

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission
DOCKETED
NOV 12 2009
DOCKETED BY [signature]

In the matter of: ) DOCKET NO. S-20703A-09-0461
SIR MORTGAGE & FINANCE OF ) SECURITIES DIVISION
ARIZONA, INC., an Arizona corporation, ) SUPPLEMENTAL RESPONSE TO
GREGORY M. SIR (a/k/a "GREG SIR"), and ) RESPONDENTS' MOTION TO VACATE
ERIN M. SIR, husband and wife, ) TEMPORARY ORDER
Respondents. ) Argument Date: December 8, 2009
Argument Time: 9:30 a.m.

The Division provides its supplemental response<sup>1</sup> to RESPONDENTS' October 24, 2009 Motion to Vacate Temporary Order to Cease and Desist ("Motion") as ordered in the Administrative Law Judge's ("ALJ") Second Procedural Order and requests that the Motion be denied.<sup>2</sup>

A. The TC&D Should Not Be Vacated Because It Only Requires Respondents to Cease and Desist From Violating the Securities Act

TC&D does not prevent respondents from operating their mortgage business. It: (a) only requires RESPONDENTS to comply with the Arizona Securities Act ("Act"); and (b) puts RESPONDENTS and the public on notice of conduct that the Division believes violates the Act.

Contrary to respondents' argument, it is not "extraordinary and onerous" for the Division to direct respondents to stop violating the Act. (See, Motion, p.2:25-26)(emphasis

1 The Division filed a short response to RESPONDENTS' Motion titled "Securities Division's Response to Respondents' Motion to Dismiss" on October 26, 2009 on account of the previously scheduled October 28, 2009 Pre-Hearing Conference.

2 The Division is filing a separate response to RESPONDENTS' November 3, 2009 "Supplement to Motion to Vacate" (the "Supplemental Motion") that raises a new scheduling argument, and RESPONDENTS' November 4, 2009 "Request to Alter Schedule in Second Procedural Order."

1 added). As a result, the Motion is necessarily an admission that RESPONDENTS cannot operate  
2 their mortgage business without violating the Act. Thus, the Motion should be denied.

3 **B. The Public Welfare Requires the ALJ to Deny the Motion**

4 Respondents' request for the ALJ to summarily vacate the TC&D, and permit them to  
5 continue to sell their loan investments in alleged violation of the Act is based on the bald  
6 allegation that the Division failed to consider whether issuing the TC&D on September 24, 2009  
7 promoted the public welfare. (Motion, p.2:25-26). Other than a self-serving letter dated July 15,  
8 2009 that ignores many vital facts reflected in RESPONDENTS' own business records,  
9 respondents' Motion is not supported by any evidence.

10 TC&D's are issued by the Division in cases like this when there are alleged ongoing  
11 violations of the Act that require "immediate action." *See*, R14-4-307(A). Further, A.R.S. § 44-  
12 2302(1) states that:

13 If it appears to the commission, either on complaint or otherwise, that any person  
14 has engaged in, is engaging in or is about to engage in any act, practice or  
15 transaction that constitutes a violation of this chapter, or any rule or order of the  
commission under this chapter, the commission may, **in its discretion:**

- 16 1. **Issue an order directing such person to cease and desist from engaging**  
17 **in the act, practice or transaction, or doing any other act in furtherance**  
**of the act, practice or transaction ... (emphasis added).**

18 Here, immediate action was required because RESPONDENTS were offering and selling the  
19 unregistered loan investments in alleged violation of the Act.

