

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES**

IN THE MATTER OF:) **FINAL ORDER**
)
CRAIG ALAN MORRIS) OAH Case No.: 1002084
) Agency Case No.: M-10-0040
 Respondent)

HISTORY OF THE CASE

On or about August 6, 2010, the Department of Consumer and Business Services, Division of Finance and Corporate Securities (Division) issued an Order Denying Mortgage Loan Originator License and Notice of Right to a Hearing to Craig Alan Morris (Respondent). The order denied Respondent's application for a mortgage loan originator's license because he had a prior conviction for burglary in the first degree, and because he had not demonstrated financial responsibility sufficient to command the confidence of the community and warrant the determination that he will operate honestly, fairly and efficiently within the purposes of the mortgage loan originator laws. Respondent filed a timely request for hearing on or about August 11, 2010.

On or about September 1, 2010, the Division issued an Amended Order Denying Mortgage Loan Originator License and Notice of Right to a Hearing to Respondent. The amended order repeated the same two bases for denying Respondent's application.

The Division referred the matter to the Office of Administrative Hearings on December 2, 2010. The case was assigned to Senior Administrative Law Judge Ken L. Betterton.

A telephone pre-hearing conference was held on February 24, 2011. Assistant Attorney General (AAG) Joanna L. Tucker Davis represented the Division. Attorney Jon P. Stride represented Respondent.

The Division filed a Motion for Summary Determination on March 16, 2011. Also, on March 16, 2011, Respondent filed a Motion for Partial Summary Determination.

On March 30, 2011, the Division filed a Response to Respondent's Motion for Partial Summary Determination.

On April 12, 2011, Respondent filed a Response to the Division's Motion for Summary Determination and Reply in Support of his Motion for Partial Summary Determination.

On April 22, 2011, the Division filed a Reply to Respondent's Motion for Partial Summary Determination.

On June 1, 2011, the ALJ issued Rulings on the Motions for Summary Determination, in which Respondent's Motion for Partial Summary Determination was allowed and the Division's Motion for Summary Determination was denied.

A hearing was held in Salem, Oregon on June 22 and 23, 2011 in Salem, Oregon. AAG Joanna L. Tucker Davis (Tucker Davis) represented the Division. Attorney Jon P. Stride (Stride) represented Respondent. Dale Hayward and Chester Browning, former clients of Respondent's, testified for Respondent. Respondent also testified in his own behalf. Kirsten Anderson, the Division's Manager for Mortgage Lending Program; Tippi Pearse, a Division Enforcement Officer; and Lauren Winters, a Division Policy Analyst, testified for the Division.

A telephone conference was held on June 29, 2011 for the parties to present closing arguments. AAG Tucker Davis represented the Division. Attorney Stride represented Respondent.

The record closed on June 29, 2011 and the matter was taken under advisement.

On August 3, 2011, ALJ Betterton issued the Proposed Order. Respondent did not file exceptions. In accordance with ORS 183.650(2) and -(3), and OAR 137-003-0665(3) and -(4), an agency must identify and explain those modifications to proposed findings of historical fact that change the outcome or basis for this Final Order from those in the proposed order. The Division has not made any changes that substantially modify the ALJ's proposed findings of historical fact or change the ALJ's recommended outcome. The Division has made changes to correct spelling, grammar, and textual placement and, where noted, has not adopted certain aspects of the ALJ's reasoning.

EVIDENTIARY RULING

Exhibits A1 through A18, and A20, offered by the Division at hearing, were admitted into evidence without objection. Exhibit A19, offered by the Division, was excluded from evidence based on Respondent's objection as to relevance. Exhibits R1 through R13, and R15 through R17, offered by Respondent at hearing, were admitted into evidence without objection. Respondent did not offer what had been reserved as Ex. R14. Pleadings P1 through P16, presented by the Division, were also made a part of the record.

ISSUES

(1) Whether Respondent has demonstrated financial responsibility to satisfy the requirements of ORS 86A.212(1)(d) to obtain a mortgage loan originator's license.

(2) Whether Respondent's conviction for burglary in the first degree disqualifies him under ORS 86A.212(1)(c)(B) from obtaining a mortgage loan originator's license.

FINDINGS OF FACT

(1) Facts regarding financial responsibility.

(1) Respondent graduated from Oregon State University in 1991 with a bachelor's degree. He married Kristin Morris in 1996. They have three sons, ages 14, 12 and 10. The 10-year-old is named Brandon. The Morrises are expecting a fourth child in September 2011. Respondent worked at various jobs after graduating from college. He worked as a janitor, worked in construction and remodeling buildings, managed apartments, and worked as a bouncer in a bar. (Respondent's testimony.)

(2) In late 1994 or early 1995, Respondent started working in the mortgage loan originator industry for banks and mortgage companies as an employee. He earned between approximately \$84,000 and \$171,000 as a salaried or commissioned mortgage loan originator from 1998 through 2001. (Respondent's testimony.)

(3) Respondent and Mrs. Morris formed Straight Line Mortgage starting in 2002 and operated their own mortgage loan originator business through various "dbas" as affiliates of several large mortgage companies through 2004. Respondent earned approximately \$109,000 in commissions in 2002. (Respondent's testimony.)

(4) In 2004, the Morrises formed Morris Mortgage and continued doing business as Straight Line Mortgage. Mrs. Morris held the mortgage broker license from the State of Oregon for their business. She helped with marketing and did some office work. Respondent operated the business and worked as the primary loan originator. At times, Respondent had as many as 20 mortgage loan originator employees working for him. The Morrises had gross income of approximately \$320,000 in 2004. (Respondent's testimony.)

(5) Because of positive economic conditions, and because of relaxed mortgage lending standards, the mortgage industry started to boom in 2004. Respondent, as well as many others in the industry, saw the opportunity as a "gold rush" period in which to make money. The boom continued until 2008, when the economy turned down and the mortgage industry suffered. (Respondent's testimony.)

(6) In 2005, the Morrises began negotiations to become affiliated with Nationwide Insurance Company to provide mortgage lending services and other financial products. In anticipation of that affiliation becoming effective in October 2005, the Morrises let their family health insurance policy through their existing company lapse for the month of September 2005. (Respondent's testimony.)

