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## ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Felecia A. Rotellini  
Superintendent of Financial Institutions

Janice K. Brewer  
Governor

### CERTIFIED MAIL

July 28, 2009

Keith L. Hendricks, Esq.  
FENNEMORE CRAIG, P.C.  
3003 N. Central Avenue, Suite 2600  
Phoenix, AZ 85012

Reference: Docket # 09F-BD058-BNK / Mortgages LTD.

Dear Mr. Hendricks:

Please find the enclosed executed **Consent Order**. This order is final. You may contact Craig Raby, Assistant Attorney General (602) 542-8889, with any questions.

Sincerely,

Felecia A. Rotellini  
Superintendent

FAR:sll

Enclosure

cc: Craig Raby, Assistant Attorney General

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License of:

No. 09F-BD058-BNK

3 **MORTGAGES LTD.**  
4 4455 E. Camelback Road  
Phoenix, AZ 85018

**CONSENT ORDER**

5 Respondent.

6  
7 On February 27, 2009, the Arizona Department of Financial Institutions ("Department")  
8 issued a Notice of Hearing to Revoke alleging that Respondent Mortgages Ltd. had violated Arizona  
9 law. Wishing to resolve this matter in lieu of an administrative hearing, and without admitting  
10 liability, fault, responsibility or guilt, ML Servicing Co., ("ML Servicing") an entity created pursuant  
11 to the Confirmation Order of the United States Bankruptcy Court for the District of Arizona as to act  
12 as the reorganized entity for Mortgages, Ltd., ML Servicing does not contest the entry of an Order  
13 with the following Findings of Fact and Conclusions of Law, and consents to the entry of the  
14 following Order.

15 FINDINGS OF FACT

16 1. Respondent Mortgages Ltd. was at all relevant times an Arizona corporation authorized  
17 to transact business in Arizona as a mortgage banker, license number BK-0007577, within the  
18 meaning of A.R.S. §§ 6-941, *et seq.* The nature of Mortgages Ltd.'s business was at all relevant  
19 times that of making, negotiating, or offering to make or negotiate loans secured by Arizona real  
20 property, within the meaning of A.R.S. § 6-941(5).

21 2. On June 23, 2008 an involuntary petition for relief was filed against Mortgages Ltd  
22 under title 11 the United States Code (the "Bankruptcy Code"), under case No.2:08-bk-07465-RJH.  
23 On June 24, 2008, the United States Bankruptcy Court for the District of Arizona (the "Court")  
24 entered an order converting the case to a case under Chapter 11 of the Bankruptcy Code.

25 3. On May 20, 2009, the Court entered an Order Confirming the Investors Committee's  
26 First Amended Plan of Reorganization Dated March 12, 2009 for Mortgages, Ltd. (the

1 “Confirmation Order”). Under the Confirmation Order, Mortgages Ltd was reorganized and  
2 renamed to ML Servicing. None of the officers or directors of ML Servicing were involved with the  
3 operations of Mortgages Ltd. as set forth herein. Based on the Confirmation Order, ML Servicing  
4 does not and will not engage in activities that requires a license within the meaning of A.R.S. §§ 6-  
5 941, *et seq.*

6 4. As used herein, “Respondent” refers to the actions of Mortgages Ltd. prior to the  
7 Confirmation Order.

8 5. Respondent failed to maintain a surety bond, as required by A.R.S. § 6-943(H), while  
9 conducting business as a mortgage banker, which is grounds for denial, suspension or revocation  
10 pursuant to A.R.S. § 6-945(A)(7); specifically:

- 11 a. On or about December 15, 2008, the Department received a Notice of Cancellation or  
12 Nonrenewal from Great American Insurance Company advising the Department that  
13 Mortgages Ltd.’s Bond, Number 3373981, was cancelled effective January 9, 2009;
- 14 b. On December 17, 2008, the Department sent a letter via certified mail to Respondent  
15 informing it of the bond cancellation and of its statutory obligation as a mortgage  
16 banker licensee to replace the cancelled bond. The letter was received and signed for  
17 on December 18, 2008;
- 18 c. On January 15, 2009, the Department received a letter from Respondent, stating that  
19 the bond had been canceled in error, it was working on getting its bond reinstated, and  
20 asked for a one week extension; and
- 21 d. The Department still has not received an original bond.
- 22 e. Respondents deposited cash in lieu of a bond on March 25, 2009.

