

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
2 DIVISION OF FINANCE AND CORPORATE SECURITIES
3 FINANCE SECTION
4 BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
5 STATE OF OREGON

6 In the Matter of

7 FIRST CAPITAL MORTGAGE CORP.

8 ORDER NO. O-02-0049

9 CEASE AND DESIST ORDER AND
10 CONSENT TO IMPOSITION OF CIVIL
11 PENALTIES

12 To: First Capital Mortgage Corp.
13 935 W. Chestnut Street Suite 600
14 Chicago, Illinois 60622

15 **WHEREAS** the Director of the Department of Consumer and Business Services
16 for the State of Oregon (hereinafter "the Director") conducted an investigation of First
17 Capital Mortgage Corp., and determined that First Capital Mortgage Corp. engaged in
18 activities constituting violations of ORS 59.840 through 59.965 (hereinafter "the Oregon
19 Mortgage Lender Law"); and

20 **WHEREAS** First Capital Mortgage Corp. wishes to resolve and settle this matter
21 with the Director;

22 **NOW THEREFORE**, as evidenced by the authorized signatures subscribed on
23 this order First Capital Mortgage Corp. hereby **CONSENTS** to entry of this order upon
24 the Director's Findings of Fact and Conclusions of Law as stated hereinafter:

25 **FINDINGS OF FACT**

26 The Director **FINDS** that:

1. First Capital Mortgage Corp. (hereinafter "Respondent"), incorporated in Illinois
on April 20, 1999 engages in residential mortgage transactions in Oregon or on Oregon
real property in expectation of compensation.

2. The Director has licensed Respondent to engage in Oregon residential

1 mortgage lending since January 11, 2002.

2 3. Michael Goldhirsh and David Goldhirsh each own 25% of Respondent. Sam
3 Borek owns the remaining 50% of Respondent.

4 4. On October 12, 2001, the Director sent notice to all licensees that there had
5 been changes in the Oregon Mortgage Lender Law and proposed changes in the
6 administrative rules and posted the notice on the web site to inform new applicants.

7 5. In January 2002, the Director published a new issue of the Mortgage Lender
8 News on the web site that included an explanation of the new notification requirements.

9 6. On February 14, 2002, the Director sent a notice to all licensees that the final
10 rules had been approved and were available on the web site along with the January
11 2002 issue of the Mortgage Lender News that explained the new requirements.

12 7. On August 9, 2002, the Director sent a letter to Respondent informing
13 Respondent that the Director had not received notification of Respondent's loan
14 originators and requesting that Respondent provide the required information by
15 September 1, 2002 to avoid civil penalties.

16 8. On September 1, 2002, the Director had not received notification of
17 Respondent's loan originators.

18 9. On September 16, 2002, the Director left a voice mail message for Michael
19 Goldhirsh informing Respondent that the Director had not received the required loan
20 originator information and that the Director was beginning the process of issuing civil
21 penalties to companies that failed to comply with the notification requirements but if
22 Respondent submitted their information prior to Director commencing administrative
23 action that the information would be accepted as compliant.

24 10. On September 19, 2002, Michael Goldhirsh spoke with the Director about the
25 voice mail message and requested a copy of the letter and form by facsimile.

26 11. On September 19, 2002, the Director sent by facsimile to Respondent,

1 addressed to Michael Goldhirsh, a copy of the August 9, 2002 letter and the loan
2 originator notification form for completion.

3 12. Respondent indicates that the completed loan originator notification form was
4 mailed as discussed with the Director during the September 19, 2002 telephone
5 conversation.

6 13. As of October 22, 2002, the Director had not received the loan originator
7 notification as requested, but the Director has since received the loan notification form
8 as requested.

9 **CONCLUSIONS OF LAW**

10 The Director **CONCLUDES** that:

11 1. Respondent violated OAR 441-880-0030(1) by failing to produce the required
12 information about Respondent's loan originators by January 30, 2002.