(7) In September 2005, Brandon, then four years old, was diagnosed with stage 4 cancer. He had a kidney and part of one lung removed. He had to undergo radiation and

chemotherapy and had to continue with closely monitored treatments for several years. Mrs. Morris stopped working in the business entirely to devote her time to caring for their son. Respondent's time and attention also shifted from the business to their son. As a result, the Morrises' business began to suffer. Respondent could not devote the time and attention necessary to attract new customers and to provide enough work for the loan originators working in his office to make the kind of money that could be made at the time in the mortgage lending business. Many of those loan originators drifted away to other offices where they could make more money. The deal with Nationwide Insurance did not materialize. At the time of Brandon's diagnosis in September 2005, the Morrises had two offices on which they were paying rent and incurring office expenses. As a result of the drop in business, the Morrises had negative income of approximately \$12,000 in 2005 and negative income of approximately \$19,000 in 2006. By cutting back on business expenses, they showed income of approximately \$42,500 for 2007. (Respondent's testimony.)

(8) The Morrises incurred substantial uninsured medical bills as a result of Brandon's illness. Respondent asserted that the family incurred uninsured bills of approximately \$250,000, although he never provided the Division with documentation to substantiate the amount. Respondent also did not provide documentation at the hearing to substantiate his son's medical bills. Brandon was considered in remission in 2008; he is currently considered "cancer free." (Respondent's testimony.)

(9) The mortgage lending industry abruptly collapsed in 2008 and remains weak. The Morrises closed down their mortgage loan originator business in 2008. (Respondent's testimony.)

(10) During the time that Respondent operated his mortgage loan originator businesses between approximately 2002 and 2008, he often commingled personal and business funds and assets. He did not keep business ledgers, and did not review or reconcile bank statements. He paid personal expenses out of business funds. (Ex. A11 at 9-11; Respondent's testimony.)

(11) In 2009, Respondent worked as a mortgage loan originator employee for lending companies and earned approximately \$80,000. From January 2010 through June 2010, Respondent worked as a mortgage loan originator employee for a mortgage company and earned approximately \$93,000. He had to stop working as a loan originator in July 2010 because the Division would not issue him a mortgage loan originator's license as a result of changes in the law governing the licensing of loan originators that went into effect in July 2010. Respondent is currently collecting unemployment insurance benefits. (Respondent's testimony.)

(12) Mrs. Morris worked as an office employee in title insurance companies from 2007 until March 2011, when she was laid off. She also is currently collecting unemployment insurance benefits. (Respondent's testimony.)

(13) Over the past several years, Respondent's father and Mrs. Morris's parents have loaned or given the Morrises money on which to live. (Respondent's testimony.)

(14) Because the Morrises had high cash flow beginning in the late 1990s, they increased their standard of living significantly and began purchasing real property and other assets for investment purposes. (Respondent's testimony.)

(15) In 1998, Respondent purchased a residence and acreage on S Hwy 99E in Oregon City, Oregon (known as the Riverhouse property). The Morrises lived there from 1998 until 2001. They then intermittently rented it and lived there until the property was sold in 2007. (Respondent's testimony.)

(16) In 1999, the Morrises purchased an 8-plex rental property in Gervais, Oregon. They fixed the property up and sold it for a profit in 2001. (Respondent's testimony.)

(17) In 2000, the Morrises purchased a residence in Canby, Oregon (known as the 14th Place property). Only Mrs. Morris's name was on the title. The Morrises used the property as a residence and office. Mrs. Morris and the children considered the 14th Place property as their "home base," especially during Brandon's treatment and recovery. Because of stress in the marriage, at times Respondent lived and stayed elsewhere, such as at the Riverhouse property. (Respondent's testimony.)

(18) In 2003, Respondent purchased a real estate office, Cash's Realty, Inc., as an investment. Respondent reasoned it would be a good source of referrals for his mortgage loan originator business. Because Respondent did not have a real estate license, he could not manage the office. He had to hire a licensed real estate person for that position. In part, because the office was plagued with high turnover in the office manager position, Cash's Realty was not a successful investment. Respondent sold the real estate office about a year after he bought it. Respondent later was sued over the sale of the business. A judgment was entered against Respondent for approximately \$22,000 as a result of that litigation. Respondent has not paid the judgment. (Respondent's testimony.) In addition, the law firm that represented the Morrises sued them for their attorneys' fees and received an arbitration award in November 2003 against the Morrises for \$7,265. (Ex. A3 at 80-89.) That judgment remains unpaid. (Respondent's testimony.)

(19) In 2002, the Morrises purchased two rural farm properties on Bolland Road in Canby, Oregon (known as the Bolland properties) for investment purposes. One parcel contained two acres; the other contained 11 acres. Both Morrises' names were on the title to the two-acre parcel. Only Mrs. Morris's name was on the title to the 11-acre parcel. The Morrises sold the two-acre parcel in 2005. (Respondent's testimony.)

(20) The 11-acre parcel was sold in 2004 to the Robert and Shelly Metje (Metjes) for \$310,000. Shortly after the sale, the Metjes accused the Morrises of failing to disclose environmental contamination on the property and filed a lawsuit against them for damages and to rescind the contract. The litigation continued until December 13, 2006,

when an arbitration award and decree of rescission was entered rescinding the purchase contract and ordering the Morrises to pay the Metjes \$417,869.80 within 30 days. Upon payment of the money, the Metjes were ordered to convey clear title to Mrs. Morris. If the Morrises failed to pay the Metjes the full amount within 180 days, the Metjes were entitled to sell the property. The proceeds of sale were to be applied toward the sum the Morrises owed the Metjes. In the event the proceeds were insufficient to satisfy the full amount the Morrises owed the Metjes, the Metjes were entitled to a judgment against the Morrises for any deficiency. (Ex. A8 at 13-16.) The Morrises did not pay the Metjes the money owed within 30 days and the property has not been sold. As of early 2011, the Metjes' deficiency judgment against the Morrises had grown with interest to more than \$500,000. (Lauren Winters's (Winters's) testimony.)

