

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF NEVADA

DEPARTMENT OF BUSINESS AND INDUSTRY

DIVISION OF MORTGAGE LENDING

In re:

Acceptance Capital Mortgage
Corporation,

Respondent.

STIPULATED SETTLEMENT AGREEMENT

The licensing and regulation of mortgage brokers, mortgage bankers and escrow agencies in the State of Nevada is governed by Chapter 645B, Chapter 645E and Chapter 645A of the Nevada Revised Statutes (hereinafter "NRS"), respectively, and the regulations promulgated thereunder. The State of Nevada, Department of Business and Industry, Division of Mortgage Lending (hereinafter the "Division") has the general duty to exercise supervision and control over mortgage brokers, mortgage bankers and escrow agencies pursuant to these chapters. Pursuant to that authority, the Division hereby enters into the following Stipulated Settlement Agreement (hereinafter "Agreement") with Acceptance Capital Mortgage Corporation (hereinafter the "Respondent") as follows:

RECITALS

WHEREAS, Respondent is a foreign Washington corporation. Currently, its status with the Nevada Secretary of State is "active."

WHEREAS, Respondent is licensed by the Division as a mortgage banker (License No. 2745), pursuant to Chapter 645E of NRS.

WHEREAS, Respondent is not licensed by the Division as a mortgage broker.

1 WHEREAS, pursuant to NRS 645E.300(2)(d), the Division is charged with conducting an
2 annual examination of each mortgage banker doing business in this State.

3 WHEREAS, on August 31, 2010, the Division conducted a regularly scheduled
4 examination of Respondent's mortgage banker license books and records, pursuant to the
5 authority in NRS 645E.300.

6 WHEREAS, it was determined from the examination the Respondent originated two
7 residential loans for borrowers SO and AA, which were brokered to and funded by another
8 investor.

9 WHEREAS, pursuant to NRS 645E.100, a mortgage banker may only, "[m]ake loans
10 secured by liens on real property using his or her own money" and requires a mortgage
11 banker to "...not engage in any other act or transaction described in the definition of
12 'mortgage broker,' as set forth in NRS 645B.0127, unless the person is also licensed as a
13 mortgage broker pursuant to chapter 645B of NRS."

14 WHEREAS, after settlement negotiations, the Division and Respondent (collectively,
15 the "Parties") wish to resolve this matter without the necessity of the filing of a complaint for a
16 formal hearing.
17

18 NOW, THEREFORE, in consideration of the representations, covenants and
19 conditions set forth herein, IT IS HEREBY STIPULATED AND AGREED to by the Division
20 and Respondent that the purported violations found during the examinations of Respondent's
21 books and records and referenced herein, shall be settled on the following terms and
22 conditions:
23

24 1. Respondent acknowledges that it brokered two loans to an investor in violation
25 of NRS 645E.100. Respondent and the Division agree that while Respondent's above-
26 described actions were inconsistent with NRS 645E.100, these actions were neither willful nor
27 intentional.
28

1 2. Respondent acknowledges and agrees, with full knowledge, to waive its right
2 have the Division file a complaint if one has not been filed by the date that Responde
3 executes this Agreement, or if a complaint has been filed, to go to a hearing in this matte

4 3. Respondent shall immediately cease and desist from conducting mortgage brok
5 activity, until such time as it complies with all licensing requirements prescribed in law.

6 4. Respondent shall, pursuant to NRS 645E.670 and/or NRS 622.400, pay an
7 administrative fine to the Division in the amount of Five Hundred Dollars and No Cents
8 (\$500.00) and the Division's administrative and other costs in the amount of Two Hundred
9 Forty Dollars and No/Cents (\$240.00). Respondent shall make payment, in full, to the
10 Division of the administrative fine and administrative and other costs upon its execution of this
11 Agreement.
12

13 5. Respondent shall make restitution to SO on the SO loan in the amount of
14 \$4,400.39, and Respondent shall make restitution to AA on the AA loan in the amount of
15 \$8,238.79. Respondent shall provide proof to the Division that such restitution was made
16 prior to the time Respondent executes this Agreement.
17

18 6. This Agreement is intended to resolve all issues related to the findings in the
19 August 31, 2010 report of examinations.

20 7. Respondent agrees that in the event it violates any of the provisions of this
21 Agreement, the Division shall retain any and all remedies available to it in accordance with
22 NRS Chapter 645E.

23 8. The parties represent and warrant that the persons executing this Agreement on
24 behalf of each party has full power and authority to do so, and has the legal capacity to
25 conduct the legal obligations assigned to it hereunder.
26

27 9. Respondent further acknowledges and agrees that the Division shall keep the
28 original of this Agreement.

