

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

5 In the Matter of:

M-08-0005

6 Pine Mountain Mortgage Inc. and
7 Del Barber Jr.,

8 Respondents.

9
10 FINAL ORDER TO CEASE AND DESIST,
11 ORDER REVOKING MORTGAGE
12 BROKER/BANKER LICENSE,
13 ORDER ASSESSING CIVIL PENALTIES
14 ENTERED BY DEFAULT

15 On or about March 18, 2008, the Director of the Department of Consumer and
16 Business Services for the State of Oregon (hereinafter "the Director") acting by the
17 authority of the Oregon Mortgage Lender Law, Chapter 59.840 et seq. of the Oregon
18 Revised Statutes (hereinafter cited as "the Oregon Mortgage Lender Law), and other
19 applicable authority, issued Administrative Order No. M-08-0005, ORDER TO CEASE
20 AND DESIST, ORDER REVOKING MORTGAGE BROKER/BANKER LICENSE,
21 ORDER ASSESSING CIVIL PENALTIES AND NOTICE OF RIGHT TO HEARING
22 (hereinafter "the Proposed Order") against Respondents Pine Mountain Mortgage Inc.
23 and Del Barber Jr.

24 On or about March 20, 2008, respondent was duly served with true copies of the
25 Proposed Order by regular, first-class mail and by certified mail, postage prepaid, and
26 addressed to: 1240 SW Knoll Ave. Suite 204 Bend, OR 97702, 19067 Mt Hood Pl.
Bend, OR 97701 and PO Box 1240 Bend, OR 97709. The copies sent by certified and
regular first-class mail to the first address were returned as undeliverable. The copy
sent by certified mail to the second address was returned as unclaimed, but the copy
sent regular first-class mail was not returned. The copy sent by certified mail to the third
address was also returned as unclaimed, but the copy sent regular first-class mail was

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1 not returned. The Respondent has not made a written request for a contested case
2 hearing in this matter and time to do so has expired.

3 NOW THEREFORE, after consideration of the Division's investigative file
4 and related documents, the Director hereby issues the following Findings of Fact,
5 Conclusions of Law, and Final Order.

6 FINDINGS OF FACT

7 The Director **FINDS** that:

8 1. Pine Mountain Mortgage Inc. (hereinafter "Pine"), is mortgage broker with a
9 principal place of business located at 1240 SW Knoll Avenue, Suite 204, Bend, Oregon
10 97702. Del Barber, Jr. (hereinafter "Barber") is the Experienced Person, President and
11 sole owner of Pine.

12 2. Pine first obtained a license to engage in Oregon residential mortgage
13 lending, license number ML-2432, on August 1, 2001. Pine surrendered the license on
14 July 22, 2004. Pine obtained a new license to engage in Oregon residential mortgage
15 lending, license number ML-3461, on November 22, 2004, but that was cancelled on
16 November 22, 2005 when Pine failed to renew the license. Pine immediately completed
17 its application and was issued a renewal license on November 23, 2005. The license
18 was then cancelled on September 21, 2005 because Pine failed to maintain its surety
19 bond. The Director re-instated Pine's license on October 5, 2006, but it was again
20 cancelled on August 16, 2007 when Pine again failed to maintain its surety bond. The
21 Director re-instated Pine's license on September 10, 2007, but cancelled it again on
22 November 24, 2007 when Pine failed to renew the license. Pine applied to renew the
23 license and was granted a 90-day license on January 9, 2008, which is set to expire on
24 April 9, 2008.

25 3. An Examiner employed by the Director conducted examinations of Pine on
26 February 9, 2004 (hereinafter "the February Exam"), June 1, 2004 (hereinafter "the June





1 Exam", and April 4, 2007 (hereinafter "the 2007 Exam"). On a scale of 1 to 5, with 5
2 being the worst, Pine received a score of 4 on each of the examinations.

3 **A. Notification**

4 **A.1. Address Changes**

5 4. The Director issued the initial license to Pine to operate only from a location
6 of 3624 NW Falcon Ridge, Bend, Oregon 97701.

7 5. On December 30, 2004, Pine moved its operation to 2564 NW Shields
8 Drive, Bend, Oregon 97701. Pine provided the Director with notice of the change of
9 address on January 10, 2005.

10 6. On March 1, 2006, Pine then moved its operation to 745 NW Mt.
11 Washington #304, Bend, Oregon 97701. Pine provided the Director with notice of the
12 change of address on April 7, 2006.

13 7. On January 1, 2007, Pine moved its operation to 1465 NW Knoll #204,
14 Bend, Oregon 97701, which is its present location. Pine provided the Director with
15 notice of the change of address on January 12, 2007.

