

**STATE OF NEBRASKA**  
**Department of Banking & Finance**

IN THE MATTER OF:	)	FINDINGS OF FACT
Dana Capital Group, Inc.,	)	CONCLUSIONS OF LAW
8001 Irvine Center Drive, Suite 1200,	)	AND
Irvine, California	)	CONSENT AGREEMENT

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Mortgage Bankers Registration and Licensing Act, Neb. Rev. Stat. §§ 45-701 to 45-721 (Reissue 2004; Cum. Supp. 2006) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Reissue 2004), the DEPARTMENT has investigated the actions of Dana Capital Group, Inc., 8001 Irvine Center Drive, Suite 1200, Irvine, California (“DANA CAPITAL”). As a result of such investigation, and being duly advised and informed in the matter, the Director and DANA CAPITAL enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

**FINDINGS OF FACT**

1. On July 22, 1998, the DEPARTMENT issued a mortgage banker license to DANA CAPITAL pursuant to Neb. Rev. Stat. § 45-705 (Cum. Supp. 2006). DANA CAPITAL renewed the license annually on March 1st each year thereafter through March 1, 2006, pursuant to Neb. Rev. Stat. § 45-706(3) (Cum. Supp. 2006). On March 1, 2006, the DEPARTMENT issued a provisional license to DANA CAPITAL pending resolution of this inquiry. DANA CAPITAL currently maintains a surety bond in the amount of \$50,000.00 pursuant to Neb. Rev. Stat. § 45-709 (Cum. Supp. 2006).

2. On January 29, 2002, DANA CAPITAL submitted its 2002 Mortgage Banker License Renewal Application (“2002 Renewal Application”) to the DEPARTMENT. Based upon the information contained in the 2002 Renewal Application, the DEPARTMENT renewed DANA CAPITAL’s license effective March 1, 2002.

3. On February 21, 2003, DANA CAPITAL submitted its 2003 Mortgage Banker License Renewal Application (“2003 Renewal Application”) to the DEPARTMENT. Based upon the information contained in the 2003 Renewal Application, the DEPARTMENT renewed DANA CAPITAL’s license effective March 1, 2003.

4. On January 30, 2004, DANA CAPITAL submitted its 2004 Mortgage Banker License Renewal Application (“2004 Renewal Application”) to the DEPARTMENT. Based upon the information contained in the 2004 Renewal Application, the DEPARTMENT renewed DANA CAPITAL’s license effective March 1, 2004.

5. On February 11, 2005, DANA CAPITAL submitted its 2005 Mortgage Banker License Renewal Application (“2005 Renewal Application”) to the DEPARTMENT. Based upon the information contained in the 2005 Renewal Application, the DEPARTMENT renewed DANA CAPITAL’s license effective March 1, 2005.

6. On February 21, 2006, DANA CAPITAL submitted its 2006 Mortgage Banker License Renewal Application (“2006 Renewal Application”) to the DEPARTMENT. Based upon the information contained in the 2006 Renewal Application, the DEPARTMENT provisionally renewed DANA CAPITAL’s license effective March 1, 2006.

7. Each Renewal Application required DANA CAPITAL to provide a variety of information to the DEPARTMENT, including whether DANA CAPITAL had ever been the subject of an administrative action in another state and whether DANA CAPITAL had

ever been fined by a regulatory agency. On each Renewal Application, DANA CAPITAL answered that it had not been the subject of an administrative action or a fine with the exception of the 2005 Renewal Application when it disclosed an action by the State of Nevada.

8. During its investigation, the DEPARTMENT has learned of a number of administrative actions taken by various state regulatory agencies regarding DANA CAPITAL in which DANA CAPITAL was required to pay a fine.

9. The DEPARTMENT has determined that these actions and fines should have been disclosed on the Renewal Applications and that by not doing so DANA CAPITAL committed multiple violations of Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) as it provided false and misleading information in documents filed with the DEPARTMENT.

10. DANA CAPITAL neither admits nor denies that it was required to disclose the various administrative actions and fines and neither admits nor denies that it violated the Act by not disclosing such items.

11. DANA CAPITAL has entered into employment agreements with a number of individuals who are Nebraska residents. Many of these individuals work either from their homes or from offices located in Nebraska. The DEPARTMENT has learned that these individuals have hired their own employees, solicited customers, accepted applications, and closed loans from locations in Nebraska.

12. Question #2 of each Renewal Application required DANA CAPITAL to list all locations at which it would be conducting mortgage banking business in Nebraska. DANA CAPITAL did not list any locations conducting business in Nebraska with the exception of its main office location.