13 2. Respondent violated ORS 59.969(1) by failing to provide to the Director
14 information about Respondent's loan originators.

15 **ORDER**

16 The Director, pursuant to ORS 59.885(4), hereby **ORDERS** that First Capital
17 Mortgage Corp. will **CEASE AND DESIST** from violating any provision of Oregon
18 Mortgage Lender Law, OAR 441-850-0005 through 441-885-0010 and any rule, order, or
19 policy issued by the Division.

20 The Director, pursuant to ORS 59.996 hereby **ORDERS** First Capital Mortgage
21 Corp. to pay the State of Oregon a civil penalty of \$5,000. The Director suspends
22 payment of \$5,000 of the assessed civil penalty for a three-year period. If in the period
23 between the date of the Order to three years from the date of the Order, First Capital
24 Mortgage Corp. intentionally, knowingly or willfully violates any material provision of the
25 Oregon Mortgage Lender Law, OAR 441-850-0005 through 441-885-0010 or any rule,
26 order, or policy issued by the Division, the suspended portion of the assessed civil

1 penalty will be assessed by the Director as part of an order for the subsequent violation.
2 "Material" is defined as anything that may have a detrimental effect on consumers, such
3 as a systemic failure to provide disclosures required by state or federal law, rule or
4 regulation, any violation that caused actual harm to a consumer, or a subsequent
5 violation of the statutes and/or rules alleged violated as part of this Order. If First Capital
6 Mortgage Corp. does not intentionally, knowingly or willfully violates any material
7 provision of the Oregon Mortgage Lender Law, OAR 441-850-0005 through 441-885-
8 0010 or any rule, order, or policy issued by the Division in the three-year period, the
9 suspended portion of the civil penalty is waived.

10 The date of the Order is the date the Director signs the Order. The Order in no
11 way limits further remedies which may be available to the Director under Oregon law for
12 any other violation of the Oregon Mortgage Lender Law not related to circumstances that
13 were the basis of this Order.

14 Dated this 30th day of JUNE, 2003.

15
16 **CORY STREISINGER, DIRECTOR**
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

17
18
19 by 
20 **DAVID C. TATMAN, CHIEF OF ENFORCEMENT**
DIVISION OF FINANCE AND CORPORATE SECURITIES

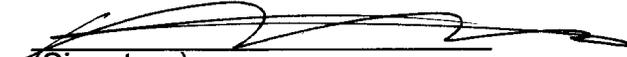
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22 **CONSENT TO ENTRY OF ORDER**

23 I, MICHAEL GOLDHERSH, state that I am the
24 PRESIDENT of First Capital Mortgage Corp., and I am authorized to act on
25 its behalf; that I have read the foregoing Order and that I know and fully understand the
26 contents hereof; that First Capital Mortgage Corp. admits the findings of fact herein,

1 voluntarily consents to the entry of this Order without further hearing, expressly waiving
2 any right to a hearing in this matter; that First Capital Mortgage Corp. understands that
3 the Director reserves the right to take further actions to enforce this order or to take
4 appropriate action upon discovery of other violations of Oregon Mortgage Lender Law;
5 and that First Capital Mortgage Corp. will fully comply with Oregon Mortgage Lender
6 Law. I understand that this Consent Order is a public document.

7 Dated this 4 day of June, 2003

8 By Michael Goldhirsch President
9 (Office Held)

10 
11 (Signature)

12 **CORPORATE ACKNOWLEDGMENT**

13 There appeared before me this 4th day of June, 2003,
14 Michael Goldhirsch, who was first duly sworn on oath, and stated that s/he was
15 and is the President of First Capital Mortgage Corp. and
16 He is authorized and empowered to sign this Consent to Entry of
17 Order on behalf of First Capital Mortgage Corp. and to bind First Capital Mortgage Corp.
18 to the terms hereof.

19 
20 Signature of Notary Public
21 Notary Public for the State of: Illinois
22 My Commission expires: 10/24/06

