

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

In the matter of:)
) ORDER NO: 13-2136-C
)
McKinley Mortgage Company, LLC,) ORDER TO SURRENDER MORTGAGE
Charles Preston, and) LICENSE AND MORTGAGE LOAN
Tobias Preston) ORIGINATOR LICENSE, PAY LATE FILING
) FEES, IMPOSING A CIVIL PENALTY AND
Respondents.) CONSENT TO ORDER
)

The Department of Commerce, Community, and Economic Development, Division of Banking and Securities (the Department) has conducted an examination of the business operations of McKinley Mortgage Company, LLC (MMC), Charles Preston and Tobias Preston (collectively, "Respondents") and has determined that Respondents violated certain provisions of AS 06.60 et seq. (the Alaska Secure and Fair Enforcement for Mortgage Licensing Act of 2010 – the Alaska SAFE Act).

Respondents agree that the Department has jurisdiction over Respondents and this matter pursuant to the Alaska SAFE Act.

Respondents wish to resolve and settle this matter with the Department. As evidenced by the authorized signatures on this Order, Respondents consent to the entry of this Order requiring MMC to surrender its mortgage license and Charles Preston's mortgage loan originator's license based on the Conclusions of Law and Order and ordering respondents to pay late filing fees and a civil penalty (partially suspended). Respondents waive their right to hearing under AS 44.62 et seq. (the Alaska Administrative Procedure Act) and the Alaska SAFE Act.

I. FACTS

1. MMC is an Alaska limited liability company, entity number 72357D, with its

1 principal place of business located at 12350 Industry Way, Suite 203, Anchorage, Alaska
2 99515. On May 28, 2009, the Department issued mortgage license number 206321 to MMC.

3 2. Charles Preston has been employed with MMC since September 2000. Charles
4 Preston was first licensed as a Mortgage Loan Originator in Alaska on May 28, 2009 (license
5 number 207184). Charles Preston is the only individual currently working for MMC holding
6 a valid mortgage loan originator's license in Alaska. The activities of a mortgage loan
7 originator include taking information from a borrower to complete a loan application,
8 quoting rates and terms, and determining the amount to be borrowed by the borrower.
9 Mortgage loan originators also have the responsibility of providing disclosures to borrowers
10 and applicants pursuant to state and federal mortgage laws.

11 3. Tobias Preston has served as the president of MMC since June 1996. Tobias Preston
12 is the managing member and 100 percent owner of MMC. Tobias Preston is listed as a
13 control person of MMC on MMC's Nationwide Mortgage Licensing System (NMLS)
14 registration.

15 4. The Division of Banking and Securities conducted an examination on Respondents
16 beginning October 21, 2013. The examination covered the period January 1, 2011 to June
17 30, 2013 (the exam period).

18 5. Mortgage licensees, including MMC, must submit reports of condition of the licensee
19 to the Department in the form proscribed by the NMLS. The NMLS requires licensees to
20 submit quarterly reports of condition, known as Mortgage Call Reports (MCRs). NMLS
21 mandates that MCRs be filed after each calendar quarter by May 15, August 14, November
22 14, and February 14. MMC filed the first quarter 2011 MCR on May 16, 2011, one day after
23 the deadline. MMC filed the second quarter 2011 MCR on August 29, 2011, 15 days after
24 the deadline. MMC filed the third quarter 2011 MCR on December 6, 2011, 22 days after

1 the deadline. MMC filed the fourth quarter 2011 MCR on the deadline. MMC filed the first
2 quarter 2012 MCR on May 17, 2012, two days after the deadline. MMC filed the second
3 quarter 2012 MCR on October 1, 2012, 48 days after the deadline. MMC filed the third
4 quarter 2012 MCR on November 23, 2012, nine days after the deadline. MMC filed the
5 fourth quarter 2012 MCR on February 15, 2013, one day after the deadline. MMC filed the
6 first quarter 2013 MCR on May 16, 2013, one day after the deadline. In total, MMC filed the
7 MCRs a total of 99 days after the respective deadlines during the exam period.