23 6. Beginning on June 4, 2008, through January 30, 2009, the Department conducted an  
24 examination of the mortgage banker business of Mortgages Ltd. and found that Respondent:

- 25 a. Failed to prominently display its mortgage banker license in the office of the mortgage  
26 banker as required; specifically:

- 1           i. The examiners were informed that the mortgage banker license was in one of the  
2           second floor offices, and had never been on display in the main lobby of  
3           Respondent's building;
- 4           b. Failed to notify the Superintendent before changing the address of the principal place  
5           of business; specifically:
- 6           i. Respondent changed the address of its principal place of business in March  
7           2008. The Department was not notified of the address change until April 17,  
8           2008. In addition, the incorrect original license was received with the  
9           application for the address change;
- 10          ii. On December 15, 1999, Respondent informed the Department that it lost its  
11          original license during its move from 2833 North Third Street, Phoenix, AZ  
12          85004 to 55 East Thomas Road, Phoenix, AZ 85012; and
- 13          iii. On April 17, 2008, the Department received the original license from the Third  
14          Street address that was reported "lost" in 1999 for Respondent's move to 4455  
15          East Camelback Road, Phoenix, AZ 85018, instead of the correct 55 E. Thomas  
16          Road original license;
- 17          c. Failed to obtain the Superintendent's prior written consent before control of the  
18          mortgage banker license was acquired through a stock purchase or other device;  
19          specifically:
- 20          i. Prior to the Confirmation Order, the sole owner of Respondent was the SMC  
21          Revocable Trust U/T/A dated December 22, 1994, as amended ("SMC Trust").  
22          Scott M. Coles ("Coles") was the sole trustee of the SMC Trust. Coles passed  
23          away on June 2, 2008 and, according to the terms of the SMC Trust, Tom Hirsch  
24          ("Hirsch") automatically became the successor trustee; and
- 25          ii. Respondent's attorney filed articles of organization for NMLC, LLC, a limited  
26          liability company organized under the laws of Arizona, on June 9, 2008. On the

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same day, Hirsch executed a proxy granting NMLC, LLC the power to vote all shares of the capital stock of NMLC, LLC. This action was a 100% (one hundred percent) change of control of the voting shares of Respondent;

- d. Failed to use its license number within regulated advertising in at least four (4) advertisements and/or solicitations;
- e. Failed to conduct the minimum elements of reasonable employee investigations prior to hiring at least fifteen (15) employees; specifically:
  - i. The Employment Eligibility Verification (Form I-9) was incomplete for at least one (1) employee;
  - ii. Obtained an Employment Eligibility Verification (Form I-9) after the hire date of at least six (6) employees;
  - iii. A completed and signed employment application was incomplete for at least one (1) employee;
  - iv. The signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction, was incomplete for at least one (1) employee;
  - v. Conducted an incorrect felony inquiry (ten year limit on convictions) for at least one (1) employee;
  - vi. Failed to consult with the applicant's most recent or next most recent employer or failed to date said inquiry for nine (9) employees;
  - vii. Failed to inquire regarding an applicant's qualifications and competence for the position or failed to date said inquiry for nine (9) employees;
  - viii. Failed to obtain a current credit report from a crediting reporting agency prior to hiring at least six (6) employees;
  - ix. Failed to investigate further after at least three employees' credit report contained derogatory information; and

