

**STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF MORTGAGE LENDING**

In re:

Kemper Mortgage, Inc., an Illinois  
corporation,

Respondent.

**AMENDED**

**NOTICE OF INTENT TO REVOKE MORTGAGE BROKER  
LICENSE, NOTICE OF INTENT TO IMPOSE FINE AND  
NOTICE OF RIGHT TO REQUEST HEARING**

The licensing and regulation of mortgage brokers and mortgage agents in the State of Nevada is governed by Chapter 645B of the Nevada Revised Statutes (“NRS”) and Chapter 645B of the Nevada Administrative Code (“NAC”). The State of Nevada, Department of Business and Industry, Division of Mortgage Lending (the “Division”) has the general duty to exercise supervision and control over mortgage brokers and mortgage agents, as well as mortgage broker and mortgage agent activity. See, NRS 645B.060(1), NRS 645B.670 and NRS 645B.690. Pursuant to that authority, the Division makes the following Factual Allegations, Violations of Law, and Initial Order, as follows:

**FACTUAL ALLEGATIONS**

1. Kemper Mortgage, Inc. (“Respondent”) is an Illinois corporation. On July 21, 2005, Respondent was issued a mortgage broker license pursuant to Chapter 645B of NRS. Respondent operated within the State of Nevada as a licensed mortgage broker until its license expired on June 30, 2008, for failure to renew. See, NRS 645B.050(1).

The Division currently classifies Respondent's license as closed. All factual allegations occurred while Respondent held an active mortgage broker license.

2. Pursuant to NRS 645B.060, the Commissioner shall exercise general supervision and control over mortgage brokers and mortgage agents doing business in this State and, "is charged with conducting...such investigations as may be necessary to determine whether any person has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner." See, NRS 645B.060(2)(c).

3. Pursuant to NRS 645B.610, if a person properly files a complaint with the Division, the Division is further charged with investigating "...each violation alleged in the complaint..." and the Division "...shall determine from the investigation whether there is reasonable cause to believe that the person committed the alleged violation...." See, NRS 645B.610(1), (3).

4. On April 24, 2007, the Division received a complaint from a widow, Ms. Dorothy S. Warren, alleging that a deceptive advertisement had been sent to her husband who had been dead for more than 23 years. The advertisement referenced a "Personal Identification Number" as well as a reduction of her deceased husband's mortgage payment, but there was no mortgage on the home.

5. By letter dated July 12, 2007, addressed to Respondent, Supervisory Examiner Sheila Walther of the Division advised Respondent that "...NRS 645B.189 prohibits deceptive advertising. Making statements regarding false sources of receipt of information, misleading recipients that the mailing was sent from another entity, indicating the mailing is related to a 'New Pin Number', promoting that the recipient is

qualified for a limited program now available due to changes in government guidelines that only entails a call to begin 'processing their new payment' appear deceptive...."

6. The Division received a complaint from John Nelson in June 2007, alleging that he had received an advertisement from Respondent which referenced the enclosure of a "New PIN." By letter dated August 7, 2007, addressed to Respondent, Sheila Walther, Supervisory Examiner of the Division, advised Respondent that that verbiage "...would indicate that the correspondence is related to an existing account, not a new solicitation, and is deceptive...." The Division instructed Respondent to "cease and desist use of this term immediately from any further correspondences." Further, notwithstanding written assurances from Respondent that Mr. Nelson had been removed from their mailing list, Mr. Nelson received an additional solicitation.

7. On or about September 27, 2007, the Division received two additional complaints alleging deceptive advertising by Respondent. Senior Investigator Tony Frascarelli of the Division advised Respondent in an October 5, 2007 e-mail that use of solicitations utilizing an unaffiliated entity's name was deceptive under NRS 598.

8. After receiving the complaints regarding Respondent, the Division commenced an investigation and determined the following:

a. RESPONDENT had engaged in a pattern of deceptive trade practices, as defined in NRS 598.0915, and a pattern of deceitful, fraudulent or dishonest business practice by publishing and disseminating advertisements where Respondent had knowingly made false representations as to an existing account by referencing a Personal Identification Number or the enclosure of a "New PIN" number and false representations as to an affiliation, connection or association with another entity where

no such affiliation, connection or association existed, in violation of NRS 645B.189(4)(a), NRS 645B.670(2)(o) and NRS 598.0915(3) and (15); and

b. Respondent continued to engage in a pattern of deceptive trade practices through its advertising material, even after being advised by the Division to cease and desist from these activities.

9. The Division discovered during the course of investigating another complaint against Respondent that Respondent had hired Brad Carr ("Carr") as a full-time, commissioned mortgage agent on February 5, 2007. However, Carr did not submit a mortgage agent application to the Division pursuant to NRS 645B.410 until June 22, 2007. Respondent paid commissions to Carr on three loans originated and closed prior to Carr's licensure, in violation of NRS 645B.450(2).

