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2 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
3 **DIVISION OF FINANCE AND CORPORATE SECURITIES**
4 **ENFORCEMENT SECTION**
5 **BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS**
6 **SERVICES**

6 **In the Matter of:**

7 **Custom Mortgage, LLC and Patrick**
8 **Carney**

9 **Respondents.**

X-09-0038

ORDER TO CEASE AND DESIST
ASSESSING EXAMINATION FEE
And
CONSENT TO ENTRY OF ORDER

10
11 **WHEREAS**, The Director of the Department of Consumer and Business Services for the
12 State of Oregon (hereinafter "the Director") conducted an investigation of Custom Mortgage,
13 LLC and Patrick Carney (hereinafter "Respondents") and determined that Respondents engaged
14 in activities constituting violations of the Oregon Mortgage Lender Law and Oregon Securities
15 Law, Chapter 59 of the Oregon Revised Statutes; and

16 **WHEREAS**, the Director issued a notice order on June 8, 2009 directed at Respondents
17 which originally focused on disclosures associated with a loan described below as the "Forest
18 Lane Transaction."

19 **WHEREAS**, the Director has subsequently conducted a review of Respondents' files
20 selected at random;

21 **WHEREAS**, Respondents, neither admits nor denies the findings of fact or conclusions
22 of law set forth herein;

23 **NOW THEREFORE**, as evidenced by the signatures subscribed on this order,
24 Respondents hereby **CONSENT** to entry of this order upon the Director's Findings of Fact and
25 Conclusions of Law as stated hereinafter.

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4140



1 **FINDINGS OF FACT**

2 The Director **FINDS** that:

3 **A. Parties**

4 1. Custom Mortgage, LLC (hereinafter “Custom Mortgage”) is an Oregon domestic
5 limited liability company first registered on January 7, 1997. Richard Carney and Capital
6 Development Corporation are listed as members. Principal offices for Custom Mortgage are
7 located at 625 Hawthorne Avenue SE, Suite 100, Salem, Oregon 97301.

8 2. Capital Development Corporation is an Oregon corporation first registered on
9 January 20, 1971. Richard Carney is listed as the president, secretary, and registered agent.
10 Principal offices for Capital Development Corporation are located at 625 Hawthorne Avenue SE,
11 Suite 100, Salem, Oregon 97301.

12 3. Custom Mortgage first obtained a license to engage in Oregon residential mortgage
13 transactions on June 28, 1995, license ML 692. The license is set to expire on June 22, 2010.

14 4. The Director’s records list Patrick Carney (hereinafter “Carney”) as Custom
15 Mortgage’s experienced person. Carney, Richard Carney, and Fred Fischer are the only
16 members listed by Custom Mortgage on the renewal application filed with the director in June
17 2008. Carney and Jennifer Teichrow are the only active loan originators currently listed by
18 Custom Mortgage with the Director.

19 5. T.R. is an Oregon resident. T.R. previously worked as an airline stewardess but is
20 currently unemployed, however, has substantial assets which she seeks to invest to supplement
21 her income. T.R. approached Respondents to invest some of her funds in loans. T.R. was
22 familiar with Respondents through their work with her brother. The Forest Lane transaction,
23 discussed below, was not T.R.’s first investment, and she understood the risks involved in
24 lending money.

25 6. In August of 2007, Respondents were approached by Bill Baskins asking them to

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1 assist him in obtaining short term financing to be secured by real property located at 54886
2 Forest Lane, Bend, OR 97707 (hereinafter "Forest Lane"). The financing was needed to
3 refinance a first position trust deed on the Forest Lane property that was in default and about to
4 be foreclosed.

5 7. Jennifer Baskins is Bill Baskins' wife. On November 1, 2006, Jennifer Baskins
6 filed a petition for dissolution of marriage in Marion County Circuit Court case No. 06c33528.

7 **B. Forest Lane Transaction**

8 8. During all times relevant herein, Bill Baskins was the owner of record for the
9 Forest Lane property.

10 9. Prior to February 15, 2007, Jennifer Baskins, filed a notice of lis pendens with
11 regard to the Forest Lane property. This filing was recorded by the Deschutes County clerk on
12 February 15, 2007. The notice stated in part that: "An action affecting the title to the real
13 property described below is now pending in the Circuit Court for the State of Oregon, County of
14 Marion. The notice further stated that: "The object of the action is to enable the parties to secure
15 a judgment of dissolution which relief may confirm or change a party's legal right to, title or
16 interest in the following-described real property: 54886 Forest Lane, Bend, OR 97707. . . . All
17 persons should be advised that one or both of the parties claim an interest in the above-described
18 real property and that the outcome of the dissolution proceedings may have an effect on that
19 claimed interest."

20 10. On September 11, 2007, Carney brokered a one year \$300,000 bridge loan between
21 T.R., the lender, and Bill Baskins, the borrower. The terms of the loan were contained in a
22 promissory note. The terms provided that: 1) the loan was secured by the Forest Lane property;
23 2) T.R. would earn 12 percent interest per annum with six months interest (\$16,767) prepaid; 3)
24 Respondents would earn a \$12,000 loan origination fee payable out of the buyer's loan proceeds;
25 and 4) the remainder of the funds would be distributed for the benefit of Mr. and Mrs. Baskins.



1 11 . Before brokering the above transaction Carney did not provide T.R. with the
2 written disclosures in the form required under OAR 441-035-0021 or 441-870-0050 including: a
3 statement of senior liens, statement of the risk of loss on foreclosure of a senior lien, a statement
4 of the value of the real property underlying the real estate paper and a credit report on the debtor
5 prepared by a credit reporting agency or the debtor's current financial statement.