- 1 x. Failed to correct this violation from their previous examination;
- 2 f. Failed to keep and maintain at all times correct and complete records clearly reflecting
- 3 the financial condition of Mortgages Ltd.; specifically:
- 4 i. Since Respondent did not record a reserve for loan impairment, owned real
- 5 estate, a doubtful loan receivable and a demand for payment under a guarantee
- 6 of another's debt, its financial statements do not accurately reflect the financial
- 7 condition of the business. Had Respondent recorded such a reserve and/or
- 8 liability, its equity would have been negatively affected and would have been
- 9 stated at negative <\$47.7 million> in its unaudited financial statements dated
- 10 May 31, 2008;
- 11 g. Failed to update and reconcile, on a monthly basis, records having more than ten (10)
- 12 transactions in a calendar quarter; specifically:
- 13 i. Since Respondent's bank accounts incur more than ten transactions during a
- 14 calendar quarter, Respondent must reconcile its accounts monthly.
- 15 Respondent's Tax Impound Account and Collection Trust Account have not
- 16 been reconciled, per Respondent's own admission;
- 17 h. Failed to maintain a complete corporate organizational file; specifically:
- 18 i. The stock ledger and stock certificates maintained by Respondent have not been
- 19 updated as required;
- 20 ii. The last issuance date for a new stock certificate for the non voting shares is
- 21 November 1, 1995. The last issuance date for a new stock certificate for the
- 22 common voting shares is November 1, 1995, as well. These stock certificates
- 23 were issued in the name of the SMC-FLC Revocable Trust dated 12/22/94; and
- 24 iii. Before his death, the sole trustee amended/restated the trust documents at least
- 25 three times. At least one amendment/restatement was a name change to the
- 26 Trust, yet the stock transfer ledger does not indicate that a new stock certificate

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- was issued;
- i. Made a false promise or misrepresentation or concealed an essential or material fact in the course of the mortgage banking business; specifically:
  - i. The May 31, 2008 financial statements misrepresented the true financial condition of Respondent because Respondent failed to accrue and record various items. Respondent did not record reserves for loan impairment or the decline in value of its owned real estate portfolio;
  - ii. Respondent did not accrue a reserve for a \$6 million loan to the SMC Revocable Trust, whose collectibility is uncertain and did not disclose that it had guaranteed a \$12 million loan taken out by SM Coles LLC; and
  - iii. The recordation of all relevant adjustments would have had a negative impact of \$57.5 million on Respondent's balance sheet. Respondent's equity at May 31, 2008 would have gone from \$9.8 million dollars to a negative equity of <\$47.7 million>;
- j. Failed to meet at all times its statutorily required minimum net worth of not less than two hundred fifty thousand dollars (\$250,000.00); specifically:
  - i. Respondent's net worth, after all required adjustments as described in the "Generally Accepted Accounting Principles" violation set forth below would have been stated at negative <\$47.7 million> as of May 31, 2008;
- k. Respondent is insolvent as defined in A.R.S. § 47-1201(23), which is grounds for denial, suspension or revocation pursuant to A.R.S. § 6-945(A)(1); specifically:
  - i. On June 23, 2008, Respondent filed a motion in the United States Bankruptcy Court to convert an involuntary petition for a Chapter 7 bankruptcy to a case under Chapter 11. The Chapter 7 proceeding was brought by certain borrowers of Respondent;
  - ii. On June 24, 2008, the Bankruptcy Court approved Respondent's motion and

1 Respondent became the debtor-in-possession with respect to the Chapter 11  
2 proceeding, *In Re Mortgages Ltd.*, U.S. Bankruptcy Court, District of Arizona,  
3 No. 2:08-bk-07465-RJH; and

4 iii. Respondent is insolvent; specifically:

- 5 1. Respondent was unable to pay interest in the amount of \$1.165 million on  
6 \$197 million of Notes Payable due to its primary lender in June 2008; and
- 7 2. Unrecorded reductions in assets or increases in liabilities, amounting to \$57.5  
8 million, would have caused Respondent's May 31, 2008, unaudited financial  
9 statements to disclose a negative equity of <\$47.7 million.>

