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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 SEP 24 A 10:17

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:)	DOCKET NO. S-20703A-09-0461
)	
SIR MORTGAGE & FINANCE OF)	
ARIZONA, INC., an Arizona corporation,)	TEMPORARY ORDER TO CEASE AND
)	DESIST AND NOTICE OF
GREGORY M. SIR (a/k/a "GREG SIR"), and)	OPPORTUNITY FOR HEARING
ERIN M. SIR, husband and wife,)	
)	
Respondents.)	

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 SIR MORTGAGE & FINANCE OF ARIZONA, INC. and GREGORY M. SIR (a/k/a "GREG SIR") 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.

I.

JURISDICTION

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

Arizona Corporation Commission
DOCKETED
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1 **II.**

2 **RESPONDENTS**

3 2. Since September 4, 2002, to the present, respondent SIR MORTGAGE &
4 FINANCE OF ARIZONA, INC. ("SMFA") has been an Arizona corporation with a principal place
5 of business in Phoenix, Arizona. SMFA is a mortgage banker licensed with the Arizona Department
6 of Financial Institutions, #0905357. At all times relevant, SMFA was not registered as a securities
7 dealer or salesman by the Commission.

8 3. Respondent GREGORY M. SIR (a/k/a "GREG SIR") ("SIR") is a married man and
9 an Arizona resident. From on or about January 7, 2000, to approximately September 4, 2002, SIR
10 conducted business within and from Arizona in his individual capacity, both in his own name and as
11 SMFA. From approximately September 4, 2002, to the present, SIR conducted business within and
12 from Arizona in his individual capacity and through SMFA as its president, secretary, treasurer and
13 director. At all times relevant, SIR was not registered as a securities dealer or salesman by the
14 Commission.

15 4. SMFA and SIR may be collectively referred to as "RESPONDENT(S)."

16 5. Respondent ERIN M. SIR ("SPOUSE") was at all relevant times the spouse of SIR.
17 SPOUSE is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the
18 liability of the marital community.

19 6. At all times relevant, SIR was acting for his own benefit and for the benefit or in
20 furtherance of SIR and SPOUSE's marital community.

21 **III.**

22 **FACTS**

23 7. From approximately January 7, 2000, to the present, SIR has been offering and
24 selling securities within and from Arizona in the form of notes and/or investment contracts. From
25 approximately September 4, 2002, to the present, SMFA has been offering and selling securities
26 within and from Arizona in the form of notes and/or investment contracts.

1 8. At all times relevant, RESPONDENTS represent to offerees and investors that they
2 are engaged in the business of originating and funding real estate loans (“Loan(s)”).

3 9. According to RESPONDENTS’ website at www.sirmortgage.com (“Website”),
4 SMFA “provides private money lending, often referred to as hard money lending for all types of
5 Real Estate projects.” RESPONDENTS’ website further represents that the “experts” at SMFA
6 provide borrowers with creative and flexible Loans for a variety of real estate ventures, including
7 complex commercial, bridge, construction, vacant land, subdivision development, industrial and
8 single family home Loans.

9 10. According to SMFA’s “Articles of Incorporation” filed with the Corporations Division
10 of the Commission and signed by respondent SIR as its incorporator, SMFA is engaged in the
11 “business of selling of mortgages and deeds of trust, as well as other real estate investments.”

12 11. The maturity dates of RESPONDENTS’ Loans vary and range from, for instance,
13 approximately six months to ten years. Loan interest rates range from approximately eleven to
14 fourteen percent per year. RESPONDENTS’ Website further represents that RESPONDENTS
15 sometimes issue interest-only Loans.

16 12. Principal Loan amounts also vary, and range from approximately \$100,000 to over
17 \$4,500,000. RESPONDENTS’ Website represents that RESPONDENTS can fund Loans up to
18 \$20,000,000.