20 Regarding exigent circumstances, RESPONDENTS sold a \$40,000 loan investment to an  
21 Arizona investor on August 13, 2009. (TC&D, ¶17). RESPONDENTS also issued a \$200,000  
22 loan on or about August 14, 2009. Respondents sold a fifty percent interest in that August 2009  
23 loan to an Illinois investor for approximately \$100,000 documented, in part, by a fractionalized  
24 deed of trust recorded with the Maricopa County Recorder's Office on or about September 10,

1 2009 (the "August Loan Investment"). (*See e.g.*, **Tab "1,"** September 10, 2009 fractionalized deed  
2 of trust resulting from the \$100,000 August Loan Investment).<sup>3</sup>

3 Throughout the Division's pre-filing investigation, RESPONDENTS also repeatedly  
4 refused to advise the Division whether they were raising money from loan investors. (*See also*,  
5 **Tabs "2" to "5"**). They were. (**TC&D, ¶17**). Importantly, RESPONDENTS do not even suggest  
6 that they will actually change the way the offer and sell the loan investments as reflected in the  
7 TC&D if the TC&D is vacated.

8 RESPONDENTS further claim that their "**small business**" is being financially devastated  
9 by the existence of the TC&D. (Supplemental Motion, p.2:11)(emphasis added). This  
10 unsupported assertion constitutes an admission that RESPONDENTS cannot operate their  
11 mortgage business without a constant influx of investor money. However, regarding  
12 RESPONDENTS' pre-TC&D loan investments, from just 2006 to 2008, respondents closed  
13 \$155,275,912.58 in loans funded in whole or in part with investor money, or: (a) \$69,864,500 in  
14 2006; (b) \$58,942,500.99 in 2007; and (c) \$26,468,911.59 in 2008.<sup>4</sup> (*See e.g.*, **TC&D, ¶¶38-41**).

15 Further, RESPONDENTS' assertion that their business is being devastated by the  
16 existence of the TC&D is belied by the unsupported arguments supporting their Motion. For  
17 instance, RESPONDENTS assert that their mortgage business has been negatively "impacted by  
18 current market conditions." (Motion, p.1:21-23). Additionally, in response to the direct question  
19

20 <sup>3</sup> From approximately March 2009, the Division has requested information and documents regarding the  
21 loan investments "to the present" date. During this time, RESPONDENTS did provide relevant  
22 information to the Division, albeit in piecemeal fashion totaling approximately 2,300 pages. (*See*, Motion,  
23 p.2:12-14). RESPONDENTS only identified the existence of the loan underlying August Loan  
Investment to the Division through a letter from their counsel dated October 9, 2009, from which the  
Division was able to determine by searching public records that RESPONDENTS had, in fact, sold the  
August Loan Investment.

24 <sup>4</sup> In addition, RESPONDENTS provided information to the Division on October 9, 2009, that states that  
25 they closed approximately \$258,472,822.42 in loans funded in whole or in part with investor money, from  
26 just 2002 to 2005, and in 2009 prior to the issuance of the TC&D, or: (a) \$36,859,600 in 2002; (b)  
\$54,986,000 in 2003; (c) \$67,182,500 in 2004; (d) \$95,103,722 in 2005; and (e) \$4,341,000 in 2009. Thus,  
RESPONDENTS' "small business" issued approximately \$413,748,735 in loans funded in whole or in part  
with investor money from just 2002 to just prior to the TC&D. This number could exceed a half a billion  
dollars given respondents' boastful admission that they have been conducting their loan investment  
business, "[f]or the last twelve years" or since approximately 1997. (Motion, p.1:19-25).

1 of whether RESPONDENTS were continuing to raise money from investors, RESPONDENTS'  
2 counsel provided the following non-answer:

3 In your letter you ask whether Sir Mortgage and/or Greg Sir are  
4 presently/continuing to raise money to fund new loans. I don't want to get hung up  
5 on words, but I think I appreciate the information you are seeking.

6 Mr. Sir informs us that there are very few viable lending opportunities these days.  
7 There are no new loan commitments at this time. A loan did close recently, but it  
8 was funded by the company's credit facility [i.e., a loan to RESPONDENTS from a  
9 commercial bank].