10 l. Failed to furnish information to the Superintendent within a reasonable time, which is  
11 grounds for denial, suspension or revocation pursuant to A.R.S. § 6-945(A)(3);  
12 specifically:

13 i. During the course of the examination, Respondent was asked to provide  
14 financial statement information on the SMC Revocable Trust and SM Coles  
15 LLC. Respondent made a loan to the SMC Revocable Trust in the amount of  
16 \$6 million, and the collectibility of the note was in question. Numerous  
17 transactions occurred between Respondent and SM Coles LLC. An  
18 understanding of these transactions was sought to determine what effect they  
19 might have on the company; and

20 ii. Respondent was asked to provide the aforementioned information, but the  
21 information was never provided;

22 m. Failed to maintain a statutorily correct trust subsidiary ledger and failed to verify each  
23 trust balance to each trust subsidiary ledger at reconciliation; specifically:

24 i. Failed to include in Respondent's trust subsidiary ledger for the tax impound  
25 account provisions for:

26 1. Amount received;



- 1 2. Date received;
- 2 3. Date deposited into the trust account;
- 3 4. Amount disbursed;
- 4 5. Date disbursed; and
- 5 6. Disbursement's payee and purpose;

6 ii. Failed to reconcile each trust balance to each trust subsidiary ledger at each  
7 reconciliation; and

8 iii. Failed to correct this violation from its previous examination;

9 n. Failed to observe Generally Accepted Accounting Principles ("GAAP") in preparation  
10 of its financial statements; specifically:

11 i. In its May 31, 2008 unaudited financial statements, Respondent:

- 12 1. Failed to record mortgages held for investment and sale at the lower of cost  
13 or fair market value;
- 14 2. Failed to recognize that the cost of their mortgages held as security for  
15 RevOp investors exceeded their fair market value;
- 16 3. Failed to recognize the decline in fair market value of its real estate  
17 investments held for sale;
- 18 4. Failed to assess the collectibility of a \$6 million note receivable from a  
19 related party, and failed to record an allowance against such note; and
- 20 5. Failed to record a \$0.9 million dollar demand made for a \$12 million dollar  
21 loan guaranteed by Respondent for another party (related); and

22 ii. Based upon the instances listed above, Respondent would have \$57.5 million in  
23 adjustments as either a reduction in assets or an increase in liability.

24 7. The conduct described above constitutes grounds for revocation of Respondent's  
25 mortgage banker license.

26 **CONCLUSIONS OF LAW**

1           1. Pursuant to A.R.S. Title 6, Chapter 9, the Superintendent has the authority and duty to  
2 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,  
3 rules, and regulations relating to mortgage bankers.

4           2. By the conduct set forth above in the Complaint, Respondent Mortgages Ltd. violated the  
5 following:

- 6           a. A.R.S. § 6-943(H) by failing to maintain the required surety bond, which is grounds  
7           for denial, suspension or revocation pursuant to A.R.S. § 6-945(A)(7);
- 8           b. A.R.S. § 6-944(D) and A.A.C. R20-4-1805 by failing to prominently display its  
9           mortgage banker license in the office of the mortgage banker as required;
- 10          c. A.R.S. § 6-944(E) by failing to notify the Superintendent before changing the address  
11          of the principal place of business;
- 12          d. A.R.S. § 6-944(A) by failing to obtain the Superintendent's prior written consent  
13          before control of the mortgage banker license was acquired through a stock purchase  
14          or other device;
- 15          e. A.R.S. §§ 6-943(N) and 6-946(E) by failing to use its license number within regulated  
16          advertising in at least four (4) advertisements and/or solicitations;
- 17          f. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum elements  
18          of reasonable employee investigations prior to hiring at least fifteen (15) employees;
- 19          g. A.R.S. § 6-946(A) by failing to keep and maintain at all times correct and complete  
20          records clearly reflecting the financial condition of Mortgages Ltd.;
- 21          h. A.A.C. R20-4-1806(C) by failing to update and reconcile, on a monthly basis, records  
22          having more than ten (10) transactions in a calendar quarter;
- 23          i. A.A.C. R20-4-1806(B)(9) by failing to maintain a complete corporate organizational  
24          file;
- 25          j. A.R.S. § 6-947(L) by making a false promise or misrepresentation or concealing an  
26          essential or material fact in the course of the mortgage banking business;

