

2009 FEB 16 PM 6:07

**STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS**

<b>IN RE:</b>	:	<b>CASE NO. M2008-647</b>
	:	
<b>GUY L. RUTHERFORD dba, AMERIPLAN MORTGAGE,</b>	:	
	:	
<b>RESPONDENT</b>	:	<b>DELORES EVANS HEARING OFFICER</b>

---

**ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued February 13, 2009**

---

**I. FINDINGS OF FACT**

**A. Background**

This matter came before Delores Evans, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Code and Ohio Revised Code ("O.R.C.") Chapter 119. The hearing was held on January 29, 2009, at 77 South High Street, 23<sup>rd</sup> Floor, Columbus, Ohio.

On October 23, 2008, the Division issued an Order of Registration Suspension & Notice of Expedited Hearing ("NOH") to Guy L. Rutherford dba Ameriplan Mortgage ("Respondent"). The Division alleged that Respondent has failed to maintain the required corporate surety bond since September 27, 2008 in violation of O.R.C. 1322.05(A) and (F). The Division automatically suspended Respondent's mortgage broker certificate of registration pursuant to O.R.C. 1322.10(F)(1)(b). In the NOH, the Division seeks to continue the suspension of Respondent's mortgage broker certificate of registration.

Todd Nist, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Stephen DeFrank, Esq., testified on behalf of the Division. No representative appeared at the hearing on Respondent's behalf. State's Exhibits 1, 2, 3, and 4 were introduced and admitted into the record. The record consists of the Exhibits, properly marked and admitted, the NOH, and the transcript from the hearing. The record was closed at the end of the day on January 29, 2009.

**B. Jurisdiction and Procedural Matters**

1. On October 23, 2008, the Division issued the NOH. The NOH informed Respondent that the Division suspended its mortgage broker certificate of registration pursuant to O.R.C. 1322.10(F)(1)(b). The NOH also indicated that Respondent was entitled to an expedited hearing within 30 days. The Division scheduled the hearing for November 19, 2008. The Division sent the NOH to Respondent, via its operations manager and statutory agent, by certified mail, return receipt requested to: 26250 Euclid Avenue, Suite 531J, Euclid, Ohio 44132. The NOH and certified mail envelope were returned to the Division marked "unclaimed, unable to forward." *State's Exhibit 1*
2. O.R.C 119.07 provides that when a party fails to claim certified mail, an agency may send notice by ordinary mail to the party's last known address and obtain a certificate of mailing.
3. On November 19, 2008, the Division sent a copy of the NOH via ordinary mail to Respondent and obtained a certificate of mailing. The NOH and ordinary mail envelope were returned to the Division marked "unable to forward." *State's Exhibit 2*
4. O.R.C. 119.07 provides that if any notice sent by registered mail is returned for failure of delivery, then the agency shall make either personal delivery of the notice or shall cause a summary of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located. A proof of publication affidavit shall be mailed by ordinary mail to the party's last known address and the notice shall be deemed received as of the date of the last publication. Failure of delivery occurs when the notice is returned marked undeliverable, address or addressee unknown, or forwarding address unknown or expired. A party's last known address is the mailing address of the party appearing in the records of the agency.
5. In accordance with the provision of O.R.C. 119.07, the Division published a notice of the NOH in The (Cleveland) Daily Legal News, a daily newspaper of general circulation in Cuyahoga County, Ohio. The Division published the NOH for three consecutive weeks on December 9, 16, and 23, 2008. *State's Exhibit 1*
6. On January 2, 2009, the Division sent a letter to Respondent, via ordinary mail, informing it of the publication in The (Cleveland) Daily Legal News. A copy of the proof of publication affidavit and NOH were enclosed with the letter. The Division also indicated that the new hearing date was January 29, 2009. *State's Exhibit 1*

7. The hearing commenced on January 29, 2009. Respondent did not contact the Hearing Officer, the Attorney General's Office, or the Division about the hearing.