8 6. Mortgage licensees must file annual reports with the Department by March 15, and
9 the Department is authorized to assess a late fee of \$25 per day for annual reports that are not
10 filed on time. MMC's 2011 annual report was filed on April 7, 2011, 23 days after March
11 15. MMC's 2012 annual report was filed on August 2, 2013, 140 days after March 15.
12 MMC currently has an outstanding late fee for the 2012 annual report of \$3,500 with the
13 Department which it has not paid as of the date of this order.

14 7. MMC operates a website, located at www.mckinleymortgage.com. MMC also has
15 LinkedIn and Twitter accounts, which are viewable by the general public, located at
16 <https://twitter.com/McKinleyMtgCo> and [http://www.linkedin.com/company/mckinley-](http://www.linkedin.com/company/mckinley-mortgage-co)
17 [mortgage-co](http://www.linkedin.com/company/mckinley-mortgage-co). MMC also distributes a brochure titled "Money to Lend Cash for Notes." The
18 websites and the brochure do not display MMC's NMLS unique identifier.

19 8. During the exam period, Respondents originated 24 residential mortgage loans.

20 9. 14 of the 24 loans originated during the exam period were eventually denied by
21 Respondents. Respondents did not maintain any records relating to 13 of the 14 denied
22 loans.

23 10. Of the loans closed during the exam period, MMC and Charles Preston failed to
24 include their NMLS unique identifier on 10 residential mortgage loan application forms.

1 11. During the exam period, Respondents did not provide a good faith estimate (GFE) to
2 the borrowers within three business days of the completion of the loan application in nine
3 instances.

4 12. During the exam period, Respondents did not provide an initial Truth in Lending
5 (TIL) disclosure to borrowers within three business days of the completion of the loan
6 application in 11 instances.

7 13. None of the 11 loans reviewed by examiners during the exam period included a
8 notice on the TIL stating “You are not required to complete this agreement merely because
9 you have received these disclosures or signed a loan application.”

10 14. During the exam period, Respondents did not provide a Mortgage Servicing
11 Disclosure Statement to borrowers within three days of application completion in 11
12 instances.

13 15. During the exam period, Respondents did not provide a credit score disclosure and
14 notice to borrowers in 10 instances.

15 16. During the exam period, Respondents made a number of loans based upon the
16 collateral value of the property rather than the credit-worthiness of the borrowers. In five
17 instances, Respondents did not make any efforts to verify the income of the borrowers.

18 17. During the exam period, Respondents did not provide, or failed to provide in a timely
19 manner, the mandatory Home Ownership and Equity Protection Act (HOEPA) disclosures in
20 seven instances.

21 18. During the exam period, Respondents denied 14 loans. In all instances, Respondents
22 failed to provide an Equal Credit Opportunity Act Notice of denial to borrowers within 30
23 days of denial of each loan.

24 19. All closed loans originated by Respondents during the exam period had interest rates

1 exceeding the rates on Treasury securities of comparable maturity by more than eight
2 percentage points.

3 II. CONCLUSIONS OF LAW

4 1. AS 06.60.100(c) requires mortgage licensees to submit reports of condition of the
5 licensee to the Department in the form proscribed by the NMLS. Respondents repeatedly
6 violated AS 06.60.100(c) by filing its quarterly MCRs a total of 99 days late during the exam
7 period.

8 2. AS 06.60.100(a) and 3 AAC 14.410 require mortgage licensees to file annual reports
9 with the Department not later than March 15 of each year. Under 3 AAC 14.414, the
10 Department may assess a fee of \$25 per day for reports filed late. Respondents violated AS
11 06.60.100(a) and 3 AAC 14.410 by filing their annual reports untimely in 2011 and 2013.
12 The Department assessed a \$3,500 late fee for MMC's late 2013 annual report, which
13 Respondents have not paid in violation of 3 AAC 14.414.

14 3. AS 06.60.325 and 3 AAC 14.510 require licensees to display their NMLS unique
15 identifiers in all advertisement materials except for radio and television advertisements.
16 Respondents violated these provisions by failing to display their NMLS unique identifiers on
17 websites and a brochure.