6 12 . Carney did not disclose the lis pendens to T.R. because he believed, based on
7 assurances made to him by Jennifer Baskins' attorney, that the lis pendens would be removed
8 and subordinated to T.R.'s interest. In fact, the lis pendens was not removed.

9 13 . On September 1, 2008, T.R.'s promissory note came due by its terms. T.R. did not
10 receive the return of her principal or the second six-months interest payment.

11 14 . In response, Carney and Custom retained counsel and after disclosing the lis pendis
12 and issues it created for T.R. and her security, reached an agreement with T.R. by which Custom
13 intervened in the Baskins' divorce proceeding to protect T.R.'s security interest in the property.
14 Custom bore all the expense associated with the litigation to protect T.R.'s interest.

15 15 . On June 8, 2009, the Division issued a notice order directed at Respondents. The
16 Order alleged that Respondents sold a security to T.R. without disclosing that Bill Baskins was
17 involved in divorce proceedings or that a lis pendens had been filed by Jennifer Baskins on the
18 Forest Lane property.

19 16 . Bill Baskins and Jennifer Baskins' divorce proceeding was dismissed after the
20 issuance of the June 8, 2009, notice order. The dismissal of the divorce case has had the effect of
21 putting T.R. in the position she would have been in if the lis pendens had been removed and
22 subordinated to T.R.'s interest, as Carney was assured it would be.

23 **C. Subsequent Investigation and Remedial Measures**

24 17 . On August 31, 2009, the Mortgage section of the Division conducted an
25 examination of Custom Mortgage. Custom Mortgage received a composite score of 1



1 (outstanding), which is the highest score available on an examination.

2 18 . The Forest Lane transaction described above led to a determination by the
3 Division that an examination of Respondents' private money loans was necessary to determine if
4 Respondents were in compliance with Oregon's Securities Laws. Respondents fully cooperated
5 with this review.

6 19 . The Divisions review found no material omissions or misstatements in the
7 transactions reviewed. Based on the Division's review Respondents have taken appropriate
8 remedial measures to ensure future compliance with Oregon Securities and Mortgage Lender
9 Laws.

10 20 . Respondents incurred significant expenses in order to ensure that T.G. did not
11 suffer any economic loss due to the failure to disclose the lis pendens as detailed herein. In
12 addition, Respondents incurred significant expenses in reviewing all hard money transactions
13 entered into in 2008 in order to document any deficiencies and to ensure that all future
14 transactions comply with Oregon Securities and Mortgage Lender Laws.

15 CONCLUSIONS OF LAW

16 The Director **CONCLUDES** that:

17 1 . The promissory note entered into by T.R., secured by real estate and brokered by
18 Respondents is a security as defined by ORS 59.015(19)(a).

19 2 . The security sold to T.R. is exempt from registration based on compliance with
20 the requirements for transactional exemption with an accredited investor in ORS 59.035(5).

21 3 . By failing to disclose to the investor, T.R. that the borrower's wife had filed and
22 recorded a lis pendens with regard to the Forest Lane property, Respondents omitted to state a
23 material fact in connection with the sale of a security in violation of ORS 59.135(2).

24 ORDER

25 **NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:**

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The Director, pursuant to ORS 59.885(4) and 59.245 hereby **ORDERS** that Respondents **CEASE AND DESIST** from violating any provision of the Oregon Mortgage Lender Law, the Oregon Securities Laws, and any rule, order or policy issued by the Director.

The Director hereby assesses Respondents \$2,000 for the cost of examination pursuant to ORS 59.235. This examination fee shall be paid within 30 days of the issuance of this consent order.

In order to ensure future compliance with the Oregon Mortgage Lender and Oregon Securities Laws the Director Orders and Respondents agree that any future violation of Oregon Securities or Mortgage Lender Laws within five (5) years of the date of this order can cause a stipulated fine of \$5,000 to become immediately due and owing. This stipulated penalty is based on the violation of ORS 59.135(2) documented in herein.

The date of this order is the day the Director or Director's nominee signs the order. The entry of this Order in no way limits further remedies which may be available to the Director under Oregon law.

Dated this 15th day of June 2010, at Salem, Oregon.

CORY STREISINGER, Director
Department of Consumer and Business Services

/s/ David Tatman
David C. Tatman, Administrator
Division of Finance and Corporate Securities

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CORPORATE ACKNOWLEDGMENT

There appeared before me this 25 day of May 2010 who was first duly sworn on oath, and stated that he was and is an officer of Respondent and that he is authorized and empowered to sign this Consent to Entry of Order on behalf of Respondent, and to bind Respondent to the terms hereof .

/s/ Kayla Renee Castaneda
Signature of Notary

Kayla Renee Castaneda
Printed Name of Notary Public

Notary Public for the State of: Oregon

My commission expires: 02-10-14

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CONSENT TO ENTRY OF ORDER

I, Patrick Carney, state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of the right to a hearing and of the right to be represented by counsel in this matter; and desire to resolve and settle this matter with the Director without admitting or denying the findings or conclusions set for herein, that I voluntarily and without any force or duress, consent to the entry of this Order, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of violations of the Oregon Mortgage Lender Law or Oregon Securities Laws; and that I will fully comply with the terms and conditions stated herein.

I understand that this Consent Order is a public document.

Dated this 25 day of May, 2010.

By: /s/ Patrick Carney
Patrick Carney

/s/ Kayla Renee Castaneda
Notary Public
for the State of: Oregon

My commission expires: 02-10-14

Approved as to form:

Mark Hoyt
(attorney for Respondents)

5-25-10
(date)

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