

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Broker License of: No. 09F-BD082-BNK  
3 **AMERICAN MORTGAGE FUNDING, INC.** **CONSENT ORDER**  
4 3942 E. Patrick Lane  
Phoenix, AZ 85050

5 Petitioner.

6  
7 On July 9, 2009, the Arizona Department of Financial Institutions (“Department”) issued a  
8 Notice of Hearing, alleging that Petitioner had violated Arizona law. Wishing to resolve this matter  
9 in lieu of an administrative hearing, and without admitting liability, Petitioner consents to the  
10 following Findings of Fact and Conclusions of Law, and consents to the entry of the following  
11 Order.

12 **FINDINGS OF FACT**

13 1. Petitioner American Mortgage Funding, Inc. (“American”) is an Arizona corporation  
14 authorized to transact business in Arizona as a mortgage broker, license number MB 0907155,  
15 within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of American’s business is that of making,  
16 negotiating, or offering to make or negotiate a loans secured by Arizona real property within the  
17 meaning of A.R.S. § 6-901(6).

18 2. Matthew Kelley (“Mr. Kelley”) is the President/Owner of American.

19 3. An October 20, 2008 through January 13, 2009 examination of American, conducted by  
20 the Department, revealed that American:

21 a. Failed to conduct the minimum elements of reasonable employee investigations  
22 before hiring employees; specifically:

23 i. Petitioner failed to collect and review all of the documents authorized by the  
24 Immigration and Control Act of 1986 for three (3) employees;

25 ii. Petitioner failed to obtain a completed “I9” (Employment Eligibility  
26 Verification Form) for five (5) employees, and one (1) I9 was completed after

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- the hire date;
  - iii. Petitioner failed to consult with the applicant's most recent or next most recent employer before hiring seven (7) employees;
  - iv. Petitioner failed to inquire regarding an applicant's qualifications and competence for the position before hiring seven (7) employees;
  - v. Petitioner failed to obtain a credit report before hiring one (1) employee;
  - vi. Petitioner failed to obtain a completed and signed employment application before hiring one (1) employee; and
  - vii. Petitioner failed to obtain a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction before hiring one (1) employee;
- b. Failed to maintain a complete list of all executed loan applications or executed fee agreements; specifically:
- i. Petitioner failed to maintain copies of all correspondence; and
  - ii. The following documents were missing from mortgage loan files examined:
    - 1. Preliminary title report;
    - 2. Appraisal;
    - 3. Lock Agreement, loan approval and commitment letter from the lender;
    - 4. Credit package, including verifications of employment and assets and the credit report;
    - 5. All e-mails and correspondence from the lender; and
    - 6. Purchase contract and escrow instructions;
- c. Allowed borrowers to sign regulated documents containing blank spaces; specifically:
- i. Petitioner failed to obtain written authorization to complete blank spaces on the 4506-T, Broker Agreement on at least seven (7) files;

- 1           ii. Petitioner failed to obtain written authorization to complete blank spaces on  
2           the Initial Application on at least eight (8) files;
- 3           iii. Petitioner failed to obtain written authorization to complete blank spaces on  
4           the Good Faith Estimate on at least eight (8) files; and
- 5           iv. Petitioner failed to obtain written authorization to complete blank spaces on  
6           the Truth in Lending disclosures on at least eight (8) files;
- 7           d. Failed to comply with the disclosure requirements of Title I of the Consumer Credit  
8           Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement  
9           Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated  
10          under these acts; specifically:
- 11           i. The Mortgage Servicing Transfer disclosure was not updated to show most  
12           recent three year history for two (2) borrowers;
- 13           ii. The Mortgage Servicing Transfer disclosure and application were not dated so  
14           it cannot be determined if the document was provided within three business  
15           days for eight (8) borrowers;
- 16           iii. The Truth in Lending statement was completed as a fixed rate when the rate  
17           was an Adjustable Rate Mortgage for one (1) borrower;
- 18           iv. The Truth in Lending statement was blank for eight (8) borrowers; and
- 19           v. The Good Faith Estimate was blank for eight (8) borrowers;
- 20          e. Misrepresented or concealed an essential or material fact in the course of the  
21          mortgage broker business, in at least six (6) mortgage loan transactions in which  
22          Thomas Alexander was the loan officer;
- 23          f. Failed to use a statutorily correct written fee/document agreement signed by all  
24          parties; specifically:
- 25           i. Petitioner failed to use a statutorily correct written agreement form when  
26           accepting documents in connection with an application for a mortgage loan

1 involving six (6) borrowers and failed to provide a provision for the Licensee  
2 to sign and date for a mortgage loan involving one (1) borrower; and

3 g. Used an unlawful appraisal disclosure that limits a borrower to 90 days in which the  
4 borrower may request a copy of an appraisal for which the borrower has paid.

5 4. Based upon the above findings, the Department issued and served upon American an  
6 Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order ("Cease  
7 and Desist Order") on May 21, 2009.

8 5. On June 19, 2009, Petitioner filed a Request For Hearing to appeal the Cease and Desist  
9 Order.

10 6. Petitioner has voluntarily agreed to take corrective action and have attempted to comply  
11 with the Department's requests. Specifically, Petitioner has and will cooperate to develop certain  
12 cases pursuant to A.R.S. § 6-161. Said cooperation shall include providing information including  
13 documentation and testimony that will enable the Department to pursue proceedings for removal and  
14 prohibition where appropriate. Petitioner did not have knowledge of, or participate in, the  
15 misrepresentations set forth in the Consent Order. Such findings do not waive any provisions of the  
16 Consent Order.

