

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Banker License of: No. 06F-BD026-BNK

3 **CONCORD MORTGAGE COMPANY #1**  
4 15333 N. PIMA ROAD, STE. 370  
5 SCOTTSDALE, AZ 85260

**CONSENT ORDER**

Petitioner.

6  
7 On January 20, 2006, the Arizona Department of Financial Institutions (“Department”)  
8 issued a Notice of Hearing alleging that Petitioner had violated Arizona law. Wishing to resolve this  
9 matter in lieu of an administrative hearing and without admitting or denying liability, Petitioner does  
10 not contest the following Findings of Fact and Conclusions of Law, and consent to the entry of the  
11 following Order.

12 **FINDINGS OF FACT**

13 1. Petitioner Concord Mortgage #1 (“Concord Mortgage”) is an Arizona corporation  
14 authorized to transact business in Arizona as a mortgage banker, license number BK 0901624,  
15 within the meaning of A.R.S. § 6-941 *et seq.* The nature of Concord Mortgage’s business is that of  
16 making, negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan  
17 secured by Arizona real property within the meaning of A.R.S. § 6-941(5).

18 2. Rhett A. Johnston (“Mr. Johnston”) is the president of Concord Mortgage.

19 3. An August 30, 2005 examination of Concord Mortgage, conducted by the  
20 Department, revealed that Concord Mortgage:

21 a. unlawfully transferred or assigned branch office licenses by not having all leases  
22 executed in the name of Concord Mortgage;

23 i. The branch offices and their current status are:

24 1. BK BR 0102880—2530 W. HWY 89A, #B-1, Sedona, Arizona  
25 (branch closed by licensee);

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2. BK BR 0105458—2530 W. HWY 89A, #C2-1, Sedona, Arizona (licensee is actively pursuing the lease transfer);
3. BK BR 0106643—7047 E. Greenway Parkway, #259, Scottsdale, Arizona (branch closed by licensee);
4. BK BR 0107250—7816 N. 19<sup>th</sup> Avenue, #109, Phoenix, Arizona (licensee will execute a lease for the new location);
5. BK BR 0107430—3100 N. Joy Lane, Flagstaff, Arizona (branch is operated out of employee’s home; employee is not paid rent);
6. BK BR 0108571—6560 HWY 179, #124, Sedona, Arizona (branch closed by licensee and branch license surrendered);

- b. failed to include the mortgage banker license number as issued on its principal place of business license in at least two advertising solicitations: “Is your builder’s mortgage company hammering you?” and “Stop Renting”;
- c. failed to disclose the terms of repayment, interest rate, and annual percentage rate when advertising on [www.bestrates.com](http://www.bestrates.com);
- d. failed to conduct the minimum required elements of reasonable employee investigations before hiring at least twenty (20) employees;
  - i. failed to obtain credit reports before hiring five (5) employees;
  - ii. failed to inquire regarding the applicant’s qualifications and competence for the position when hiring ten (10) employees;
  - iii. failed to obtain a completed employment eligibility verification form “I-9” when hiring seven (7) employees;
  - iv. failed to investigate further as to the applicant’s honesty, truthfulness, integrity, or competence when hiring seven (7) employees, all of which had derogatory credit ratings;

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- v. failed to properly document prior employer inquiries when hiring fifteen (15) employees;
- vi. failed to correct these violations from three (3) prior examinations;
- e. paid an unlawful referral fee:
  - i. when one of the Petitioner's loan officers advertised homes for sale without charging any fee to the realtors for the advertising space;
  - ii. when one of the Petitioner's loan officers paid \$443.59 for dinner involving a builder and real estate agent on December 16, 2004;
  - iii. by sending flowers to real estate agents congratulating them on listings or closings: Helen Brown, January 5, 2005: \$59.68; Assist to Sell, April 16, 2004: \$37.73; Remax, April 27, 2004: \$26.87; and Century 21, April 20, 2004: \$26.87;
- f. paid \$300.00 in compensation to Mark 1 Mortgage, an independent contractor who was acting as a mortgage broker or mortgage banker, but was not licensed as such, on June 30, 2004;
  - i. failed to correct this violation from its prior examination;
- g. failed to ensure that funds were on deposit in its general account before writing checks, and, expended more than its available cash on hand;
  - i. a \$6,166.50 overdraft occurred in its general operating account in March of 2005;
  - ii. reconciliations in January, April, May, and June of 2005 revealed overdrafts in Petitioner's general ledger book balances of \$27,228.44, \$51,573.09, \$46,577.79, and \$42,067.92 respectively;
- h. failed to maintain samples of every piece of advertising;
- i. failed to maintain a list of all executed loan applications;