16 **A.2. Clients' Trust Account**

17 8. Pine provided notice of a clients' trust account located at Bank of the
18 Cascades when it applied for its initial license.

19 9. Pine notified the Examiner during the February Exam that Pine had closed
20 the clients' trust account approximately eighteen months prior to the exam. This was
21 the first notice that Pine provided the Director regarding the closure of the clients' trust
22 account.

23 10. As part of the 2007 Exam, Pine reported that it does not operate a clients'
24 trust account. However, in response to the 2007 Exam, Pine provided a copy of a
25 disclosure that it provides to borrowers that indicates that the company will collect a
26 admin fee, appraisal fee, credit reporting fee, and processing fee "at the time of



1 acceptance of your loan application..." and does not indicate that such funds are non-
2 refundable.

3 **B. Personnel and Loan Originator Issues**

4 **B.1. Loan Originator Education**

5 11. On January 1, 2002, a new requirement, OAR 441-880-0020, went into
6 effect requiring all loan originators to obtain continuing education every two-year period
7 beginning from the date the Director was first notified that the loan originator was
8 originating loans, called the notification date. OAR 441-880-0030(6) provided that an
9 employer could not hire or continue to employ a loan originator who failed to complete
10 the required education.

11 12. Barber began originating loans for Pine on August 1, 2001. His notification
12 date is January 30, 2002. Accordingly Barber was required to complete 20 hours of
13 continuing education by January 30, 2004. Pine provided evidence that Barber had
14 completed the required continuing education on December 12, 2003.

15 13. Barber was then required to complete 20 hours of continuing education
16 between January 31, 2004 and January 30, 2006. Pine failed to provide any education
17 certificates during the 2007 Exam that evidenced that Barber had completed the
18 required continuing education. Pine continued to employ Barber as a loan originator
19 after January 30, 2006 despite the fact that he had not completed the required
20 continuing education.

21 14. During the 2007 Exam, Pine provided an education certificate that showed
22 that Barber had completed a Truth in Lending course offered by Broker Knowledge
23 Group on August 8, 2006, which provided 2 hours of continuing education. Pine also
24 provided a printout taken on January 16, 2007 of one screen of the Training Pro website
25 showing that Barber had completed some courses, but not all, of the company's course
26 "Oregon Current Trends in Mortgage Lending: 20 Hours Continuing Education

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1 Overview.” The printout did not indicate how many hours of continuing education
2 Barber completed.

3 **B.2. Personnel Ledger**

4 15. As part of the 2007 Exam, Pine provided a copy of its sole personnel file.
5 The file did not contain the name of the person, which is believed to be Barber. The file
6 also did not contain the loan originator’s e-mail address.

7 **B.3. Complaint Files**

8 16. As part of the 2007 Exam, Pine provided a single page document labeled
9 “Complaint Register.” The document listed only one consumer complaint. That
10 complaint was from March 21, 2006 and it listed a vague disposition, but did not list the
11 consumer’s name or the subject of the complaint. There were no other documents
12 provided.

13 17. Division records show receiving two consumer complaints in 2001, four
14 consumer complaints in 2004, two consumer complaints in 2006, and one complaint in
15 2007 of which Pine was notified and requested to respond. Only the 2006 complaint
16 was listed on the “Complaint Register.”

17 **B.4. Criminal Records Checks**

18 18. On January 1, 2004, a new law went into effect requiring all licensees to
19 conduct criminal records checks on all existing loan originators by April 30, 2004.

20 19. Pine did not complete a criminal records check for Barber until June 9,
21 2004, after the June Exam and the April 30, 2004 deadline.

22 **C. Borrower File and Disclosure Issues**

23 **C.1. Executed Loan Applications**

24 20. The February Exam revealed that the Gage and Lovisco files did not
25 contain an executed loan application.

26 21. The 2007 Exam revealed that the Denton loan file from August 2006 did not

1 contain an executed loan application.

2 **C.2. Truth in Lending Disclosures**

3 22. The February Exam revealed that Lovisco file contained a TIL that
4 disclosed the prepaid finance charges as \$525 when they actually exceeded \$4,000

5 23. The February Exam revealed that the Holliday file contained a TIL that
6 disclosed the prepaid finance charges as \$2,650.67 when they actually exceeded
7 \$3,500.

8 24. The February Exam revealed that the Gage file contained a TIL that
9 disclosed prepaid finance charges as \$332.50 when they actually exceeded \$2,500.