13. The DEPARTMENT has determined that the activities of these employees constitute conducting mortgage banking and the locations where these individuals worked were branches of DANA CAPITAL and should have been disclosed in response to Question #2 of the Renewal Application. The DEPARTMENT has therefore concluded that by not disclosing these branch locations on each Renewal Application, DANA CAPITAL committed multiple violations of Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) as it provided false and misleading information in documents filed with the DEPARTMENT.

14. Neb. Rev. Stat. § 45-711(9) (Cum. Supp. 2006) requires a licensee to notify the DEPARTMENT of any material changes within thirty days. A change in location of branches doing business in Nebraska, whether by addition, deletion, or relocation, is a material change requiring notice to the DEPARTMENT.

15. At no time prior to the commencement of this investigation did DANA CAPITAL notify the DEPARTMENT that it had opened any branches conducting business in Nebraska. The DEPARTMENT has therefore concluded that DANA CAPITAL committed multiple violations of Neb. Rev. Stat. § 45-711(9) (Cum. Supp. 2006) by failing to notify the DEPARTMENT of the opening and closing of these branches within thirty days.

16. DANA CAPITAL neither admits nor denies that these employees operated branch locations and neither admits nor denies that they were required to be listed on each Renewal Application.

17. The DEPARTMENT has also learned that at least two of DANA CAPITAL's employees established limited liability companies which were used to conduct mortgage banking business in Nebraska. These limited liability companies did not obtain a license

pursuant to the Act and instead relied upon DANA CAPITAL's license and the employment agreements to conduct such mortgage banking business.

18. These limited liability companies therefore were operating as a mortgage banker as defined by Neb. Rev. Stat. § 45-702(6) (Cum. Supp. 2006) as they were directly or indirectly offering to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year.

19. These limited liability companies do not qualify for any of the exemptions set forth in Neb. Rev. Stat. § 45-703 (Cum. Supp. 2006). Moreover, the individual employees or agents of these limited liability companies also do not qualify for the exemptions set forth in Neb. Rev. Stat. § 45-703(1)(f),(g) as these individuals were not employed by a licensed or exempt mortgage banker.

20. The DEPARTMENT has concluded that DANA CAPITAL therefore violated Neb. Rev. Stat. § 45-705 (Cum. Supp. 2006) as it utilized unlicensed entities and nonexempt individuals to conduct its mortgage banking business in Nebraska. DANA CAPITAL disputes this finding.

21. The DEPARTMENT has also learned that at least one of its employees also had signed an agreement with Premier Mortgage Funding, Inc., a Nebraska licensed mortgage banker.

22. Neb. Rev. Stat. § 45-703(1)(f) (Cum. Supp. 2006) provides an exemption from the Act for any individual acting solely as an employee of a mortgage banker licensed or registered pursuant to the Act or exempt from the Act.

23. The employee did not qualify for the exemption found at Neb. Rev. Stat. § 45-703(1)(g) (Cum. Supp. 2006) as he was not an exclusive employee of DANA CAPITAL.

24. The DEPARTMENT has determined that DANA CAPITAL violated Neb. Rev. Stat. § 45-705 (Cum. Supp. 2006) as it utilized a non-exempt individual to conduct mortgage banking in Nebraska. DANA CAPITAL disputes this finding as it claims it was unaware that its employees had established limited liability companies to conduct mortgage banking business.

25. Each Renewal Application completed by DANA CAPITAL required it to list any trade names or d/b/a designations that it was using to conduct business in Nebraska. At no time did DANA CAPITAL disclose any trade name or d/b/a designation on its Renewal Applications.

26. The DEPARTMENT has learned that at least one of DANA CAPITAL's employees began conducting business in 2005 under a trade name other than DANA CAPITAL.

27. The DEPARTMENT has concluded that DANA CAPITAL's failure to list the trade name on its 2006 Renewal Application constitutes a violation of Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) as it provided false and misleading information in the application that was filed with the DEPARTMENT. DANA CAPITAL disputes this finding as it claims that it was unaware that its employee was utilizing a name other than DANA CAPITAL to conduct mortgage banking business in Nebraska.

28. Neb. Rev. Stat. § 45-711(9)(f) (Cum. Supp. 2006) requires a licensee to notify the DEPARTMENT within thirty days of adopting a trade name.

29. The DEPARTMENT has concluded that DANA CAPITAL violated Neb. Rev. Stat. § 45-711(9)(f) (Cum. Supp. 2006) as it failed to notify the DEPARTMENT of the adoption of the trade name within thirty days. DANA CAPITAL disputes this finding as it claims it was unaware that its employees had established limited liability companies to conduct mortgage banking business.

30. Based upon its investigation, the DEPARTMENT has learned that DANA CAPITAL was largely unaware of the activities of its employees in Nebraska. Specifically, DANA CAPITAL was not aware that these employees had established offices, hired employees, established limited liability companies, and operated under trade names other than DANA CAPITAL.