10. On June 12, 2008, the Division commenced its annual examination of Respondent. The examination concluded on or about August 5, 2008. During the examination, the Division discovered violations of laws and regulations by Respondent, as follows:

a. Respondent failed to submit to the Division an annual financial statement for fiscal year 2007 prepared from Respondent's books and records by a Nevada licensed independent public accountant, as required by NRS 645B.085.

b. Respondent failed to submit monthly activity reports for the months of October 2007 through August 2008, as required by NRS 645B.080(2) and NAC 645B.070(1).

c. Respondent failed to pay the fiscal year 2008 certified public accountant assessment in the amount of \$71.50 plus the 10% late fee in the amount of

\$7.15, as required by NAC 645B.064.

d. Respondent failed to pay the fiscal year 2008 Attorney General assessment in the amount of \$560.44 plus the 10% late fee in the amount of \$56.04, as required by NRS 645F.290.

e. Respondent failed to pay the 2008 examination fee in the amount of \$3,180.00 plus the 10% late fee in the amount of \$318.00, as required by NAC 645B.060.

f. During the examination, Respondent failed to provide all documentation required to complete the examination, including the completed Manager's Questionnaire, 12 months of quick books complete with descriptions on all transactions, copies of complete payroll records to include copies of 1099's and/or W2's, a copy of an interim financial statement from the latest month end, a list of warehouse lines of credit reflecting with whom, the amount of each and a copy of the contracts and the last 15 denied or withdrawn files, as required by NAC 645B.072.

g. The loan files reviewed were also missing "complete and suitable records," as required by NAC 645B.072(1). The items that were missing from the loan files included the following: 1 loan file did not contain a copy of the note; 11 loan files did not contain copies of the recorded deeds of trust; 12 loan files did not contain copies of the final title policies; 2 loan files did not contain copies of the appraisals; 3 loan files did not contain copies of the lender approvals; 2 loan files did not contain copies of the final settlement statements; 5 loan files did not contain copies of the credit score notices; 1 loan file did not contain a copy of the FHA loan analysis; and 1 loan file did not contain a copy of the complete loan application.

h. Based upon settlement statements in 8 loan files reviewed, Respondent charged and collected discount fees. However, the fees did not buy down the interest rates and there were no services performed specific to this fee, in violation of Regulation X, 24 CFR §3500.14(c).

i. In 2 of the loan files reviewed, Respondent disclosed an inaccurate annual percentage rate and provided incomplete Truth in Lending disclosures, in violation of Regulation Z, federal Truth in Lending Act, 12 CFR §226.18(e).

### **VIOLATIONS OF LAW**

Having investigated Respondent's activities, as more fully set forth above, the Division has found that Respondent violated NRS 645B.189(4)(a), NRS 645B.670(2)(o), NRS 598.0915(3) and (15), NRS 645B.080(1) and (2), NRS 645B.450(2), NRS 645B.085, NAC 645B.070(1), NAC 645B.064, NRS 645F.290, NAC 645B.060, NAC 645B.072, Regulation X, 24 CFR §3500.14(c), and Regulation Z, federal Truth in Lending Act, 12 CFR §226.18(e), as follows:

1. Respondent violated NRS 645B.189(4)(a) and NRS 598.0915(3) and (15) by engaging in a pattern of deceptive trade practices and a pattern of deceitful, fraudulent or dishonest business practice by publishing and disseminating advertisements where Respondent knowingly made false representations as to an existing account or affiliations, connections or associations, and continued these practices after being advised by the Division to cease and desist.

2. Respondent violated NRS 645B.450(2) by compensating an unlicensed mortgage agent.

3. Respondent failed to submit to the Division an annual financial statement for fiscal year 2007 prepared from Respondent's books and records by a Nevada licensed independent public accountant, in violation of NRS 645B.085.

4. Respondent failed to submit monthly activity reports for 11 months, as required by NRS 645B.080(1) and (2) and NAC 645B.070(1).

5. Respondent failed to pay assessments and examination fees, as required by NAC 645B.064, NRS 645F.290 and NAC 645B.060.

6. Respondent failed to maintain and provide to the Division during an examination all documentation required by NRS 645B.080 and NAC 645B.072.

7. Respondent charged and collected loan discount fees on 8 brokered loans. However, the fees did not buy down the rate and there were no specific services performed for these fees, in violation of Regulation X, 24 CFR §3500.14(c).

8. Respondent disclosed an inaccurate annual percentage rate and provided incomplete Truth in Lending disclosures, in violation of Regulation Z, federal Truth in Lending Act, 12 CFR §226.18(e).

