

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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2008 AUG 28 P 2:15

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WILLIAM A. MUNDELL  
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GARY PIERCE

AZ CORP COMMISSION  
DOCKET CONTROL

In the matter of:  
GUILLERMO RICARDO DE LA VARA  
(a/k/a "WILLIAM DE LA VARA" and "BILL  
DE LA VARA"), a married man  
doing business as MORTGAGE NOTES, an  
Arizona registered trade name and  
MORTGAGE NOTES, INC., a dissolved  
Arizona corporation;  
MNI PROPERTIES, L.L.C., an Arizona  
limited liability company;  
ERLINDA DE LA VARA (a/k/a "ERLINDA  
G. LOPEZ"), spouse of GUILLERMO  
RICARDO DE LA VARA,  
Respondents.

DOCKET NO. S-20616A-08-0449

TEMPORARY ORDER TO CEASE AND  
DESIST AND NOTICE OF  
OPPORTUNITY FOR HEARING

Arizona Corporation Commission

DOCKETED

AUG 28 2008

DOCKETED BY [signature]

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents GUILLERMO RICARDO DE LA VARA (a/k/a "WILLIAM DE LA VARA" and "BILL DE LA VARA"), doing business as "MORTGAGE NOTES," an Arizona registered trade name and as MORTGAGE NOTES, INC., a dissolved Arizona corporation, and MNI PROPERTIES, L.L.C., an Arizona limited liability company are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, et seq., the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

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**I.**

**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, and the Securities Act.

**II.**

**RESPONDENTS**

2. GUILLERMO RICARDO DE LA VARA (a/k/a “WILLIAM DE LA VARA” and “BILL DE LA VARA”) (hereafter, “DE LA VARA”) is a married man who at all times relevant resided in Phoenix, Arizona. DE LA VARA does business as “MORTGAGE NOTES,” an Arizona registered trade name owned by DE LA VARA, and as MORTGAGE NOTES, INC.

3. MORTGAGE NOTES, INC. (“MNI”) is a dissolved Arizona corporation with a principal place of business in Phoenix, Arizona. MNI was formed in Arizona on or about September 1990 and was administratively dissolved by the Corporations Division of the Commission on August 1, 2008 for its failure to file its 2008 annual report. From at least 2001 to the present, DE LA VARA transacted business through and has been doing business as MNI as its co-owner, president, chief executive officer and director.

4. MNI PROPERTIES, L.L.C. (“MNIP”) is an Arizona limited liability company with a principal place of business in Phoenix, Arizona. MNIP was formed by DE LA VARA on January 21, 2004. DE LA VARA is the managing member of MNIP.

5. ERLINDA DE LA VARA (a/k/a “ERLINDA G. LOPEZ”) has been at all times relevant the spouse of DE LA VARA. She is referred to hereafter as “RESPONDENT SPOUSE.” RESPONDENT SPOUSE is joined in this action under A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the marital community.

6. At all times relevant, DE LA VARA was acting for his own benefit and for the benefit or in furtherance of DE LA VARA and RESPONDENT SPOUSE’s marital community.



1           14.     RESPONDENTS re-sell and/or assign the deeds of trust to investors as the Lien  
2 Investments. The purchase price of a Lien Investment ranges from \$5,000 to \$250,000.

3           15.     RESPONDENTS represent to investors that the Lien Investments are risk-free and  
4 fully secured by real estate that has a fair market value exceeding the balance of the notes/loans  
5 secured by the deeds of trust.

6           16.     The terms of a Lien Investment often retain those set forth in the original deed of  
7 trust acquired or generated by RESPONDENTS. RESPONDENTS sometimes sell an investor a  
8 Lien Investment that consists only of a portion of the payments due under a deed of trust.  
9 RESPONDENTS occasionally sell a Lien Investment to an investor that includes a lesser interest  
10 rate than that set forth under the original deed of trust.