31. The DEPARTMENT has concluded that DANA CAPITAL therefore violated Neb. Rev. Stat. § 45-707(1)(1) (Cum. Supp. 2006) as it failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the Act or with any state or federal law applicable to the mortgage banking business. DANA CAPITAL disputes this finding as at least two of the employees had informed DANA CAPITAL that they did not reside in Nebraska.

### **CONCLUSIONS OF LAW**

1. Neb. Rev. Stat. § 45-705 (Cum. Supp. 2006) provides, in part, that no person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or registered with the DEPARTMENT.

2. Neb. Rev. Stat. § 45-706(1) (Cum. Supp. 2006) provides that the business of a mortgage banker shall be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Act.

3. Neb. Rev. Stat. § 45-703(1)(f) (Cum. Supp. 2006) provides an exemption from the Act for any individual acting solely as an employee of a mortgage banker licensed or registered pursuant to the Act or exempt from the Act.

4. Neb. Rev. Stat. § 45-706(3) (Cum. Supp. 2006) provides that mortgage hanker licenses may be renewed annually by filing an application for renewal containing such information as the Director may require to indicate any material change in the original application or succeeding renewal applications.

5. Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) provides that if the Director, following an administrative hearing, finds that a licensee has made or caused to be made, in any document filed with the Director or in any proceeding under the Act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the Director any information which, if submitted by the licensee, would have resulted in denial of the license application, the Director may suspend or revoke the license, or issue an administrative fine not exceeding five thousand dollars for each violation of the Act.

6. Neb. Rev. Stat. § 45-707(1)(l) (Cum. Supp. 2006) provides that if the Director, following an administrative hearing, finds that a licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the Act or with any state or federal law applicable to the mortgage banking business, the Director may suspend or revoke the license or issue an administrative fine not exceeding five thousand dollars for each violation of the Act.

7. Neb. Rev. Stat. § 45-711(9)(f) (Cum. Supp. 2006) provides that a licensee must notify the DEPARTMENT within thirty days of adopting a trade name.

8. Neb. Rev. Stat. § 45-711(9)(g) (Cum. Supp. 2006) provides that a licensee must notify the DEPARTMENT within thirty days of the establishment or closing of a branch office located in Nebraska.



9. Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006) provides that if the Director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by Section 45-707 or has otherwise violated the Act, the Director may order such person to pay an administrative fine not exceeding five thousand dollars for each separate violation plus the costs of investigation.

10. Neb. Rev. Stat. § 45-709(1) (Cum. Supp. 2006) provides that a licensee must maintain a surety bond in the amount of one hundred thousand dollars (\$1 00,000), except those licensees that were licensed on July 14, 2006, can maintain a surety bond in the amount of fifty thousand dollars (\$50,000.00) through February 28, 2007.

11. Neb. Rev. Stat. § 45-709(2) (Cum. Supp. 2006) provides that the Director may require the filing of a new or supplemental bond in the form as provided in subsection (1) of that section if he or she determines that the bond filed under this section is exhausted or is inadequate for any reason, including the financial condition of the licensee or the applicant for a license. The new or supplemental bond shall not exceed one million dollars.

12. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that DANA CAPITAL has violated the Act and that proceedings could be commenced to revoke or suspend DANA CAPITAL's license and/or an administrative fine in an amount of not more than five thousand dollars for each of the violations plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006).

13. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

14. It is in the best interest of DANA CAPITAL, and in the best interest of the public, for DANA CAPITAL and the DEPARTMENT to resolve the issues included herein.

### **CONSENT AGREEMENT**

The DEPARTMENT and DANA CAPITAL agree as follows:

Stipulations: In connection with this Consent Agreement, DANA CAPITAL and the DEPARTMENT stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Agreement shall resolve all matters between the DEPARTMENT and DANA CAPITAL in connection with the Findings of Fact listed above. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.
3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

DANA CAPITAL further represents as follows:

1. DANA CAPITAL is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.
2. DANA CAPITAL is acting free from any duress or coercion of any kind or nature.
3. This Consent Agreement is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Agreement and for no other purpose.

IT IS, THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, DANA CAPITAL shall pay a total fine of eighteen thousand seven hundred fifty dollars (\$18,750.00) for its violations of the Act.

2. Within ten (10) days after the effective date of this Consent Agreement, DANA CAPITAL shall pay the investigation costs of the DEPARTMENT in the amount of two thousand dollars (\$2,000.00).

3. The total amount of the fine and investigation costs, twenty thousand seven hundred fifty dollars (\$20,750.00), shall be payable in one check or money order to the DEPARTMENT.

4. Within thirty (30) days after the effective date of this Consent Agreement, DANA CAPITAL shall increase its surety bond to one hundred fifty thousand dollars (\$150,000.00) and submit an original surety bond rider reflecting such increase.

