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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES**

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND
BUSINESS SERVICES**

| | | |
|------------------------------|---|--|
| In the Matter of: |) | Case M-08-0041 |
| |) | |
| Smart Mortgage, Inc., |) | ORDER TO CEASE AND DESIST, AND |
| |) | ORDER ASSESSING CIVIL PENALTIES |
| dba Smart Mortgage; |) | |
| |) | ENTERED BY CONSENT |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |
| |) | |

WHEREAS the Director (the “Director”) of the Department of Consumer & Business Services for the State of Oregon (the “Department”) conducted an investigation into the activities of Smart Mortgage Inc., dba Smart Mortgage (the “Respondent”) and determined that Respondent engaged in activities constituting violations of Oregon Revised Statutes (“ORS”) 86A.095 et seq. (the “Oregon Mortgage Lender Law”) [formerly numbered ORS 59.840 to 59.980];

WHEREAS Respondent wishes to resolve this matter with the Director;
WHEREAS Respondent withdraws its request for a hearing in this matter;
NOW THEREFORE, as evidenced by the authorized signature subscribed on this order, Respondent hereby **CONSENTS** to entry of this order upon the Director’s Findings of Facts and Conclusions of Law as stated hereinafter:

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Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1 **FINDINGS OF FACT**

2 The Director **FINDS** that:

3 1. On September 26, 2003, the Director issued Pacific Communication Systems, Inc. dba
4 Northwest Mortgage Capital Corporation a license to engage in residential mortgage lending.
5 On September 25, 2004 the Director renewed the license and the name was changed to Bennett
6 Investment Company dba Smart Mortgage Inc. On September 22, 2006 the license was again
7 renewed, and on September 25, 2006 the name was changed to Smart Mortgage Inc. dba Smart
8 Mortgage. Respondent has been continually licensed since that time. Respondent's current
9 license was set to expire on September 25, 2008 until the expiration was stayed by issuance of a
10 ORDER TO CEASE & DESIST, REVOKING MORTGAGE BROKER / BANKER LICENSE,
11 ASSESSING CIVIL PENALTIES AND NOTICE OF RIGHT TO HEARING in this case on
12 that same day. Smart Mortgage submitted request for a hearing. The parties then negotiated this
13 consent agreement without proceeding to a contested case hearing.

14 2. Respondent's principal place of business is 8700 SW 26th Avenue, Portland, OR 97219.

15 3. Scott McKeown ("McKeown") was originally registered with the Division as a loan
16 originator on September 26, 2003. McKeown's criminal record check should have been
17 performed no later than April 29, 2004.

18 4. The Division conducted two examinations of Respondent. The first examination
19 occurred October 30, 2006 ("First Exam"). The First Exam report concluded that Respondent
20 had not performed a criminal record check on McKeown and instructed the firm to do so and
21 forward the results to the Division for review.

22 5. Respondent received a copy of the First Exam report and responded in a letter dated
23 February 8, 2007 stating that all of the noted deficiencies had already been, or would be,
24 corrected. Respondent did not provide the Director with a copy of McKeown's criminal records
25 check.

26 6. On September 20, 2007 the Division completed a follow-up examination of Respondents





1 (“Second Exam”). The Second Exam report again noted that the Division had not received a
2 copy of McKeown’s criminal record check.

3 7. McKeown’s criminal record check was not forwarded to the Division until after the
4 Second Exam. The criminal records check of McKeon did not reveal any criminal convictions.

5 **CONCLUSIONS OF LAW**

6 8. Respondent violated ORS 86A.186 [formerly ORS 59.972] and OAR 441-860-0045
7 [formerly OAR 441-880-0050] by not performing a criminal background check on McKeown
8 within the time required by that statute and rule.

9 9. Respondent violated ORS 86A.115 (11) [formerly ORS 59.865(11)] by failing to produce
10 a copy of the criminal background check on McKeown after the First Exam, as requested by the
11 Director.

12 **ORDER**

13 **NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDER:**

14 10. The Director, pursuant to ORS 86A.992 [formerly ORS 59.996] and ORS 86A.118
15 [formerly ORS 59.870] hereby **ORDERS** Respondent to pay the State of Oregon a civil penalty
16 of **\$5,000** based on a \$2,500 civil penalty for each of the two (2) violations cited above.

17 11. The Director hereby agrees to suspend this penalty in its entirety so long as Respondent
18 complies with the Oregon Mortgage Lender Law and any rule or order issued by the Director. If,
19 in the period between the date of this order to three years from the date of the order, Respondent
20 violates any provision of the Oregon Mortgage Lender Law or any rule, or order issued by the
21 Director, the suspended portion of the assessed civil penalty will become immediately due and
22 payable. If, in the period between the date of the Order and three years from the date of the
23 order, Respondent does not violate any provision of the Oregon Mortgage Lender Law or any
24 rule or order issued by the Director then the suspended portion of the assessed civil penalty shall
25 be waived.

26 ///

1 12. The Director, pursuant to ORS 86A.124 (formerly ORS 59.880) **ORDERS** Respondent
2 to pay \$750 for costs associated with the examination of this case.

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

6
7 Dated this 16th day of July, 2011, at Salem, Oregon.

8
9 SCOTT L. HARRA, Acting Director
10 Department of Consumer and Business Services

11 /s/ David Tatman
12 David Tatman, Administrator
13 Division of Finance and Corporate
14 Securities

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1 **CORPORATE CONSENT TO ENTRY OF ORDER**

2 I, Scott McKeown, state that I am an officer of Respondent, and I am authorized to act on
3 its behalf; that I have read the foregoing Order and that I know and fully understand the contents
4 hereof; that I and this entity have been advised of the right to a hearing and of the right to be
5 represented by counsel in this matter; that Respondent voluntarily and without any force or
6 duress, consents to the entry of this Order, expressly waiving any right to a hearing in this
7 matter; that Respondent understands that the Director reserves the right to take further actions to
8 enforce this Order or to take appropriate action upon discovery of other violations of the Oregon
9 Mortgage Law; and that Respondent will fully comply with the terms and conditions stated
10 herein.

11 Respondent further assures the Director that neither Respondent, nor its officers,
12 directors, employees or agents will effect mortgage transactions in Oregon unless such activities
13 are in full compliance with Chapter 86A, formerly Chapter 59, of the Oregon Revised Statutes.

14 Respondent understands that this Consent Order is a public document.

15 Dated this 8th day of July, 2011.

16 By /s/ Scott McKeown, Secretary
Scott McKeown (Office Held)

17 **CORPORATE ACKNOWLEDGMENT**

18 There appeared before me this 8th day of July, 2011, Scott McKeown, who was first
19 duly sworn on oath, and stated that he was and is Secretary of Respondent and that he is
20 authorized and empowered to sign this Consent to Entry of Order on behalf of Respondent, and
21 to bind Respondent to the terms hereof.

22 /s/ Stephen J. Sheldon

23 Signature of Notary Public
24 Notary Public for the State of: OR.
25 My Commission Expires: 2013.

26 Dated this 7th day of July 2011.