11           17.     RESPONDENTS represent to investors that RESPONDENTS manage the Lien  
12 Investments, and: (a) perform any underwriting and/or risk evaluation services associated with a  
13 Lien Investment, "in house, with no loan committees with which to contend;" (b) generate and timely  
14 record a deed of trust or other documents to legally or adequately secure an investor's Lien  
15 Investment; (c) service a note and deed of trust, and collect monthly payments and balloon and/or  
16 note payoffs from the borrower/note makers; (d) disburse collected monthly loan payments, and loan  
17 payoffs associated with a Lien Investment to an investor; (e) prepare Lien Investment account  
18 statements, and forward such statements to investors; (f) research and/or confirm the title of real  
19 estate that will secure an investor's Lien Investment; (g) prepare and record a deed of release at the  
20 conclusion of an investor's Lien Investment as may be required by law; and/or (h) handle foreclosure  
21 or borrower/note maker eviction matters relating to a Lien Investment to repay the investor their  
22 principal investment and promised profit.

23           18.     Once an investor purchases a Lien Investment and signs any applicable real estate  
24 documents, they have no duties to receive their promised Lien Investment profit and the return of  
25 their principal investment. Lien Investment documents created, signed and recorded by  
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1 RESPONDENTS are acknowledged (notarized) by RESPONDENT SPOUSE under her  
2 alternative name "ERLINDA G. LOPEZ."

3 19. Under the Lien Investments, RESPONDENTS share profits with their investors,  
4 for instance, by: (a) retaining a lump-sum origination fee from the principal Lien Investment funds  
5 and/or borrower/note maker; (b) assigning only a portion of the payments due under a deed of trust to  
6 an investor, and retaining the remaining interest and principal payments made by the borrower/note  
7 maker; or (c) by retaining interest income representing the difference in the interest rate called for  
8 under an original deed of trust and that ultimately assigned/sold to an investor as a Lien Investment.

9 20. At all times relevant, RESPONDENTS:

- 10 A. Fail to disclose to certain investors that they are being sold Lien Investments  
11 related to real estate that RESPONDENTS do not own or have a legal or  
12 equitable interest.
- 13 B. Misrepresent to certain investors that RESPONDENTS will collect monthly  
14 and loan-payoff payments from borrower/note makers and fail to forward  
15 such monies to the investors.
- 16 C. Fail to disclose to investors that RESPONDENTS sometimes will fail to  
17 record deeds of trust to secure an investor's Lien Investment in the lien  
18 position promised by RESPONDENTS (*i.e.*, 1<sup>st</sup>). RESPONDENTS further  
19 fail to disclose to certain investors that RESPONDENTS then sell the same  
20 Lien Investment (*e.g.*, note and related 1<sup>st</sup> position deed of trust) to another  
21 investor. RESPONDENTS often fail to provide their investors with  
22 recorded documents demonstrating the purported security of their  
23 Investments.
- 24 D. Fail to disclose to investors that RESPONDENTS will in some cases forge  
25 an investor's signature on a real estate document, such as a release of deed  
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of trust, in part, so RESPONDENTS can sell the same Lien Investment to another investor.

E. Misrepresent and/or fail to disclose to certain investors the *number* of pre-existing liens attached to a piece of real estate. This misrepresentation and/or omission sometimes results in a piece of real estate being subject to 4 or more Lien Investments that are often under-secured.

F. Misrepresent to certain investors the *dollar amount* of disclosed, existing/prior liens attached to a piece of real estate and/or the *fair market value* of the real estate. This misrepresentation sometimes results in an under-secured Lien Investment.

G. Fail to disclose to investors that RESPONDENTS will sometimes falsify the legal description of real estate in a deed of trust that purportedly secures an investor's Lien Investment, and then correctly type the legal description of the same real estate in documents associated with a subsequent investor's purchase of the same Lien Investment.

21. In one instance, RESPONDENTS DE LA VARA and MNI acquired 6 properties with loans issued by a mortgage banker, resulting in first position liens on all 6 properties in favor of the mortgage banker. Thereafter, RESPONDENTS DE LA VARA and MNI sold second position Lien Investments on the 6 properties to an existing investor. RESPONDENTS DE LA VARA and MNI then purportedly sold first position Lien Investments on those 6 properties to an Arizona couple (the "Jade Park investors") when, in reality and by default, they actually purchased third position Lien Investments. With the downturn in the Arizona real estate market and related sale costs, the depreciated, current market value of the 6 properties is less than, or approximately equal to the loan balance owed to first position lien holding mortgage banker. Thus, the Jade Park investors' Investments are under-secured and worthless.