19 13. RESPONDENTS’ Loans are evidenced by promissory notes (“Notes”) executed by
20 borrowers in favor of SMFA, and secured by real property and other collateral (“Collateral”). To
21 create and perfect their security interest in the Collateral, RESPONDENTS prepare deeds of trust,
22 UCC financing statements and similar documents executed by borrowers in favor of SMFA and
23 recorded in the county where the Collateral is located. RESPONDENTS’ various Collateral
24 securitization documents may be referred to collectively as the “DOT(s).”

25 14. At all times relevant, RESPONDENTS represent to offerees and investors that they
26 use investor money to fund the Loans (the “Investment(s)”). Less often, RESPONDENTS

1 sometimes fund a Loan themselves, and then sell their interest in the Loan to one or more investors
2 as the Investments. Principal Investment amounts vary and range from, for example,
3 approximately \$40,000 to over \$250,000.

4 15. Investors provide their Investment money directly to RESPONDENTS. Thereafter,
5 RESPONDENTS assign to one or more investors their interest in the original Loan Notes and
6 DOTs in proportion to their principal Investment(s).

7 16. RESPONDENTS most often pool investor money together to fund a single Loan,
8 resulting in fractionalized Notes, and fractionalized DOTs recorded in favor of multiple investors.
9 By way of limited example, in a December 2006 Loan in the amount of \$3,080,000 funded with
10 investor money, RESPONDENTS sold and assigned their Loan interests to eight participating
11 investors in proportion to their principal Investments, resulting in an undivided, fractionalized DOT
12 interest of: (a) 24%; (b) 12.5%; (c) 12.5%; (d) 12.5%; (e) 10%; (f) 10%; (g) 10%; and (h) 8.5%
13 respectively.

14 17. Alternatively, RESPONDENTS sometimes sell and assign one hundred percent of
15 their interest in a Loan to one investor as an Investment. For example, on or about August 13,
16 2009, RESPONDENTS assigned to a single Arizona investor one hundred percent of their interest
17 in a Loan Note and DOT providing security for a \$40,000 residential Loan.

18 18. Sometimes, SMFA and/or SIR, through his family trust or one of his other
19 companies, retain a partial interest in a Loan Note and DOT. By way of limited example, in a June
20 2005 Loan in the amount of \$1,450,000 funded, in part, with investor money, RESPONDENTS
21 assigned the Loan Note and DOT in favor of four investors and SMFA in proportion to their
22 principal Investments resulting in an undivided, fractionalized DOT interest of: (a) 25.5%; (b)
23 10%; (c) 10%; (d) 15%; and (e) 39.5% to SMFA respectively.

24 19. RESPONDENTS profit from the Loan Investments by charging borrowers various
25 fees. For instance, in one \$550,000 Loan to finance the purchase of vacant land, RESPONDENTS
26 charged the borrower: (a) a mortgage banker's "Discount/loan fee" of \$16,500, or approximately

1 three percent of the principal Loan amount; (b) a "Property inspection fee" totaling \$750; (c) loan
2 processing fee totaling \$1,250; (d) a \$75 courier fee; and (e) a \$100 fee for future loan closing
3 services.

4 20. In another \$550,000 Loan, RESPONDENTS also charged and retained a: (a)
5 "Mortgage Banker's Discount" of \$13,125; (b) a "Prepaid Commitment Fee" of \$3,375; (c) an
6 "Assignment Endorsement Fee" of \$125; (d) a "Lender Endorsement Fee" of \$100; (e) a "Property
7 Inspection Fee" of \$750; (f) a Loan "Processing Fee" of \$1,250; (g) a "Courier Fee" of \$75; and (h) a
8 "Final Payoff Document preparation Fee" of \$100. In one \$2,150,000 non-performing construction
9 Loan, RESPONDENTS charged the borrower a one percent loan extension fee totaling \$21,500 and
10 a \$750 document fee.