10 25. The June exam revealed that the Fortier file contained a TIL that disclosed
11 prepaid finance charges as \$1,581.51 when they actually exceeded \$3,000.

12 26. The June exam revealed that the Kirkpatrick file contained a TIL that
13 disclosed prepaid finance charges as \$4,187.50 when they actually exceeded \$9,000.

14 27. The June exam revealed that the Rinn file contained a TIL that disclosed
15 prepaid finance charges as \$2,294.04 when they actually exceeded \$3,000.

16 28. The 2007 exam revealed that the Villa file contained a TIL that disclosed
17 prepaid finance charges as \$558.80 when Pine demanded fees of \$1,840.

18 29. The 2007 exam revealed that the Fernandez file contained a TIL that
19 disclosed prepaid finance charges as \$6,399 when they actually exceeded \$6,500.

20 30. The 2007 exam revealed that the Denton file contained a TIL that disclosed
21 prepaid finance charges as \$808.49 when they actually exceeded \$3,000.

22 31. The February Exam included a review of the Holliday borrower file.
23 Holliday applied for a 30-year fixed mortgage. The Holliday file contained a TIL
24 disclosure that contained a payment stream reflecting that the loan would be repaid in
25 179 installments of the same amount with a balloon payment for the 180th payment,
26 which is not consistent with the 30-year fixed-rate loan for which the borrower applied.



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1 32. The June Exam included a review of the Fortier borrower file. Fortier
2 applied for a 30-year fixed mortgage. The Fortier file contained a TIL disclosure that
3 contained a payment stream reflecting that the loan would be repaid in 179 installments
4 of the same amount with a balloon payment for the 180th payment, which is not
5 consistent with the 30-year fixed-rate loan for which the borrower applied.

6 33. The 2007 Exam included a review of the Fernandez borrower file for a loan
7 in May 2006. Fernandez applied for a 30-year interest only option ARM mortgage. The
8 Fernandez file contained four TIL disclosures that each contained a payment stream
9 reflecting that the loan would be repaid in 359 installments of the same amount with a
10 balloon payment for the 360th payment, which is not consistent with the 30-year interest
11 only option ARM mortgage for which the borrower applied.

12 **D. Fraud**

13 34. In the spring of 2006, Barker applied for a mortgage loan from Pine, with
14 Barber as the loan originator, to purchase residential real property located in Sisters,
15 Oregon. Pine prepared a loan application for Barker that listed Barker's income as
16 \$7,700 per month, however, Pine and Barber knew that income was wrong because
17 documents in Pine's borrower file for Barker show that Barker's gross income was
18 \$2,400 and the combined household income was less than \$5,700 per month.

19 35. Pine submitted the loan application to First Franklin Financial Corporation
20 (hereinafter "Franklin"). On June 20, 2006, Franklin issued a conditional approval
21 based, in part, upon Barker's debt to income ratio being 49.24%. The maximum debt to
22 income ratio that Franklin would approve was 50.49%. The debt to income ratio using
23 the combined household income reported in Pine's borrower file for Barker was over
24 67% and was over 160% using just Barker's gross income, which would have exceeded
25 Franklin's allowable ratio.

26 36. As part of the conditions to making the loan, Franklin required that Barker



1 show at least \$23,400 in assets.

2 37. On or about June 20, 2006, Barber called Barker to tell him that he needed
3 to put \$24,000 in the bank and get a verification of deposit (hereinafter "VOD") for the
4 lender. Barker told Barber he did not have the \$24,000. Barber told Barker to ask
5 Barber's father to lend him the money. Barber told Barker that the money only had to
6 be in his bank account long enough to get the VOD completed.

7 38. Barber's father would not lend Barker the money. Barker asked Adame to
8 loan him the money. Adame agreed and deposited the money into Barker's bank
9 account on June 22, 2006. Adame received the money back from Barker before June
10 29, 2006.

11 39. On June 27, 2006, Barber called Barker and told him that the loan would
12 close that day. Later that same day, Barber called Barker and told him that the loan
13 was declined. Later that same day, Barber called Barker and told him he needed to call
14 Adame.

15 40. Barker called Adame. Adame told Barker that Barber had contacted
16 Adame with a plan to allow Barker to purchase the home. Adame believed the plan was
17 that Adame would apply as a co-borrower on the loan.

18 41. On June 27, 2006, Pine, through loan originator Barber, took a loan
19 application for Adame to purchase the residential real property sought by Barker.