10 **(Tab 3).** RESPONDENTS' Answer to the TC&D even claims that losses incurred by loan  
11 investment investors "were caused by the decline in real estate values." (**Answer, p.11, ¶MM**).  
12 Thus, RESPONDENTS acknowledge that the recent economic decline is purportedly hurting  
13 their business, rather than the fact they have been ordered to comply with the Act. In contrast,  
14 RESPONDENTS should not be allowed to allegedly violate the Act because our economy is in  
15 the midst of an economic recession or long recovery.

16 That respondents will begin selling the loan investments again if the TC&D is vacated is  
17 demonstrated by the conduct set forth in the TC&D, their actions prior to the issuance of the  
18 TC&D and the unsupported factual and legal arguments contained in their Motion. (**TC&D,**  
19 **¶¶42-51, 57-58**). Based on the foregoing, the Division requests the ALJ to deny the Motion.

20 **C. The Motion Ignores Vital Facts and Applicable Law**

21 Respondents support their Motion by citing R14-4-307(A). Neither that rule, nor any  
22 other rule or statute applicable to the Act allows the ALJ to summarily vacate the TC&D without  
23 consideration of the evidence referenced in the TC&D.

24 The proper procedure is for the ALJ to conduct the hearing set to begin on February 1,  
25 2010 as agreed to by counsel for the parties at the October 28, 2009 Pre-Hearing Conference, and  
26 to issue proposed findings of fact and conclusions of law for the Commissions' consideration.  
(*See e.g., R14-3-110(A),(B)* regarding hearing officer recommendations; A.R.S. § 41-

1 1061(C) (“Opportunity shall be afforded all parties to respond and present evidence and argument  
2 on all issues involved.”).

3 Because the Act does not permit the ALJ to summarily vacate the TC&D, or permit the  
4 respondents to violate the Act without having considering the evidence specified in the TC&D,  
5 the Motion should be denied.

6 Regardless, the ALJ should deny the Motion because: (1) respondents were offering and  
7 selling unregistered securities in the form of investment contracts and notes in violation of the  
8 Act; (2) respondents offered and sold the investments during the Division’s investigation and, as  
9 noted above, up to the date that the Division was forced to file the TC&D; and (3) respondents  
10 “*fraudulently*” sold at least seven of the loan investments totaling approximately \$634,000.80.<sup>5</sup>  
11 (TC&D, ¶¶42-51).

12 **1. The Loan Investments Are Unregistered Investment Contract**  
13 **Securities.**

14 The detailed allegations of TC&D establish that respondents sold unregistered<sup>6</sup> securities  
15 within Arizona in the form of investment contracts. (TC&D, ¶¶11-37). A “security” is defined  
16 by A.R.S. § 44-1801(26) as any “investment contract.” Under the Supreme Court’s decision in  
17 *S.E.C. v. Howey*, 328 U.S. 293, 300-301, 66 S.Ct. 1100, 1103-04 (1946), an investment contract  
18 exists if there is: (1) an investment of money, (2) in a common enterprise, (3) with profits based  
19 solely on the efforts of others.<sup>7</sup> The word “solely” in the last element of the *Howey* test has since  
20 been uniformly construed to mean “substantially.” *S.E.C. v. Glenn W. Turner Enterprises*, 474

21 <sup>5</sup> The registration and fraud claims in this case are based on *strict liability*. The Division does not have to  
22 prove traditional elements like intent, causation, damages or reliance. *See e.g., State v. Gummison*, 127 Ariz.  
23 110, 113, 618 P.2d 604 (1980); *Rose v. Dobras*, 128 Ariz. 209, 214, 624 P.2d 887 (App.1981); *Barnes v.*  
*Vozack*, 113 Ariz. 269, 550 P.2d 1070 (1976); *Trimble v. American Sav. Life Ins. Co.*, 152 Ariz. 548, 553,  
733 P.2d 1131 (1986).

24 <sup>6</sup> Respondents’ loan investments were not registered with the Division as securities. (TC&D, ¶¶52-54).  
25 Respondents admit they were not registered with the Division as securities salesman or dealers. (Answer,  
26 ¶¶2, 3). Respondents have the burden of proving that the loan investments are exempt from registration.  
*See*, A.R.S. § 44-2033. In this case, at a minimum, the scope and magnitude of RESPONDENTS’ offers  
and sales of the loan investments is inconsistent with, for instance, small, private placement based  
exemptions. (TC&D, ¶¶38-41).

