

In the matter of:

Notice of Intent to Assess Fine and Revoke Mortgage Broker Certificate of Registration & Notice of Opportunity for a Hearing

1. The Division conducted an examination of Respondent's office on June 20 through June 21, 2005.
2. 1322.02(A)(1) states, "No person, on the person's own behalf or on behalf of any other person, shall act as a mortgage broker without first having obtained a certificate of registration from the superintendent of financial institutions for every office to be maintained by the person for the transaction of business as a mortgage broker in this state." During the June 2005 examination of Respondent, Respondent's employee advised the examiner that licensed loan officer Melinda Heitzman worked out of a branch at 2517 Ritchie Avenue in Crescent Springs, Kentucky. Respondent's Kentucky location does not hold a certificate of registration under the Ohio Mortgage Broker Act. During the examination, the

examiner noted loan documents for first residential mortgages on Ohio real estate where Melinda Heitzman was the loan officer. Because these mortgages were brokered from an unlicensed location, Respondent has violated R.C. 1322.02(A)(1).

3. R.C. 1322.01(E) defines "loan officer" as an "employee who originates mortgage loans in consideration of direct or indirect gain, profit, fees, or charges. Loan officer also includes an employee who solicits financial and mortgage information from the public for sale to another mortgage broker." R.C. 1322.02(B) states that "no person, on the person's own behalf or on behalf of any other person, shall act as a loan officer without first having obtained a license from the superintendent." R.C. 1322.07(C) prohibits registrants from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings. During the June 2005 examination, the Division examiner noted that two individuals, Timothy Madden and Arthur Halmi, were acting as loan officers after their licenses were cancelled on August 27, 2004 and September 18, 2002 respectively. By allowing two unlicensed individuals to act as loan officers for Respondent, Respondent has violated R.C. 1322.07(C) by engaging in improper dealings.
4. R.C. 1322.062 requires Ohio Mortgage Broker Act Registrants to deliver to the buyer within three days of application for a mortgage a mortgage loan origination disclosure statement. This mortgage loan origination disclosure statement must contain certain information including: (1) the name, address, and telephone number of the buyer; (2) the typewritten name of the loan officer and his or her license number; (3) the street address, telephone number and facsimile number of the registrant and the number designated on the registrant's certificate of registration, (4) the signature of the loan officer, (5) a statement indicating whether the buyer is to pay for the services of a bona fide third party if the registrant is unable to assist the buyer in obtaining a mortgage, (6) a statement that describes the method by which the fee to be paid by the buyer to the registrant will be calculated; (7) a statement that the lender may pay compensation to the registrant; (8) a description of all the services the registrant has agreed to perform for the buyer; and (9) a statement that the buyer has not entered into an exclusive agreement for brokerage services. During the June 2005 examination, the Division examiner noted that Respondent's loan files failed to contain the mortgage loan origination disclosure statements containing the information required by R.C. 1322.062(A). By not providing buyers mortgage loan origination disclosure statements as required by R.C. 1322.062(A), Respondent has violated R.C. 1322.062(A).
5. R.C. 1322.071(B)(2) states that "no mortgage broker, registrant, or licensee shall do any of the following: receive, directly or indirectly, a premium on the fees charged for services performed by a bona fide third party." During the June 2005 examination, the Division examiner noted that Respondent charged buyers fees in the amount of \$25 for flood certifications which actually cost \$14 and that Respondent charged the buyer \$50 for credit reports which actually cost \$32. By charging consumers \$25 for flood certifications for which third parties charged

Respondent \$14 and by charging consumers \$50 for credit reports for which third parties charged Respondent \$32, Respondent has violated R.C. 1322.071(B)(2).

6. R.C. 1322.08 requires that a registrant deposit into its special account any bona fide third-party fee the registrant receives and also pay bona fide third-party fees to a bona fide third party from the registrant's special account. During the June 2005 exam, the Division examiner noted that while Respondent maintains a special account, it fails to use it properly. In particular, Respondent fails to deposit fees for credit reports, appraisals, and flood certifications it regularly receives from consumers into the special account. Respondent concomitantly fails to pay third parties for their services from funds in the special account.
7. R.C. 1321.52(A) prohibits any person from advertising, soliciting, or holding out that that person is engaged in the business of making mortgage loans on real estate which is other than a first lien without first obtaining a certificate of registration under the Ohio Mortgage Loan Act. R.C. 1321.52(B) prohibits any person from engaging in the business of lending or collecting the person's own or another person's money, credit, or choses in action for such loans without first obtaining a certificate of registration under the Ohio Mortgage Loan Act. Respondent does not hold a certificate of registration under the Ohio Mortgage Loan Act. During the June 2005 examination, the Division examiner noted that Respondent has closed second mortgage loans in its own name. A separate entity, Humbert Mortgage Servicing LLC, which also does not hold a certificate of registration under the Mortgage Loan Act, services the second mortgages made by Humbert Mortgage, Inc. By making second mortgage loans without a proper license Respondent has violated R.C. 1322.07(C) by engaging in improper dealings.
8. R.C. 1322.09 requires every advertisement relating to a mortgage broker's services to include the name, street address, and number on the registrant's certificate of registration. During the June 2005 examination, the Division examiner noted that Respondent's advertisements including its phone book ads, ads in church publications, and ads in a real estate magazine fail to include the registrant's certificate of registration number. Respondent's website also fails to include its certificate of registration number. Consequently, Respondent has violated R.C. 1322.09 in a number of its advertisements.
9. O.A.C. 1301:8-7-07(B)(3) states that a registrant shall not place or cause to be placed an advertisement that uses unqualified superlatives, including "lowest rates." Respondent's website states that the registrant can provide the "Lowest interest rate available." Consequently, Respondent has violated O.A.C. 1301:8-7-07(B)(3) by advertising that it can provide the "lowest interest rate available."
10. R.C. 1322.031(E)(1) requires copies of all loan officer licenses to be displayed at the office where the loan officer principally transacts business. During the June 2005 examination, the Division examiner noted that copies of Respondent's loan