### **INITIAL ORDER**

**IT IS HEREBY ORDERED** that, within thirty (30) days of the date of this Order, Respondent shall pay to the Division the sum of four thousand one hundred ninety-three dollars and thirteen cents (\$4,193.13) representing:

a. The fiscal year 2008 certified public accountant assessment of seventy-one dollars and fifty cents (\$71.50) plus a 10% late fee in the amount of seven dollars and fifteen cents (\$7.15), for a total of seventy-eight dollars and sixty-five cents (\$78.65);

b. The fiscal year 2008 Attorney General assessment of five hundred sixty dollars and forty-four cents (\$560.44) plus a 10% late fee in the amount of fifty-six dollars and four cents (\$56.04), for a total of six hundred sixteen dollars and forty-eight cents (\$616.48);  
and

c. The 2008 examination fee of three thousand one hundred eighty dollars and no cents (\$3,180.00) plus a 10% late fee in the amount of three hundred eighteen dollars and no cents (\$318.00), for a total of three thousand four hundred ninety-eight dollars and no cents (\$3,498.00).

**IT IS FURTHER ORDERED** that within thirty (30) days of the date of this Order, Respondent shall pay the Division investigative costs in the amount of seven hundred forty dollars and no cents (\$740.00) in connection with this matter.

**IT IS FURTHER ORDERED** that within thirty (30) days of the date of this Order, Respondent shall pay the Division an administrative fine in the amount of Fifty Thousand Dollars (\$50,000.00) for Respondent's violations of NRS Chapters 645B, 645F and 598, NAC 645B, Regulation X and Regulation Z.

**IT IS FURTHER ORDERED** that Respondent's mortgage broker license is revoked.

**IT IS FURTHER ORDERED** that this matter will be deemed concluded upon compliance with each and every one of the above provisions.

#### **Notice of Right to Request Hearing**

Pursuant to NRS 645B.750, upon the timely filing of an application with the Division, Respondent shall be entitled to a hearing with regard to the contents of this Initial Order. At that hearing, pursuant to NRS 645B.670(2), the Division will seek to order all of the items contained in this Initial Order.

Should Respondent not request a hearing within twenty (20) days of the date of this Notice, the Division will enter a Final Order in this matter against Respondent, as required by NRS 645B.750(2), which provides, among other things, for:

a. The revocation of Respondent's mortgage broker license;

b. Respondent's immediate surrender of its mortgage broker license; and

c. The conclusion of this matter upon the revocation of Kemper's mortgage broker license and Respondent's surrender of same, the Division's receipt of an annual financial statement for fiscal year 2007 prepared from Respondent's books and records by a Nevada licensed independent public accountant, the Division's receipt of payment, in full, of the administrative fine, costs and fees, fiscal year 2008 certified public accountant assessment, fiscal year 2008 Attorney General assessment, 2008 examination fee and the respective associated late fees.

Dated this 10<sup>th</sup> day of April, 2009.

**STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF MORTGAGE LENDING**

By:   
**JOSEPH L. WALTUCH, COMMISSIONER**

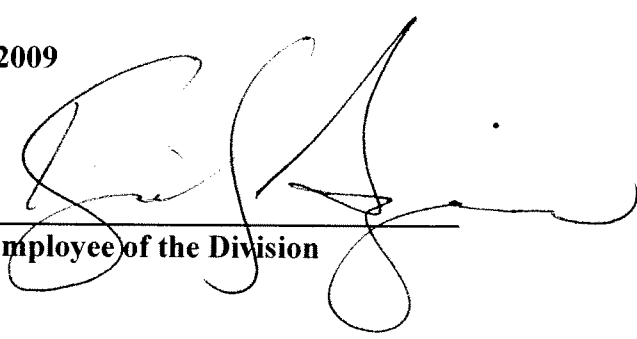
**CERTIFICATE OF SERVICE**

1  
2  
3 **I certify that I am an employee of the State of Nevada, Department of Business and Industry,**  
4 **Division of Mortgage Lending, and that on April 10, 2009, I deposited in the U.S. mail, postage**  
5 **prepaid via First Class Mail and Certified Return Receipt Requested, a true and correct copy of**  
6 **the foregoing, AMENDED NOTICE OF INTENT TO REVOKE MORTGAGE BROKER**  
7 **LICENSE, NOTICE OF INTENT TO IMPOSE FINE AND NOTICE OF RIGHT TO REQUEST**  
8 **HEARING for KEMPER MORTGAGE INC, addressed as follows:**

9  
10  
11 **Kemper Mortgage Inc**  
12 **c/o Eric D. Kaplan**  
13 **Kaplan Papadakis & Gournis PC**  
14 **180 North Lasalle Street**  
15 **Chicago IL 60601**

16  
17 **Certified Receipt Number: 7006 2760 0000 0875 9926**

18  
19  
20 **DATED this 10th day of April, 2009**

21  
22  
23 **By:**   
24 **Employee of the Division**