11 21. As discussed further below, RESPONDENTS further prepare, and require investors
12 to execute a standard form document called, "Beneficiary Instructions and Authorizations"
13 ("Agency Agreements") that permit RESPONDENTS to perform a multiple Loan related tasks on
14 behalf of investors.

15 22. As documented, in part, by the Agency Agreements, RESPONDENTS also collect a
16 portion of the monthly Loan interest payments made by Loan borrowers in the form of an "interest
17 participation" fee of, for instance, as little as ".25%" (*i.e.*, one-quarter of one percent) up to ".30%"
18 (*i.e.*, 3/10 of one percent). RESPONDENTS sometimes also have investors execute an "Irrevocable
19 Money Assignment" in favor of RESPONDENTS and/or one of SIR's other companies that allows
20 RESPONDENTS and/or one of SIR's other companies to retain, for instance, one-half of one percent
21 (*i.e.*, ".50%") of all Loan interest payments made by a Loan borrower under a Loan Note.

22 23. Some Loan servicing work, such as the recordation of documents with the county
23 recorder, is handled by a third-party escrow agent ("Loan Servicing Agent") both selected and
24 controlled by RESPONDENTS, in part, as provided by the Agency Agreements.

25 24. RESPONDENTS and/or the Loan Servicing Agent manage the essential aspects of
26 the Loans on behalf of investors. For instance, and without limitation, they:

- 1 A. Advertise for, and obtain borrowers, in part, via RESPONDENTS' Website;
- 2 B. Negotiate the terms and conditions of the Loans with borrowers;
- 3 C. Prior to originating and funding Loans, they evaluate borrowers and *Loan Collateral*
- 4 and, for example obtain and review borrower financial statements and balance
- 5 sheets, and evaluate the risk of, and underwrite the Loans "in house" (the "Due
- 6 Diligence");
- 7 D. Prepare and have borrowers execute DOTs and a myriad of related documents
- 8 setting forth Loan terms and fees, and securing various forms of Collateral;
- 9 E. Arrange for and participate in escrow closings, including the preparation of escrow
- 10 instructions, recording instructions, good faith estimates and HUD-1 settlement
- 11 statements and Loan disbursement and borrower payment instructions and statements
- 12 tailored to the terms and conditions of each Loan; and
- 13 F. As discussed further below, they evaluate and attempt to favorably resolve issues
- 14 arising from non-performing Loans.

15 **The Due Diligence**

16 25. The Due Diligence services performed by RESPONDENTS on behalf of investors

17 for each Loan are extensive, often documented in a detailed, customized "Loan Checklist" prepared

18 by RESPONDENTS and include, without limitation, the procurement and review of: (a)

19 preliminary and final title insurance policies; (b) borrower/tenant lease agreements, a "detailed rent

20 roll," or in the case of a an apartment-to-condo conversion Loan, an "affidavit of no leases" to

21 prove fee simple ownership and control; (c) construction contracts; (d) construction cost

22 breakdowns or budgets; (e) building or plat site plans, ALTA surveys, blue prints, and construction

23 and architectural plans; (f) drainage and engineering studies; (g) zoning information, and flood maps;

24 (h) environmental reports; (i) borrower financial statements, "net worth" statements and profit and

25 loss statements for self employed borrowers; (j) borrower tax returns; (k) borrower credit reports

26 and/or FICO scores; (l) detailed borrower Loan applications; (m) borrower and/or Collateral

1 insurance information; (n) income documentation such as W-2's and pay stubs; (o) corporate
2 borrower documents such as operating agreements, by-laws, articles of incorporation and Loan
3 related resolutions; (p) purchase contracts, and previous loan settlement documents; (q) Collateral
4 appraisals, and tax parcel numbers; (r) city development and tax rebate agreements; (s) project
5 development, sewer, utility and impact fee information; (t) borrower project marketing materials; (u)
6 Collateral improvements and related cost breakdowns; (v) building permits or certificates of
7 occupancy; (w) property photos; (x) Collateral deferred maintenance information; (y) in one example,
8 detail regarding the apartment complex serving as Loan Collateral, including unit count, size,
9 bedrooms and bathrooms, CCR's and HOA documents; and (z) other types of information as
10 applicable to the often diverse and/or complex Loans discussed above.