- 1 i. the loan listing provided by Petitioner, which included 2003, 2004, and  
2 2005 loans, did not contain a provision for final disposition;
- 3 j. permitted eight (8) borrowers to sign regulated documents containing blank spaces  
4 without first obtaining the proper written authorization from the borrowers to  
5 complete the blank spaces;
- 6 k. made misrepresentations in the course of the mortgage banker business;
- 7 i. failed to disclose on final HUD-1 settlement statements co-broker fees  
8 paid to the following entities: Ashton Woods, \$8,521.50; Pulte  
9 Mortgage, \$7,871.91; Home American Mortgage, \$708.30; and UAMC  
10 Mortgage Company, \$14,337.56;
- 11 l. failed to comply with the disclosure requirements of title I of the Consumer  
12 Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures Act  
13 (12 U.S.C. §§ 2601-2617); and the regulations promulgated under these acts;
- 14 i. failed to issue or retain a preliminary good faith estimate to one (1)  
15 borrower;
- 16 ii. failed to issue a timely servicing transfer disclosure given to one (1)  
17 borrower;
- 18 iii. failed to accurately report a loan origination fee on the initial good faith  
19 estimate to one (1) borrower;
- 20 m. failed to include the disbursement's payee and purpose in the trust subsidiary ledger;
- 21 n. failed to immediately deposit advances or fees by the end of the next business day  
22 into a trust account;
- 23 i. deposits were held for more than thirty (30) days;
- 24 ii. failed to correct this violation from its prior examination;
- 25 o. failed to have all parties sign a written fee agreement in connection with mortgage  
26 loan applications;

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- i. thirteen (13) written fee agreements were not signed by Petitioner;
  - ii. one (1) written fee agreement was untimely;
  - iii. failed to correct these violations from two (2) prior examinations;
- p. failed to provide the Department with documents within a reasonable time;
- i. failed to provide the Department, in a timely manner, copies of all of Petitioner's branch office leases;
- q. failed to comply with the Department's prior Cease and Desist Order;
- i. Petitioner signed Consent Order 04F-BD063-SBD in January of 2004 and has failed to correct the following violations:
    - 1. employee investigations;
    - 2. signed documents containing blank spaces;
    - 3. timely deposit of trust monies;
    - 4. proper written fee agreements;
    - 5. compensation to unlicensed, independent contractors; and
    - 6. appraisal disclosure that is in conflict with Arizona law;
- r. used an unlawful appraisal disclosure placing a 90-day limit upon borrowers to request transfer or return of an appraisal report for which the borrowers had already paid;
- i. failed to correct this violation from its prior examination.

4. Based upon the above findings, the Department issued and served upon Concord Mortgage and Mr. Johnston an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order ("Cease and Desist Order") dated December 2, 2005.

5. On December 29, 2005, Petitioner filed a Request For Hearing to appeal the Cease and Desist Order.

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1 CONCLUSIONS OF LAW

2 1. Pursuant to A.R.S. § 6-941, *et seq.*, the Superintendent of Financial Institutions  
3 (“Superintendent”) is charged with the authority and duty to regulate all persons engaged in the  
4 mortgage banker business in Arizona and with the enforcement of statutes, rules, and regulations  
5 relating to mortgage bankers.