20 42. Pine prepared a loan application for Adame that indicated that Adame
21 would occupy the property as a primary residence and listed Adame's income as \$7,500
22 per month. However, Barber was aware that the Adame would not occupy the property
23 but rather that Adame was purchasing the property for Barker to occupy as a primary
24 residence. In addition, Pine and Barber knew that the income reported on the
25 application was false because documents in Pine's borrower file for Adame show
26 Adame's net income was \$2,000 per month, far below the \$7,500 gross income



1 reported by Pine.

2 43. Pine submitted Adame's loan application to American Mortgage Network
3 Inc. (hereinafter "AmNet"). Based upon the representations that Adame would occupy
4 the home as a primary residence, Amnet approved for a 95% loan to value loan, which
5 funded on June 30, 2006. Despite Barker telling Adame that Adame would be a co-
6 borrower, Adame was the only person on the loan from AmNet.

7 44. If AmNet had known that Adame was not going to occupy the property as a
8 primary residence, AmNet's guidelines for the loan sought for Adame provide that the
9 maximum loan to value on a non-owner occupied loan is 85% and thus AmNet would
10 not have made the loan it did to Adame.

11 45. The loan that Pine obtained for Adame with Amnet provided for a maximum
12 of a 50% debt to income ratio. While the debt-to-income ratio based upon the income
13 reported by Pine in the Adame application provided for a debt-to-income ratio of
14 40.41%. The debt to income ratio using Adame's income reported in Pine's borrower
15 file for Adame was over 100%, which would have exceeded AmNet's allowable ratio
16 and AmNet would not have made the loan to Adame.

17 CONCLUSIONS OF LAW

18 The Director **CONCLUDES** that:

19 1. Pine violated OAR 441-860-0070(1)(i) by failing to provide the Director
20 with written notice of the change of address within thirty days of moving to 745 NW Mt.
21 Washington #304, Bend, Oregon 97701.

22 2. Pine violated ORS 59.935(1) by failing to maintain a clients' trust account
23 to deposit clients' trust funds collected pursuant to Pine's disclosure provided to
24 borrowers.

25 3. Barber violated ORS 59.971(1)(d) and OAR 441-880-0020(3) when
26 Barber failed to complete 20 hours of continuing education between January 30, 2004



1 and January 30, 2006.

2 4. Pine violated OAR 441-880-0030(6) when it continued to employ Barber
3 as a loan originator after he failed to complete the required 20 hours of continuing
4 education between January 30, 2004 and January 30, 2006.

5 5. Pine violated OAR 441-880-0030(7) by failing to maintain course
6 completion certificates in the personnel file for loan originator Barber.

7 6. Pine violated OAR 441-865-0050(1) by failing to maintain a personnel
8 ledger containing the name of the employee for Barber.

9 7. Pine violated OAR 441-865-0050(3) by failing to maintain a personnel
10 ledger containing the name and e-mail address for loan originator Barber.

11 8. Pine violated OAR 441-865-0040(1) by failing to maintain a complaint file
12 with copies of all written complaints by borrowers for two complaints filed in 2001, four
13 complaints filed in 2004, one complaint filed in 2006 and one complaint filed in 2007.

14 9. Pine violated OAR 441-865-0040(2) by failing to maintain a complaint file
15 with copies of correspondence related to the complaint and a written disposition of the
16 complaint by an officer, director or control person of Pine for two complaints filed in
17 2001, four complaints filed in 2004, one complaint filed in 2006 and one complaint filed
18 in 2007.

19 10. Pine violated OAR 441-880-0050(2) by failing to conduct a criminal record
20 check for Barber prior to April 30, 2004.

21 11. Pine violated OAR 441-865-0060(1)(a) by failing to maintain executed
22 loan applications in the Gage, Lovisco and Denton August 2006 files.

23 12. Pine violated OAR 441-865-0060(1)(g) by failing to maintain TILs in the
24 Lovisco, Holliday, Gage, Fortier, Kirkpatrick, Rinn, Villa, Fernandez and Denton files
25 that complied with the requirements of TILA at 12 CFR §226.18(d) to disclose the
26 finance charge because in each of the loans the prepaid finance charges were



1 underestimated by more than \$100 making the total finance charges underestimated by
2 more than \$100 in violation of 12 CFR § 226.18(d)(1).

3 13. Pine violated OAR 441-865-0060(1)(g) by failing to maintain TILs in the
4 Holliday, Fortier, and Fernandez files that complied with the requirements of TILA at 12
5 CFR §226.18(g) to disclose the number, amounts and timing of the payments.

6 14. Pine and Barber violated ORS 59.930(2) by submitting a loan application
7 knowing it contained materially false income information in an attempt obtain a loan for
8 Barker.

