

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING

FILED

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING, BUREAU OF  
COMPLIANCE, INVESTIGATION AND  
LICENSING

Docket No.: 09 0577 PA DEPT OF BANKING  
(ENF-C&D)

v.

AMERICAN FORECLOSURE  
SPECIALISTS.

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**ORDER TO CEASE AND DESIST**

**Background**

WHEREAS, the Department of Banking (the "Department") is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce 7 Pa. C.S. § 6101 et seq. (relating to mortgage loan industry licensing and consumer protection) (the "Mortgage Act"); and

WHEREAS, the Bureau of Compliance, Investigation and Licensing (the "Bureau") is primarily responsible for administering and enforcing the Mortgage Act for the Department; and

WHEREAS, the Mortgage Act is the successor statute to Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (the "MBBCEPA"), 63 P.S. § 456.301 et seq., and the Secondary Mortgage Loan Act (the "SMLA"), 7 P.S. § 6601 et seq. On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act; and

**WHEREAS**, American Foreclosure Specialists is a business located in Oklahoma that is engaged in the business of negotiating modifications to existing mortgage loans of consumers; and

**WHEREAS**, in or around April 2009 the Bureau became aware that American Foreclosure Specialists was engaged in the business of negotiating modifications to existing mortgage loans of Pennsylvania consumers; and

**WHEREAS**, American Foreclosure Specialists offers to refinance mortgage loans for Pennsylvania consumers in the mortgage loan modification process; and

**WHEREAS**, specifically, American Foreclosure Specialists' website, [www.afscanhelp.com](http://www.afscanhelp.com), states that American Foreclosure Specialists offers mortgage loan refinancing and Pennsylvania is listed in the dropdown menu of states American Foreclosure Specialists conducts business; and

**WHEREAS**, the Mortgage Act applies to any mortgage loan that is "(i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender or any other person; (ii) made or executed within this Commonwealth; or (iii) notwithstanding the place of execution, secured by real property located in this Commonwealth" or to "[a]ny person who engages in the mortgage loan business in this Commonwealth." 7 Pa. C.S. § 6151; and

**WHEREAS**, Section 6102 of the Mortgage Act defines a "first mortgage loan" as "[a] loan which is secured in whole or in part by a first lien upon any interest in real property created by a security agreement, including a mortgage, indenture, deed of trust or any other similar instrument or document, which real property is used as a one-family to four-family dwelling, a portion of which may be used for nonresidential purposes." 7 Pa. C.S. § 6102; and

**WHEREAS**, Section 6102 of the Mortgage Act defines a “secondary mortgage loan” as “[a] loan which is secured in whole or in part by a lien upon any interest in real property created by a security agreement, including a mortgage, indenture, deed of trust or any other similar instrument or document, which real property is subject to a prior lien and which is used as a one-family to four-family dwelling, a portion of which may be used for nonresidential purposes.” 7 Pa. C.S. § 6102; and

**WHEREAS**, Section 6102 of the Mortgage Act defines a “mortgage loan” as “[a] first or secondary mortgage loan, or both, as the context may require.” 7 Pa. C.S. § 6102; and

**WHEREAS**, Section 6102 of the Mortgage Act defines “mortgage loan business” as “[t]he business of *advertising*, causing to be advertised, soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans.” 7 Pa. C.S. § 6102 (emphasis added); and

**WHEREAS**, by advertising to refinance mortgage loans as part of the loan modification process with Pennsylvania consumers, American Foreclosure Specialists has engaged in the “mortgage loan business” as defined in the Mortgage Act; and

**WHEREAS**, American Foreclosure Specialists is not licensed to conduct mortgage loan business in Pennsylvania; and

**WHEREAS**, Section 6111 of the Mortgage Act provides that “. . . no person shall engage in the mortgage loan business in this Commonwealth without being licensed as a mortgage broker, mortgage lender, mortgage loan correspondent or mortgage originator as provided under this chapter.” 7 Pa. C.S. § 6111; and

**WHEREAS**, American Foreclosure Specialists has violated the Mortgage Act by engaging in the mortgage loan business in Pennsylvania without a license; and

**WHEREAS**, Section 6138(a)(4) of the Mortgage Act provides the Department with authority to issue orders as may be necessary for the proper conduct of the mortgage loan business and the enforcement of the Mortgage Act. 7 Pa. C.S. § 6138(a)(4); and

**WHEREAS**, Section 6140(a) of the Mortgage Act provides, in relevant part that “[a] person subject to the provisions of this chapter and not licensed by the department who violates any provision of this chapter or who commits any action which would subject a license to suspension, revocation or nonrenewal under section 6139 (relating to suspension, revocation or refusal) may be fined by the department up to \$10,000 for each offense.” 7 Pa. C.S. § 6140(a); and

**AND NOW, THEREFORE**, since American Foreclosure Specialists has engaged in unlicensed activity, the Bureau, pursuant to its authority referenced above hereby imposes the following Order:

1. Upon the effective date of this Order, American Foreclosure Specialists shall cease and desist from engaging in the mortgage loan business subject to the Mortgage Act, including, but not limited to, advertising (including website advertising) refinancing mortgage loans for Pennsylvania consumers and in refinancing mortgage loans for Pennsylvania consumers, unless and until such time that American Foreclosure Specialists is licensed by the Department pursuant to the Mortgage Act.

2. Upon the effective date of this Order, American Foreclosure Specialists shall provide a list of Pennsylvania consumers that are working with American Foreclosure Specialists. The list shall include, but is not limited to:

- a. The names of all Pennsylvania consumers that have responded to American Foreclosure Specialists' advertisements or that American Foreclosure Specialists has as clients;
- b. The address and telephone numbers of the consumers listed in (a); and
- c. The current application status.

The list shall be sent to John Talalai, Administrator, Compliance Division, at \_\_\_\_\_ by 5:00 PM eastern time on the effective Date of this Order.

3. Nothing in this Order shall prevent the Bureau from taking any further administrative action as deemed necessary including, but not limited to imposing fines pursuant to Section 6140(a) of the Mortgage Act or seeking restitution for Pennsylvania consumers.

**IT IS SO ORDERED.**

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Administrator  
Compliance Division  
Department of Banking,  
Bureau of Compliance, Investigation and Licensing

5/7/2009  
(Date)

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Order to Cease and Desist upon the parties below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED AND FIRST CLASS MAIL

American Foreclosure Specialists  
10314 N. 138 E. Ave.  
Suite 103  
Owasso, OK 74055

Dated this 7<sup>th</sup> day of May, 2009.

Lauren A. Sassani  
Assistant Counsel  
Attorney I.D. # 203016  
FOR: Commonwealth of Pennsylvania  
Department of Banking  
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