- 1 k. A.R.S. § 6-943(C)(3)(b) by failing to meet at all times its statutorily required
- 2 minimum net worth of not less than two hundred fifty thousand dollars (\$250,000.00);
- 3 l. A.R.S. § 6-945(A)(1) by its insolvency as defined in A.R.S. § 47-1201(23);
- 4 m. A.R.S. § 6-945(A)(3) by failing to furnish information to the Superintendent within a
- 5 reasonable time, which is grounds for denial, suspension or revocation;
- 6 n. A.A.C. R20-4-1806(B)(5), by failing to maintain a trust subsidiary ledger and failing
- 7 to verify each trust balance to each trust subsidiary ledger at reconciliation; and
- 8 o. A.R.S. § 6-946(B) and A.A.C. R20-4-102 by failing to observe generally accepted
- 9 accounting principles in preparation of its financial statements.

10 3. Respondent is insolvent within the meaning of A.R.S. § 47-1201(23), which is grounds  
11 for the suspension or revocation of Respondent's mortgage banker license, pursuant to A.R.S.  
12 § 6-945(A)(1).

13 4. Respondent failed, within the reasonable time, to furnish any information or make any  
14 report as required by the Superintendent, which is grounds for the suspension or revocation of  
15 Respondent's mortgage banker license, pursuant to A.R.S. § 6-945(A)(3).

16 5. Respondent failed to maintain the required surety bond, a violation of A.R.S. § 6-943(H),  
17 thereby failing to conduct business in accordance with the law and violating A.R.S. Title 6, Chapter  
18 9 and the rules related to Chapter 9, which is grounds for the suspension or revocation of  
19 Respondent's mortgage banker license, pursuant to A.R.S. § 6-945(A)(7).

20 6. The violations, set forth above, constitute grounds for the pursuit of any other remedy  
21 necessary or proper for the enforcement of statutes and rules regulating mortgage bankers in Arizona  
22 pursuant to A.R.S. §§ 6-123 and 6-131.

23 7. Pursuant to A.R.S. § 6-132, Respondent's violations of the aforementioned statutes are  
24 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for  
25 each day.

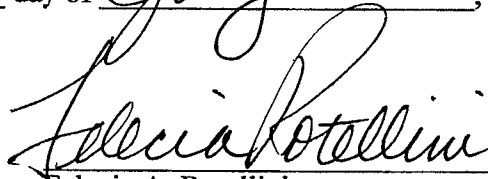
26 **ORDER**  
10

1 1. Mortgage Banker License, Number BK-0007577, issued in the name of Respondent  
2 Mortgages Ltd. is hereby immediately revoked, and shall immediately be surrendered to the  
3 Department upon execution of this Consent Order.

4 2. The provisions of this Order shall be binding upon Respondent, and resolves the Notice  
5 of Hearing, subject to Respondent's compliance with the requirements of this Order, as well as all  
6 other statutes and rules regulating mortgage bankers.

7 3. This Order shall become effective upon service, and shall remain effective and  
8 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,  
9 or set aside.

10 SO ORDERED this 28th day of July, 2009.

11  
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13 Felecia A. Rotellini  
14 Superintendent of Financial Institutions

15 **CONSENT TO ENTRY OF ORDER**

16 1. ML Servicing, as the reorganized entity formerly known as Mortgages, Ltd. pursuant  
17 to the Confirmation Order, acknowledges that it has been served with a copy of the foregoing  
18 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same,  
19 is aware of its right to an administrative hearing in this matter, and has waived the same.

