

**STATE OF NEBRASKA**  
**Department of Banking & Finance**

IN THE MATTER OF:  
Mortgage Express, Inc.,  
7200 South 84<sup>th</sup> Street,  
Omaha, Nebraska

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FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND  
CONSENT AGREEMENT

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Mortgage Bankers Registration and Licensing Act, Neb. Rev. Stat. §§ 45-701 to 45-721 (Reissue 2004; Cum. Supp. 2006) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Reissue 2004), the DEPARTMENT has investigated the actions of Mortgage Express, Inc., 7200 South 84<sup>th</sup> Street, Omaha, Nebraska (“MORTGAGE EXPRESS”). As a result of such investigation, and being duly advised and informed in the matter, the Director and MORTGAGE EXPRESS enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

**FINDINGS OF FACT**

1. MORTGAGE EXPRESS holds a license under the Act. A mortgage banker license was originally issued on December 6, 1995, and has been renewed annually on March 1<sup>st</sup> pursuant to Neb. Rev. Stat. § 45-706(3) (Cum. Supp. 2006).
2. On August 2, 2005, the DEPARTMENT received a telephone call from Melissa Eich (“Eich”) from a MORTGAGE EXPRESS branch in Sioux Falls, South Dakota. Eich stated that they were attempting to “do” a Nebraska loan, but that the lender could not verify its office location. A review of DEPARTMENT records showed that MORTGAGE

EXPRESS had never notified the DEPARTMENT that it had opened a branch in Sioux Falls, South Dakota, that was conducting mortgage banking business in Nebraska.

3. On August 2, 2005, the DEPARTMENT conducted a search of MORTGAGE EXPRESS' webpage, [www.mortgageexpress.bz](http://www.mortgageexpress.bz). MORTGAGE EXPRESS' webpage listed branches in the following locations:

- a. Sioux Falls, South Dakota
- b. Dakota Dunes, South Dakota
- c. Norfolk, Nebraska
- d. Blair, Nebraska
- e. Lincoln, Nebraska
- f. Bellevue, Nebraska
- g. LaVista, Nebraska
- h. Omaha, Nebraska (three branches)
- i. Mankato, Minnesota
- j. Rochester, Minnesota
- k. Sioux City, Iowa (two branches)
- l. Missouri Valley, Iowa
- m. Council Bluffs, Iowa
- n. Clarinda, Iowa
- o. Des Moines, Iowa
- p. Waterloo, Iowa
- q. Dubuque, Iowa
- r. Maryville, Missouri
- s. Hot Springs, Arkansas

t. Chicago, Illinois.

4. MORTGAGE EXPRESS submitted Renewal Applications to the DEPARTMENT on or before March 1<sup>st</sup> of each year since 1996. Each Renewal Application had a question requiring MORTGAGE EXPRESS to list the locations of all branches conducting mortgage banking business in Nebraska. A review of MORTGAGE EXPRESS' Renewal Applications indicated that many of the branches on the website had never been disclosed to the DEPARTMENT.

5. On January 17, 2007, MORTGAGE EXPRESS provided the DEPARTMENT with a table providing information regarding its branches. According to the table, the branches conducting mortgage banking business in Nebraska were as follows:

	Branch	Date Opened	Date Closed
a.	14242 West Center Road Omaha, Nebraska	8/1/1997	9/30/2003
b.	7200 South 84 <sup>th</sup> Street LaVista, Nebraska	10/1/2003	N/A
c.	1616 Vinton Street Omaha, Nebraska	6/9/1999	N/A
d.	128 West Norfolk Ave, Suite B Norfolk, Nebraska	12/8/2000	N/A
e.	1108 Pierce Street, Suite D Sioux City, Iowa 51105	5/1/1998	12/31/2006
f.	317 Dakota Dunes Blvd. Suite D Dakota Dunes, South Dakota	5/1/2001	12/31/2006
g.	200 East Washington Street Clarinda, Iowa	7/1/1998	N/A
h.	4921 East. 26 <sup>th</sup> Street, Suite 2 Sioux Falls, South Dakota	7/29/1998	N/A

i.	1705 Washington Blair, Nebraska	10/1/2001	11/1/2006
j.	14612 West Center Road Omaha, Nebraska (d/b/a Rotella Mortgage)	5/19/2003	12/31/2004
k.	11414 West Center Road Omaha, Nebraska (d/b/a Performance Lending)	2/1/2003 1/3/2006	12/1/2005 6/1/2006
l.	401 West Broadway Council Bluffs, Iowa	7/21/1998	7/31/2005
m.	4817 Dodge Street Omaha, Nebraska (d/b/a Executive Lending)	2/1/2003	9/30/2005
n.	2710 South 70 <sup>th</sup> Street, Suite 106 Lincoln, Nebraska	7/15/2000	1/1/2004
o.	1300 South Locust Grand Island, Nebraska	10/2/1998	7/31/2003
p.	1420 East Military Fremont, Nebraska	11/1/2004	10/31/2005
q.	2012 North Grand Island Avenue Grand Island, Nebraska	9/1/2005	N/A

