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DEPARTMENT OF BANKING

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA : Docket No. : 09 0040 (ENF-CO)
 DEPARTMENT OF BANKING, BUREAU :
 OF COMPLIANCE, INVESTIGATION :
 AND LICENSING, :
 :
 :
 v. :
 AMERISAVE MORTGAGE :
 CORPORATION. :

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations, has conducted an examination of Amerisave Mortgage Corporation ("Amerisave") and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") believes that Amerisave operated in violation of 7 Pa. C. S. § 6101 et seq. (the "Mortgage Act"). The parties to the above captioned matter, in lieu of litigation, hereby agree to the terms of this Consent Agreement and Order (the "Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Mortgage Act.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Act for the Department.
3. 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2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act.

4. Amerisave was licensed as First Mortgage Banker, license no. 14042, pursuant to the MBBCEPA and as a Secondary Mortgage Broker, license no. 12970, pursuant to the SMLA.

5. Amerisave was granted a conditional license pursuant to the Mortgage Act on November 5, 2008.

6. Amerisave is currently licensed as a Mortgage Lender pursuant to the Mortgage Act.

7. Amerisave currently maintains its principal place of business in Pennsylvania at 650 N Cannon Ave, Ste. 133, Lansdale, PA 19446-1874 (the "Principal Place").

8. Amerisave's Principal Place was formally located at 587 S. Main St., Shrewsbury, PA 17361-1753 (the "Former Principal Place") until May 15, 2008, when the office was relocated to Lansdale, PA.

9. Amerisave currently maintains a branch license at the corporate headquarters located at One Capital City Plaza, 3350 Peachtree Rd. NE, Ste. 1000, Atlanta, GA 30326-1040 (the "Corporate Office").

10. On February 19, 2008, an examiner from the Department initiated an examination of Amerisave at the Former Principal Place (the "Examination").

11. At the time of the Examination, the Former Principal Place and the Corporate Office were the only licensed locations of Amerisave.

Unlicensed Activity

12. The Bureau alleges that in 2007 and 2008, Amerisave originated two hundred fifty-nine (259) Pennsylvania first mortgage loans and nine (9) Pennsylvania secondary

mortgage loans from locations that were not licensed as branches under the Mortgage Act (formerly the MBBCEPA and the SMLA).

13. Specifically, Amerisave provided the examiner with a spreadsheet (the "Spreadsheet") that listed:

- a. all of the locations from which mortgage loans were originated;
- b. the loan officer name and loan officer home addresses; and
- c. application date, loan number, borrower, property address, status and lender for each application.

14. The Mortgage Act defines a "branch" as "[a]n office or other place of business, other than the principal place of business, located in this Commonwealth or any other state, where a person engages in the mortgage loan business subject to this chapter." 7 Pa.C.S. § 6102 (corresponding to 63 P.S. § 456.302).

15. Section 6131(a)(1)(ii) of the Mortgage Act (corresponding to Section 304(a) of the MBBCEPA and Section 4(a)(5) of the SMLA) provides, in relevant part, that an application for licensure shall include "the address *or addresses* where the applicant's mortgage loan business is to be conducted." 7 Pa.C.S. § 6131(a)(1)(ii) (emphasis added) (corresponding to 63 P.S. § 456.304(a) and 7 P.S. § 6604(a)(5)).

16. Section 6132(b)(2) of the Mortgage Act (corresponding to Section 305(a) of the MBBCEPA and Section 5 of the SMLA) provides that a licensee must pay a renewal fee for each branch office. 7 Pa.C.S. § 6132(b)(2) (corresponding to 63 P.S. § 456.305(a) and 7 P.S. § 6605).

17. Thus, based on the foregoing, any office of a licensee where mortgage loan business is conducted under the Mortgage Act must be licensed as a branch pursuant to the Mortgage Act.

18. The Examination revealed that in July 2007 Amerisave began the process of recruiting "Business Partners" who signed employment agreements stating that they would work out of their homes originating mortgage loans and then submit the applications through the Corporate Office.