18 4. AS 06.60.325 requires licensees to clearly display their NMLS unique identifiers on
19 all mortgage loan application forms. Respondents MMC and Charles Preston violated AS
20 06.60.325 by failing to display their NMLS unique identifiers on 10 mortgage loan
21 applications.

22 5. AS 06.60.135 mandates that all licensees maintain a record of each borrower and each
23 mortgage loan or mortgage loan application for 36 months from the date of creation.
24 Respondents violated AS 06.60.135 by failing to maintain records relating to denied loans.

1 6. AS 06.60.330 requires all licensees to conduct mortgage loan activities in compliance
2 with federal statutes and regulations. These statutes and regulations include: 12 U.S.C. 2601-
3 2617, The Real Estate Settlement Procedures Act of 1974 (RESPA), and 12 CFR 1024
4 (Regulation X), promulgated thereunder; 15 U.S.C. 1601, The Consumer Credit Protection
5 Act, and 12 CFR 1026 (Regulation Z), promulgated thereunder; and any other federal statute
6 the purpose of which is to regulate residential mortgage lending, which would include 15
7 U.S.C. 1681, the Fair Credit Reporting Act, and 12 CFR 1002, the Equal Opportunity Credit
8 Act. During the exam period, examiners noted a number of instances in which Respondents
9 failed to comply with the above-listed federal statutes and regulations (as noted specifically
10 below) and therefore Respondents repeatedly violated AS 06.60.330.

- 11 • 12 CFR 1024.7, part of Regulation X, requires that a good faith estimate (GFE) be
12 given to borrowers within three business days of each completed loan application.
13 Respondent violated 12 CFR 1024.7 by failing to provide GFEs as required on 10
14 separate occasions.
- 15 • 12 CFR 1026, part of Regulation Z, requires creditors to deliver Truth in Lending
16 disclosures to borrowers within three business days of the completion of the loan
17 application. Respondents violated 12 CFR 1026.19 by failing to provide these
18 disclosures as required in 11 instances.
- 19 • 12 CFR 1026.19, part of Regulation Z, requires the following statement to be
20 included on the Truth in Lending disclosures made to borrowers: “You are not
21 required to complete this agreement merely because you have received these
22 disclosures or signed a loan application.” By failing to provide this notice on any of
23 the 11 loans reviewed by examiners, Respondents violated 12 CFR 1026.19.
- 24 • 12 CFR 1024.21, Part of Regulation X, requires mortgage brokers to provide

1 customers with a Servicing Disclosure Statement within three days of the completion
2 of the loan application. By failing to provide this Disclosure Statement in 11
3 instances, Respondents violated 12 CFR 1024.21.

- 4 • 15 U.S.C. 1681, also known as the Fair Credit Reporting Act, requires mortgage
5 lenders to provide credit score disclosure and notice to borrowers. By failing to
6 provide the disclosure and notice in 10 instances, Respondents violated 15 U.S.C.
7 1681.
- 8 • 12 CFR 1026.34, part of Regulation Z, prohibits lenders from extending credit to a
9 consumer based solely on collateral and without regard to the consumer's repayment
10 ability as of consummation of the loan. This provision also requires that creditors
11 verify the amounts of income or assets that it relies on to determine repayment ability,
12 including expected income or assets. By failing to verify income in five instances,
13 Respondents violated 12 CFR 1026.34.
- 14 • The Home Ownership and Equity Protection Act (HOEPA), codified as part of
15 Regulation Z, requires that lenders provide a number of disclosures at least three days
16 prior to loan closure for loans exceeding the rates on Treasury securities of
17 comparable maturity by more than eight percentage points. By failing to provide
18 these disclosures, or failing to provide them on a timely basis in seven instances,
19 Respondents violated HOEPA.
- 20 • 12 CFR 1002, the Equal Credit Opportunity Act (ECOA), requires lenders to notify
21 borrowers of credit decisions within 30 days of application. If an application for
22 credit is denied for reasons other than incompleteness, lenders must provide
23 borrowers with a reason for denial. Respondents failed to provide such notice to
24 borrowers regarding all 14 denied loans and therefore violated 12 CFR 1002.