17 **CONCLUSIONS OF LAW**

18 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to  
19 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,  
20 rules, and regulations relating to mortgage brokers.

21 2. By the conduct set forth in the Complaint, American violated the following:

22 a. A.R.S. § 6-903(N) and A.A.C. R20-4-102 by failing to conduct the minimum  
23 elements of reasonable employee investigations before hiring employees;

24 b. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6) by failing to maintain original  
25 documents or copies of all mortgage loan transactions;

26 ...

- 1 c. A.R.S. § 6-909(A) and A.A.C. R20-4-921, by allowing borrowers to sign regulated
- 2 documents containing blank spaces;
- 3 d. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e) by failing to comply with the
- 4 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.
- 5 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C.
- 6 §§ 2601 through 2617), and the regulations promulgated under these acts;
- 7 e. A.R.S. § 6-909(L) by misrepresenting or concealing an essential or material fact in
- 8 the course of the mortgage broker business;
- 9 f. A.R.S. § 6-906(C) by failing to use a correct written fee document agreement; and
- 10 g. A.R.S. § 6-906(C) by using unlawful appraisal disclosures that limit a borrower to 90
- 11 days in which the borrower may request a copy of an appraisal for which the
- 12 borrower has paid.

13 3. Petitioner violated the aforementioned rules and statutes in the conduct of their mortgage  
14 broker business, which is grounds for the suspension or revocation of Petitioner's mortgage broker  
15 license, pursuant to A.R.S. § 6-905(A)(3).

16 4. The violations, set forth above, constitute grounds for: (1) the issuance of an order  
17 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to  
18 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
19 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
20 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
21 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-905; and (4) an order to pay  
22 restitution of any fees earned on loans made in violation of A.R.S. § 6-901, *et seq.*, pursuant to  
23 A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or any other remedy necessary or proper for the  
24 enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and  
25 6-131.

26 ...

1 ORDER

2 1. American Mortgage Funding, Inc. shall immediately stop the violations set forth in the  
3 Findings of Fact and Conclusions of Law. American:

- 4 a. Shall conduct the minimum elements of reasonable employee investigations before  
5 hiring employees;
- 6 b. Shall maintain original documents or copies of all mortgage loan transactions;
- 7 c. Shall not allow borrowers to sign regulated documents containing blank spaces;
- 8 d. Shall comply with the disclosure requirements of Title I of the Consumer Credit  
9 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement  
10 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated  
11 under these acts;
- 12 e. Shall cease to misrepresent or conceal an essential or material fact in the course of the  
13 mortgage broker business;
- 14 f. Shall use a correct written fee document agreement when accepting documents from  
15 borrowers and shall ensure that such documents are properly executed; and
- 16 g. Shall not use unlawful appraisal disclosures that limit a borrower to 90 days in which  
17 the borrower may request a copy of an appraisal for which the borrower has paid.

18 2. American Mortgage Funding, Inc. shall comply with all Arizona statutes and rules  
19 regulating Arizona mortgage brokers (A.R.S. §§ 6-901 *et seq.*).

20 3. American Mortgage Funding, Inc. shall pay to the Department a civil money penalty in  
21 the amount of ten thousand dollars (\$10,000.00).

- 22 a. Five thousand dollars (\$5,000.00) shall immediately be paid to the Department upon  
23 execution of this Order.
- 24 b. The balance of the civil money penalty, five thousand dollars (\$5,000.00), shall be  
25 paid to the Department within sixty (60) days after execution of this Order.

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1           6. Matthew Kelley, on behalf of American Mortgage Funding, Inc., represents that he is the  
2 President, and that, as such, has been authorized by American Mortgage Funding, Inc to consent to  
3 the entry of this Order on its behalf.

4           7. Petitioner waives all rights to seek judicial review or otherwise to challenge or contest the  
5 validity of this Order.

6           DATED this 10 day of August 2009, 2009.

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By   
Matthew Kelley, President  
American Mortgage Funding, Inc.,

12 ORIGINAL of the foregoing filed this 19th  
13 day of August, 2009, in the office of:

14 Felecia A. Rotellini, Superintendent of Financial Institutions  
15 Arizona Department of Financial Institutions  
16 ATTN: Susan L. Longo  
17 2910 N. 44th Street, Suite 310  
18 Phoenix, AZ 85018

19 COPY mailed same date to:

20 Lewis D. Kowal, Administrative Law Judge  
21 Office of the Administrative Hearings  
22 1400 West Washington, Suite 101  
23 Phoenix, AZ 85007

24 Craig A. Raby, Assistant Attorney General  
25 Office of the Attorney General  
26 1275 West Washington  
Phoenix, AZ 85007

Robert D. Charlton, Assistant Superintendent  
Chris Dunshee, Senior Examiner  
Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

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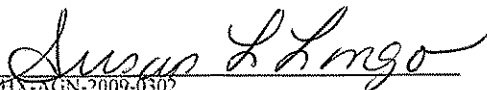


1 AND COPY MAILED SAME DATE by  
2 Certified Mail, Return Receipt Requested, to:

3 American Mortgage Funding, Inc.  
4 c/o Matthew Kelley, President/Owner  
5 3942 E. Patrick Lane  
6 Phoenix, AZ 85050  
7 Petitioner

8 Matthew Kelley, President/Owner  
9 and Statutory Agent for:  
10 American Mortgage Funding, Inc.  
11 PO Box 25771  
12 Scottsdale, AZ 85255

13 Michael Salcido, Esq.  
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16 Phoenix, AZ 85004  
17 Attorneys for Petitioner

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