11 The Prospectus

12 26. RESPONDENTS prepare and provide to investors a Loan or "Property Evaluation"
13 ("Prospectus") reflecting the results of their borrower and Loan Due Diligence. The Prospectus
14 includes, without limitation: (a) the name of the borrower; (b) the address of the Collateral for the
15 Loan, including the county assessor's parcel number; (c) RESPONDENTS' "General Comments"
16 such as the condition, improvements and previous sale price of the real estate Collateral; (d)
17 RESPONDENTS' "Valuation Estimates;" (e) RESPONDENTS' "Opinion of Value" of the real
18 estate/collateral expressed in dollar amounts; (f) the Loan amount; and (g) other miscellaneous
19 Loan and/or borrower information such as project zoning, gross monthly income, square footage,
20 etc. According to counsel for RESPONDENTS, RESPONDENTS prepare a Prospectus for each
21 Loan Investment to "determine whether there are sufficient assets available for the borrower to
22 secure a loan."

23 27. The Prospectus' "General Comments" contain representations such as, without
24 limitation:

25
26

1 A. In the case of a \$510,000 Loan secured by a home and land (the "\$510K Loan,"),
2 that the "House is upgraded with major architectural upgrades. Land is located in a
3 prime in-fill area west of ASU;" and

4 B. In the case of an \$80,000 residential Loan (the "\$80K Loan"), that said Loan was
5 secured by "Property/Improvements" including a "Mobile Home with permanent
6 addition (total livable 1,585 sq. ft....Property was acquired in August of 2005 for
7 65K. Borrower Invested (sic) over 50 thousand dollars to complete the addition.
8 Property was for sale listed (sic) in 12/05 for \$159,900."

9 28. The Prospectus' "Valuation Estimates" often include an analysis of the "Recent
10 Sales in the area" of the real estate Collateral, such as:

11 A. In the case of the \$510K Loan, that there were "\$275/[sq.]ft comps in subdivision,"
12 "\$20.00/[sq.]ft for comparable high-density land" and an "Opinion of Value" of
13 \$1,000,000 for the home and \$675,000 for the land Collateral; and

14 B. In the case of the \$80K Loan, that RESPONDENTS' "Opinion of Value" of the
15 Collateral was \$135,000, resulting in a "59% LTV" (*i.e.*, loan to value ratio).

16 **The Agency Agreements**

17 29. Pursuant to the Agency Agreements, RESPONDENTS perform a myriad Loan
18 related tasks on behalf of investors including, but are not limited to:

19 A. Evaluating requests from borrowers to have others assume their Loan obligations;

20 B. Arranging for an "assumption fee" to be paid by the borrower, which fee is retained
21 by RESPONDENTS "as additional compensation for evaluating the assumption;"

22 C. Retaining and managing borrower payments and deposits;

23 D. Collecting additional money from investors as necessary for the construction,
24 maintenance and general preservation of the real and personal property providing
25 collateral for the Loans; and
26

1 E. Negotiating, preparing and executing, as an “agent” on behalf of investors, Loan
2 assumption agreements, extension letters and note modification agreements, and
3 professional services contracts relating to, for instance, foreclosure attorneys and
4 real estate agents.

5 30. The Agency Agreements also give the Loan Servicing Agent the authority to
6 perform Loan tasks for investors. Such tasks performed by the Loan Servicing Agent on behalf of
7 investors include, but are not limited to: (a) providing notice of late payments to borrowers; (b)
8 demanding and collecting late charges from borrowers; and (c) charging and collecting from
9 borrowers a “loan administration fee” for fees and costs incurred by investors in resolving Loan
10 related disputes.