(21) In 2004, the Morrises purchased a condominium in Government Camp, Oregon (known as the Alpenglow property) for \$200,000. They put the property on the market for sale in 2005. In 2006, the Morrises sold the property to Respondent's father and his father's wife. Respondent's father and his wife owned a residence next door to the Alpenglow property. Respondent and Mrs. Morris realized \$120,000 from the sale of the condominium. After selling the condominium, Respondent continued to manage the property and rent it out as a vacation home. He used the rental income to pay the \$1,500 monthly mortgage payment on the property for his father. His father then reimbursed Respondent for the mortgage payment. Respondent did not use any of the proceeds from the sale of the condominium to pay creditors. (Respondent's testimony.)

(22) The Morrises filed their tax returns for 2003 timely in 2004. They did not file timely tax returns for tax years 2005 through 2008. They filed those returns late in 2009. They filed their tax returns for 2009 timely in April 2010. (Respondent's testimony.) The Morrises listed on the bankruptcy papers they filed in 2008 a federal tax lien of \$13,048 and an Oregon tax lien of \$7,600 for tax-year 2003. (Ex. A2 at 11.) They listed tax liens on the bankruptcy papers they filed in 2009 a federal tax lien of \$24,000 for tax-years 2005-2007 and an Oregon tax lien of \$2,000 for tax-years 2005-2007. (Ex. A5 at 12.) The Morrises did not itemize Brandon's medical expenses on any of the tax returns they filed. (Respondent's testimony.)

(23) The Morrises purchased a 2003 Hummer and a 2004 Cadillac Escalade, for both personal and business use. The vehicles were repossessed in 2008 or 2009 because the Morrises did not make the payments. Those debts resulted in deficiency judgments against the Morrises of approximately \$20,000 for each vehicle. The Morrises have not paid the deficiency judgments. (Respondent's testimony.)

(24) Respondent sold the Riverhouse property to his long-time close personal friend, Thor Dorsett (Dorsett), in 2007. The transaction closed in late September 2007. Respondent received approximately \$300,000 from the sale. He received two payments, \$45,000 and \$16,000, prior to closing, and \$240,000 at closing. (Respondent's testimony; Ex. A13 at 74.) Because Respondent considered the house on the property to be "barely habitable," he promised Dorsett that he would "make repairs" and "fix up the property." (Respondent's testimony.) Respondent contends that he spent \$140,000 to

build a barn on the property. He also contends that he spent approximately \$30,000 to repair the house. The contract of sale for the Riverhouse property contained a typed-in clause that Respondent agreed “to pay for any repairs that are requested by buyer.” (*Id.* at 5.) The contract of sale also had a standard “as-is” clause that states the “buyer is purchasing the property in its present condition and with all defects apparent or not.” (*Id.* at 6.) The contract of sale contained no clause requiring Respondent to build a barn on the property. (*Id.* at 3-12.) The Morrisses lived on the Riverhouse property from time to time after the property was sold to Dorsett. Respondent also has stayed at the property when he and Mrs. Morris were having marital problems. The family moved into the Riverhouse property after they lost the 14th Place property in foreclosure. Mrs. Morris last lived on the property in December 2010. (Respondent’s testimony.)

(25) Since September 2007, Respondent intermittently has paid Dorsett monthly rent of \$4,000 for the Riverhouse property to cover the interest on Dorsett’s mortgage on the property. Respondent has paid the rent in cash; he has not had a personal bank account since 2005 because it is “too much hassle.” Respondent estimates that since 2007 he has paid Dorsett rent totaling approximately \$48,000. Dorsett has never lived on the Riverhouse property. (Respondent’s testimony.)

(26) Respondent joined a local yacht club in the mid-2000s as a means to make business contacts and attract clients. He purchased a yacht in 2005 to use to entertain clients. Respondent sold that yacht in 2007 for \$70,000 and used the proceeds to pay the \$70,000 owed on the boat. In 2007 or 2008, Respondent purchased another yacht for \$200,000, with a down payment of \$50,000 and monthly payments of \$1,000. He used proceeds received from the sale of the Riverhouse property to make the down payment. He also spent \$10,000 for repairs on the boat. (Respondent’s testimony.)

(27) In 2008, Dorsett was planning to start a business called “Thor’s Luxury Toy Club.” The business plan was to accumulate boats, classic vehicles, motor homes and similar property, and sell them on a time-share basis to individuals and businesses. Respondent wanted to be involved in the venture and to put his \$200,000 yacht into the business. Respondent hoped to generate income from the sale of time-shares in the boat. Dorsett’s business venture did not get off the ground. Respondent’s yacht ended up in foreclosure because he failed to make the monthly payments. He had a deficiency judgment of approximately \$20,000 entered against him on the yacht. Respondent has not paid the judgment. (Respondent’s testimony.)

(28) Respondent entered into a business deal with Elliott Leighton in the 2000s. They planned to market and sell real property. The business venture was unsuccessful and resulted in Leighton suing Respondent in 2006 or 2007. Leighton received a judgment against Respondent for approximately \$10,000. Respondent has not paid the judgment. (Respondent’s testimony.)

(29) The 14th Place property was in foreclosure in May 2008 due to the Morrisses failure to make the mortgage payments. (Respondent’s testimony.) Individuals often file bankruptcy under Chapter 13 as an accepted and legitimate tool to stop foreclosure on a

residence. (Winter's testimony.) The Morrises decided to use Chapter 13 to stop foreclosure on the residence and allow the family to remain in the home for at least several more months. On May 28, 2008, the Morrises retained bankruptcy attorney Rex Daines and completed and signed a petition in bankruptcy under Chapter 13. The petition was filed the following day, May 29. The filing of the petition immediately stopped the foreclosure proceeding. (Winters's testimony.)