20 2. ML Servicing admits the jurisdiction of the Superintendent and consents to the entry  
21 of the Order.

22 3. ML Servicing states that no promise of any kind or nature has been made to induce it  
23 to consent to the entry of this Order, and that it has done so voluntarily.

24 4. ML Servicing acknowledges that the acceptance of this Order by the Superintendent  
25 is solely to settle this matter and does not preclude this Department, any other agency or officer of  
26 this state or subdivision thereof from instituting other proceedings as may be appropriate now or in

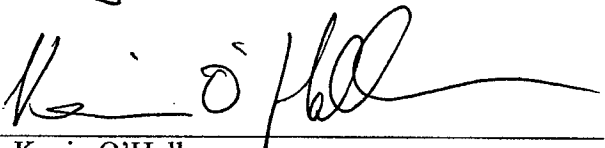
1 the future.

2 5. Kevin O'Halloran, as the President of ML Servicing, the reorganized entity pursuant  
3 to the Confirmation Order has been authorized by virtue of the Confirmation Order to execute  
4 appropriate documents to implement the Plan and Confirmation Order on behalf of ML Servicing.

5 6. ML Servicing waives all rights to seek judicial review or otherwise to challenge or  
6 contest the validity of this Consent Order.

7 7. Nothing in this Order, nor any act of ML Servicing (including, but not limited to, the  
8 execution of this Order) shall be treated, construed, or deemed as an admission by ML Servicing or  
9 any of its affiliates, including, without limitation, ML Liquidating Trust, or ML Manager LLC ("ML  
10 Manager") or any entity in which ML Manager is a member, manager, or principal (collectively, the  
11 "ML Reorganized Entities"), shall be treated, construed, or deemed as an admission by the ML  
12 Reorganized Entities of the validity of the findings of fact or conclusions of law contained in this  
13 Order, or of any liability, fault, responsibility, or guilt of any kind in this or any other matter, all such  
14 findings, conclusions, liability, fault, responsibility, and guilt of any kind being expressly denied.

15 DATED this 27<sup>th</sup> day of July, 2009.

16  
17 By   
18 Kevin O'Halloran  
19 President, ML Servicing Co.

20 ORIGINAL of the foregoing filed this \_\_\_\_\_  
day of \_\_\_\_\_, 2009, in the office of:

21 Felecia A. Rotellini  
22 Superintendent of Financial Institutions  
23 Arizona Department of Financial Institutions  
24 ATTN: Susan Longo  
25 2910 N. 44th Street, Suite 310  
26 Phoenix, AZ 85018

COPY mailed/delivered same date to:

Brian B. Tully, Administrative Law Judge  
Office of the Administrative Hearings

1 1400 West Washington, Suite 101  
Phoenix, AZ 85007

2  
3 Craig A. Raby  
Assistant Attorney General  
Attorney General's Office  
4 1275 West Washington  
Phoenix, AZ 85007

5  
6 Robert D. Charlton, Assistant Superintendent  
Richard Fergus, Licensing Division Manager  
Joan Doran, Senior Examiner  
7 Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
8 Phoenix, AZ 85018

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

10 ML Servicing Co..  
11 c/o Kevin O'Halloran, President  
~~4453 E. Camelback Road~~  
12 Phoenix, AZ 85018

14050 NORTH 83<sup>rd</sup> AVE, SUITE 180  
PEORIA, AZ 85381

13 Cathy L. Reece, Esq.  
Keith L. Hendricks, Esq.  
14 FENNEMORE CRAIG, P.C.  
3003 N. Central Avenue, Suite 2600  
15 Phoenix, AZ 85012  
Attorneys for Official Committee of  
16 Investors in the Mortgages Ltd. Bankruptcy

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18 516923; PHX-AGN-2009-0209

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