<sup>7</sup> In *Howey*, the Court held that investors who purchased fractional interests/lots in an orange plantation  
expected profits solely from the efforts of the promoters.

1 F.2d 476, 482 (9<sup>th</sup> Cir. 1973); *Sullivan v. Metro Productions, Inc.*, 150 Ariz. 573, 577, 724 P.2d  
2 1242, 1246 (App. 1986)(“The Ninth Circuit, in *Turner Enterprises, supra*, noted that the word  
3 ‘solely’ in the *Howey* test is not to be read as a literal limitation on the definition. That court held  
4 ‘we adopt a more realistic test, whether the efforts made by those other than the investor are the  
5 undeniably significant ones, those essential managerial efforts which affect the failure or success  
6 of the enterprise.’...The emphasis in determining whether an investment is a security is on  
7 economic reality.”).

8 Two tests have been developed to determine the existence of the “common enterprise”  
9 element: (1) horizontal commonality; and (2) vertical commonality. *Daggert v. Jackie Fine Arts,*  
10 *Inc.*, 152 Ariz. 559, 565, 733 P.2d 1142, 1148 (App. 1986). The commonality element is satisfied  
11 if horizontal *or* vertical commonality is demonstrated. *Id.*, 152 Ariz. at 566, 733 P.2d at 1149.  
12 Horizontal commonality requires a pooling of investor funds collectively managed by the  
13 promoter. *Id.* at 565, 733 P.2d at 1148. Vertical commonality is established if there is a  
14 correlation between the potential profits of the investor and the promoter. *Id.*

15 Arizona courts agree that the “investment contract” definition of a security embodies a  
16 flexible principal, “that is capable of adaptation to meet the countless and variable schemes devised  
17 by those who seek to use the money of others on the promise of profits.” *Nutek Information*  
18 *Systems, Inc. v. Arizona Corporation Commission*, 194 Ariz. 104, 108, 977 P.2d 826, 830  
19 (App.1998). This flexible approach recognizes the investor’s economic reality and maximizes the  
20 protection that the Arizona Securities Act provides to Arizona investors. *Rose v. Dobras*, 128 Ariz.  
21 209, 212, 624 P.2d 887, 890 (App.1981)(“The supreme court has consistently construed the  
22 definition of ‘security’ liberally.”).<sup>8</sup>

23 \_\_\_\_\_  
24 <sup>8</sup> Also, the Preamble to the Securities Act states:

25 The intent and purpose of this Act is for the protection of the public, the preservation of fair and  
26 equitable business practices, the suppression of fraudulent or deceptive practices in the sale or  
purchase of securities, and the prosecution of persons engaged in fraudulent or deceptive  
practices in the sale or purchase of securities. This Act shall not be given a narrow or restricted  
interpretation or construction, but shall be liberally construed as a remedial measure in order not  
to defeat the purpose thereof.

1 Here, investors invested money with RESPONDENTS by purchasing loan interests from  
2 them with an expectation of profit in the form of a percentage of loan borrower interest payments  
3 of approximately eleven to fourteen percent per year. (*See e.g.*, TC&D, ¶¶11, 14-15). The TC&D  
4 also establishes both horizontal and vertical commonalities. Without limitation, investors provided  
5 their investment money directly to RESPONDENTS, who then pooled the investor money together  
6 to fund large, single loans (*i.e.*, horizontal). (TC&D, ¶15-16). RESPONDENTS also share all  
7 monthly loan payments with investors (*i.e.*, vertical) (TC&D, ¶21-22). RESPONDENTS also  
8 retained interests in the fractionalized notes and/or deeds of trust assigned to often multiple  
9 investors (*i.e.*, vertical). (TC&D, ¶13, 18). (*See e.g.*, Tab 1; TC&D, ¶¶15-16). These facts are  
10 ignored in the letter attached to the Motion.