(30) On their Chapter 13 bankruptcy petition, the Morrises estimated their liabilities between \$500,001 and \$1 million. (Ex. A1 at 1.) Upon their signatures on the petition, the Morrises acknowledged that they were signing the petition under penalty of perjury and that the information they provided was true and accurate. (*Id.* at 5.) The Morrises then gathered their financial information for their attorney to file the various schedules for income, assets and list of creditors to accompany their petition. Attorneys in such cases must rely on clients to provide them with accurate information. (Winters's testimony.) The schedules were signed by the Morrises on June 17, 2008 and filed the same day with the court. Above the Morrises signatures for the schedules was printed the following: "I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct." (Ex. A2 at 31.) Below the Morrises signature was printed the following: "Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. §§ 152 and 3571." (*Id.*) On their Summary of Schedules the Morrises listed real property valued at \$350,000 and personal property valued at \$73,073. They listed total liabilities of \$629,961.00. (*Id.* at 1.) They listed combined monthly income of \$7,257. (*Id.* at 21.) The Morrises listed the sale of the Riverhouse property as a gross of \$675,000 and a net of \$30,000. (*Id.* at 27.) The Morrises listed 31 creditors holding unsecured nonpriority claims for a total liability of \$256,527.00. (*Id.* at 18.) Question 1 on the Statement of Financial Affairs asked each of the Morrises to list their gross income for the current calendar year and the two years immediately preceding the calendar year. Respondent listed his income from self employment from Straight Line Mortgage as \$18,000 for 2008; \$48,000 for 2007; and \$70,000 for 2006. (*Id.* at 24.)

(31) The Chapter 13 petition established a \$690 monthly payment from the Morrises to pay back their creditors. The Chapter 13 plan was a confirmable plan. If Respondent and Mrs. Morris had made two \$690 monthly payments prior the confirmation hearing, the Chapter 13 plan could have been approved by the bankruptcy court. Respondent and his family then could have continued to live on the 14th Place property and kept the two family vehicles. If the Morrises had followed through with their Chapter 13 plan, all of their unsecured debts, including non-consensual liens and judgments, would have been discharged. This would have included the Metjes' judgment and their son's medical bills. The Morrises' Chapter 13 petition was dismissed for failure to make the two monthly plan payments of \$690. The 14th Place house was eventually foreclosed and the Morrises forced to move. (Winters's testimony.)

(32) In May 2009, the Morrises retained attorney Todd Trieweiler to file a petition in bankruptcy court under Chapter 7. The Morrises completed and signed the

petition on May 14, 2009. The petition was filed with the bankruptcy court the same day. The Morrisses listed their estimated liabilities between \$1,000,001 and \$10 million. (Ex. A4 at 1.) The Chapter 7 petition contained the same written acknowledgment as the Chapter 13 petition that the Morrisises certified under penalty of perjury that the information they provided was true and accurate. (Ex. A5 at 5.) The Morrisises gathered their financial information to give to their attorney for the attorney to file the various schedules of assets, income and liabilities. The Morrisises signed the completed schedules on May 29, 2009. The schedules were filed with the bankruptcy court the same day. On the Summary of Schedules, the Morrisises listed \$0.00 as the value of real property they owned and listed person property valued at \$3,002.00. They listed total liabilities of \$1,455,717.00. (*Id.* at 3.) The Morrisises listed 86 creditors holding unsecured nonpriority claims of \$1,429,717.00. (*Id.* at 14-31.) The Morrisises listed the sale of the Alpenglow property at \$75,000 and that they received \$15,000. (*Id.* at 39.) Question 1 on the Statement of Financial Affairs asked each of the Morrisises to list their gross income for the current calendar year and the two years immediately preceding the calendar year. Respondent listed his income as \$0.00 for 2007; \$0.00 for 2008; and \$0.00 for 2009. (*Id.* at 38.) The question regarding gross income was worded the same on the Chapter 7 petition as on the Chapter 13 petition. The Chapter 7 petition contained the same written acknowledgment above the Morrisises' signatures as appeared on the Chapter 13 petition that they were signing the petition under penalty of perjury and that the information they provided was true and accurate. Below their signatures was the following warning: "Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571." (*Id.* at 46.)

(33) Respondent and Mrs. Morris retained attorney Rose Zook (Zook) and appeared before the bankruptcy court trustee on June 22, 2009 for a first meeting of creditors. An attorney appeared to represent the Metjes. Attorney Vivienne Popperl (Popperl) represented the Office of the United States Trustee. (Ex. A6.) The Office of the Trustee represents the interests of unsecured creditors in bankruptcy proceedings. (Winters's testimony.) The Morrisises were questioned under oath in a deposition format about their Chapter 7 bankruptcy petition, the schedules they filed, and their financial circumstances. When asked why their Chapter 13 plan was dismissed, Respondent answered that it was dismissed because their taxes were not done. (*Id.* at 4.) When asked by Popperl if he had reviewed the bankruptcy petition and schedules thoroughly before filing them, Respondent answered that he had just skimmed over them. Popperl instructed the Morrisises to carefully review the schedules before they returned later for another meeting of creditors to see if any corrections needed to be made to their petition and schedules. (*Id.* at 19.)

(34) Another meeting of creditors was held on July 20, 2009. Attorney Zook again represented the Morrisises. An attorney appeared to represent the Metjes. Attorney Popperl represented the trustee. (Ex. A7.) Respondent was given the opportunity to make any corrections to the Chapter 7 petition and schedules. He reaffirmed that the information on his Chapter 7 petition and schedules was correct. (*Id.* at 5-6.)

(35) On November 16, 2009, attorney Popperl conducted a bankruptcy proceeding examination of Respondent under oath. (Ex. A11.) Attorney Popperl asked Respondent questions about his business practices starting in approximately 2003 with Cash's Realty and about his various Straight Line Mortgage entities. Respondent admitted that he commingled funds between the various businesses and did not keep good business records. (*Id.* at 9-11.) Respondent also admitted that throughout the time he owned and operated his various businesses, he did not review or reconcile bank statements, and he did not keep ledgers to track money coming into or going out of his businesses. (*Id.* at 95-96.)

(36) After attorney Popperl reviewed the Morrises' financial records and questioned them under oath, she concluded that deposits made to the Morrises' business account from May 2007 through March 2009 totaled \$588,119.69, and that the Morrises paid at least \$300,000 in personal expenses from that business account. These payments for personal expenses were made during the same time period that the Morrises did not make their two monthly payments of \$690 under the Chapter 13 repayment plan. (Ex. A17 at 46.)

