

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 12F-BD010-SBD

3 **3 TO 5, LLC; TIMOTHY E. MUDD,**
4 **MANAGING MEMBER; AND**
5 **CHRISTOPHER EYMANN,**
6 **MANAGING MEMBER,**

ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER

1649 E. Bethany Home Road
Phoenix, AZ 85016

7 Respondents.

8
9 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),
10 makes the following Findings of Fact and Conclusions of Law and enters the following Order
11 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

12 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
13 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
14 hearing to contest the allegations set forth in this Order. The Request for Hearing shall be filed with
15 the Arizona Department of Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D)
16 within **thirty (30) days** of service of this Order and shall identify with specificity the action or order
17 for which review is sought in accordance with A.R.S. § 41-1092.03(B).

18 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
19 her own behalf or by counsel. If Respondents are represented by counsel, the information required
20 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
21 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
22 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
23 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
24 **physical accessibility.** Requests for special accommodations must be made as early as possible to
25 allow time to arrange the accommodations. If accommodations are required, call the Office of
26 Administrative Hearings at (602) 542-9826.

1 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.
2 § 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled
3 hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an
4 Informal Settlement Conference is requested, a person with the authority to act on behalf of the
5 Department will be present (the "Department Representative"). Please note that in requesting an
6 Informal Settlement Conference, Respondents waive any right to object to the participation of the
7 Department Representative in the final administrative decision of this matter, if it is not settled. In
8 addition, any written or oral statement made by Respondents at such informal settlement conference,
9 including written documentation created or expressed solely for purposes of settlement negotiations,
10 is inadmissible in any subsequent administrative hearing. (See A.R.S. § 41-1092.06 for rules
11 regarding informal settlement conferences.) Conversely, any written or oral statement made by
12 Respondents outside an Informal Settlement Conference is not barred from being admitted by the
13 Department in any subsequent hearing.

14 If Respondents do not request a hearing, this Order shall become final. If Respondents
15 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the
16 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
17 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
18 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
19 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S.
20 § 6-132; (3) an order to pay restitution of any fees earned in violation of A.R.S. §§ 6-941, *et seq.*,
21 pursuant to A.R.S. §§ 6-131(A)(3) and 6-137; and (4) an order or any other remedy necessary or
22 proper for the enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S.
23 §§ 6-123 and 6-131.

24 **FINDINGS OF FACT**

25 1. Respondent 3 To 5, LLC is a Delaware limited liability company that is not and was
26 not, at any time material herein, authorized to transact business in Arizona as a mortgage broker

1 within the meaning of A.R.S. § 6-901 *et seq.* or as a mortgage banker within the meaning of A.R.S. §
2 6-941 *et seq.* The nature of 3 To 5, LLC's business is that of making, negotiating, or offering to
3 make or negotiate a mortgage loan secured by Arizona real property within the meaning of A.R.S. §
4 6-901(11) and/or A.R.S. § 6-941(5).

5 2. Respondent Timothy E. Mudd ("Mr. Mudd") is the managing member of 3 To 5,
6 LLC and is not and was not, at any time material herein, authorized to transact business in Arizona
7 as a mortgage banker within the meaning of A.R.S. § 6-901 *et seq.* or as a mortgage banker within
8 the meaning of A.R.S. § 6-941 *et seq.*

9 3. Respondent Christopher Eymann ("Mr. Eymann") is the managing member of 3 To 5,
10 LLC and is not and was not, at any time material herein, authorized to transact business in Arizona
11 within the meaning of A.R.S. § 6-901 *et seq.* or a mortgage banker within the meaning of A.R.S. § 6-
12 941 *et seq.*

13 4. 3 To 5, LLC, Mr. Mudd and Mr. Eymann are not exempt from licensure as mortgage
14 brokers within the meaning of A.R.S. § 6-902 or as mortgage bankers within the meaning of A.R.S.
15 § 6-942.

16 5. On May 11, 2001, the Department received a consumer complaint, alleging that
17 Respondents are unlicensed brokers who engaged in predatory practices when on or about February
18 23, 2011, Complainant was seeking to obtain a loan from Respondents to purchase the property
19 located at 7929 W. Payson Road, Phoenix, Arizona 85043. Complainant requested that Respondents
20 comply with the terms of the original loan commitment and/or that Complainant's loan transaction
21 with Respondents be rescinded. Complainant provided the Department with a copy of the
22 Settlement Statement (HUD-1) listing 3 To 5, LLC as the lender, and the lender fee of \$1,191.66.
23 According to the Maricopa County Recorder's website, the name of 3 To 5, LLC is associated with
24 multiple transactions involving the interest in land located in Arizona.