1 7. AS 06.60.340 prohibits licensees from failing to make disclosures as required by the
2 Alaska SAFE Act or applicable federal statutes, and prohibits licensees from failing to
3 comply with state and federal statutes and regulations. During the exam period, examiners
4 found that Respondents failed to make numerous disclosures and comply with federal
5 statutes, as cited above, and therefore Respondents violated AS 06.60.340.

6 8. Tobias Preston is a “control person” of MMC as that term is defined in AS
7 06.60.990(4).

8 9. 3 AAC 14.415 requires mortgage licensees to supervise operations and personnel,
9 including mortgage loan originators, to ensure compliance with the Alaska SAFE Act. Based
10 on the number of violations noted by examiners, MMC and Tobias Preston failed to
11 supervise business operations and have policies and procedures in place to ensure
12 compliance with the Alaska SAFE Act and are therefore in violation of 3 AAC 14.415.

13 10. Under AS 06.60.159, mortgage licensees are liable for the conduct of a person acting
14 as a mortgage loan originator if the mortgage licensee knows or should have known that the
15 person violated the Alaska SAFE Act and the person is employed or under contract with the
16 mortgage licensee to act as a mortgage loan originator. In the present case, based on the
17 numerous violations noted in Charles Preston’s work as the sole mortgage loan originator
18 and the small size of the company, MMC and Tobias Preston, as president and control
19 person, knew or should have known that Charles Preston was violating the Alaska SAFE
20 Act, and therefore MMC and Tobias Preston are in violation of AS 06.60.159.

21 11. Based on the numerous violations cited associated with each of the 24 loans
22 originated during the exam period, Respondents are subject to a civil penalty under AS
23 06.60.420.

24 //

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

III. ORDER

Pursuant to the Alaska SAFE Act and on the basis of the Findings of Fact, Conclusions of Law and Respondents' consent to the entry of this Order, the Department ORDERS the following:

1. Respondent McKinley Mortgage's license is hereby ordered to be surrendered pursuant to AS 06.60.200. McKinley Mortgage agrees not to reapply for a mortgage license with the State of Alaska for five years from the date of the execution of this order.

2. Respondent Charles Preston's mortgage loan originator license is hereby ordered to be surrendered pursuant to AS 06.60.260. Charles Preston agrees not to reapply for licensure as a mortgage loan originator with the State of Alaska for five years from the date of the execution of this order.

3. Respondents are ordered to pay the \$3,500 late fee for filing a late 2013 annual report. The late fee is due in full at the time of the execution of this order.

4. Respondents are ordered to pay a civil penalty under AS 06.60.420 in the amount of \$24,000, which is \$1,000 per each loan originated during the exam period. \$6,000 is due upon execution of this order with the remaining amount of the civil penalty (\$18,000) suspended for a period of three (3) years. If any Respondent fails to comply with any terms or conditions of this Order, the suspended portion of the civil penalty will be immediately due. If Respondents comply with the terms and conditions of the order for three (3) years from the date of the execution of this order, the suspended portion of the civil penalty will be set aside.

5. Respondents are ordered to comply with all provisions of the Alaska SAFE Act, including associated regulations.

6. The scope of this Order is limited to the violations of the Alaska SAFE Act described

1 herein. The entry of this Order in no way waives, in any manner, the Department's
2 investigative or enforcement authority with regard to any of the Respondents' activities
3 regulated by the Department or any other state or federal agency.

4 7. The entry of this order does not absolve Respondents of any responsibility to pay
5 examination costs assessed by the Department under AS 06.60.250(k). Examination costs of
6 \$9,600 are due in full at the time of the execution of this order.

7 8. Respondents are jointly and severally liable for complying with the terms of this
8 order including payment of the late fees, exam fees, and civil penalty.

9
10 **IT IS SO ORDERED.**

11 SUSAN BELL, Commissioner
12 Department of Commerce, Community and Economic Development

13 12/31/2013

14 Date

/s/ Kevin Anselm

15 Kevin Anselm, Director
16 Division of Banking and Securities

17 **Consent to Entry of Order**
18 **McKinley Mortgage Company, LLC**

19 I, Tobias Preston, as President of McKinley Mortgage Company, LLC (MMC),
20 hereby acknowledge that I have read the foregoing Consent Order, I am aware of the right to
21 a hearing and appeal in this matter, and have waived the same.