(37) On August 3, 2010, attorney Popperl filed with the bankruptcy court a complaint for denial of discharge for the Morrises in the Chapter 7 case. (Ex. A17.) The Office of the Trustee accused the Morrises of committing bankruptcy fraud as follows:

By understating their income in response to question one on the statement of financial affairs and in schedule one at the meeting of creditors; by understating and omitting income they received other than from employment or the operation of a business in response to question two on their statement of financial affairs and in response to questioning at the meetings of creditors; by lying about their arrangements with Thor Dorsett for use of vehicles; by lying about their access to and use of checking accounts; and by failing to disclose in the statement of financial affairs and at the meetings of creditors that they repaid a loan from Respondent's father in the year prior to the filing of the bankruptcy case.

(*Id.* at 28-42.)

(38) The trustee also sought to deny the Morrises a discharge in bankruptcy based on non-intent (*i.e.*, non-fraud) reasons as follows:

For failing to keep books and records; for failing to explain satisfactorily a loss or deficiency of assets to meet liabilities; and for intending to hinder, delay or defraud a creditor or an officer of the estate, concealment of property of the debtor within one year before the date of the filing of the bankruptcy petition or property of the estate after the date of filing of the petition.

(*Id.* at 42-54.)

(39) The Morrises retained attorney Brad Baker (Baker) to file with the bankruptcy court a motion to convert the Chapter 7 petition to a Chapter 13 petition. The Morrises appeared with attorney Baker before Bankruptcy Court Judge Randall L. Dunn on August 13, 2010. Attorney Popperl represented the trustee. (Ex. A18.) Judge Dunn commented that the Morrises were adept at managing their affairs to keep assets out of the hands of their creditors, and expressed doubts that the Morrises could prevail under the non-intent claims and obtain a discharge in bankruptcy under Chapter 7. (*Id.* at 3.) Judge Dunn agreed to allow the Morrises to convert their case from a Chapter 7 petition to a 100 percent repayment plan to creditors under Chapter 13, provided that the Morrises agreed to waive discharge of their debts under a future Chapter 7 bankruptcy petition. The Morrises agreed to that condition and were allowed to convert their case to a Chapter 13 repayment plan. (*Id.* at 4-5.) The Morrises, however, did not follow through and convert their Chapter 7 petition to a Chapter 13 repayment plan. As a result, the waiver of discharge under a future Chapter 7 petition became effective and the Morrises cannot now discharge their debts. (Winters's testimony.)

(40) On his application for a mortgage loan originator license in June 2010, Respondent wrote that he had unsatisfied judgments or liens against him, and that he had filed bankruptcy. The Division asked Respondent to provide copies of his bankruptcy filings and judgments against him. Respondent provided a brief explanation, but did not provide copies of documents as requested by the Division. (Kirsten Anderson's (Anderson's) testimony.)

(41) Since July 2010 the Division has granted licenses to mortgage loan originator applicants who have filed bankruptcy where the applicant has revealed his or her financial circumstances honestly and fairly to the Division and presented a plan to pay their debts. (Anderson's testimony.)

(42) At the hearing, Respondent contended that he and his wife had paid down Brandon's medical bills to approximately \$86,000 from approximately \$250,000. However, he presented no documentation at the hearing to support his contention. Respondent also contended at the hearing that he has paid other debts and judgments, but provided no documentation to support his contention. At the hearing, he was unsure of the number of his creditors and amounts he owed those creditors. (Respondent's testimony.)

*(2) Facts regarding the burglary conviction.*¹

(43) On June 1, 2010, Respondent filed an application for a mortgage loan originator license with the Division. (Ex. A3.) The application included a question, "Have you ever been convicted of or pled guilty or nolo contendere ("no contest") in a

¹ The facts and exhibits numbers regarding the burglary conviction issue are taken from the Findings of Fact in the Rulings on Motions for Summary Determination issued June 1, 2011, and are incorporated herein.

domestic, foreign or military court to any felony?" (*Id.* at 17.) Respondent answered "yes." (*Id.*)

(44) On February 24, 1994, Respondent pled guilty in Benton County Circuit Court to burglary in the first degree. (Ex. A1.) The guilty plea and conviction resulted from a district attorney information that charged Respondent as follows:

Burglary in the First Degree (Occupied Dwelling) committed as follows:

The defendant, on or about 11/16/93, in the County of Benton and State of Oregon, did unlawfully and knowingly enter and remain in the RESIDENCE of * * * a dwelling located at * * * with the intent to commit the crime(s) of THEFT therein.

(Ex. A2 at 1.)

(45) Respondent explained his conviction to the Division during the application process as follows:

Back in 1993 while down at OSU my roommate and I had our bikes stolen. We were told to go over to a fraternity house that was known for doing such things. We walked through the front door and were looking around for our bikes. My roommate proceeded to steal someone's wallet and check book. The next week while he was using the stolen items without my knowledge he was arrested and thrown in jail. In turn I was convicted for being with him in the [f]raternity while a crime was being committed. I was in the wrong place at the wrong time with definitely the wrong person. This was a onetime event in my life that was almost 20 years ago.

(Ex. A5 at 2.)

(46) The application included a question, "Do you have any unsatisfied judgments or liens against you?" (Ex. A3 at 17.) Respondent answered "yes." (*Id.*) The application also included a question, "Within the past 10 years, have you filed a personal bankruptcy petition or been subject of an involuntary bankruptcy petition?" (*Id.*) Respondent answered "yes." (*Id.*)

(47) Respondent explained his financial circumstances to the Division during the application process as follows:

I am currently in the process of going through a bankruptcy. The issues started when my son was diagnosed with stage 4 cancer and I was unable to work to my full potential. This inturn (*sic*) cause (*sic*) some of my employees to find employment with other companies. This along with to

(sic) many obligations in connection with our offices sent us into a downward spiral.

Along with the bankruptcy there are a few judgments for medical bills, one from an investment group for \$7000.00 and an unpaid judgment for a piece of property my wife sold and the buyers were able to get a rescission (sic) on the sale of property with no evidence of wrong doing.