11 Finally, the investors expected a profit based on the solely on the undeniably significant  
12 “expert” loan management efforts of RESPONDENTS. (TC&D, ¶¶9, 23-37). RESPONDENTS  
13 had investors execute a de-facto power of attorney that permits RESPONDENTS to perform a myriad  
14 of important loan related tasks on behalf of investors. (TC&D, ¶21, 24). Because the loan  
15 investments constitute investment contracts and notes under A.R.S. § 44-1801(26), the *Howey* test,  
16 Arizona law and the detailed facts alleged in the TC&D, the ALJ should deny the Motion.

17 **2. The Loan Investments Are Note Securities for Purposes of the Division’s**  
18 **Registration and Fraud Claims.**

19 Here, the loan investments are documented in part by RESPONDENTS’ assignment of  
20 fractionalized loan notes and deeds of trust. (TC&D, ¶¶13-15). The Act defines a security as  
21 “any note.” A.R.S. § 44-1801(26). The TC&D alleges that RESPONDENTS committed both  
22 registration and fraud violations of the Act.

23 The Arizona Supreme Court holds that for purposes of the registration claims asserted in  
24 the TC&D under A.R.S. §§ 44-1841 and 1842, all notes are securities that must be registered  
25 unless an exemption applies. *See State v. Tober*, 173 Ariz. 211, 211-212, 841 P.2d 206, 206-07  
26 (1992). Here, each investment involves several deeds of trust and fractionalization precluding

1 reliance on A.R.S. § 44-1843(A)(10). Thus, the loan investments are note securities for purposes of  
2 the Division's registration claims, and the Motion should be denied.

3       The Arizona Court of Appeals has held that whether a note is a security for purposes of a  
4 fraud claim under the Act should be decided by applying the analysis set forth in the Supreme  
5 Court's decision of *Reves v. Ernst & Young*, 494 U.S. 56, 65 (1990). *See, MacCollum v.*  
6 *Perkinson*, 185 Ariz. 179, 186, 913 P.2d 1097, 1104 (App. 1996). In *Reves*, the Supreme Court  
7 identified certain types of notes that are excluded from the definition of a security. *See Reves v.*  
8 *Ernst & Young*, 494 U.S. 56, 65 (1990).<sup>9</sup> Under *Reves*, any promissory note is presumed to be a  
9 security unless it bears a strong "family resemblance" to a judicially crafted list of non-securities.  
10 Here, the only possibly applicable *Reves* exceptions would be: (1) a note secured by a mortgage on  
11 a home; or (2) a note secured by a lien on a small business or some of its assets. *Reves*, 494 U.S. at  
12 65 citing *Exch. Nat'l Bank of Chicago v. Touche Ross & Co.*, 544 F.2d 1126, 1138 (2d Cir 1976).  
13 However, these exceptions do not apply, in part, because: (a) the investors at issue in this case are  
14 not professional mortgage bankers who issue loans as their primary occupation-if they were, they  
15 would not agree to have RESPONDENTS manage the essential aspects of the loan investments  
16 (TC&D, ¶¶19-37); (b) the notes purchased by investors are generally long term and range up to  
17 ten years (TC&D, ¶11); (c) although the notes are secured by fractionalized deeds of trust, the loan  
18 investments are risky as evidenced, in part, by the seven allegedly "fraudulently" sold loan  
19 investments and the fact that the loans are often issued to start-up, or unproven borrowers (TC&D,  
20 ¶¶42-51); and (d) the notes purchased by the investors are not related to their own home mortgages  
21 or business loans, but are purchased solely for their passive, profit potential of approximately  
22 eleven percent per year, minus RESPONDENTS' various fees and loan interest participation.  
23 (TC&D, ¶¶11, 21, 22). That the loan investments are securities is further demonstrated by the fact  
24  
25

26 <sup>9</sup> The Arizona Court of Appeals has instructed that the analysis in *Reves* should be applied only in the  
context of an alleged violation of the antifraud statute, A.R.S. § 44-1991(A). *MacCollum v. Perkinson*, 185  
Ariz. 179, 186 (Ariz. Ct. App. 1996).