officer licenses were not displayed at Respondent's office in violation of R.C. 1322.031(E)(1).

11. R.C. 1322.10(A)(1)(a) states that the superintendent of financial institutions may suspend, revoke, or refuse to issue or renew a certificate of registration or license if the superintendent finds a violation of or failure to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or rules adopted thereunder.

FINDINGS

Based upon the allegations above, the Division determines the following:

1. By allowing a loan officer to broker loans secured by real estate located in Ohio while working from an office that does not hold a certificate of registration, Respondent has violated R.C. 1322.02(A)(1).
2. By allowing two unlicensed individuals to act as loan officers for Respondent, Respondent has violated R.C. 1322.07(C) by engaging in an improper dealing.
3. By failing to provide buyers with mortgage loan origination disclosure statements as required by law, Respondent has violated R.C. 1322.062(A).
4. By charging consumers \$25 for flood certifications for which third parties charged Respondent \$14 and by charging consumers \$50 for credit reports for which third parties charged Respondent \$32, Respondent has violated R.C. 1322.071(B)(2).
5. By failing to deposit into its special account bona fide third party fees that Respondent received and by failing to pay bona fide third party fees from said special account, Respondent has violated R.C. 1322.08.
6. By closing second mortgage loans in Respondent's name without first obtaining a certificate of registration under the Ohio Mortgage Loan Act, as required by R.C. 1321.52(A), Respondent has violated R.C. 1322.07(C).
7. By failing to display Respondent's certificate of registration number on its advertisements, Respondent has violated R.C. 1322.09.
8. By advertising that it can provide the "lowest interest rate available," Respondent has violated O.A.C. 1301:8-7-07(B)(3).
9. By failing to display Respondent's loan officer licenses at Respondent's office, Respondent has violated R.C. 1322.031(E)(1).

PROPOSED ACTION

Based upon the allegations and findings above, the Division intends to REVOKE the Mortgage Broker Certificate of Registration MB#3520 of Humbert Mortgage, Inc. and to LEVY A FINE in the amount of \$10,000 for its violation of the Ohio Mortgage Broker Act.

NOTICE OF OPPORTUNITY FOR A HEARING ON PROPOSED ACTION

Therefore, pursuant to R.C. Chapters 1322 and 119, Respondents are hereby notified that thirty-one (31) days from the date of the mailing of this Notice, the Superintendent intends to issue an ORDER REVOKING the mortgage broker certificate of registration MB#3520 of Humbert Mortgage, Inc. and to impose a FINE of \$10,000.

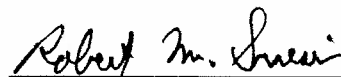
Respondent is further notified, pursuant to R.C. Chapter 119, that Respondent is entitled to a hearing on this matter. If Respondent desires to request a hearing, the request must be made in writing, and must be received in the offices of the Ohio Division of Financial Institutions within thirty (30) days of the time of the mailing of this Notice. Hearing requests should be addressed to:

**State of Ohio
Department of Commerce
Division of Financial Institutions
Attn: Attorney Timothy C. Winslow
77 South High Street, 21st Floor
Columbus, Ohio 43215-6120**

At the hearing, Respondent may appear in person, by Respondent's attorney, or by such other representative as is permitted to practice before the Agency, or Respondent may present its position, arguments, or contentions in writing, and, at the hearing, may present evidence and examine witnesses appearing for and against Respondent.

If the Ohio Division of Financial Institutions does not receive a written request for a hearing in its offices within thirty (30) days of the time of the mailing of this Notice, the Superintendent will issue an ORDER REVOKING the mortgage broker certificates of registration MB#3520 of Humbert Mortgage, Inc. and assessing a fine of \$10,000.

Signed and Sealed this 28th day of July, 2005.



Robert M. Grieser

Deputy Superintendent of Financial Institutions

CC: Timothy C. Winslow, In House Counsel—Division of Financial Institutions
Matt Lampke Asst. Attorney General, Executive Agencies
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