(Ex. A5 at 2.)

(48) The Division denied Respondent's application on two grounds. First, the Division concluded that Respondent failed to satisfy the requirements of ORS 86A.212(1)(d) by not demonstrating financial responsibility. Second, the Division believed that Respondent's conviction for burglary "involved a felony and an element of the felony was an act of fraud, dishonesty, a breach of trust or laundering monetary instruments." (Amended Order, September 1, 2010.)

CONCLUSIONS OF LAW

(1) Respondent has not demonstrated financial responsibility to satisfy the requirements of ORS 86A.212(1)(d) and OAR 441-880-0210 to obtain a mortgage loan originator's license.

(2) Respondent's conviction for burglary in the first degree does not disqualify him under ORS 86A.212(1)(c)(B) from obtaining a mortgage loan originator's license.

OPINION

The Division denied Respondent's application for a mortgage loan originator's license. Respondent has the burden of proof to establish that he meets the qualifications for obtaining the license. ORS 86A.212; ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683 (1980). The allegations must be proven by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

(1) Denial based on lack of financial responsibility.

The Division is responsible for licensing mortgage loan originators and regulating their conduct. ORS 86A.212 *et seq.* The Division has the duty, especially in light of abuses in the mortgage industry that led Congress in 2008 to enact the SAFE Act, to make certain that mortgage loan originators meet the qualifications for licensure.

Mortgage loan originators work with individuals to obtain home mortgages. Such transactions often involve hundreds of thousands of dollars and represent the individual's largest asset. It is important for mortgage loan originators to keep careful and accurate records, complete forms correctly and honestly, and conduct themselves with integrity.

ORS 86A.212(1)(d) states that the Division may not issue a mortgage loan originator license to an applicant, unless the applicant:

Has demonstrated financial responsibility sufficient to command the confidence of the community and warrant the determination that the applicant will operate honestly, fairly and efficiently within the purposes of ORS 86A.200 to 86A.239.

The criteria for determining financial responsibility are set forth in OAR 441-880-0210 as follows:

(1) For purposes of this rule, an applicant is not financial (*sic*) responsible if the applicant has shown a disregard of his or her own financial circumstances, taking into consideration the totality of the applicant's financial circumstances.

(2) Factors that the director may consider in determining whether an applicant has not demonstrated financial responsibility include, but are not limited to, the following:

- (a) Current outstanding judgments or material litigation, excluding judgments solely as a result of medical expenses;
- (b) Current outstanding tax liens or other government liens and filings;
- (c) A foreclosure within the past three years and the type of property subject to foreclosure, whether residential or commercial;
- (d) Pending or completed bankruptcy proceedings, and the nature of the proceedings, occurring within the past five years; or
- (e) A pattern of seriously delinquent accounts within the past five years.

(2) (*sic*) In assessing the financial responsibility of the applicant, the director may consider extenuating or mitigating factors, including but not limited to the following:

- (a) Involuntary loss of job or income;
- (b) Involuntary medical expenses;
- (c) Divorce;
- (d) Attempting workout arrangements with creditors; or
- (e) Any other factor the director believes reflects circumstances beyond the control the applicant.

(3) (*sic*) This rule applies to mortgage loan originators licensed on or after July 31, 2010.

Respondent failed to meet his burden under ORS 86A.212(1)(d) and OAR 441-880-0210 to establish that he has financial responsibility sufficient to command the confidence of the community and warrant the determination that he will operate honestly, fairly and efficiently.

The factors in OAR 441-880-0210(2) are examined in turn.

(a) Current outstanding judgments or material litigation.

Respondent and his wife have debts of approximately \$1.5 million. They listed liabilities of \$1,455,717 on their Chapter 7 bankruptcy petition filed May 29, 2009. Those debts cannot be discharged because Respondent did not follow through with the conversion from a Chapter 7 petition to a Chapter 13 repayment plan as he was allowed to do by the bankruptcy court.

The current outstanding judgments include those resulting from litigation against Respondent by the Metjes, from litigation against Respondent over the failed investment in Cash's Realty, and from litigation against Respondent by a former investment partner, Elliott Leighton.

The current outstanding judgments against Respondent also include deficiency judgments on the yacht and on the Hummer and Cadillac vehicles.

(b) Current outstanding tax liens.

Respondent has both federal and Oregon tax liens against him.

(c) Foreclosure with the past three years.

The 14th Place property was foreclosed in May 2008. Although only Mrs. Morris's name was on the title to that property, Respondent treated the property as his own for residential and business purposes and participated in using Chapter 13 of the bankruptcy laws to stop foreclosure on that property.

(d) Pending or completed bankruptcy proceedings within the past five years.

Respondent filed bankruptcy proceedings under both Chapters 7 and 13 within the last five years. The Chapter 13 petition, filed in May 2008, established a \$690 monthly payment plan for Respondent and Mrs. Morris to pay back their creditors. They failed to make the two monthly payments to get them to their confirmation hearing on the plan. Had they made their two payments and had their plan been confirmed, Respondent's

family could have stayed in the 14th Place residence, the family could have kept their two vehicles, and a significant portion of their debts could have been discharged.

The Morrises has a second chance to improve their financial situation when the bankruptcy court in August 2010 gave the opportunity to convert their Chapter 7 bankruptcy petition to a Chapter 13 repayment plan. Respondent and his wife failed to follow through with the conversion plan and now will be denied discharge of their debts under a future Chapter 7 petition.

(e) A pattern of seriously delinquent accounts within the past five years.

Respondent has a pattern of seriously delinquent accounts within the past five years. In his Chapter 7 petition filed in May 2009, Respondent and Mrs. Morris listed total liabilities of nearly \$1.5 million. Among their debts, they listed 86 creditors with unsecured non-priority claims. At hearing, Respondent was unsure of the number of his creditors and the amount of his debts.

Respondent has not demonstrated that he is financially responsible applying the factors set forth in OAR 441-880-0210(2)(a) through (e).