6. MORTGAGE EXPRESS failed to list the Sioux City, Iowa; Dakota Dunes, South Dakota; Clarinda, Iowa; Council Bluffs, Iowa; and Sioux Falls, South Dakota branches on any Renewal Applications prior to the Renewal Application submitted for 2006. MORTGAGE EXPRESS disputes that it was required to list branches outside of Nebraska prior to the 2006 Renewal Application.

7. MORTGAGE EXPRESS failed to list the Norfolk, Fremont, Bellevue and two Omaha Branches on its Renewal Application for 2005. MORTGAGE EXPRESS

represents to the DEPARTMENT that it failed to include an attachment containing these branches with its 2005 Renewal Application.

8. MORTGAGE EXPRESS failed to list its Grand Island, Nebraska branch on its 2006 Renewal Application.

9. Neb. Rev. Stat. § 45-706(3) (Cum. Supp. 2006) provides that mortgage banker licenses may be renewed annually by filing an application for renewal containing such information as the Director may require to indicate any material change in the original application or succeeding renewal applications. MORTGAGE EXPRESS committed six violations of this Section by failing to list all of the branches as required by the 2005 and 2006 Renewal Applications.

10. Neb. Rev. Stat. § 45-711(9) (Cum. Supp. 2006) requires a licensee to notify the DEPARTMENT within thirty (30) days after a material development. The opening and closing of a branch in Nebraska is specifically listed as a material development in Neb. Rev. Stat. § 45-711(9)(g) (Cum. Supp. 2006).

11. MORTGAGE EXPRESS has never notified the DEPARTMENT within thirty (30) days of the opening, closing, or relocation of branches located in Nebraska. Since 2005, MORTGAGE EXPRESS has closed five branches without providing such notice. MORTGAGE EXPRESS therefore has committed five violations of Neb. Rev. Stat. § 45-711(9) (Cum. Supp. 2006) since 2005.

12. On July 27, 2006, the DEPARTMENT received a Mortgage Banker License Application ("Application") from Performance Lending Group, LLC ("Performance"). During its investigation of the license Application, the DEPARTMENT learned that Performance had asked MORTGAGE EXPRESS to submit the Application on its behalf.

The DEPARTMENT further learned that MORTGAGE EXPRESS had mishandled Performance's Application.

13. References in this Consent Agreement to customers of MORTGAGE EXPRESS will be by way of initials, in order to protect the privacy of such customers. MORTGAGE EXPRESS knows or should know the identity of these customers. If MORTGAGE EXPRESS is unable to ascertain the identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

14. The DEPARTMENT received a complaint regarding MORTGAGE EXPRESS from TE on March 24, 2005. The DEPARTMENT forwarded TE's complaint to MORTGAGE EXPRESS on April 4, 2005. The DEPARTMENT requested that MORTGAGE EXPRESS provide a written response to the allegations in the complaint and to submit a "copy of the consumer's loan file." MORTGAGE EXPRESS provided the DEPARTMENT with copies of the documents it retained for this transaction.

15. Ultimately, the DEPARTMENT obtained copies of loan files from MORTGAGE EXPRESS and Homecomings Financial, Inc. ("Homecomings"), as well as copies of documents TE retained. From a comparison of these documents the DEPARTMENT concluded that MORTGAGE EXPRESS' file was missing important documents, including a loan pricing commitment, various good faith estimates, and various truth-in-lending disclosures.

16. MORTGAGE EXPRESS therefore violated Neb. Rev. Stat. § 45-711(8) (Cum. Supp. 2006) which provides that a licensee shall maintain a copy of all documents and records relating to each mortgage loan and application for a mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period

of two years after the date the mortgage loan is funded or the loan application is denied or withdrawn.

17. Mike Akromis, ("AKROMIS"), Vice President of MORTGAGE EXPRESS, submitted a response dated April 18, 2005 that attempted to explain the circumstances involved in TE's loan. However, AKROMIS based his explanation upon the information contained in MORTGAGE EXPRESS' file. As a result, AKROMIS explanation was significantly inaccurate in several material respects.

18. MORTGAGE EXPRESS violated Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) as AKROMIS' explanation was so inaccurate as to cause it to be false and misleading. MORTGAGE EXPRESS represents to the DEPARTMENT that it did not intend to mislead the DEPARTMENT regarding TE's loan.