1 10. This Agreement may be signed in counterparts and a facsimile signature shall be
2 deemed as valid as an original; however, Respondent shall immediately forward all original
3 signature pages to the Division.

4 11. This Agreement, as well as the rights and obligations of the parties hereto, shall
5 be interpreted, governed, and construed pursuant to the laws of the State of Nevada.

6 12. Any action to enforce this Agreement shall be brought in the Eighth Judicial District
7 Court of the State of Nevada in and for Clark County.

8 13. If the Division is successful in any action to enforce this Agreement, the court may
9 award it attorney's fees. It is specifically agreed that reasonable attorney's fees for the State-
10 employed attorneys shall be \$142.55 per hour.

11 14. Failure to declare a breach or the actual waiver of any particular breach of this
12 Agreement or its material terms, by either party, shall not operate as a waiver by such party of
13 any of its rights or remedies as to any other breach.

14 15. Respondent has the right to retain an attorney to review this Agreement at its sole
15 cost and expense and has freely and voluntarily chosen not to do so.

16 16. Other than the fine and administrative and other costs set forth herein, each side
17 shall pay its own costs and fees, including attorney's fees.

18 17. If any provision contained in this Agreement is held to be unenforceable by a court
19 of law or equity, this Agreement shall be construed as if such a provision(s) did not exist and
20 the unenforceability of such provision(s) shall not be held to render any other provision(s) of
21 this Agreement unenforceable.

22 18. This Agreement constitutes the entire agreement of the parties, and it is intended
23 as a complete and exclusive statement of the promises, representations, negotiations, and
24 discussions of the parties. Unless otherwise expressly authorized by its terms, this Agreement
25 shall be binding upon the parties unless an amendment to the same is in writing, signed by
26
27
28

1 the respective parties hereto, and approved by the Office of the Attorney General.

2 19. **NOTICE TO RESPONDENT:** By executing this Agreement, you hereby agree that
3 you are waiving certain rights as set forth herein. As Respondent, you are specifically
4 informed that you have the right to request that the Division file an administrative complaint
5 against you, and at any hearing on such a complaint, you would have the right to appear and
6 be heard in your defense, either personally or through your counsel of choice. If the Division
7 were to file a complaint, at the hearing, the Division would have the burden of proving the
8 allegations in the complaint and would call witnesses and present evidence against you. You
9 would have the right to respond and to present relevant evidence and argument on all issues
10 involved. You would have the right to call and examine witnesses, introduce exhibits, and
11 cross-examine opposing witnesses on any matter relevant to the issues involved.
12

13 You would have the right to request that the Commissioner of the Division issue
14 subpoenas to compel witnesses to testify and/or offer evidence on your behalf. In making this
15 request, you may be required to demonstrate the relevance of the witness's testimony and/or
16 evidence. Other important rights you have are listed in NRS Chapter 645E and NRS
17 Chapter 233B.
18

19 20. Respondent understands and agrees that this Agreement may be used to show
20 that past violations have occurred should any future disciplinary action be taken by the
21 Division.

22 21. In consideration of the execution of this Agreement, Respondent, for itself, its
23 owners, heirs, executors, administrators, successors, and assigns, hereby releases, remises,
24 and forever discharges the State of Nevada, the Department of Business and Industry of the
25 State of Nevada, the Division, and each of their members, agents, attorneys (including any
26 and all employees of the Nevada Attorney General), and employees in their individual and
27 representative capacities, from any and all manner of actions, causes of action, suits, debts,
28

1 judgments, executions, claims, and demands whatsoever, known and unknown, in law or
2 equity, that Respondent ever had, now has, may have, or claim to have against any or all of
3 the persons or entities named in this section, arising out of or by reason of the Division's
4 examination of Respondent, and all other matters relating thereto.

5 22. Respondent hereby indemnifies and holds harmless the State of Nevada, the
6 Department of Business and Industry of the State of Nevada, the Division, and each of their
7 members, agents, and employees, and employees of the Nevada Attorney General in their
8 individual and representative capacities against any and all claims, suits, and actions brought
9 against said persons and/or entities by reason of the Division's examination of Respondent,
10 this Agreement, and all other matters relating thereto, and against any and all expenses,
11 damages, and costs, including court costs and attorney fees, which may be sustained by the
12 persons and/or entities named in this section as a result of said claims, suits, and actions.

14 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed
15 and intend to be legally bound thereby. This Agreement shall constitute a Final Order of the
16 Commissioner.

17 Dated this 11th day of January, 2010.

19 Acceptance Capital Mortgage Corporation

20 By: 

21 Title: President

22 Dated this 20th day of January, 2010.

23 State of Nevada
24 Department of Business and Industry
25 Division of Mortgage Lending

26 By: 

27 Joseph L. Waltuch, Commissioner