19. The employment agreements indicated that the Business Partners were to use the Corporate Office address as their address as well as use telephone and fax numbers for the Corporate Office.

20. The Business Partners were located throughout the United States.

21. Amerisave contends that the violations alleged by the Bureau arose from differing interpretations of the former MBBCEPA and SMLA.

22. Upon learning the Bureau's view that Amerisave was in violation of the Mortgage Act, Amerisave immediately updated its application software to ensure that only employees working from a licensed location could accept and process Pennsylvania mortgage applications.

23. In addition, Amerisave worked with the Bureau to correct the language in its employment contracts in order to ensure that the violation is not repeated in the future.

Authority of the Department

24. Section 6138(a)(4) of the Mortgage Act (based upon Section 310(a) of the MBBCEPA and Section 16(1) of the SMLA) 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) (based upon 63 P.S. § 456.310(a) and 7 P.S. § 6616(1)).

25. Section 6140(b) of the Mortgage Act (corresponding to Section 314(c) of the MBBCEPA and Section 22(b) of the SMLA) provides, in relevant part, that "[a] person licensed

under this chapter or director, officer, owner, partner, employee or agent of a licensee who violates a provision of this chapter or who commits any action which would subject the licensee to suspension, revocation or nonrenewal under section 6139 may be fined by the department up to \$10,000 for each offense.” 7 Pa C.S. § 6140(b) (corresponding to 63 P.S. § 456.314(c) and 7 P.S. § 6622(b)).

VIOLATION

26. The Bureau alleges that by conducting mortgage loan business from unlicensed locations, Amerisave was in violation of Sections 6131(a)(1)(ii) and 6132(b)(2) of the Mortgage Act.

27. Amerisave disagrees with the alleged violations, but consents to this Order as a compromise of disputed claims.

RELIEF

28. Fine. Amerisave agrees to pay a fine of fifty thousand dollars (\$50,000) which shall be due and payable to the Department in two monthly installments of twenty-five thousand dollars (\$25,000). The first installment shall be due and payable within thirty (30) days of the Effective Date of this Order and the second installment shall be due and payable within sixty (60) days of the Effective Date of this Order. Payments shall be remitted by certified checks or money orders made payable to the Pennsylvania Department of Banking and sent to the attention of the Compliance Division, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

28. Fine in abeyance. Amerisave agrees that an additional fifty thousand dollars (\$50,000) will be held as a fine in abeyance. If Amerisave violates or fails to comply with the terms of this Order, the Bureau may so advise Amerisave. If, after due notice and an opportunity

to be heard, the Secretary of Banking concludes that Amerisave has violated the terms of this Order, the Bureau may reinstate the fine in abeyance, which shall become due and payable within sixty (60) days of the Secretary's final decision.

29. Corrective Measures. Upon the Effective Date of this Order, Amerisave shall cease and desist from originating Pennsylvania mortgage loans from unlicensed locations.

FURTHER PROVISIONS

30. Consent. Amerisave hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the Mortgage Act and agrees that it understands all of the terms and conditions contained therein. Amerisave, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

31. Publication. The Department will publish this Order pursuant to its authority in Section 302.A.(5) of the Department of Banking Code. 71 P.S. § 733-302.A.(5).

32. Entire Agreement. This Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Bureau and Amerisave.

33. Binding Nature. The Department and Amerisave intend to be and are legally bound by the terms of this Order.

34. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

35. Effectiveness. Amerisave hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

36. Other Enforcement Action.

a. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Amerisave in the future regarding all matters not resolved by this Order.

b. Amerisave acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

37. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

38. Counterparts. This Order may be executed in separate counterparts and by facsimile.

39. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recited paragraphs, the Department and Amerisave intending to be legally bound, do hereby execute this Consent Agreement and Order.

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

Ryan M. Walsh, Administrator
Bureau of Compliance
Investigation and Licensing
Department of Banking

Date: March 9, 2009

FOR AMERISAVE MORTGAGE CORPORATION

(Officer Signature)

(Print Officer Name)

(Title)

Date: 3-6-2009