

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of Mortgage Broker License of:

No. 09F-BD036-SBD

3 **MORTGAGE ALLIANCE OF ARIZONA,**  
4 **INC. AND JIM F. PRENDERGAST,**  
5 **PRESIDENT**  
9160 East Bahia Drive, Suite 201  
6 Scottsdale, Arizona 85260

**CONSENT ORDER**

6 Respondents.

7 On October 28, 2008, the Arizona Department of Financial Institutions (“Department”)  
8 issued an Order to Cease and Desist; Notice of Opportunity for Hearing and Consent to Entry of  
9 Order and on March 26, 2008, the Department issued a Notice of Assessment, alleging that  
10 Respondents had violated Arizona law. Wishing to resolve this matter in lieu of an administrative  
11 hearing, Respondents do not contest the following Findings of Fact and Conclusions of Law, and  
12 consent to the entry of the following Order.

13 **FINDINGS OF FACT**

14 1. Respondent Mortgage Alliance of Arizona, Inc., (“Mortgage Alliance”), is an Arizona  
15 Corporation that is authorized to transact business in Arizona as a mortgage broker (license number  
16 MB 0018994) within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of Mortgage Alliance’s  
17 business is that of a mortgage broker, within the meaning of A.R.S. § 6-901(6).

18 2. Respondent Jim F. Prendergast (“Mr. Prendergast”) is the President of Mortgage  
19 Alliance. Mr. Prendergast is authorized to transact business in Arizona as a mortgage broker within  
20 the meaning of A.R.S. § 6-903(E).

21 3. Neither Mortgage Alliance nor Mr. Prendergast are exempt from licensure as mortgage  
22 brokers within the meaning of A.R.S. § 6-902.

23 4. An examination of Mortgage Alliance conducted by the Department, beginning August  
24 29, 2008 and concluding September 7, 2008, revealed that Mortgage Alliance and Mr. Prendergast:

25 a. Failed to obtain a branch office license from the Superintendent, specifically:

26 i. The branch office located at 8180 North Hayden Road, Suite D-102,

1                   Scottsdale, Arizona 85258 was not licensed at the time of the examination;

2                   b. Failed to maintain copies of every piece of advertising relating to Respondents'  
3                   mortgage broker business in Arizona, specifically:

4                   i. Respondents did not keep all copies of 2007 advertising, totaling twenty nine  
5                   thousand, two hundred ninety three dollars and ten cents (\$29,293.10).

6                   Respondents advised the Department during the examination that copies of  
7                   radio and television advertisements were not kept;

8                   c. Failed to conduct the minimum elements of reasonable employee investigations  
9                   before hiring employees, specifically:

10                  i. Respondents failed to collect complete Immigration Reform and Control  
11                  documents prior to hiring seven (7) employees;

12                  ii. Respondents failed to obtain a completed and dated Form I-9 prior to hiring  
13                  eleven (11) employees;

14                  iii. Respondents failed to obtain a completed and signed employment application  
15                  prior to hiring one (1) employee;

16                  iv. Respondents failed to obtain a signed statement attesting to all of an  
17                  applicant's felony convictions, including detailed information regarding each  
18                  conviction, prior to hiring sixteen (16) employees;

19                  v. Respondents failed to consult with the applicant's most recent or next most  
20                  recent employer prior to hiring sixteen (16) employees;

21                  vi. Respondents failed to inquire regarding the applicant's qualifications and  
22                  competence for the position prior to hiring sixteen (16) employees;

23                  vii. Respondents failed to obtain a current credit report prior to hiring four (4)  
24                  employees;

25                  viii. Respondents failed to conduct further investigation of one (1) employee with  
26                  a derogatory credit report; and

- 1           ix. Respondents failed to maintain the hire date of six (6) employees;
- 2           d. Failed to maintain a complete organizational file, specifically:
- 3                i. Respondents have not held meetings pursuant to the corporation bylaws;
- 4                subsequently, Respondents have not retained meeting minutes;
- 5           e. Failed to comply with the disclosure requirements of Title I of the Consumer Credit
- 6           Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
- 7           Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
- 8           under these acts, specifically:
- 9                i. Respondents failed to provide current and/or timely Servicing Transfer
- 10              disclosures to nine (9) borrowers; and
- 11              ii. Respondents failed to provide a timely Truth-in-Lending disclosure to one (1)
- 12              borrower; and
- 13           f. Misrepresented and/or concealed essential or material facts in the course of the
- 14           mortgage broker business, specifically:
- 15                i. During 2006 and 2007, Respondents paid co-broker fees to Richmond
- 16              American Homes of Arizona, Inc./Home American Mortgage and failed to
- 17              instruct the lender to disclose thirty five thousand, three hundred sixteen
- 18              dollars and ninety two cents (\$35,316.92) in co-broker fees on twelve (12)
- 19              final HUD-1 settlement statements.

20           5. Based on the above findings, the Department issued and served upon Mortgage Alliance

21 a Notice of Assessment on March 26, 2008.

22           6. A copy of the Department's Report of Examination ("Report") dated January 1, 2008

23 accompanied the Notice of Assessment served upon Mortgage Alliance. Page fifteen (15) of the

24 Report states, "Within 30 days of the date of the cover letter accompanying this report of

25 examination, the Licensee must advise the Superintendent of the actions taken to correct the

26 violations of laws, and the measures implemented to prevent future violations."