1 that RESPONDENTS, their attorneys and the investors referred to the loan investments as  
2 “investments.” (*See e.g.*, TC&D, ¶35).

3 The *Reves* case also allows for another exception depending on the: (a) motivation of the  
4 parties including whether the investor is interested primarily in the profit the note is expected to  
5 generate; (b) plan of distribution; (c) the reasonable expectations of the investing public; and (d)  
6 whether another regulatory scheme is applicable such that application of the Act is unnecessary.  
7 *Reves*, 494 U.S. at 66-67. Applied here, the investors purchased the loan investments solely for  
8 their passive profit potential such that investors can expect the protections afforded to them under  
9 the Act. The scope and magnitude of RESPONDENTS’ loan investment offering is inconsistent  
10 with small, or isolated investment offerings to which the Act may not apply.

11 Finally, RESPONDENTS argue that this matter is better resolved by the Arizona  
12 Department of Financial Institutions (“DFI”). (Motion, p.1:16-23). However, the DFI is not  
13 tasked with enforcing violations of the Act. The Division is also not asserting claims based on  
14 Arizona mortgage banking laws. *Reves*, 494 U.S. at 66-67. Again, respondents’ Motion fails to  
15 cite any authority to support their argument that the DFI has exclusive jurisdiction over claims  
16 against licensed mortgage bankers for illegally selling investments in violation of the Act. Thus,  
17 respondents’ reliance on the fact that DFI regulates mortgage bankers lacks merit and should be  
18 ignored. Because RESPONDENTS’ loan investments are also note securities under the  
19 allegations of the TC&D, the Act and applicable law, the Motion should be denied.<sup>10</sup>

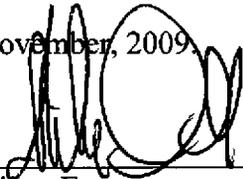
20 **C. Conclusion.**

21 Because: (a) the TC&D merely requires RESPONDENTS’ to comply with the law, and  
22 puts RESPONDENTS and the public on notice of conduct that allegedly violates the Act; (b) the  
23 TC&D protects the public welfare for the reasons discussed above; and (c) RESPONDENTS’  
24  
25

26 <sup>10</sup> As noted by the letter attached to their Motion, the majority of the letter analyzes why RESPONDENTS’  
claim that the loan investments do not constitute “real property investment contract” securities. However,  
the TC&D does not allege that the loan investments are “real property investment contract” securities.

1 Motion ignores important facts and is contrary to law, the Division respectfully requests that the  
2 Motion be denied.

3 **RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of November, 2009.



4  
5 Mike Dailey, Esq.  
6 Staff Attorney  
7 Securities Division  
8 1300 West Washington, Third Floor  
9 Phoenix, Arizona 85007

10 **ORIGINAL AND THIRTEEN (13) COPIES**  
11 **of the foregoing filed this 12<sup>th</sup> day of**  
12 **November, 2009 with:**

13 Docket Control  
14 Arizona Corporation Commission  
15 1200 West Washington  
16 Phoenix, Arizona 85007

17 **Copy of the foregoing hand-delivered this 12<sup>th</sup> day of**  
18 **November, 2009 to:**

19 Marc E. Stern, Administrative Law Judge  
20 Arizona Corporation Commission  
21 Hearing Division  
22 1200 West Washington  
23 Phoenix, Arizona 85007

24 **Copy of the foregoing mailed this 12<sup>th</sup> day of**  
25 **November, 2009 to:**

26 Paul Roshka, Esq.  
Tim Sabo, Esq.  
Roshka DeWulf & Patten  
One Arizona Center  
400 East Van Buren Street  
Suite 800  
Phoenix, Arizona 85004  
*Attorneys for Respondents*