1           22.     In another case, RESPONDENTS DE LA VARA and MNI sold another Arizona  
2 couple 29 Lien Investments totaling approximately \$950,000 in which these RESPONDENTS  
3 engaged in the conduct described above. These investors' Lien Investments are under-secured  
4 and/or unsecured.

5           23.     Contrary to RESPONDENTS' representations, the Lien Investments are not risk-free  
6 and secure because, without limitation, they are subject to RESPONDENTS' misrepresentations and  
7 non-disclosures noted above, unpredictable civil litigation, bankruptcy proceedings and a material  
8 drop in the value of the associated real estate collateral.

9           24.     RESPONDENTS failed to disclose to investors that DE LA VARA and MNI filed two  
10 bankruptcies directly related to, and adversely affecting the Lien Investments, to wit:

- 11           A.       MNI voluntarily filed a Chapter 11 bankruptcy on June 29, 2007 in the U.S.  
12                    Bankruptcy Court, District of Arizona, 2:07-bk-03071-JMM, which has since  
13                    been converted to a Chapter 7 bankruptcy (the "MNI Bankruptcy"); and  
14           B.       DE LA VARA voluntarily filed a Chapter 7, no-asset bankruptcy on January  
15                    15, 2008 in the U.S. Bankruptcy Court, District of Arizona, 2:08-bk-00381-  
16                    SSC (the "DE LA VARA Bankruptcy").

17 The MNI and DE LA VARA Bankruptcies are pending.

18           25.     On June 9, 2008, the judge in the DE LA VARA Bankruptcy: (a) denied the discharge  
19 of his debts in that case under 11 U.S.C. § 727 relating to fraudulent transfers of property pursuant to  
20 Adversary Complaint No. 2-08-AP-294; and (b) entered an adverse judgment against him in the  
21 amount of \$353,913.57. The fraudulent transfers at issue in the DE LA VARA Bankruptcy were  
22 made by DE LA VARA and MNI to MNIP and DE LA VARA family members. There is a pending  
23 investor Adversary Complaint No. 08-00287 in the DE LA VARA Bankruptcy that seeks an order that  
24 approximately \$1 million dollars worth of Lien Investments are non-dischargeable under 11 U.S.C. §  
25 523(a)(2), (4) & (6) due to RESPONDENT DE LA VARA and MNI's fraud in selling the Lien  
26 Investments.





1 operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is  
2 not limited to, the following:

- 3           A.     Misrepresenting to investors that the Lien Investments are risk-free and secure,  
4                    when they are not secure, under-secured and/or entail lower lien positions than  
5                    represented by RESPONDENTS, and because they are subject to unpredictable  
6                    civil litigation, bankruptcy proceedings and a material drop in the value of  
7                    associated real estate collateral.
- 8           B.     Misrepresenting to certain investors that RESPONDENTS own or have a legal  
9                    or equitable interest in real estate that purportedly secures an investor's Lien  
10                  Investment when, in fact, they do not. This misrepresentation results in the  
11                  investors' Lien Investment being unsecured.
- 12          C.     Misrepresenting to certain investors that RESPONDENTS will collect monthly  
13                  and loan payoff payments from borrower/note makers and forward such monies  
14                  to investors when they, in fact, do not.
- 15          D.     Misrepresenting to certain investors that RESPONDENTS will timely record  
16                  deeds of trust and any related documents to secure an investor's Lien Investment  
17                  in the lien position promised by RESPONDENTS (i.e., 1<sup>st</sup>). RESPONDENTS  
18                  then fail to disclose to investors that they will resell the same Lien Investment  
19                  position to another investor. This conduct results in the first investor's Lien  
20                  Investment being under-secured and/or unsecured.
- 21          E.     Failing to disclose to investors that RESPONDENTS will in some cases forge an  
22                  investor's signature on a real estate document, such as a release of deed of trust  
23                  that extinguishes an investor's security interest in their Lien Investment. This  
24                  non-disclosure allows RESPONDENTS to then re-sell the same Lien Investment  
25                  to another investor.
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- 1 F. Misrepresenting and/or failing to disclose to certain investors the *number* of  
2 existing liens attached to a piece of real estate that purportedly will secure an  
3 investor's Lien Investment. This misrepresentation often results in a piece of  
4 real estate being subject to 4 or more Lien Investments. This misrepresentation  
5 has the effect of leaving the investor's Lien Investment under-secured and/or  
6 unsecured.
- 7 G. Misrepresenting and/or failing to disclose to certain investors the *dollar amount*  
8 of disclosed, existing/prior lien(s) attached to a piece of real estate, and/or the  
9 *fair market value* of the real estate, to induce an investor to invest in, for  
10 instance, a second position Lien Investment. This misrepresentation has the  
11 effect of leaving the Lien Investment under-secured and/or unsecured.
- 12 H. Failing to disclose to investors that RESPONDENTS will in some instances  
13 falsify the legal description of real estate in documents associated with an  
14 investor's Lien Investment, and then correctly type the legal description of the  
15 same real estate in documents associated with a subsequent investor's purchase  
16 of the same Lien Investment. This non-disclosure results in the first investor's  
17 Lien Investment being unsecured.
- 18 I. Failing to disclose to investors that Lien Investment documents created, signed  
19 and recorded by RESPONDENTS, and acknowledged (notarized) by  
20 RESPONDENT SPOUSE under her alternative name "ERLINDA G. LOPEZ,"  
21 result in the Lien Investments being invalid and unsecured, for instance, as to  
22 lien holders/creditors whose real estate documents are timely and properly  
23 acknowledged and recorded.
- 24 J. Failing to disclose to certain investors the nature and existence of the DE LA  
25 VARA and MNI Bankruptcies.
- 26 33. This conduct violates A.R.S. § 44-1991.