**C. Respondent's Activities**

8. Respondent is a company that holds a mortgage broker certificate of registration (# 800084) pursuant to O.R.C. Chapter 1322. *State's Exhibit 1*
9. Stephen DeFrank, an attorney examiner with the Division, monitors mortgage brokers to verify their compliance with O.R.C. Chapter 1322. Mr. DeFrank reviewed Respondent's mortgage broker file. *Testimony of Mr. DeFrank*
10. Sometime between August 15 and 26, 2008, the Division received notice from Hartford Fire Insurance Company that Respondent's surety bond was going to be cancelled on September 27, 2008. *State's Exhibit 3; Testimony of Mr. DeFrank*
11. On August 26, 2008, the Division sent a letter to Respondent indicating that it had received a Notice of Cancellation of Bond from Hartford Fire Insurance Company concerning Respondent's surety bond. The letter advised Respondent to review its surety bond status and provide the Division with evidence of its compliance with the bond requirements of O.R.C. 1322.05. *State's Exhibit 4*
12. The Division did not receive a response from Respondent.
13. On October 23, 2008, the Division suspended Respondent's mortgage broker certificate of registration for failing to maintain a surety bond. *State's Exhibit 1*
14. As of January 26, 2009, the day of the hearing, the Division had not received any response from Respondent.

**II. CONCLUSIONS OF LAW**

15. The Division has procedurally complied with O.R.C. Chapter 119 and jurisdiction has been established over this matter.
16. The Division is responsible for the administration, regulation, and enforcement of the Ohio Mortgage Broker Act, O.R.C. Chapter 1322.
17. Ohio's Mortgage Broker Act charges the Division with the protection of the public from harm by denying, suspending or revoking a mortgage broker certificate of registration if the evidence establishes that registration standards have not been met. O.R.C. 1322.041(A) and 1322.10(A). A home is generally the most valuable asset owned by an individual. Mortgage lenders have access to an individual's confidential personal and financial information and they play a critical role in the financing process. Thus, the Division is charged with protecting the

integrity of the registration process and preserving the public interest and confidence in the mortgage industry. It is for this reason that only the Division has the authority to issue a mortgage broker certificate of registration in Ohio.

18. O.R.C. 1322.05(A) and (F) state that:

(A) No registrant shall conduct business in this state, unless the registrant has obtained and maintains in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in this state. The bond shall be in favor of the superintendent of financial institutions and in the penal sum of at least fifty thousand dollars and an additional penal sum of ten thousand dollars for each location, in excess of one, at which the registrant conducts business. The term of the bond shall coincide with the term of registration. A copy of the bond shall be filed with the superintendent. The bond shall be for the exclusive benefit of any buyer injured by a violation by an employee, licensee, or registrant of any provision of sections 1322.01 to 1322.12 of the Revised Code. The aggregate liability of the corporate surety for any and all breaches of the conditions of the bond shall not exceed the penal sum of the bond.

\* \* \* \* \*

(F) No registrant shall fail to comply with this section. Any registrant that fails to comply with this section shall cease all mortgage broker activity in this state until the registrant complies with this section.

19. Pursuant to O.R.C. 1322.10(F)(1)(b), the Division may summarily suspend a mortgage broker certificate of registration for failing to maintain a surety bond.
20. Respondent has failed to maintain a corporate surety bond since September 27, 2008, which is a violation of O.R.C. 1322.05(A) and (F).
21. Pursuant to O.R.C. 1322.10(F)(1)(b), the Division summarily suspended Respondent's mortgage broker certificate of registration for failing to maintain a surety bond.
22. The Division has met its burden of proof for suspending Respondent's mortgage broker certificate of registration.

### III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established a sufficient evidentiary basis for suspending Respondent's mortgage broker certificate of registration pursuant to O.R.C. 1322.10(F)(1)(b) because Respondent failed to comply with O.R.C. 1322.05(A) and (F). Therefore, the Hearing Officer respectfully recommends that the Division continue the suspension of Respondent's mortgage broker certificate of registration.

Respectfully submitted,

A handwritten signature in cursive script that reads "Delores Evans".

Delores Evans  
Hearing Officer  
February 13, 2009