Respondent argues that his current poor financial circumstances resulted from his son's medical bills and the collapse of the mortgage industry. OAR 441-880-0210[3] permits an applicant to present evidence of extenuating or mitigating factors in assessing the applicant's financial responsibility, such as involuntary loss of job or income and involuntary medical expenses. OAR 441-880-0210[3](a) and (b). Respondent's argument is not persuasive.

Respondent's lack of financial responsibility existed before his son was diagnosed with cancer in September 2005, and long before the mortgage industry collapsed in 2008. Respondent acknowledged that as early as 2002, when he started his Straight Line Mortgage businesses, he did not keep business ledgers and did not review or reconcile bank statements. He paid personal expenses out of business funds. Respondent regularly commingled his business and personal funds. His investment in Cash's Realty failed in 2003, resulting in him being sued and a money judgment entered against him for approximately \$22,000. That judgment remains unpaid. The November 2003 judgment against Respondent for attorneys' fees of \$7,265 owed to the law firm that represented the Morrises in the litigation also remains unpaid.

OAR 441-880-0210(1) states that an applicant is not financially responsible if the applicant has shown a disregard of his or her own financial circumstances, taking into consideration the totality of the applicant's financial circumstances. ORS 86A.212(1)(d) requires that an applicant demonstrate financial responsibility sufficient to command the confidence of the community and warrant determination that the applicant will operate honestly, and fairly and efficiently.

A financially responsible individual, faced with substantial medical bills and a significant drop in income, would have adjusted their spending habits to reflect the reality of their financial circumstances. Instead, among other financial decisions, in 2007 or 2008, Respondent made a \$50,000 down payment on a \$200,000 yacht.

There is strong evidence that Respondent engaged in fraudulent transfers of property with the sale of the condominium to his father and the sale of the Riverhouse property to a long-time close personal friend. The bankruptcy trustee believed that Respondent committed bankruptcy fraud and filed a complaint against Respondent and his wife alleging fraud. The bankruptcy court also questioned Respondent's honesty regarding his dealings with his creditors.

Respondent received approximately \$120,000 in proceeds from the sale of the Alpenglow property and approximately \$300,000 from the sale of the Riverhouse property. From the Riverhouse sale proceeds, Respondent claims he spent \$140,000 to build a barn for his friend, Dorsett. He had no legal obligation under the contract of sale to build a barn. He also claims to have spent another \$30,000 on repairs to the property. The contract of sale contained an "as-is" clause that Dorsett was buying the property with all defects, but also contained a clause that bound Respondent to make any repairs requested by Dorsett. A seller of property in an arms-length transaction would not agree to an open-ended promise to make repairs to the property as requested by the buyer. Respondent also claims that he paid Dorsett cash rent of \$4,000 a month on the property.

ALJ Betterton concluded that Respondent sold the Alpenglow and Riverhouse properties to shield assets from his creditors. Such conduct demonstrates that an individual will not operate honestly as a mortgage loan originator.

Respondent presented no documentation to show that he used the proceeds from the sale of the Alpenglow or Riverhouse properties to pay creditors. A responsible individual, trying to right his financial ship, would have made an effort to pay creditors and been able to document those efforts.

The attorney for the bankruptcy trustee concluded that the Morrises funneled approximately \$588,000 through a business account from May 2007 through March 2009 and paid at least \$300,000 in personal expenses from that account. During that same time period, the Morrises failed to make two \$690 monthly payments on their Chapter 13 repayment plan that could have yielded financial protection for them under bankruptcy laws. Respondent's conduct in handling that aspect of his financial affairs demonstrates a lack of financial responsibility and a failure to operate honestly and fairly.

There are other examples that Respondent's conduct and practices demonstrate a lack of financial responsibility and integrity.

Respondent failed to file tax returns timely for several years. When requested by the Division to provide copies of documents pertaining to his bankruptcy filings and the judgments against him, Respondent failed to provide the copies.

When asked under oath by the attorney for the bankruptcy trustee why his Chapter 13 repayment plan had been dismissed, Respondent said it was because his tax returns had not been filed. In fact, the Chapter 13 plan was dismissed because Respondent had not made two monthly payments of \$690 to keep his repayment plan on track.

Respondent completed and signed two bankruptcy petitions and schedules within 12 months. The forms asked for the same information. Both petitions contained written warnings to the signer of the consequences of providing false information. On the Chapter 13 petition in 2008, Respondent represented that his income had been \$18,000 for 2008 and \$48,000 for 2007. On the Chapter 7 petition in 2009, he represented his income had been \$0.00 for 2008 and \$0.00 for 2007. Respondent represented on the bankruptcy papers that he netted \$30,000 from the sale of the Riverhouse property, when in fact he received \$300,000. He represented that he had netted \$15,000 from the sale of the Alpenglow property, when in fact he had received \$120,000.

In sum, the evidence fails to establish that Respondent possesses the financial responsibility sufficient to command the confidence of the community and that he will operate honestly, fairly and efficiently as a mortgage loan originator.

(2) Denial based on burglary conviction.²

The United States Congress in 2008 enacted the “Secure and Fair Enforcement for Mortgage Licensing of 2008” (SAFE Act), 12 USCA §§ 5101 through 5116. The purpose of the SAFE Act is to increase uniformity, reduce regulatory burden, enhance consumer protection and reduce fraud in the mortgage lending industry. 12 USCA § 5101. The SAFE Act requires that states put in place a SAFE Act compliant system. 12 USCA § 5107. Section 5107 of the SAFE Act provides that if a state does not create a licensing system that complies with the SAFE Act’s requirements, the Secretary of Housing and Urban Development (HUD) is authorized to make that determination and set up a separate, federal licensing system for loan originators in that state.

Section 5104 of the SAFE Act provides, in relevant part, that an applicant may qualify for a mortgage loan originator’s license if:

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court

(A) During the 7-year period preceding the date of the application for licensing and registration; or (B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

² The opinion for section (2), denial based on burglary conviction, is taken from the Rulings on Motions for Summary Determination issued June 1, 2011, and is incorporated by reference herein.

