STATE OF ALASKA

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1940
ANCHORAGE, ALASKA 99501

In the Matter of:

Susan McCready

Respondent
Case No. 5000-09-006

CONSENT ORDER

I. INTRODUCTION

The Alaska Department of Commerce, Community, and Economic Development, Division of Banking and Securities, ("Division") administers the Alaska Mortgage Lending Regulation Act, Alaska Statutes ("AS") 06.60. Having conducted an investigation under AS 06.60.250, the Division finds as follows:

II. FACTUAL ALLEGATIONS

2.1. Respondent.

A. KM Capital Management Inc. maintains a principal place of business at 3300 C Street, Suite 106, Anchorage, Alaska. Susan McCready (Respondent) is an employee of KM Capital Management Inc.

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2.2. Factual Background.

- As of February 3, 2009, KM Capital Management Inc. was operating as a mortgage broker and/or mortgage lender in Alaska. From February 3, 2009 to May 8, 2009, Respondent was working as an employee for KM Capital Management Inc. as an originator in Alaska.
 - B. Respondent is not licensed in Alaska under AS 06.60 as an originator.
- C. As of May 8, 2009, Respondent agreed to stop conducting originator activities until a license is obtained.

2.3. Prohibited Acts.

From February 3, 2009, to May 8, 2009 Susan McCready, operated as an originator in Alaska without being licensed under AS 06.60.

III. LEGAL STANDARDS

- 3.1. Enactment of Licensing Requirements. The Alaska Mortgage Lending Regulation Act, AS 06.60, which requires the licensing of mortgage lenders, brokers, and originators, became effective July 1, 2008.
- 3.2. License Requirement for Mortgage Broker or Mortgage Lender. Under AS 06.60.010(a), a person, including a person doing business from outside the state, may not operate as a mortgage lender or mortgage broker in this state unless the person is licensed under AS 06.60.
- 3.3. License Requirement for Originator. Under AS 06.60.010(b), a person may not operate as an originator in the state unless the person is a natural person who is licensed as an originator under AS 06.60 and who works under exclusive contract for, or an employee of, a mortgage licensee.

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3.5. Licensing for Existing Industry Participants. Under sec. 10, ch. 50, SLA 2007, and 3 AAC 14.090, a person who was engaging on June 30, 2008, in activities for which a license is required under AS 06.60 was not required to comply with the licensing requirements of AS 06.60 until March 1, 2009.

3.6. Business License as Indicator of Industry Participation on June 30, 2008. Under sec. 10, ch. 50, SLA 2007 and 3 AAC 14.090, the Division considers a person to be engaging in activities for which a license was required under AS 06.60 on June 30, 2008, if the person was operating as a mortgage broker, mortgage lender, or originator on June 30, 2008 under a current business license issued under AS 43.70 for that purpose.

- **3.7. Application to Internet Activities.** Under AS 06.60.890, AS 06.60 applies to a person if the person is engaging in the activities regulated by AS 06.60 by using an Internet website from within or outside the state.
- **3.8.** Business from Outside this State. Under 3 AAC 14.030, a person doing business from outside this state under AS 06.60.010(a) includes a person doing business via the Internet, through the mail or a private delivery service, by telephone, or by other means of interstate communication.
- **3.9. Operating in this State.** Under 3 AAC 14.035, a person operates as a mortgage broker, mortgage lender, small mortgage lender, originator, or small mortgage originator in this state if the person communicates with a resident of this state or a person present in this state, whether in person, in writing, via the Internet, through the mail or a private delivery service, by telephone, or by other means of intrastate or interstate communication.

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IV. AGREEMENT AND ORDER

- **4.1.** Parties' Intent. The parties intend this agreement to be a full and final settlement of the violations described above.
- **4.2. Jurisdiction.** It is agreed that the Division has jurisdiction over the subject matter of the activities described above.
- **4.3.** Voluntarily Entered. Respondent has freely and voluntarily entered into this Consent Order.
- **4.4.** Fine/Reimbursement. Respondent agrees to pay to the Division a fine of \$3,000.00 and reimbursement of investigative expenses of \$450.00 for a total payment of \$3,450.00 in the form of a check made payable to the State of Alaska, delivered to the attention of Linette Lacy, Investigator, Department of Commerce, Community, and Economic Development, Division of Banking and Securities 550 West Seventh Avenue, Suite 1940, Anchorage, Alaska 99501.
- **4.5. Payment Due Date.** Payment under paragraph 4.4 is due (shall be postmarked) no later than thirty days after this fully-executed Consent Order is delivered to Respondent.
- **4.6.** Authority to Execute Order. The undersigned warrant that they have full power and right to execute this Consent Order on behalf of the parties.
- **Representatives/Successors.** This Consent Order shall be binding on all employees, agents, officers, directors, and other representatives, successors, or assigns of Respondent.
- **4.8.** Waiver of Hearing. Respondent has been informed of its right to a hearing before an administrative law judge, and has waived its right to a hearing and any administrative and judicial review of the Consent Order or the issues raised in this matter.

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Respondent understands and agrees that it is relieving the Division of the burden of proving the facts admitted in this Consent Order.

- 4.9. Non-compliance with Order. Respondent understands that its failure to abide by the terms and conditions of this Consent Order may provide grounds for the denial of licensure or for further legal action by the Division, including an action to revoke or suspend licensure of Respondent or its originators. If Respondent fails to perform its obligations under this Consent Order, Respondent shall reimburse the Division for its costs, including attorney's fees, incurred in pursing such legal action.
- **4.10.** Agreement Read and Understood/Advice of Counsel. Respondent has read and understands this Consent Order in its entirety, having had an unrestricted opportunity to obtain the advice of counsel in regard to the meaning of this Consent Order.
- **4.11. Amendment.** This Consent Order may be modified only by written amendment signed by both parties.
- **4.12. Effective Date.** This agreement is effective when signed by the Division Director.

DATED: 08-11-09 Susan McCready
/s/ Susan McCready

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| - | ACKNOWLEDGMENT |
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| Section Sectio | STATE OF Alaska |
| The second second second second second | COUNTY OF Anchorage : ss. |
| element of the free factor | I HEREBY CERTIFY that on the 11th day of August, 2009 |
| * | before me, the undersigned, a Notary Public in and for the State of |
| Administration of the last of | personally appeared Susan McCready, known to me to be the |
| - | person whose name is subscribed to this Consent Order, who stated that she is authorized to |
| | sign, and acknowledged that she executed the same voluntarily and of her own will for the |
| | uses and purposes set forth therein. |
| | CURRENT AND CONCERN TO L.C. A. 11th C. August |
| | SUBSCRIBED AND SWORN TO before me this 11th day of August, |
| - | 2009 Denniell Plummer Votary Public in and for the County of Anchorage State of |
| | Alaska My Commission expires: 02/02/2012 NOTARY PUBLIC + Community, and Economic Development Division of Banking and Securities LH: LH |
| occupante and a second | DATED: 08-17-09 By: /s/ Lorie L. Hovanec |
| oneconomico de la composição de la compo | Lorie L. Hovanec, Director |
| * | |
| | Contact Person: Ms. Linette Lacy, Investigator Alaska Department of Commerce, Community, and Economic Development Division of Banking and Securities 550 West Seventh Avenue, Suite 1940 Anchorage, Alaska 99501 (907) 269-8188 |
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