11 **General Performing & Non-Performing Loan Services**

12 31. Both prior and subsequent to their Investment purchases, SIR or authorized SMFA
13 representatives spoke to and/or personally met with investors to educate them about the benefits,
14 nature and status of the Loans, and to provide them with advice and guidance regarding Loan
15 related problems and solutions.

16 32. At all times relevant, SIR emphasized to offerees and investors that success of the
17 Investments depends primarily on his superior knowledge and skill in originating and managing
18 Loans, and his approximately twenty-six years of mortgage banking and brokering experience.

19 33. RESPONDENTS’ investors generally have no direct contact with Loan borrowers,
20 or with the often multiple other investors involved in their “fractionalized” Loan Investments.
21 Investors specifically agreed, and/or intended that RESPONDENTS would communicate with
22 Loan borrowers and/or other investors that may be participating in their particular Loan Investment
23 and the Loan Servicing Agent on their behalf.

24 34. After an investor purchases a Loan Investment, RESPONDENTS send them a letter
25 forwarding documents prepared by RESPONDENTS for the investor’s signature including,
26 without limitation: (a) Loan “Collection Instructions;” (b) “Beneficiaries Instructions and

1 Authorization;" (c) "Irrevocable Money Assignment;" (d) "Signature Page for Deed of Release and
2 Reconveyance;" (e) "Signature Page for Deed of Partial Release and Reconveyance;" and (f) a
3 "Notice to Beneficiary."

4 35. RESPONDENTS prepare and maintain all material records of the Investments,
5 including Loan borrower and investor receipts and disbursements. RESPONDENTS also send to
6 investors their "INVESTOR'S DOCUMENTS" and/or an "INVESTOR PACKAGE" for their
7 "investor file" that includes, for example, their: (a) "Loan Confirmation;" (b) "Property Evaluation
8 Summary;" (c) "Note Endorsement;" (d) "Assignment of Non-Recorded Documents;" (e)
9 "Promissory Note;" (f) "Commitment for Title Insurance;" (g) "Evidence of Insurance;" (h) "Deed
10 of Trust (Recorded Copy);" (i) "Assignment of Beneficial Interest (Recorded Copy); (j)
11 "Irrevocable Money Assignment;" (k) "Beneficiary Instructions & Authorization;" and (l) Loan
12 "Account Servicing Agreement."

13 36. RESPONDENTS sometimes sent borrower payment money directly to investors via
14 letters explaining the nature, calculation and amount of the Investment distribution, the status of the
15 Loans, including the management of things such as rental income, impound accounts and the sale
16 of foreclosed collateral via real estate agents. Loan Borrowers also have sent Loan money directly
17 to RESPONDENTS including, without limitation, Loan extension and document fees.

18 37. During the pendency and conclusion of non-performing Loans, RESPONDENTS
19 often: (a) negotiate with first and second lien holders regarding non-foreclosure options and Loan
20 workouts; (b) negotiate and arrange for Loan modifications; (c) select and hire real estate and
21 bankruptcy attorneys to assist RESPONDENTS and the DOT trustee with judicial and/or non-
22 judicial foreclosure or eviction proceedings; and (d) select and hire real estate agents to sell
23 foreclosed Loan Collateral, and participate in the marketing of such property for the benefit of
24 Investors.

Summary of Loan Investment Offering

1
2 38. RESPONDENTS sold the Investments to at least one-hundred fifty-one widely
3 disbursed investors residing throughout Arizona, and eight other states.

4 39. From approximately January 7, 2000, to the present, RESPONDENTS issued
5 approximately three-hundred ninety-seven Loans funded in whole or in part with Investment
6 investor money, including: (a) sixty-one Loans in 2000; (b) sixty Loans in 2001; (c) forty-two
7 Loans in 2002; (d) thirty-eight Loans in 2003; (e) forty Loans in 2004; (f) thirty-four Loans in
8 2005; (g) forty-six Loans in 2006; (h) thirty-six Loans in 2007; (i) twenty-seven Loans in 2008;
9 and (j) thirteen Loans in 2009.