25 6. On or about July 15, 2011, the Department issued a letter to Respondents requesting
26 information and a response regarding possible mortgage lending unlicensed activity. On July 18,

1 2011, Mr. Mudd responded to the Department's request for information regarding potential
2 unlicensed mortgage business activity by stating that 3 To 5, LLC "is no longer doing loans," that
3 the company is being shut down, that "[t]he last loan was done on April 20, 2011," and that "[n]o
4 further loans will be done by 3 To 5, LLC."

5 7. These Findings of Fact shall also serve as Conclusions of Law.

6 **CONCLUSIONS OF LAW**


7 1. Pursuant to A.R.S. §§ 6-901 and 6-941 *et seq.*, the Superintendent has the authority
8 and duty to regulate all persons engaged in the mortgage broker and the mortgage banker business
9 and with the enforcement of statutes, rules, and regulations relating to mortgage brokers and
10 mortgage bankers.

11 2. By the conduct set forth above, 3 To 5, LLC, Mr. Mudd and Mr. Eymann have
12 violated the following:

- 13 a. A.R.S. § 6-903(A) by acting in the capacity of a mortgage broker in the state of
14 Arizona, as defined by A.R.S. § 6-901(11), without having first applied for and
15 obtained a mortgage broker license from the Superintendent pursuant to A.R.S.
16 Title 6, Chapter 9;
- 17 b. A.R.S. § 6-909(B) by accepting compensation, as defined by A.R.S. § 6-901(5),
18 for arranging for or negotiating a mortgage loan when not licensed pursuant to
19 A.R.S. Title 6, Chapter 9.
- 20 c. A.R.S. § 6-943(A) by acting in the capacity of a mortgage banker in the state of
21 Arizona, as defined by A.R.S. § 6-941(5), without having first applied for and
22 obtained a mortgage banker license from the Superintendent pursuant to A.R.S.
23 Title 6, Chapter 9; and
- 24 d. A.R.S. § 6-947(B) by accepting compensation, as defined by A.R.S. § 6-941(2),
25 for arranging for or negotiating a mortgage banking loan or mortgage loan when
26 not licensed pursuant to A.R.S. Title 6, Chapter 9.

1 SO ORDERED this 18th day of August, 2011.

2 Lauren W. Kingry
3 Superintendent of Financial Institutions

4 By: 
5 Robert D. Charlton
6 Assistant Superintendent

7 **CONSENT TO ENTRY OF ORDER**

8 1. Respondents acknowledge that they have been served with a copy of the foregoing
9 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
10 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

11 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of
12 the foregoing Findings of Fact, Conclusions of Law, and Order.

13 3. Respondents state that no promise of any kind or nature has been made to induce
14 them to consent to the entry of this Order, and that they have done so voluntarily.

15 4. Respondents agree to immediately cease from engaging in the violative conduct set
16 forth in the Findings of Fact and Conclusions of Law.

17 5. Respondents acknowledge that the acceptance of this Agreement by the
18 Superintendent is solely to settle this matter and does not preclude this Department, any other agency
19 or officer of this state or subdivision thereof from instituting other proceedings as may be
20 appropriate now or in the future.

21 6. Failure to correct the violations set forth above in this Cease and Desist Order or any
22 future findings of repeat violations shall result in disciplinary action which may include a greater
23 civil money penalty.

24 7. Timothy E. Mudd, on behalf of 3 To 5, LLC and himself, represents that he is the
25 managing member and that, as such, has been authorized by 3 To 5, LLC to consent to the entry of
26 this Order on its behalf.


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

3 3 To 5, LLC
4 1649 E. Bethany Home Rd.
5 Phoenix, AZ 85016
6 Respondent Company

7 3 To 5, LLC
8 ATTN: Timothy E. Mudd
9 7500 E. Block Rock Tr.
10 Paradise Valley, AZ 95253
11 Statutory Agent for Respondent Company

12 Timothy E. Mudd
13 10645 N. Tatum Blvd. #200-541
14 Phoenix, AZ 85028
15 Respondent

16 Christopher Eymann
17 7500 E. Block Rock Tr.
18 Paradise Valley, AZ 85253
19 Respondent

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21 _____
22 # 2247631

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