

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

3 **No. 08F-BD043-BNK**

4 **UNIVERSAL MORTGAGE INCORPORATED**  
5 **AND DONALD L. WALTHALL, CEO**  
3830 N. Morning Dove Circle  
Mesa, AZ 85287

**SUPERINTENDENT'S FINAL  
DECISION AND ORDER**

6 Respondents.

7 The Superintendent of Financial Institutions having reviewed the record in this matter and  
8 the Administrative Law Judge Decision attached and incorporated herein by this reference, adopts  
9 the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order as  
10 follows:

11 **ORDER**

12 **IT IS ORDERED** that the Order of Summary Suspension issued February 28, 2008 is  
13 affirmed summarily suspending the Respondents' mortgage broker license number MB 0908171.

14 **NOTICE**

15 The parties are advised that this Order becomes effective immediately and the provisions of  
16 this Order shall remain effective and enforceable except to the extent that, and until such time as,  
17 any provision of this Order shall have been modified, terminated, suspended, or set aside by the  
18 Superintendent or a court of competent jurisdiction.

19 DATED this 13th day of May, 2008.

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22 Felecia Rotellini  
23 Superintendent of Financial Institutions

24 ORIGINAL filed this 13th day of  
May, 2008 in the office of:

25 Felecia Rotellini  
26 Superintendent of Financial Institutions  
Arizona Department of Financial Institutions  
27 ATTN: June Beckwith

1 2910 North 44th Street, Suite 310  
2 Phoenix, Arizona 85018

3 COPY of the foregoing mailed/hand delivered  
4 This same date to:

5 Thomas Shedden, Administrative Law Judge  
6 Office of Administrative Hearings  
7 1400 West Washington, Suite 101  
8 Phoenix, AZ 85007

9 Craig Raby, Assistant Attorney General  
10 Office of the Attorney General  
11 1275 West Washington  
12 Phoenix, AZ 85007

13 Robert D. Charlton, Assistant Superintendent  
14 Richard Fergus, Licensing Manager  
15 Arizona Department of Financial Institutions  
16 2910 N. 44th Street, Suite 310  
17 Phoenix, AZ 85018

18 AND COPY MAILED SAME DATE by  
19 Certified Mail, Return Receipt Requested, to:

20 Donald L. Walthall, CEO  
21 Universal Mortgage Incorporated  
22 5701 Kentucky Avenue N, Suite 104  
23 Crystal, MN 55428

24 Donald L. Walthall, CEO  
25 Universal Mortgage Incorporated  
26 3716 St. Francis Blvd.  
27 Anoka, MN 55303

Business Filings, Inc. Statutory Agent for:  
Universal Mortgage Incorporated  
2394 E. Camelback Road  
Phoenix, AZ 85016

BY: Gene Beckwith

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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of the Mortgage Broker  
License of:

UNIVERSAL MORTGAGE  
INCORPORATED AND  
DONALD L. WALTHALL, CEO  
3830 N. Morning Dove Circle  
Mesa, AZ 85287

Respondents.

**No. 08F-BD043-BNK**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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**HEARING:** April 17, 2008

**APPEARANCES:** No one appeared for Respondents; Assistant Attorney  
General Craig Raby appeared for the Arizona Department of Financial Institutions

**ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

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The Arizona Department of Financial Institutions issued an Order of Summary  
Suspension and Notice of Hearing to Respondents. Based on the evidence of record,  
the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law  
and Order:

**FINDINGS OF FACT**

1. Universal Mortgage Incorporated ("Universal") is licensed as a mortgage broker  
in Arizona (License No. MB 0908171). Mr. Donald L. Walthall is Universal's CEO and  
sole owner. Mr. Walthall is authorized to transact business in Arizona as a mortgage  
broker.
2. On February 28, 2008 the Arizona Department of Financial Institutions (the  
"Department") issued to Universal and Mr. Walthall (collectively "Respondents") an  
Order of Summary Suspension and Notice of Hearing and Complaint.

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

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2 3. The Notice of Hearing set the matter for hearing at 9:00 a.m. April 17, 2008 at  
3 the Office of Administrative Hearings.

4 4. At the scheduled hearing time no representative appeared for Respondents.  
5 After a 15 minute grace period the Administrative Law Judge convened the hearing in  
6 Respondents' absence.

7 5. The Notice of Hearing and Complaint allege that two criminal complaints have  
8 been filed against Mr. Walthall and, pursuant to A.R.S. §§ 6-905(B) and (C) and 41-  
9 1092.11(B), Mr. Walthall's conduct constitutes an immediate threat to the public health,  
10 safety and welfare warranting an immediate suspension of Respondents' mortgage  
11 broker license.

12 6. The Department presented the testimony of Mr. Richard Fergus, its licensing  
13 manager, and Assistant Superintendent Mr. Thomas Giallanza, and had 4 exhibits  
14 entered into evidence.

15 7. Mr. Fergus and Mr. Giallanza each provided credible testimony.

16 8. Mr. Giallanza monitors news accounts about subprime mortgages and other  
17 issues related to fraud. In October 2007 he read that Mr. Walthall had been indicted in  
18 Minnesota. Mr. Giallanza cross-referenced the Department's records and verified that  
19 Mr. Walthall is the CEO of Universal and licensed in Arizona.

