

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
Affiliated Mortgage Company, LLC)	CONCLUSIONS OF LAW
2210 Jackson Boulevard,)	AND
Rapid City, South Dakota)	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 acts of Affiliated Mortgage Company, LLC, 2210 Jackson Boulevard, Rapid City, South Dakota ("AFFILIATED"). As a result of such investigation, and being duly advised and informed in the matter, the Director and AFFILIATED enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. On July 11, 2006, AFFILIATED submitted a Mortgage Banker License Application ("Application") to the DEPARTMENT pursuant to Neb. Rev. Stat. § 45-705 (Cum. Supp. 2006). On July 20, 2006, AFFILIATED withdrew its pending Application. On November 14, 2006, AFFILIATED resubmitted its Application.
2. Question #2 of the Application requires the "Address, contact person, and phone number of all other offices (whether or not in Nebraska) at which mortgage banking business will be transacted. If none, please so indicate." A grid is provided for

this information. In addition, the instructions to the Application state "If you need extra space to answer any questions, please attach a separate sheet and reference it accordingly."

3. In response to Question #2, AFFILIATED listed branches in Spearfish, South Dakota, and Gillette, Wyoming.

4. In its Application, AFFILIATED disclosed a website with an address of www.affiliatedsd.com. When the DEPARTMENT reviewed the website on January 4, 2007, the DEPARTMENT discovered that the website also listed a branch in Papillion, Nebraska ("Papillion Branch"), that was not listed in response to Question #2 on the Application.

5. On January 4, 2007, the DEPARTMENT sent a letter to AFFILIATED requesting an explanation as to when the Papillion Branch had opened and why it was not listed in response to Question #2 of the Application.

6. AFFILIATED responded in a letter dated January 4, 2007, in which it provided the following explanation regarding the Papillion Branch:

Question #2 was read as "other than in Nebraska" vs. "whether or not in Nebraska".

Our Papillion location is one individual that markets for us out of her home. She started marketing for us around November 1st 2006. To date she has not generated any business for Affiliated Mortgage Co.

7. AFFILIATED, by failing to list all of its branches conducting business in Nebraska, violated Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) as it provided false and misleading information to the DEPARTMENT in its Application.

8. The website also contained an on-line application which appeared to accept applications from Nebraska residents. The website did not contain any statement that

AFFILIATED did not make loans in Nebraska, or a statement that it made loans in only those states in which it had licenses.

9. The DEPARTMENT also addressed this issue in its January 4, 2007 letter in which it requested that AFFILIATED:

Please provide us a list of all customers who have submitted a mortgage application with Affiliated Mortgage Company LLC for property located in Nebraska. This list should include all applications received by the website and any other source.

10. In its January 4, 2007 letter, AFFILIATED stated that it had received three applications from Nebraska residents.

11. Neb. Rev. Stat. § 45-702(6) (Cum. Supp. 2006) defines the term "mortgage banker" as any person who "makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year."

12. Neb. Rev. Stat. § 45-702(9) (Cum. Supp. 2006) defines the term "offer" as every attempt to provide, offer to provide, or solicitation to provide a mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet.

13. The DEPARTMENT has determined that operating a website that is accessible to residents of Nebraska is an offer to make, originate, service, negotiate, acquire, or sell more than ten loans, unless such website specifically indicates that those services are not available to Nebraska customers. The DEPARTMENT's interpretation of this statute was set forth on the DEPARTMENT's website in the Frequently Asked Questions section at all times relevant to this Order.

14. **AFFILIATED**, by accepting three applications, offering to accept loan applications via the Internet, opening a Nebraska branch and advertising it on its website, and engaging a person in Nebraska to conduct marketing on its behalf, committed multiple violations of Neb. Rev. Stat. § 45-705(1) (Cum. Supp. 2006) which provides that

(n)o person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or has registered with the department as provided in the Mortgage Bankers Registration and Licensing Act or is licensed under the Nebraska Installment Loan Act.

15. **AFFILIATED** does not hold, and never has held, a license issued pursuant to the Nebraska Installment Loan Act.

16. The **DEPARTMENT** incurred a minimum of five hundred dollars in investigation costs in this matter.

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. § 45-702(6) (Cum. Supp. 2006) defines the term "mortgage banker" as any person not exempt from the Act who, for compensation or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year.

3. Neb. Rev. Stat. § 45-702(9) (Cum. Supp. 2006) defines the term "offer" as every attempt to provide, offer to provide, or solicitation to provide a mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general

and public advertising, whether made in print, through electronic media, or by the Internet.

4. 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.

5. Neb. Rev. Stat. § 45-706(1) (Cum. Supp. 2006) provides that the Director of the DEPARTMENT shall issue a mortgage banker license if he or she finds that the character and general fitness of the applicant are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Act.

6. Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) provides that the Director may suspend or revoke any license issued under the Act or impose an administrative fine if the licensee has made statements which, at the time or in the light of the circumstance in which they were made, were false or misleading in any material respect.

7. 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.

8. The above Findings of Fact contain information which indicates that AFFILIATED acted as a mortgage banker without a license. Operating without a license is itself a violation of the Act. Moreover, AFFILIATED is operating a website that is

promoting its proposed mortgage banking business, as well as operating a branch in Nebraska prior to obtaining a license. AFFILIATED's decision to operate a mortgage banking business without a license raises serious questions regarding AFFILIATED's ability to operate the business soundly, efficiently, and in the public interest.

9. The above Findings of Fact contain information which indicates that AFFILIATED provided false and misleading information on its Application. Providing false and misleading information on an Application raises serious questions regarding AFFILIATED's ability to operate the business soundly, efficiently, and in the public interest.

10. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that AFFILIATED has violated the Act and that proceedings to deny AFFILIATED's Application should be initiated and/or that an administrative fine in an amount of not more than five thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006).

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

12. It is in the best interest of AFFILIATED, and the best interest of the public, to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and AFFILIATED agree as follows:

Stipulations: In connection with this Consent Agreement, AFFILIATED 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 AFFILIATED 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.

AFFILIATED further represents as follows:

1. AFFILIATED 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. AFFILIATED 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, AFFILIATED shall pay a fine of five thousand dollars (\$5,000.00) for its multiple violations of Neb. Rev. Stat. § 45-705 (Cum. Supp. 2006), in which AFFILIATED acted as a mortgage banker without the required license.
2. Within ten (10) days after the effective date of this Consent Agreement, AFFILIATED shall pay a fine of one thousand dollars (\$1,000.00) for its violation of

Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) where it provided false and misleading information to the DEPARTMENT by omitting the Papillion branch in its Application.

3. Within ten (10) days after the effective date of this Consent Agreement, AFFILIATED shall pay the investigation costs of the DEPARTMENT in the amount of five hundred dollars (\$500.00).

4. The total amount of the fine and investigation costs, six thousand five hundred (\$6,500.00), shall be payable in one check or money order to the DEPARTMENT.

5. Within three (3) business days of receipt of the fine and investigation costs, the DEPARTMENT shall issue a Mortgage Banker License to AFFILIATED for the current licensing period.

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

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

DATED this 23 day of JANUARY, 2007.

Affiliated Mortgage Company, LLC

By: _____

Vernon M. Buress, President

2210 Jackson Boulevard,
Rapid City, South Dakota 57702
(605) 718-9820

DATED this 25th day of January, 2007.

**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**

By: John Munn
John Munn, Director

Commerce Court, Suite 400
1230 "O" Street
Lincoln, Nebraska 68508
(402) 471-2171