

LAWRENCE G. WASDEN
Attorney General

A. RENÉ MARTIN – I.S.B. #3188
Deputy Attorney General
State of Idaho
Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031
Telephone: (208) 332-8092
Facsimile: (208) 332-8016

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

STATE OF IDAHO, DEPARTMENT OF)	Docket No. 2009-8-01
FINANCE, CONSUMER FINANCE)	
BUREAU,)	
)	
Complainant,)	AMENDED CONSENT ORDER
)	
DMI FUNDING INCORPORATED, dba)	
DIRECT MORTGAGE,)	
)	
Respondent.)	
)	

The Director of the State of Idaho, Department of Finance, Consumer Finance Bureau (Director) has conducted a review of the Idaho mortgage brokering activities of DMI FUNDING INCORPORATED, dba DIRECT MORTGAGE (the Respondent). Pursuant to said review, it appears to the Director that the Respondent has violated provisions of the Idaho Residential Mortgage Practices Act, Idaho Code § 26-3101 *et seq.* (the Act). The Director and the Respondent have agreed to resolve this matter through this Consent Order rather than through a formal administrative or civil action. Therefore, the Director deems it appropriate and in the public interest that this Consent Order be entered. The Respondent voluntarily consents to the entry of this Consent Order.

THE RESPONDENT

1. The Respondent is incorporated under the laws of Idaho, and has been licensed by the State of Idaho, Department of Finance (Department) to conduct mortgage brokering/lending activities in Idaho since October 27, 2005. The Respondent holds Idaho Mortgage Broker/Lender License No. MBL-5112 for its home office located in Boise, Idaho. The Respondent's home office was formerly located at 1003 South Allante Place, Boise, Idaho 83709. On or about July 1, 2008, the Respondent moved its home office from that location to 4696 W. Overland Road, Suite 100, Boise, Idaho 83705. The Respondent's president is Karl R. Aguilera.

FINDINGS OF FACT

2. The Respondent failed to notify the Department of its home office move from 1003 South Allante Place, Boise, Idaho 83709 to 4696 W. Overland Road, Suite 100, Boise, Idaho 83705, which move occurred on or around July 1, 2008. It was not until September of 2008 that the Department learned of such move, when the Respondent filed with the Department documents necessary to transition to the Nationwide Mortgage Licensing System and Registry, a new nationwide mortgage licensing database.

3. When the Respondent changed its office location, as referenced in paragraph 2 above, it failed to apply for and obtain a license for the new place of business from which its mortgage brokering business would be conducted.

4. On or about February 11, 2009, the Department was contacted by the Respondent's former landlord at the 1003 South Allante Place, Boise, Idaho address. The landlord informed the Department that after the Respondent moved from that address, it left behind a locked container containing voluminous documents apparently intended for shredding.

The Department retrieved the container and held it in safekeeping at the Department's offices. Upon review of a few documents that could be removed from the container without unlocking it, the Department learned that the container included confidential information concerning the Respondent's customers or prospective customers.

FINDINGS OF VIOLATIONS

COUNT ONE: FAILURE TO NOTIFY THE DEPARTMENT OF THE CHANGE OF ITS BUSINESS LOCATION

5. Paragraphs 1 through 4 above are fully incorporated herein by this reference.
6. Idaho Code § 26-3108(7) provides that no mortgage broker licensee under the Act shall change the location of any place of business without giving the Director at least fifteen (15) days' prior written notice.
7. The Respondent's failure to notify the Department of the change of its business location as referenced in paragraphs 1 and 2 above constituted a violation of Idaho Code § 26-3108(7).

COUNT TWO: ENGAGING IN MORTGAGE BROKERING ACTIVITY FROM AN UNLICENSED LOCATION

8. Paragraphs 1 through 7 above are fully incorporated herein by this reference.
9. Idaho Code § 26-3108(6) provides that a separate license shall be required for each place of business from which mortgage brokering activities are directly or indirectly conducted.
10. The Respondent's failure to apply for and obtain a license from the Department under the Act for its new office location, after its office move as referenced above, constituted a violation of Idaho Code § 26-3108(6).

COUNT THREE: FAILURE TO SAFEGUARD CONFIDENTIAL CUSTOMER INFORMATION

11. Paragraphs 1 through 10 above are fully incorporated herein by this reference.

12. Section 26-3109(1)(b) of the Idaho Residential Mortgage Practices Act provides that violation of any state or federal law, rule or regulation pertaining to mortgage brokering or mortgage lending, as defined in § 26-3102 of the Act, by any licensee or any partner, officer, director, manager, member, employee or agent of the licensee, is grounds for revocation or suspension of a license issued under the Act, establishing a violation of the Act.