6 2. By the conduct set forth in the Findings of Fact, the Department concluded Concord  
7 Mortgage violated the following:

- 8 a. A.R.S. § 6-944(A) by unlawfully transferring or assigning branch office licenses  
9 by failing to have all leases executed in the name of Concord Mortgage;
- 10 b. A.R.S. §§ 6-943(N) and 6-946(E) by failing to include the license number, as  
11 issued on its principal place of business license, within all regulated advertising  
12 and business solicitation;
- 13 c. A.R.S. § 6-946(E) by failing to disclose the terms of repayment, interest rate, and  
14 annual percentage rate when advertising;
- 15 d. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum  
16 elements of reasonable employee investigations before hiring employees;
- 17 e. A.R.S. § 6-947(B) and A.A.C. R20-4-102 by paying compensation to unlicensed,  
18 independent contractors who were acting as mortgage brokers or mortgage  
19 bankers and by paying unlawful referral fees;
- 20 f. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(C) by failing to ensure that funds  
21 were on deposit in its general account before writing checks, and, expending more  
22 than its available cash on hand;
- 23 g. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B) by failing to maintain all  
24 advertising pieces;
- 25 h. A.A.C. R20-4-1806(B) by failing to maintain a complete list of all executed loan  
26 applications or executed fee agreements;

- 1 i. A.R.S. § 6-947(A) and A.A.C. R20-4-1808 by allowing borrowers to sign  
2 regulated documents containing blank spaces without first obtaining proper  
3 written authorization from the borrowers to complete the blank spaces;
- 4 j. A.R.S. § 6-947(L) by making misrepresentations in the course of the mortgage  
5 banker business;
- 6 k. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e) by failing to comply with the  
7 disclosure requirements of title I of the Consumer Protection Act (15 U.S.C. §§  
8 1601-1666j); the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-  
9 2617); and the regulations promulgated under these acts;
- 10 l. A.A.C. R20-4-1806(B)(5) and A.A.C. R20-4-1806(C) by failing to include the  
11 disbursement's payee and purpose in the trust subsidiary ledger;
- 12 m. A.R.S. § 6-946(C) by failing to immediately deposit advances or fees by the end  
13 of the next business day into a trust account;
- 14 n. A.R.S. § 6-946(C) by failing to have all parties sign a written fee agreement in  
15 connection with mortgage loan applications;
- 16 o. A.R.S. § 6-945(A)(3) by failing to provide the Department with documents within  
17 a reasonable time;
- 18 p. A.R.S. § 6-945(A)(7) by failing to comply with and violating the Department's  
19 prior Cease and Desist Order;
- 20 q. A.R.S. § 6-946(C) by using an unlawful appraisal disclosure placing a 90-day  
21 limit upon borrowers to request transfer or return of an appraisal report for which  
22 the borrowers had already paid.

23 3. The violations set forth above constitute grounds for the issuance of an order  
24 directing Petitioner to cease and desist from the violative conduct and to take the appropriate  
25 affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct  
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1 the conditions resulting from the unlawful acts, practices, and transactions, pursuant to A.R.S.  
2 § 6-137.

3 4. The violations set forth above constitute grounds for the imposition of a civil penalty  
4 of not more than five thousand dollars (\$5,000.00) for each violation for each day, pursuant to  
5 A.R.S. § 6-132.

6 **ORDER**

7 1. Concord Mortgage shall immediately correct all violations set forth in the Findings of  
8 Fact and in the Report of Examination. Concord Mortgage:

- 9 a. shall not transfer or assign branch office licenses; shall sign all branch leases; and  
10 shall be liable for all branch expenses;
- 11 b. shall include the license number, as issued on licensee's principal place of  
12 business license, within all regulated advertising and business solicitation;
- 13 c. shall disclose the terms of repayment, interest rate, and annual percentage rate  
14 when advertising, as required by applicable law;
- 15 d. shall conduct the minimum elements of reasonable employee investigations  
16 before hiring employees;
- 17 e. shall not pay compensation to, contract with, or employ as an independent  
18 contractor, a person who is acting as mortgage broker or mortgage banker, but  
19 who is not licensed in Arizona as such and shall not pay unlawful referral fees;
- 20 f. shall ensure that funds are on deposit in licensee's general account before writing  
21 checks;
- 22 g. shall maintain samples of every piece of advertising;
- 23 h. shall maintain a complete list of all executed loan applications;
- 24 i. shall obtain the proper written authorization from borrowers to complete the blank  
25 spaces before permitting borrowers to sign regulated documents containing blank  
26 spaces;

- 1 j. shall not make misrepresentations in the course of the mortgage banker business  
2 and shall disclose on final HUD-1 settlement statements co-broker fees;
- 3 k. shall comply with the disclosure requirements of title I of the Consumer  
4 Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures  
5 Act (12 U.S.C. §§ 2601-2617); and the regulations promulgated under these acts;
- 6 l. shall include the disbursement's payee and purpose in the trust subsidiary ledger;
- 7 m. shall immediately deposit advances or fees by the end of the next business day  
8 into a trust account;
- 9 n. shall have all parties sign a written fee agreement in connection with mortgage  
10 loan applications;
- 11 o. shall provide the Department with documents within a reasonable time;
- 12 p. shall comply with the Department's prior Cease and Desist Order; and
- 13 q. shall not use an unlawful appraisal disclosure placing a 90-day limit upon  
14 borrowers to request transfer or return of an appraisal report for which the  
15 borrowers had already paid.

16 2. Concord Mortgage shall provide to the Department copies of all branch leases  
17 requested in the Report of Examination dated October 26, 2005, as soon as they are completed.  
18 Concord Mortgage shall provide said documents on or before April 30, 2006.

19 3. Concord Mortgage shall immediately pay to the Department a civil money penalty in  
20 the amount of twenty-five thousand dollars (\$25,000.00).

21 4. The provisions of this Order shall be binding upon Petitioner, its employees, agents  
22 and other persons participating in the conduct of the affairs of Petitioner.

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

26 ...

1 SO ORDERED this 22nd day of March, 2006.

2  
3 Felecia Rotellini  
4 Felecia A. Rotellini  
Superintendent of Financial Institutions

5 **CONSENT TO ENTRY OF ORDER**

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

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

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

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

17 5. Rhett A. Johnston, signing on behalf of Concord Mortgage Company #1, represents  
18 that he is the president and as such, has been authorized by Concord Mortgage Company #1 to  
19 consent to the entry of this Order on its behalf.

20 6. Petitioner waives all rights to seek judicial review or otherwise to challenge or contest  
21 the validity of the Cease and Desist Order or Notice of Hearing.

22 7. Concord Mortgage Company #1 admits to certain violations and that certain of its  
23 actions failed to completely correct prior violations, as more specifically detailed in Petitioner's  
24 Response to Examination Report filed January 13, 2006 and Answer to Notice of Hearing filed  
25 February 9, 2006. Wishing to resolve this matter in lieu of an administrative hearing, and without  
26 further admissions, Concord Mortgage Company #1 agrees to cease all violative conduct.

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DATED this 21 day of March, 2006.

Concord Mortgage Company #1

By:   
Rhett A. Johnston, President

...  
ORIGINAL of the foregoing filed this 23rd  
day of March, 2006, in the office of:

Felecia A. Rotellini  
Superintendent of Financial Institutions  
Arizona Department of Financial Institutions  
ATTN: June Beckwith  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

COPY mailed same date to:

Daniel Martin  
Administrative Law Judge  
Office of the Administrative Hearings  
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Phoenix, AZ 85007

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

Robert Charlton, Assistant Superintendent  
Joan Doran, Examiner  
Arizona Department of Financial Institutions  
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AND COPY MAILED SAME DATE by  
Certified Mail, Return Receipt Requested, to:

Rhett A. Johnston, President  
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15333 N. Pima Road, Suite 370  
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