10 40. According to documents provided to the Division by SMFA, from only 2006 to 2008,
11 RESPONDENTS closed \$155,275,912.58 in Loans funded in whole or in part with investor money,
12 or: (a) \$69,864,500 in 2006; (b) \$58,942,500.99 in 2007; and (c) \$26,468,911.59 in 2008.

13 41. According to documents provided by RESPONDENTS to the Division, SMFA had
14 "\$62,385,839.71 in loans outstanding and being serviced (not including loans that have been
15 foreclosed)" as of June 30, 2009.

16 **Specific Loan Investment Example No. 1**

17 42. Approximately \$304,000.80 of the \$510K Loan discussed above at paragraph 27(a)
18 was sold by RESPONDENTS to five investors, resulting in an undivided, fractionalized Note and
19 DOT interest recorded in their favor on October 5, 2005 in proportion to their principal
20 Investments totaling: (a) 15.686%; (b) 7.647%; (c) 11.765%; (d) 14.706%; and (e) 9.804%
21 respectively.

22 43. As noted above, RESPONDENTS represented to the investors, in part, in a written
23 Prospectus that the \$510K Loan was secured by the borrower's "personal residence" in Tempe
24 (the "Home") that: (a) totaled 4,515 square feet and was located on a 17,100 square foot lot; (b)
25 was "upgraded with major architectural upgrades;" and (c) in light of "recent" sales of
26

1 comparable homes in the same neighborhood of \$275.00 per square foot, the Home had an
2 estimated fair market value of \$1,000,000 as of August 30, 2005.

3 44. Unbeknownst to the \$510K Loan Investment investors, the City of Tempe sued the
4 \$510K Loan borrower in 2000 for injunctive relief for the borrower's failure to: (a) timely
5 complete construction of the Home; and (b) and for failing to comply with previous court orders
6 requiring him to complete construction of the Home, in part, via the submittal of improved
7 building plans solving a multitude of problems, and the procurement of required building permits
8 and the issuance of a certificate of occupancy after a final inspection. (*See, City of Tempe v*
9 *Carrillo, et al.*, CV2000-021319, Maricopa County Superior Court) (the "Tempe Enforcement
10 Action").

11 45. According to a December 2000 motion for sanctions against the borrower, the
12 Tempe Enforcement Action was based, in part, on the allegation that:

13 This case arises from a situation where a single-family residential dwelling has been
14 under construction within the City of Tempe for over ten years. This litigation is the
15 City of Tempe's attempt to compel the completion of this project in accordance with
16 Tempe's building code or for other appropriate relief, potentially up to and
including, the removal of all incomplete and unlawful improvements to this [Home]
property returning it to its natural state.

17 46. After various evidentiary hearings, motions and oral arguments in the Tempe
18 Enforcement Action: (a) an "Order of Contempt" was entered against the \$510K Loan borrower
19 on April 2, 2001 for violating a previous court order dated September 12, 2000 requiring
20 completion of the Home's construction; and (b) a "Judgment" awarding sanctions against the
21 \$510K Loan borrower in the amount of \$31,900 for failing to comply with the prior court order
22 was entered on October 12, 2001 (the "Sanctions Award"). The Sanctions Award also provided
23 for the demolition of the Home under certain conditions, such as the borrower's failure to obtain a
24 certificate of occupancy after final inspection by April 5, 2002. The \$510K Loan borrower failed
25 to meet these conditions. However, pursuant to extensions granted by the City of Tempe, the
26 borrower was allowed to continue construction of the Home until a similar, "Amended Judgment"
awarding \$31,900 in sanctions against the borrower was entered on or about March 17, 2003.