The Oregon legislature passed House Bill (HB) 2189 in 2009 in response to the SAFE Act. ORS 86A.212(1) was enacted as part of HB 2189. ORS 86A.212(1) provides, in relevant part:

The Director of the Department of Consumer and Business Services may not issue a mortgage loan originator's license to an applicant unless the director finds, at a minimum, that the applicant:

* * * * *

(c) Has not been convicted of or pleaded guilty or no contest in a state, federal, foreign or military court to a felony or to a misdemeanor if an essential element of the misdemeanor involved false statements or dishonesty:

(A) During a period of seven years before the date the applicant submits an application * * *; or

(B) At any time before the date the applicant submits an application under ORS 86A.206, if the conviction or plea involved a felony and an element of the felony was an act of fraud, dishonesty, a breach of trust or laundering a monetary instrument. * * *.

The question is whether Respondent's conviction for burglary in the first degree is a disqualifying conviction under ORS 86A.212(1)(c)(B).

Burglary is a felony. ORS 164.215;³ ORS 164.225.⁴ The Division argues that Respondent's burglary conviction "involved" the crime of theft (*i.e.*, dishonesty), and hence is a disqualifying conviction under ORS 86A.212(1)(c)(B). Respondent argues that ORS 86A.212(1)(c)(B) requires that an element of the felony must be an act of fraud or dishonesty. Respondent argues that fraud or dishonesty are not elements of the crime of burglary.

A person is not guilty of an offense unless the person acts with a culpable mental state with respect to each material element of the offense. ORS 161.095(2). *See also State v. Rainoldi*, 236 Or 129 (2010); *State v. Reynolds*, 183 Or App 245, 249 (2002) (If an allegation is truly an "element" of a crime, by definition, it is "material." * * *. A "material element" is one that the state must prove to establish the crime charged.); *State v. Mills*, 77 Or App 125, 129 (1985) (The "material elements" of a crime are those elements that must be proven to sustain a conviction.)

The elements of burglary are set forth in ORS 164.215 and ORS 164.225. The elements from ORS 164.215 are (1) a person enters or remains unlawfully in a building with (2) the intent to commit a crime therein. ORS 164.225 adds an additional element that the building must be a dwelling.

³Burglary in the second degree is a Class C felony. ORS 164.215(2).

⁴ Burglary in the first degree is a Class A felony. ORS 164.225(2).

Burglary requires proof of *intent* to commit a crime. It is not necessary to prove that an intended crime was committed.⁵ Theft is not a lesser included offense of the crime of burglary. *State v. Washington*, 273 Or 829, 838 (1975).

ALJ Betterton agrees with Respondent that fraud or dishonesty are not elements of burglary. A person who enters or remains unlawfully in a dwelling with the intent to sell marijuana is guilty of burglary in the first degree. *State v. Chatelain*, 347 Or 278 (2009). A person who enters or remains unlawfully in a dwelling with the intent to cause physical injury to any person is guilty of burglary in the first degree. ORS 164.225(1)(b); *Ross v. Hill*, 235 Or App 340 (2010). A person who enters or remains unlawfully in a dwelling who uses or threatens to use a dangerous weapon is guilty of burglary in the first degree. ORS 164.225(1)(c).

ORS 86A.212(1)(c)(B) requires that an element of the felony was an act of fraud or dishonesty. Burglary does not satisfy that requirement.

The Division argues that Respondent's interpretation of ORS 86A.212(1)(c)(B) does not conform to the SAFE Act, is not what the legislature intended, and could result in HUD setting up a separate federal licensing system because Oregon would be out of compliance with the SAFE Act. The Division relies on the language in Section 1504 "if such felony involved an act of fraud, dishonesty * * *" to support its position.

ORS 86A.212(1)(c)(B) states if the conviction "involved a felony and an element of the felony was an act of fraud, dishonesty * * *." The first step of statutory analysis is an examination of the text and context of the statute. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12 (1993). ORS 86A.212(1)(c)(B) is unambiguous on its face. It reads "an *element* of the felony was an act of fraud, dishonesty * * *." (Emphasis added.) As a second step, the legislative history may be considered to the extent it is useful. *State v. Gaines*, 346 Or 160, 164-173 (2009). David Tatman, the Division's administrator, stated in his written remarks before the legislative committee considering HB 2189, that the law would disqualify an applicant if the applicant "had a felony conviction at any time for fraud, breach of trust or money laundering." (Jon P. Stride's Declaration, Ex. 1 at 4.) Mr. Tatman's comments are not inconsistent with the

⁵See *State v. Sanders*, 280 Or 685, 689 (1977), where the court cited with approval *Commonwealth v. Ronchetti*, 333 Mass 78, 81-82, 128 N.E.2d 334 (1955), and stated:

If the defendant is charged with an illegal entry with the intent to commit theft, and there is evidence to support that charge, the jury can convict of burglary although the defendant committed an assault after entry and testified he entered with the intent to commit assault, not theft. Likewise, if the defendant was charged with an illegal entry with intent to commit theft, and there was evidence to support this charge, but he committed no crime after entry and he testified he intended to commit no crime, the jury can convict for burglary.

language that was adopted in ORS 86A.212(1)(c)(B). The elements of a crime are those elements that must be proven to sustain a conviction. *State v. Mills, supra*.

ALJ Betterton also found that the current language of the Oregon Statute does not contradict the federal language. The Division does not adopt that aspect of the ALJ's reasoning, but notes that ALJ Betterton also found that "if the legislature has enacted a statute that is contrary to the SAFE Act, the responsibility to correct the error rests with the legislature. The error cannot be corrected in a contested case hearing before the OAH under the Administrative Procedures Act."

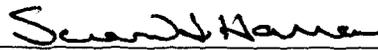
The Division, therefore, adopts the ALJ's finding that "Respondent's convictions for burglary in the first degree do not disqualify him from a mortgage loan originator's license under ORS 86A.212(1)(c)(B)."

Respondent's conviction for burglary in the first degree does not disqualify him from a mortgage loan originator's license under ORS 86A.212(1)(c)(B).

ORDER

Respondent Craig Alan Morris' application for a mortgage loan originator's license is denied.

DATED this 14th day of October, 2011.



Scott L. Harra, Acting Director
Department of Consumer and Business Services

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order. Judicial review is to the Oregon Court of Appeals pursuant to the provisions of ORS 183.482.