5. Within thirty (30) days after the effective date of this Consent Agreement, DANA CAPITAL shall provide a complete list of all employees and independent agents who are Nebraska residents. This list shall include the name of the individual, the individual's address, the address at which the individual will be conducting business for DANA CAPITAL, if different, the individual's phone number, the individual's e-mail, and the individual's website, if one exists. DANA CAPITAL shall also submit copies of any written agreements between it and its Nebraska employees and independent contractors, except those agreements that have already been submitted to the DEPARTMENT.

6. Within thirty (30) days after the effective date of this Consent Agreement, DANA CAPITAL shall adopt a corporate policy prohibiting its employees and independent agents from using a corporation, a limited liability company, or other entity to operate a branch of DANA CAPITAL in Nebraska. DANA CAPITAL shall provide a copy of this policy to each current

employee who resides in Nebraska and shall provide a copy to each Nebraska resident subsequently hired as an employee or independent agent for a period of five (5) years from the date of this Consent Agreement. DANA CAPITAL shall provide a copy of this policy and proof that it has been delivered to all current employees who are Nebraska residents within forty (40) days after the effective date of this Consent Agreement.

7. Within thirty (30) days after the effective date of this Consent Agreement, DANA CAPITAL shall adopt a corporate policy prohibiting its employees and independent agents from using a trade name to operate a branch of DANA CAPITAL doing business in Nebraska unless DANA CAPITAL obtains a separate license using that trade name. DANA CAPITAL shall provide a copy of this policy to each current employee who resides in Nebraska and shall provide a copy to each Nebraska resident subsequently hired as an employee or independent agent for a period of five (5) years from the date of this Consent Agreement. DANA CAPITAL shall provide a copy of this policy and proof that it has been delivered to all current employees who are Nebraska residents within forty (40) days after the effective date of this Consent Agreement.

8. Within thirty (30) days after the effective date of this Consent Agreement, DANA CAPITAL shall either (a) remove the website [www.rndfinsolutions.com](http://www.rndfinsolutions.com), and all signs designating the branch as MD FINANCIAL, (b) change the content of the website so that all references to MD FINANCIAL are eliminated and replaced with references to DANA CAPITAL and remove all signs designating the branch as MD FINANCIAL, (c) adopt MD FINANCIAL as a trade name, or (d) terminate its employment agreement with CHAIDEZ. Within forty (40) days after the effective date of this Consent Agreement, DANA CAPITAL shall submit proof to the DEPARTMENT that it has complied with this paragraph.

9. For a period of five (5) years after the effective date of this Consent Agreement, DANA CAPITAL shall provide a notice to the DEPARTMENT within thirty (30) days after hiring an employee or independent agent who are residents of Nebraska or will work from an office located in Nebraska. This notice shall include the name of the employee, the address of the employee, the address at which the employee will be conducting business for DANA CAPITAL, if different, the employee's phone number, the employee's e-mail, and the employee's website, if one exists. DANA CAPITAL shall also submit a copy of any written agreement between it and the individual hired as an employee or independent agent.

10. For a period of five (5) years after the effective date of this Consent Agreement, DANA CAPITAL shall provide the DEPARTMENT a notice within thirty (30) days after the termination of any employee or independent agent working in Nebraska. Said notice shall include the date of the termination.

11. For a period of five (5) years after the effective date of this Consent Agreement, DANA CAPITAL shall provide a copy of any Order issued by a state or federal regulatory agency negatively affecting DANA CAPITAL or any of its officers, directors, or shareholders, within thirty (30) days of receipt of such Order. For purposes of this paragraph, an Order negatively affecting DANA CAPITAL shall include, but not be limited to, (a) Orders imposing a fine, assessment, fee or cost, (b) Orders denying an application, (c) Orders revoking, suspending or otherwise imposing conditions upon its license, and (d) Orders to cease and desist.

12. Within five (5) business days after DANA CAPITAL pays the fine and costs, increases its surety bond, and provides the policies and notices required by paragraphs 5 through 8 of this Consent Agreement, the DEPARTMENT shall issue a non-provisional license to DANA CAPITAL for the remainder of the current licensing term.

13. In the event DANA CAPITAL fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding DANA CAPITAL as it deems necessary and appropriate in the public interest.

14. The effective date of this Consent Agreement shall be the date of the Director's signature.

DATED this 15<sup>th</sup> day of January, 2007.

Dana Capital Group, Inc.

By: \_\_\_\_\_

Dana H. Smith, President

8001 Irvine Center Drive, Suite 1200  
Irvine, California 92618  
(800) 588-5535

DATED this 16<sup>th</sup> day of January, 2007.  
STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE

By: \_\_\_\_\_

John Munn, Director

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