1 47. The \$510K Loan borrower satisfied by the Sanctions Award on or about May 21,
2 2003. However, the Home was still under construction by the \$510K Loan borrower as of August
3 2009.

4 **Specific Loan Investment Example No. 2**

5 48. In March 2007, RESPONDENTS issued a \$330,000 loan to a borrower secured by
6 vacant land in Cave Creek, Arizona (“Cave Creek Loan”). RESPONDENTS then sold one-
7 hundred percent of their interest in the Cave Creek Loan to two sets of Arizona investors: (a) one
8 \$200,000 Investment resulting in an undivided, fractionalized 60.606% Note and DOT interest;
9 and (b) one \$130,000 Investment resulting in an undivided, fractionalized 39.394% Note and DOT
10 interest.

11 49. As part of their Cave Creek Loan Investment offering, RESPONDENTS
12 represented to investors, in part, via a written Prospectus dated April 6, 2007, that: (a) the Cave
13 Creek Loan Investment Collateral is the “West 5 acres” beside a house with the street address of
14 “7**6 East Grapevine Rd.,” (b) the Collateral “was split from 10 acres to 5 acres between father
15 and son that increase (sic) property value. Property has great views of all the surrounding
16 mountains and city lights;” (c) that recent, February 2007 sales in the area on similar five acre
17 parcels ranged from \$500,000 to \$680,000; and (d) that RESPONDENTS’ “Opinion of Value” of
18 the Collateral was \$330,000.

19 50. There is large piece of vacant land next to the house at 7**6 East Grapevine Rd.
20 However, RESPONDENTS further failed to inform the Cave Creek Loan Investment investors
21 that the five acres providing security for their Investment: (a) is approximately a half-mile to the
22 north of Grapevine Road, and the house with the street address of 7**6 East Grapevine Road, and
23 is only accessible by a circuitous route to the north of Grapevine Road; (b) contains buried and/or
24 power lines; (c) contains a severely sloping grades over the majority of the property, including the
25 both the north and south sides of the property; and (d) abuts and contains washes, dry creek beds
26 over a majority of the property, with the potential for flooding.

1 51. The Cave Creek Loan is presently in default, and there is a tax lien on the Cave
 2 Creek Loan Collateral. Subsequent to problems with the Cave Creek Loan, the investors also
 3 determined that the parcel number listed on the Cave Creek Loan Investment Prospectus was
 4 placed on “inactive” status by the Town of Cave Creek due to a previous split of the Collateral
 5 land.

6 **IV.**

7 **VIOLATION OF A.R.S. § 44-1841**

8 **(Offer and Sale of Unregistered Securities)**

9 52. From approximately January 7, 2000, to the present, SIR has been offering and
 10 selling securities within and from Arizona in the form of notes and/or investment contracts. From
 11 approximately September 4, 2002, to the present, SMFA has been offering and selling securities
 12 within and from Arizona in the form of notes and/or investment contracts.

13 53. The securities referred to above are not registered pursuant to Articles 6 or 7 of the
 14 Securities Act.

15 54. This conduct violates A.R.S. § 44-1841.

16 **V.**

17 **VIOLATION OF A.R.S. § 44-1842**

18 **(Transactions by Unregistered Dealers or Salesmen)**

19 55. RESPONDENTS have, and are continuing to offer and sell securities within or from
 20 Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

21 56. This conduct violates A.R.S. § 44-1842.

