pay to the Department a civil money penalty in the amount  
7 of ten thousand dollars (\$10,000.00).

8 3. The provisions of this Order shall be binding upon Select Mortgage, Inc., its employees,  
9 agents, and other persons participating in the conduct of the affairs of Select Mortgage, Inc.

10 4. The provisions of this Order shall be binding upon Respondent, and resolves the Cease  
11 and Desist Order, subject to Respondent's compliance with the requirements of this Order.

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

15 SO ORDERED this 13 day of April, 2010.

16 ~~Thomas L. Wood~~ *Lauren W. Kingry*  
17 ~~Acting Superintendent of Financial Institutions~~

18  
19 By *Robert D. Charlton*  
20 Robert D. Charlton  
Assistant Superintendent of Financial Institutions

21 ...  
22 ...  
23 ...  
24 ...  
25 ...  
26 ...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CONSENT TO ENTRY OF ORDER**

1. Respondent acknowledges that it has been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same, is aware of its right to an administrative hearing in this matter, and has waived the same.

2. Respondent admits the jurisdiction of the Superintendent and consents to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Respondent states that no promise of any kind or nature has been made to induce it to consent to the entry of this Order, and that it has done so voluntarily.

4. Respondent acknowledges that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

5. Richard Dunbar, on behalf of Select Mortgage, Inc., represents that he is the President, and that, as such, has been authorized by Select Mortgage, Inc. to consent to the entry of this Order on its behalf.

6. Respondent waives all rights to seek judicial review or otherwise to challenge or contest the validity of this Consent Order.

DATED this 23 day of March, 2010.

By Richard W. Dunbar  
Richard Dunbar, President  
Select Mortgage, Inc.



1 ORIGINAL of the foregoing filed this 13<sup>th</sup>  
2 day of April, 2010, in the office of:

3 Thomas L. Wood  
4 Acting Superintendent of Financial Institutions  
5 Arizona Department of Financial Institutions  
6 ATTN: Susan Longo  
7 2910 N. 44th Street, Suite 310  
8 Phoenix, AZ 85018

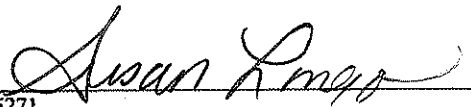
9 COPY mailed/delivered same date to:

10 Liane C. Kido  
11 Assistant Attorney General  
12 Office of the Attorney General  
13 1275 West Washington  
14 Phoenix, AZ 85007

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

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

21 Richard Dunbar, President  
22 Select Mortgage, Inc.  
23 3131 North Country Club Road, Suite 107  
24 Tucson, Arizona 85716  
25 Respondent

26   
#755271