13. The Financial Services Modernization Act of 1999, Pub.L. No. 106-102, 113 Stat. 1338 (1999), more commonly known as the Gramm-Leach-Bliley Act or “GLB,” establishes a comprehensive legal framework governing the privacy and security of personal financial information for the financial industry. *See Privacy Law*, Charlene Brownlee and Blaze D. Waleski, Law Journal Press, § 3.01, pp.3-5 (2006); 15 U.S.C.A., § 6801 *et seq.*

14. The Gramm-Leach-Bliley Act required federal agencies, including the Federal Trade Commission (FTC), to implement rules that pertain to the sector of the financial industry over which such agencies have jurisdiction. *Privacy Law*, § 3.01, pp. 3-6.

15. In response to the requirements of the Gramm-Leach-Bliley Act, the FTC enacted a series of rules labeled “Standards for Safeguarding Customer Information.” 16 CFR § 314.1 *et seq.* The purpose of those rules was to set forth “standards for developing, implementing, and maintaining reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.” 16 CFR § 314.1(a). 16 CFR § 313.1(b) of the FTC rules provides that mortgage brokers and mortgage lenders fall within the scope of the FTC’s rules relating to privacy of consumer financial information.

16. The FTC’s rules setting “standards for safeguarding customer information,” at 16 CFR § 314.3(a), require that mortgage brokers and mortgage lenders develop, implement, and

maintain a written comprehensive information security program, to include physical safeguards appropriate to the size and complexity of the company, for the purpose of insuring the security and confidentiality of customer information.

17. The Respondent's failure to abide by the spirit and substance of the FTC's "Standards for Safeguarding Customer Information," as set forth in 16 CFR § 314.1, to which the Respondent was subject pursuant to 16 CFR § 313.1(b) as referenced above, resulted in confidential customer information being removed from the Respondent's control and left under the control of the Respondent's former landlord, subjecting such information to a possible breach of the confidentiality of customers' personal and financial information. Such act constituted a violation by the Respondent of federal law concerning safeguarding customer information, applicable to mortgage brokers and mortgage lenders, within the meaning of and in violation of § 26-3109(1)(b) of the Idaho Residential Mortgage Practices Act.

REMEDIES

18. The Respondent admits to the allegations contained in this Consent Order.

19. The Respondent agrees to immediately retrieve the container of confidential customer information currently in the custody of the Department, as referenced in paragraph 4 above, and deliver such container directly to a shredding company for immediate shredding. After the shredding is complete, the Respondent shall certify to the Department that the shredding of all documents included in such container have been shredded, and shall deliver to the Department the bill for the shredding services showing the date such documents were shredded.

20. Upon the execution of this Consent Order and completion satisfactory to the Department of the requirements of paragraph 19 above, the Respondent agrees to pay to the

Department an administrative penalty in the amount of one thousand dollars (\$1,000) and an additional amount of five hundred dollars (\$500) for investigative expenses and attorney fees incurred by the Department in pursuing this matter, for a total payment to the Department of fifteen hundred dollars (\$1,500).

21. The Respondent agrees to abide by all provisions of the Idaho Residential Mortgage Practices Act and rules promulgated thereunder at all times in the future, including specifically to apprise the Department of the Respondent's address changes, conduct mortgage brokering/lending business only from licensed locations, and protect the confidentiality of personal and financial customer information as required by law.

22. The Respondent agrees that the findings of fact and violations contained herein may be used in any subsequent proceeding resulting from any breach of the terms of this Consent Order or future violations of the Act, rules promulgated thereunder, or relevant federal laws and rules by the Respondent.

23. The Department agrees not to seek further penalties or fees for the violations identified in this Consent Order other than as set forth above, as long as the Respondent fully complies with the terms of this Consent Order.

24. The Respondent acknowledges and understands that this Consent Order is an administrative action that must be disclosed to the Department on future licensing and renewal forms. The disclosure requirements of other states may also require disclosure of the same.

25. The Respondent acknowledges and agrees that it has entered into this Consent Order voluntarily with the benefit of advice of counsel, and in doing so, waives its right to a hearing under the Idaho Administrative Procedure Act for the violations addressed herein.

DATED this 24 day of March, 2009.

DMI FUNDING INCORPORATED,
dba DIRECT MORTGAGE

By: Karl R. Aguilera
President
Title

APPROVED AS TO FORM AND CONTENT:

DATED this _____ day of _____, 2009.

COUNSEL FOR THE RESPONDENT

DATED this 24th day of March, 2009.

STATE OF IDAHO
DEPARTMENT OF FINANCE

[Signature] on behalf of Finance
MICHAEL LARSEN
Consumer Finance Bureau Chief

IT IS SO ORDERED.

DATED this 24th day of March, 2009.



STATE OF IDAHO
DEPARTMENT OF FINANCE

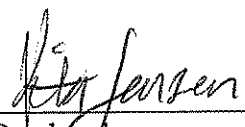
[Signature]
GAVIN M. GEE, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of Mar., 2009,
I caused a true and correct fully-executed copy of the foregoing CONSENT ORDER to be
served on the following by the designated means:

Michael Southcombe, Esq.
P.O. Box 932
Boise, Idaho 83701

- U.S. mail, postage prepaid
- certified mail
- facsimile _____
- overnight delivery



Paralegal