9 15. Pine and Barber violated ORS 59.930(2) by submitting a loan application
10 knowing it contained materially false income and occupancy information to obtain a loan
11 for Adame.

12 16. In violating ORS 59.930(2) by submitting loan applications that contained
13 materially false information, Pine engaged in dishonest, fraudulent, or illegal practices or
14 conduct in the mortgage lender business, which constitutes grounds for the Director to
15 revoke the Oregon residential mortgage lending license issued to Pine pursuant to ORS
16 59.865(2).

17 17. In repeatedly violating ORS 59.930(2) by submitting loan applications that
18 contained materially false information, Pine repeatedly failed to comply with a provision
19 of ORS 59.840 to 59.980, which constitutes grounds for the Director to revoke the
20 Oregon residential mortgage lending license issued to Pine pursuant to ORS 59.865(3).

21 18. By failing to keep records as prescribed by rules OAR 441-865-0050(1)
22 (personnel ledgers), OAR 441-880-0030(7) (education certificates), OAR 441-880-
23 0050(7) (criminal records checks documents), OAR 441-865-0040 (complaints from
24 borrowers and investors) 441-865-0060(1)(a) and (g) (executed loan applications and
25 TILs), Pine has violated ORS 59.860(1) which requires the mortgage brokers keep
26 records as prescribed by rule of the Director.



1 19. Because Pine failed to comply with the requirements of ORS 59.860(1) to
2 make and keep records, the Director may revoke the mortgage lender license issued to
3 Pine based upon ORS 59.865(11).

4 20. Pine failed to supervise diligently and adequately control its loan originator
5 by failing to ensure that its loan originator completed the required continuing education
6 in the time required, failing to terminate its loan originator who failed to complete the
7 continuing education, failing to ensure that each borrower's file contained accurate and
8 complete TILs, and failed to have adequate controls to prevent a loan originator from
9 submitting fraudulent applications.

10 21. Because Pine failed to supervise diligently and adequately control its loan
11 originator, the Director may revoke the mortgage lender license applied for by Pine
12 based upon ORS 59.865(15).

13 ORDER

14 NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:

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

18 The Director, pursuant to ORS 59.865 hereby **REVOKES** the Oregon residential
19 mortgage banker/broker license issued to Pine.

20 The Director, pursuant to ORS 59.996 hereby **ORDERS** Pine to pay the State of
21 Oregon a civil penalty of \$50,000. The civil penalty is based upon \$5,000 for the
22 violation of OAR 441-860-0070(1)(i), \$5,000 for the violation of ORS 59.935(1), \$5,000
23 for the violation of OAR 441-880-0030(6) and (7), \$5,000 for the violation of OAR 441-
24 865-0050(1) and (3), \$5,000 for the violation of OAR 441-865-0040(1) and (2), \$5,000
25 for the violation of OAR 441-880-0050(2), \$5,000 for the violation of 441-865-
26 0060(1)(a), \$5,000 for the violation of OAR 441-865-0060(1)(g), \$5,000 for each of two

1 | violations of ORS 59.930 for a total of \$10,000.

2 | The Director, pursuant to ORS 59.996 hereby **ORDERS** Barber to pay the State
3 | of Oregon a civil penalty of \$15,000. The civil penalty is based upon \$5,000 for the
4 | violation of ORS 59.971(1)(d) and OAR 441-880-0020(3) and \$5,000 for each of two
5 | violations of ORS 59.930 for a total of \$10,000.

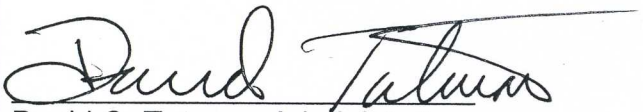
6 | The date of this order is the day the Director or Director's nominee signs the
7 | order. The entry of this Order in no way limits further remedies which may be available
8 | to the Director under Oregon law.

9 | The entry of this Order in no way limits further remedies which may be available
10 | to the Director under Oregon law.

11 | Dated this 11th day of April, 2008, at Salem, Oregon.

12 | NUNC PRO TUNC March 18, 2008.

13 | CORY STREISINGER, Director
14 | Department of Consumer and Business Services

15 | 
16 | David C. Tatman, Administrator
17 | Division of Finance and Corporate Securities

18 | NOTICE OF APPEAL RIGHTS

19 | You are entitled to seek judicial review of this final order. Judicial review may
20 | be obtained by filing a petition for review with the Oregon Court of Appeals in
21 | Salem, Oregon within sixty (60) days from the date of service of this final
22 | order. Judicial review is pursuant to the provisions of **ORS 183.482**.

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