**Tab "1"**

DHI Title

Unofficial Document

When recorded, return to:  
Sir Mortgage & Finance of Arizona, Inc.  
3333 E. Camelback Road  
Suite #185  
Phoenix, AZ 85018  
Attn: Loan No. 29-1376  
251091200501-013

ASSIGNMENT OF BENEFICIAL INTEREST UNDER DEED OF TRUST

DATED: 09/01/2009

FOR VALUE RECEIVED, the undersigned, as Beneficiary or successor thereto, hereby grants, conveys and transfers to:

J. ~~XXXXXXXXXXXXXXXXXXXX~~ Trustees of the ~~XXXXXX XXXXX M. Potes~~ Defined Contribution Plan U/A/DTD August 18, 2006, as to an undivided 50.000% interest

Pursuant to Section 33-404 ARS, the names and addresses of the Beneficiaries are available through Sir Mortgage & Finance of Arizona, Inc., an Arizona Corporation, 3333 E. Camelback, Suite #185 Phoenix, AZ 85018

all beneficial interest under that Deed of Trust, Assignment of Rents and Security Agreement dated 08/21/2009 executed by ~~XXXXXXXXXXXXXXXXXXXX~~ husband and wife as community property with right of survivorship, Trustor(s), to Grand Canyon Title Agency, an Arizona Corporation as Trustee, and recorded August 31, 2009 as Instrument No. 20090811220 in the records of Maricopa County, Arizona; which affects the following described real property:

SEE ATTACHED EXHIBIT "A"

TOGETHER with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest due or to become due thereunder, and all rights accrued or to accrue thereunder.

IN WITNESS WHEREOF, said Beneficiary has signed this instrument as of this 1<sup>st</sup> day of September, 2009

SIR MORTGAGE & FINANCE OF ARIZONA, INC. AN ARIZONA CORPORATION

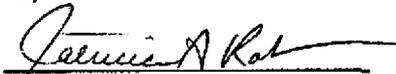
  
By: Gregory M. Sir  
Its: President

Address of Assignor:

Sir Mortgage & Finance of Arizona, Inc., an Arizona Corporation Inc.  
3333 E. Camelback, Suite #185  
Phoenix, AZ 85018

STATE OF ARIZONA )  
County of Maricopa ) ss

This instrument was acknowledged before me this 1<sup>st</sup> day of September, 2009  
By Gregory M. Sir, President of Sir Mortgage & Finance of Arizona, Inc., an Arizona Corporation, on behalf of said corporation

  
Notary Public

My commission expires: 12/17/2012



**Tab “2”**

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

MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT  
DIRECTOR

SECURITIES DIVISION  
1300 West Washington, Third Floor  
Phoenix, AZ 85007  
TELEPHONE: (602) 542-4242  
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E-MAIL: securitiesdiv@azcc.gov

**ARIZONA CORPORATION COMMISSION**

June 10, 2009

**VIA EMAIL & U.S. MAIL**

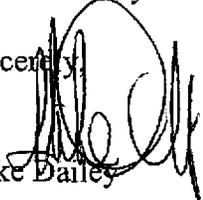
Paul Roshka, Esq.  
Roshka DeWulf & Patten  
One Arizona Center  
400 East Van Buren Street  
Suite 800  
Phoenix, Arizona 85004

Re: *In re Sir Mortgage & Finance of Arizona, Inc.*, File No. 9699

Dear Paul:

In addition to the requests for information we discussed yesterday, please let me know in writing by at least Monday June 15, 2009 whether Sir Mortgage and/or Greg Sir are presently/continuing to raise money to fund new loans. Thank you.

Sincerely,

  
Mike Dailey

**Tab “3”**

**Micheal Dailey**

---

**From:** Paul Roshka [roshka@rdp-law.com]  
**Sent:** Monday, June 15, 2009 5:55 PM  
**To:** Micheal Dailey  
**Subject:** Sir Mortgage

Hello Michael. I write in response to your June 10, 2009 letter.