20 9. Mr. Giallanza contacted Mr. Michael Freeman, the prosecutor who brought the  
21 charges against Mr. Walthall, and discussed the matter with Mr. Freeman.

22 10. Mr. Freeman explained that Minnesota uses a criminal complaint rather than an  
23 indictment and, at Mr. Giallanza's request, Mr. Freeman provided the Department with  
24 certified copies of two criminal complaints that had been filed against Mr. Walthall in  
25 Hennepin County Minnesota. See Exhibit 1 (Complaint in Case No. 27CR07127154  
26 filed December 6, 2007) and Exhibit 2 (Complainant in Case No. 27CR082435 filed  
27 January 15, 2008).

28 11. On December 6, 2007 Mr. Walthall was charged with 24 counts of "Theft by  
29 Swindle Over \$35,000.00." See Exhibit 1. Each count is a separate felony charge. Mr.  
30 Giallanza's opinion is that this criminal complaint for theft by swindle provides grounds  
for Respondent's license to be summarily suspended because these charges constitute

1 obtaining money under false pretenses and because of the number of counts showing  
2 substantial instances of theft.

3 12. On January 15, 2008 Mr. Walthall was charged with 8 additional counts of "Theft  
4 by Swindle Over \$35,000.00. See Exhibit 2.

5 13. Mr. Walthall is scheduled for a jury trial on June 9, 2008. See Exhibit 4.

6 14. The Department's records show Universal's principal place of business is 3830  
7 N. Morning Dove Circle, Mesa, Arizona, and that Mr. Walthall's home address is 3716  
8 St. Francis Boulevard, Anoka, Minnesota.

9 15. On March 17, 2008 the Department received the certified mail "green card"  
10 showing that Mr. Walthall had received the Notice of Hearing at his home address.

11 16. On March 3, 2008 the Department received the certified mail "green card"  
12 showing that Universal's statutory agent, Business Filings, Inc, had received the Notice  
13 of Hearing at the agent's address of 2394 E. Camelback Road, Phoenix, Arizona.

14 17. On March 12, 2008 the Department received the certified mail "green card"  
15 showing that Universal had received the Notice of Hearing at its address of record with  
16 the Department. Mr. Giallanza testified that the Department questioned whether or not  
17 Mr. Walthall actually signed the green card that went to Universal's address of record  
18 because the Department also attempted to make personal service on Mr. Walthall at  
19 that address and, although a man represented to the process server that he was Mr.  
20 Walthall, the Department does not believe that that man actually was Mr. Walthall.

21 18. The Department requests that Respondents' license remain suspended until the  
22 matters arising out of the criminal complaints are resolved at which time, further action  
23 will depend on whether or not Mr. Walthall is found guilty of any of the alleged counts.

### 24 CONCLUSIONS OF LAW

25 1. The Department bears the burden of persuasion. See A.R.S. § 41-1092.07(G)(2).  
26 The standard of proof on all issues is that of a preponderance of the evidence. See  
27 A.A.C. R2-19-119.

28 2. A preponderance of the evidence is "[e]vidence which is of greater weight or more  
29 convincing than the evidence which is offered in opposition to it; that is, evidence which  
30 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S  
LAW DICTIONARY 1182 (6<sup>th</sup> ed. 1990).

1 3. The preponderance of evidence shows that Respondents were provided proper  
2 notice of the hearing because the Department sent the Notice of Hearing to Universal's  
3 address of record and to its statutory agent and, the Department sent Mr. Walthall the  
4 Notice of Hearing at his home address. See A.R.S. § 6-817 and A.R.S. § 41-1092.04.

5 4. The preponderance of evidence shows that Universal's statutory agent received  
6 the Notice of Hearing and that Mr. Walthall received the Notice of Hearing at his home  
7 address.

8 5. The preponderance of evidence shows that the criminal complaints against Mr.  
9 Walthall constitute violations of A.R.S. § 6-905(B). Consequently, the Department has  
10 grounds to suspend or revoke Respondents' license.

11 6. The preponderance of evidence shows that Mr. Walthall's conduct as described  
12 in the criminal complaints was such that emergency action to summarily suspend  
13 Respondents' license was justified.

14 7. The Department has met the burden to show that summary suspension of  
15 Respondents' license was appropriate and that continued suspension is warranted until  
16 the matters arising out of the criminal complaints against Mr. Walthall are resolved.

17 **RECOMMENDED ORDER**

18 **IT IS RECOMMENDED** that the Director of the Arizona Department of Financial  
19 Institutions affirm the Order of Summary Suspension against Universal Mortgage  
20 Incorporated (License No. MB 0908171).

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24 Done this day, April 18, 2008

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28 Thomas Shedden  
29 Administrative Law Judge  
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Original transmitted by mail this  
21 day of April, 2008, to:

Felecia Rotellini, Superintendent  
Arizona Department of Financial Institutions  
ATTN: Susan L. Ross  
2910 North 44th Street, Suite 310  
Phoenix, AZ 85018

By Chris Fishel