22 **VI.**

23 **VIOLATION OF A.R.S. § 44-1991**

24 **(Fraud in Connection with the Offer or Sale of Securities)**

25 57. In connection with the offer or sale of securities within or from Arizona,
 26 RESPONDENTS are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud;

1 (ii) making untrue statements of material fact or omitting to state material facts that are necessary in
2 order to make the statements made not misleading in light of the circumstances under which they are
3 made; or (iii) engaging in transactions, practices, or courses of business that operate or would
4 operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is
5 not limited to, the following:

6 A. Representing to the five \$510K Loan Investment investors that their Investments
7 were secured by a Home worth \$1,000,000 as of August 2005 in light of "recent"
8 sales of *comparable homes* in the same neighborhood of \$275.00 per square foot,
9 while further failing to disclose to them that Home was still under construction, and
10 that: (a) borrower had been the defendant in the Tempe Enforcement Action due to
11 his failure to adequately construct the Home since approximately 1990; (b) that an
12 "Order of Contempt" was entered against the borrower on or about April 2, 2001
13 for violating a previous court order dated September 12, 2000 requiring
14 completion of the Home's construction; (c) that the Sanctions Award had been
15 entered against the borrower on October 12, 2001 in the amount of \$31,900 for
16 violating the previous court order requiring him to submit and obtain approval of
17 new building plans and a certificate of occupancy issued after a final inspection;
18 (d) that the borrower, in fact, failed to comply with the conditions of the Sanctions
19 Award such that the Home could have been legally demolished, and would have
20 been so demolished had the City of Tempe not voluntarily granted the borrower
21 additional time to complete construction of the Home; and (e) that "Amended
22 Judgment" awarding \$31,900 in sanctions against the borrower was entered on or
23 about March 17, 2003; and

24 B. Representing to the two Cave Creek Loan Investment investors that the five acres of
25 vacant land serving as Collateral for their Investments was worth \$330,000 in light of
26 recent sales in the same area, and that they were located west of and/or next to the

1 house with the street address of 7**6 East Grapevine Road, while further failing to
2 disclose to them that: (a) although there is a large piece of vacant land next to the
3 house with the street address of 7**6 East Grapevine Road, such land is not the
4 Collateral providing security of their Investment as indicated on their Prospectus;
5 (b) the Collateral providing security for their Investments is approximately a half-
6 mile to the north of Grapevine Road and/or the house with the address of 7**6 East
7 Grapevine Rd. listed in the Prospectus, and is only accessible by a circuitous route
8 off of Grapevine Road; (c) contains a severely sloping grades over the majority of
9 the property, including on both the north and south sides of the property; and (d)
10 abuts and contains washes, dry creek beds and/or waterways over a majority of the
11 property, with the potential for flooding.

12 58. This conduct violates A.R.S. § 44-1991.

13 **VII.**

14 **TEMPORARY ORDER**

15 **Cease and Desist from Violating the Securities Act**

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

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

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

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

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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 SIR and SPOUSE are subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
5. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each RESPONDENT, including SPOUSE, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-307. **If a RESPONDENT or SPOUSE requests a hearing, the requesting respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. 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.

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,

1 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
2 **Order shall remain effective from the date a hearing is requested until a decision is entered.**
3 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,
4 with written findings of fact and conclusions of law. A permanent Order may include ordering
5 restitution, assessing administrative penalties, or other action.

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

9 Persons with a disability may request a reasonable accommodation such as a sign language
10 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
11 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
12 Requests should be made as early as possible to allow time to arrange the accommodation.

13 **X.**

14 **ANSWER REQUIREMENT**

15 Pursuant to A.A.C. R14-4-305, if a RESPONDENT or SPOUSE requests a hearing, the
16 requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to
17 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
18 85007, within 30 calendar days after the date of service of this Temporary Order and Notice.
19 Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
20 Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

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

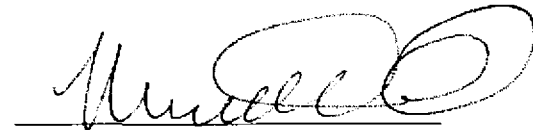
25 The Answer shall contain an admission or denial of each allegation in this Temporary
26 Order and Notice and the original signature of the answering respondent or the respondent's

1 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
2 of an allegation. An allegation not denied shall be considered admitted.

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

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 24th day of
9 September, 2009.



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11 Mark Dinell
Assistant Director of Securities

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