22 MMC admits the jurisdiction of the Department of Commerce, Community and
23 Economic Development, Division of Banking and Securities (Department) and further
24 consents to entry of this Consent Order by the Department as settlement of the issues

1 contained in this Consent Order. MMC admits violation of the Alaska SAFE Act.

2 MMC understands that the Department reserves the right to take further actions to
3 enforce this Order or to take appropriate action upon discovery of other violations of the
4 Alaska SAFE Act, and that MMC will fully comply with the terms and conditions of this
5 Order, the Alaska SAFE Act and associated regulations.

6 MMC enters into this Consent Order voluntarily and understands that this Consent
7 Order is a public document and is reportable to the NMLS.

8 12/30/13 /s/ Tobias Preston
9 Date Tobias Preston
10 McKinley Mortgage Company, LLC

11 SUBSCRIBED AND SWORN TO before me this 30th day of December, 2013 at Redding,
12 CA.

13 /s/ Margo J. Tuggle
14 Notary Public
15 Margo J. Tuggle
16 Notary Printed Name
17 My commission expires: 04/13/2016

18 **Consent to Entry of Order**
19 **Charles Preston**

20 I, Charles Preston, hereby acknowledge that I have read the foregoing Consent Order,
21 I am aware of the right to a hearing and appeal in this matter, and have waived the same.

22 I admit the jurisdiction of the Department of Commerce, Community and Economic
23 Development, Division of Banking and Securities (Department) and further consent to entry
24 of this Consent Order by the Department as settlement of the issues contained in this Consent
Order. I admit violation of the Alaska SAFE Act.

1 I understand that the Department reserves the right to take further actions to enforce
2 this Order or to take appropriate action upon discovery of other violations of the Alaska
3 SAFE Act, and that I will fully comply with the terms and conditions of this Order, the
4 Alaska SAFE Act and associated regulations.

5 I am entering into this Consent Order voluntarily and I understand that this Consent
6 Order is a public document and is reportable to the NMLS.

7
8 12/27/13 /s/ Charles Preston
Date Charles Preston

9
10 SUBSCRIBED AND SWORN TO before me this 27th day of December, 2013 at Anchorage,
11 Alaska.

12 /s/ K. Burton
Notary Public in and for Alaska
13 K. Burton
Notary Printed Name
14 My commission expires: 02/14/2017

15
16 **Consent to Entry of Order**
Tobias Preston

17 I, Tobias Preston, hereby acknowledge that I have read the foregoing Consent Order,
18 I am aware of the right to a hearing and appeal in this matter, and have waived the same.

19 I admit the jurisdiction of the Department of Commerce, Community and Economic
20 Development, Division of Banking and Securities (Department) and further consent to entry
21 of this Consent Order by the Department as settlement of the issues contained in this Consent
22 Order. I admit violation of the Alaska SAFE Act.

23 I understand that the Department reserves the right to take further actions to enforce
24

1 this Order or to take appropriate action upon discovery of other violations of the Alaska
2 SAFE Act, and that I will fully comply with the terms and conditions of this Order, the
3 Alaska SAFE Act and associated regulations.

4 I am entering into this Consent Order voluntarily and I understand that this Consent
5 Order is a public document and is reportable to the NMLS.

6
7 12/30/13
Date

/s/ Tobias Preston
Tobias Preston
McKinley Mortgage Company, LLC

8
9
10 SUBSCRIBED AND SWORN TO before me this 30th day of December, 2013 at Redding,
CA.

11
12 /s/ Margo J. Tuggle
Notary Public
Margo J. Tuggle
Notary Printed Name
My commission expires: 04/13/2016

13
14
15 Approved as to Form

16
17 /s/ John L. Bley
John L. Bley, Attorney

18
19 12/27/2013
Date

20
21
22 Contact Person:
23 Kristy Naylor
Securities Examiner
24 (907) 269-7675