19. MORTGAGE EXPRESS' file included documents titled "Reason for Refinance," a loan pricing commitment, and "Right to Receive Copy of an Appraisal." These documents contained TE's signature, but none of the blanks had been filled in.

20. On June 26, 2006, the DEPARTMENT received a copy of a complaint against MORTGAGE EXPRESS that LZ & JZ had filed with the Nebraska Attorney General's Office. On August 4, 2006, the DEPARTMENT forwarded LZ & JZ's complaint to MORTGAGE EXPRESS. The DEPARTMENT requested that MORTGAGE EXPRESS respond to the complaint and to provide the DEPARTMENT a complete copy of LZ & JZ's loan file.

21. MORTGAGE EXPRESS faxed a response to the Nebraska Attorney General on August 8, 2006. However, MORTGAGE EXPRESS' response did not address all of the allegations in the complaint nor did it include a copy of the loan file. The DEPARTMENT,

in a letter dated August 21, 2006, requested the additional information not provided in MORTGAGE EXPRESS' response.

22. On September 15, 2006, Jeff Rothlisberger ("ROTHLISBERGER"), President of MORTGAGE EXPRESS, called a DEPARTMENT employee regarding the LZ & JZ complaint and left a message on the employee's voicemail. According to ROTHLISBERGER, he was "having trouble producing the file" and that he was "going to tear up [his] office looking for this file." Ultimately, MORTGAGE EXPRESS located the file more than two months after the DEPARTMENT had requested it from MORTGAGE EXPRESS.

23. Loan files contain sensitive personal information, including social security numbers, bank account numbers, and credit histories which MORTGAGE EXPRESS has a duty to properly maintain to avoid disclosure of this information. Part of properly maintaining a loan file is being able to locate the file upon request. Since MORTGAGE EXPRESS could not locate the file when requested by the DEPARTMENT, MORTGAGE EXPRESS violated Neb. Rev. Stat. § 45-711(8) (Cum. Supp. 2006).

24. In the complaint, LZ & JZ stated that MORTGAGE EXPRESS had emailed their loan file to LZ's parents without their permission. MORTGAGE EXPRESS disputes that this was done without the customers' permission.

25. The DEPARTMENT incurred a minimum of one thousand five hundred dollars in investigation costs in this matter.

#### CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-705 (Cum. Supp. 2006) provides, in part, that no person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she,



or it is licensed or registered with the DEPARTMENT. The statute further provides that an applicant for a mortgage banker license shall submit an application on forms provided by the DEPARTMENT, and the form shall contain, among other items, all addresses at which the applicant will conduct its business and the names and titles of each director and principal officer of the applicant.

2. Neb. Rev. Stat. § 45-706(1) (Cum. Supp. 2006) provides that the business of a mortgage banker shall be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Act.

3. Neb. Rev. Stat. § 45-706(3) (Cum. Supp. 2006) provides that mortgage banker licenses may be renewed annually by filing an application for renewal containing such information as the Director may require to indicate any material change in the original application or succeeding renewal applications.

4. Neb. Rev. Stat. § 45-707(1)(I) (Cum. Supp. 2006) provides that the Director may revoke or suspend a license and/or impose an administrative fine for each separate violation of the Act if the Director finds that the licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the Act or with any other state or federal law applicable to the mortgage banking business.

5. Neb. Rev. Stat. § 45-711(8) (Cum. Supp. 2006) provides that the licensee shall maintain a copy of all documents and records relating to each mortgage loan and application for a mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the mortgage loan is funded or the loan application is denied or withdrawn.

6. Neb. Rev. Stat. § 45-711(9)(g) (Cum. Supp. 2006) provides that the licensee shall notify the Director in writing within thirty days after the occurrence of any material development and specifically lists the opening and closing of branches in Nebraska as a significant development.

7. Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006) provides that if the Director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by Section 45-707 or has otherwise violated the Act, the Director may order such person to pay an administrative fine not exceeding five thousand dollars for each separate violation plus the costs of investigation.

8. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that MORTGAGE EXPRESS has violated the Act and that an administrative fine in an amount of not more than five thousand dollars for each of the violations plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006).

9. The facts listed in the above Findings of Fact clearly indicate that MORTGAGE EXPRESS' management has been deficient in material respects. The DEPARTMENT has made no findings regarding violations of the Act pertaining to MORTGAGE EXPRESS' lending activities. However, the above Findings of Fact show deficiencies related to lost and incomplete loan files, lack of a consistent privacy policy, and mishandled license applications, all of which relate to the management of the company.

10. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

11. It is in the best interest of MORTGAGE EXPRESS, and in the best interest of the public, for MORTGAGE EXPRESS and the DEPARTMENT to resolve the issues included herein.