1           7. The cover letter which accompanied the Report was dated March 26, 2008. Given five  
2 (5) days for mailing time, plus the thirty (30) day deadline, Respondents' final date to respond to the  
3 Superintendent's request for a response to the examination was April 30, 2008.

4           8. Also included with the Report and cover letter were invoices for the cost of the  
5 examination conducted pursuant to A.R.S. § 6-122(B)(3), which totaled three thousand, ninety  
6 dollars (\$3,090.00) pursuant to the guidelines set forth in A.R.S. § 6-125(B)(4), and a civil money  
7 penalty of five thousand dollars (\$5,000.00), pursuant to A.R.S. § 6-132.

8           9. On or about May 14, 2008, after the Department received no response to the Report and  
9 no payment of the examination fee, Michelle Skeen ("Ms. Skeen"), the Department's examiner in  
10 charge of Respondents' examination, contacted Mr. Prendergast by telephone and left a message.

11           10. On or about May 27, 2008, Ms. Skeen spoke with Mr. Prendergast, who informed her  
12 that he was attempting to get funds together in order to pay the exam fee and civil money penalty  
13 and would advise Ms. Skeen when he had everything together.

14           11. On May 28, 2008, Mr. Prendergast e-mailed Ms. Skeen to inquire about a payment  
15 arrangement.

16           12. On May 29, 2008, Ms. Skeen advised Mr. Prendergast to submit a letter outlining the  
17 payment arrangement sought.

18           13. On July 8, 2008, the Department received a letter from Mr. Prendergast requesting  
19 termination of his mortgage broker license and setting forth a proposed payment plan. Mr.  
20 Prendergast stated he was able to make payments in the amount of two thousand dollars (\$2,000.00)  
21 a month for four (4) months, beginning August 1, 2008, and requested that late fees associated with  
22 the examination fee be waived.

23           14. On July 14, 2008, Robert D. Charlton ("Mr. Charlton"), Assistant Superintendent of the  
24 Department, sent a letter via certified mail to Mr. Prendergast approving the proposed payment plan.  
25 Mr. Charlton advised Mr. Prendergast that the examination fee "must be received by November 1,  
26 2008 to avoid accruing \$50 per day in late fees..." Mr. Charlton's letter also informed Mr.

1 Prendergast that “failure to adhere to the payment schedule...may result in additional administrative  
2 action.” Mr. Charlton finally requested Mr. Prendergast sign and return the Notice of Assessment.

3 15. As a result of the failure of Respondents to respond to the Department, an Order to Cease  
4 and Desist was issued on October 28, 2008.

5 16. As of the date of the issuance of the Order to Cease and Desist, the Department had not  
6 received any payment, response, or the signed Notice of Assessment from Respondents.

### 7 CONCLUSIONS OF LAW

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

11 2. By the conduct set forth in the Findings of Fact, Mortgage Alliance and Mr.  
12 Prendergast have violated the following:

- 13 a. A.R.S. § 6-904(F), by failing to obtain a branch office license from the  
14 Superintendent;
- 15 b. A.A.C. R20-4-917(B)(7), by failing to maintain copies of every piece of advertising  
16 relating to Respondents’ mortgage broker business in Arizona;
- 17 c. A.R.S. § 6-903(N) and A.A.C. R20-4-102, by failing to conduct the minimum  
18 elements of reasonable employee investigations before hiring employees;
- 19 d. A.A.C. R20-4-917(B)(9), by failing to maintain a complete organizational file;
- 20 e. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e), by failing to comply with the  
21 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.  
22 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§  
23 2601 through 2617), and the regulations promulgated under these acts; and
- 24 f. A.R.S. § 6-909(L), by misrepresenting and/or concealing essential or material facts in  
25 the course of the mortgage broker business.

26 3. Respondents’ failure to timely respond to the Superintendent’s request for

1 information constitutes a violation of A.R.S. § 6-123(3), which constitutes grounds to suspend or  
2 revoke Respondents' mortgage broker license, number MB 0018994, pursuant to A.R.S. § 6-905(A).

3 4. The violations set forth above constitute grounds for: (1) the issuance of an order  
4 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and  
5 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
6 Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions;  
7 (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132; (3) the suspension or  
8 revocation of Respondents' license pursuant to A.R.S. § 6-905; and (4) an order or any other remedy  
9 necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to  
10 A.R.S. §§ 6-123 and 6-131.

11 **ORDER**

12 1. Respondents have surrendered their mortgage broker license, number MB0018994 to the  
13 Department.

14 2. Respondents shall pay to the Department a civil money penalty in the amount of **five**  
15 **thousand dollars (\$5,000.00)**, due and payable by December 22, 2008.

16 3. Respondents shall pay to the Department the examination fee in the amount of **three**  
17 **thousand, ninety dollars (\$3,090.00)**, due and payable by January 22, 2009.

18 4. The provisions of this Order shall be binding upon Mortgage Alliance of Arizona, Inc.  
19 and Jim F. Prendergast, their employees, agents, and other persons participating in the conduct of the  
20 affairs of Mortgage Alliance of Arizona, Inc.

21 5. The provisions of this Order shall be binding upon Respondents, and resolves the Order  
22 to Cease and Desist, subject to compliance with the requirements of this Order. Should Respondents  
23 fail to comply with this Order, the Superintendent shall institute further disciplinary proceedings.

24 ...

25 ...

26 ...