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VII.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

THEREFORE, based on the above allegations, and because the Commission has determined that the public welfare requires immediate action,

IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that RESPONDENTS, their agents, servants, employees, successors, assigns, and those persons in active concert or participation with RESPONDENTS CEASE AND DESIST from any violations of the Securities Act.

IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

IT IS FURTHER ORDERED that this Order shall be effective immediately.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from RESPONDENTS' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of DE LA VARA and RESPONDENT SPOUSE are subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. §§ 25-215 and 44-2031(C); and

5. Order any other relief that the Commission deems appropriate.

## IX.

## HEARING OPPORTUNITY

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3 Each RESPONDENT, including RESPONDENT SPOUSE may request a hearing pursuant  
4 to A.R.S. § 44-1972 and A.A.C. Rule 14-4-307. **If a RESPONDENT or RESPONDENT**  
5 **SPOUSE requests a hearing, the requesting respondent must also answer this Temporary**  
6 **Order and Notice.** A request for hearing must be in writing and received by the Commission  
7 within 20 days after service of this Temporary Order and Notice. The requesting respondent must  
8 deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200  
9 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket  
10 Control by calling (602) 542-3477 or on the Commission's Internet web site at  
11 [www.azcc.gov/divisions/hearings/docket.asp](http://www.azcc.gov/divisions/hearings/docket.asp).

12 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10  
13 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,  
14 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**  
15 **Order shall remain effective from the date a hearing is requested until a decision is entered.**  
16 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,  
17 with written findings of fact and conclusions of law. A permanent Order may include ordering  
18 restitution, assessing administrative penalties, or other action.

19 If a request for hearing is not timely made, the Division will request that the Commission  
20 make permanent this Temporary Order, with written findings of fact and conclusions of law, which  
21 may include ordering restitution, assessing administrative penalties, or other relief.

22 Persons with a disability may request a reasonable accommodation such as a sign language  
23 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,  
24 ADA Coordinator, voice phone number 602/542-3931, e-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov). Requests should  
25 be made as early as possible to allow time to arrange the accommodation.  
26

X.

**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a RESPONDENT or RESPONDENT SPOUSE requests a hearing, the requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Temporary Order and Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at [www.azcc.gov/divisions/hearings/docket.asp](http://www.azcc.gov/divisions/hearings/docket.asp).


Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Mike Dailey.

The Answer shall contain an admission or denial of each allegation in this Temporary Order and Notice and the original signature of the answering respondent or the respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 28 day of August, 2008.

  
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Matthew J. Neubert  
Director of Securities

MD