### CONSENT AGREEMENT

The DEPARTMENT and MORTGAGE EXPRESS agree as follows:

Stipulations: In connection with this Consent Agreement, MORTGAGE EXPRESS and the DEPARTMENT stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Agreement shall resolve all matters between the DEPARTMENT and MORTGAGE EXPRESS in connection with the Findings of Fact listed above. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.
3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

MORTGAGE EXPRESS further represents as follows:

1. MORTGAGE EXPRESS is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.
2. MORTGAGE EXPRESS is acting free from any duress or coercion of any kind or nature.
3. This Consent Agreement is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Agreement and for no other purpose.

IT IS, THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, MORTGAGE EXPRESS shall pay a fine of two hundred fifty dollars (\$250.00) for each of its six violations of Neb. Rev. Stat. § 45-706(3) (Cum. Supp. 2006) where they failed to properly list all of their branches on the 2005 and 2006 Renewal Application.
2. Within ten (10) days after the effective date of this Consent Agreement, MORTGAGE EXPRESS shall pay a fine of two hundred fifty dollars (\$250.00) for each of its five violations of Neb. Rev. Stat. § 45-711(9) (Cum. Supp. 2006) since 2005 where it failed to notify the DEPARTMENT within thirty (30) days of the opening, closing, and relocating of branches in Nebraska.
3. Within ten (10) days after the effective date of this Consent Agreement, MORTGAGE EXPRESS shall pay a fine of one thousand dollars (\$1,000.00) for each of the two violations of Neb. Rev. Stat. § 45-711(8) (Cum. Supp. 2006) where it failed to properly maintain customer loan files for a period of two years from the date the loan was closed, denied, or withdrawn.
4. Within ten (10) days after the effective date of this Consent Agreement, MORTGAGE EXPRESS shall pay a fine of one thousand dollars (\$1,000.00) for its violation of Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) which was caused by MORTGAGE EXPRESS' failure to properly maintain documents.
5. Within ten (10) days after the effective date of this Consent Agreement, MORTGAGE EXPRESS shall pay the investigation costs of the DEPARTMENT in the amount of one thousand five hundred dollars (\$1,500.00).

6. The total amount of the fine and investigation costs, seven thousand two hundred and fifty dollars (\$7,250.00), shall be payable in one check or money order to the DEPARTMENT.

7. Within fourteen (14) days after the effective date of this Consent Agreement, MORTGAGE EXPRESS shall adopt a records retention policy that is in conformity with Neb. Rev. Stat. § 45-711(8) (Cum. Supp. 2006); shall provide a copy of such policy to each of its employees and agents; and shall forward a copy of such policy to the DEPARTMENT.

8. Within fourteen (14) days after the effective date of this Consent Agreement, MORTGAGE EXPRESS shall review their confidentiality policy and shall revise it if necessary to prohibit the disclosure of the information in the loan file to outside third parties except as necessary to obtain the borrower's loan or respond to a regulator's inquiry, without written permission of the borrower and shall provide a copy of such policy to each of its employees and agents, and shall forward a copy of such policy to the DEPARTMENT.

9. Within fourteen (14) days after the effective date of this Consent Agreement, MORTGAGE EXPRESS shall adopt a policy that shall prohibit its loan officers and processors from obtaining customer signatures on blank documents. MORTGAGE EXPRESS shall provide a copy of such policy to each of its employees and agents, and shall forward a copy of such policy to the DEPARTMENT.

10. MORTGAGE EXPRESS shall notify the DEPARTMENT at least ten (10) days prior to opening any branch office which will originate or arrange loans secured by Nebraska real estate, regardless of the location of the branch office. This condition shall apply until March 1, 2011, unless this condition is sooner vacated by the DEPARTMENT.

11. The DEPARTMENT reserves the right to conduct an examination of MORTGAGE EXPRESS pursuant to Neb. Rev. Stat. § 45-710(1) (Cum. Supp. 2006) to ascertain compliance with this Consent Agreement and with the Act. MORTGAGE EXPRESS agrees to pay the costs of any such examination.

12. In the event MORTGAGE EXPRESS fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding MORTGAGE EXPRESS as it deems necessary and appropriate in the public interest.

13. The effective date of this Consent Agreement shall be the date of the Director's signature.

DATED this 4<sup>th</sup> day of April, 2007.

**Mortgage Express, Inc.**

By: 

Jeff Rothberger, President

7200 South 84<sup>th</sup> Street  
 LaVista, Nebraska 68128  
 (402) 334-5878

DATED this 9<sup>th</sup> day of April, 2007.

**STATE OF NEBRASKA  
 DEPARTMENT OF BANKING AND FINANCE**

By: 

John Munn, Director

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