In your letter you ask whether Sir Mortgage and/or Greg Sir are presently /continuing to raise money to fund new loans. I don't want to get hung up on words, but I think I appreciate the information you are seeking.

Mr. Sir informs us that there are very few viable lending opportunities these days. There are no new loan commitments at this time. A loan did close recently, but it was funded by the company's credit facility.

I anticipate being able to provide before I leave town Wednesday afternoon for a couple of days off the responses to the questions you asked when we met recently.

Thanks. I'll be in the office tomorrow.

Paul

Paul J. Roshka, Esq.  
ROSHKA DeWULF & PATTEN, PLC  
One Arizona Center  
400 E. Van Buren Street, Suite 800  
Phoenix, AZ 85004  
Phone: 602-256-6100  
Fax: 602-256-6800  
Email: [roshka@rdp-law.com](mailto:roshka@rdp-law.com)

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**For more information about Roshka DeWulf & Patten, please see our website at [www.rdp-law.com](http://www.rdp-law.com).**

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**Tab "4"**

ROSHKA DEWULF & PATTEN

Michael Dailey, Esq.

July 9, 2009

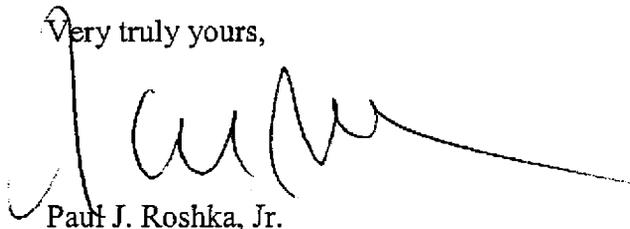
Page 2

Finally, in your July 7, 2009 voicemail message, you ask for Sir Mortgage's agreement that no lender funds will be used for any new loans until this matter is resolved. Early next week when you received the above-captioned documents, you will also receive a letter from us that will demonstrate that Sir Mortgage is not offering or selling securities. We think it is appropriate that you review this correspondence before asking for such a concession from Sir Mortgage.

We hope you will promptly review the information provided to you when it is delivered to you early next week. I will be out of the country starting July 18th for the balance of the month. We would like to discuss the letter you will be receiving from us before I go on vacation. We suggest meeting any time Wednesday or Thursday morning. Mr. Sir has authorized us to inform you that he will not fund any new loans with lender monies before we meet next week.

In the meantime, if you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,



Paul J. Roshka, Jr.  
For the Firm

PJR:rba

cc: Sir Mortgage & Finance of Arizona, Inc. (via email/U. S. mail)  
Ronald Baran, Special Investigator (via U. S. mail & facsimile 602-594-7415)  
Timothy J. Sabo, Esq.

Sir.ACC/tr/Dailey05.doc

ACC000952  
SIR  
MORTGAGE

**Tab “5”**

**Micheal Dailey**

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**From:** Paul Roshka [roshka@rdp-law.com]  
**Sent:** Wednesday, June 17, 2009 2:20 PM  
**To:** Micheal Dailey  
**Cc:** Ronald Baran; Joyce Goodwin; Tim Sabo  
**Subject:** RE: Sir Mortgage

Hello Mike.

I'm not going to be able to get you the response by the time I leave town very shortly. Sorry for the delay. You'll have it Monday. If that's a problem please let me know.

I'll pass the email you just sent me along to Mr. Sir, but wonder why you apparently think money is being raised at this time. Please let me know what your concerns are as your reference to a TC&D suggests to me that you are very concerned about something. I don't see this matter that way but want to be sensitive to your issues.

I'll be watching my emails and available to return calls over the next couple of days. Please let me know if you feel we need to speak before I return. My cell is 602-920-4128.

Thanks.

Paul

Paul J. Roshka, Esq.  
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**From:** Micheal Dailey [mailto:MDailey@azcc.gov]  
**Sent:** Wednesday, June 17, 2009 1:52 PM  
**To:** Paul Roshka

10/29/2009