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

ERNEST G. JOHNSON  
 EXECUTIVE DIRECTOR



RECEIVED

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ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION  
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ORIGINAL

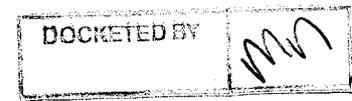
## MEMORANDUM

**TO:** Kristin K. Mayes, Chairman  
 Gary Pierce  
 Paul Newman  
 Sandra D. Kennedy  
 Bob Stump

Arizona Corporation Commission  
**DOCKETED**

FEB - 4 2010

**FROM:** Matthew J. Neubert   
 Director of Securities



**DATE:** February 2, 2010

**RE:** *In re Sir Mortgage & Finance of Arizona, Inc. and Gregory M. Sir,*  
 Docket No. S-20703A-09-0461

**CC:** Ernest G. Johnson, Executive Director

Attached for your consideration is a proposed Order to Cease and Desist, Order for Administrative Penalties ("Order") and Consent to Same By: Respondent Sir Mortgage & Finance of Arizona, Inc. ("SMFA") and its president Respondent Gregory M. Sir (collectively "Respondents"). The Order finds that from January 7, 2000, to September 24, 2009, Respondents sold unregistered securities within and from Arizona in the form of investment contracts and notes. Respondents are private money lenders who fund a wide variety of real estate loans documented by notes and secured by real property and other collateral often identified in deeds of trust (the "DOT(s)"). Respondents: (a) funded some of the loans at issue with investor money; and (b) funded a loan themselves and then later sold some or all of their interest in the loan to one or more investors as an investment. Respondents then assigned to one more investors an interest in the original loan notes and DOTs in proportion to their principal investments.

The Order finds that Respondents violated A.R.S. §§ 44-1841 & 44-1842 of the Arizona Securities Act ("Act") by selling unregistered securities while not being registered as securities salesman or dealers, or exempt from registration. The Order requires Respondents to permanently cease and desist from violating the Act and pay a \$90,000 administrative penalty. Respondents have already delivered a check for the \$90,000 administrative penalty to the Division.

The Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Mike Dailey

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

In the matter of	)	DOCKET NO. S-20703A-09-0461
SIR MORTGAGE & FINANCE OF	)	DECISION NO. _____
ARIZONA, INC., an Arizona corporation,	)	<b>ORDER TO CEASE AND DESIST, ORDER</b>
GREGORY M. SIR (a/k/a "GREG SIR"),	)	<b>FOR ADMINISTRATIVE PENALTIES AND</b>
	)	<b>CONSENT TO SAME BY:</b>
Respondents.	)	<b>RESPONDENT SIR MORTGAGE &amp;</b>
	)	<b>FINANCE OF ARIZONA, INC.</b>
	)	<b>-AND-</b>
	)	<b>RESPONDENT GREGORY M. SIR (a/k/a</b>
	)	<b>"GREG SIR")</b>

Respondents SIR MORTGAGE & FINANCE OF ARIZONA, INC. and GREGORY M. SIR (a/k/a "GREG SIR") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Administrative Penalties ("Order") and Consent to Same. Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission. This Order is entered without trial of any issue or fact and is not intended to have any collateral estoppel or res judicata effect against Respondents except for this case, and any other proceeding involving the Commission.

I.

**FINDINGS OF FACT**

1  
2  
3 1. 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 2. Respondent GREGORY M. SIR (a/k/a "GREG SIR") ("SIR") is an Arizona  
9 resident. From on or about January 7, 2000, to approximately September 4, 2002, SIR conducted  
10 business within and from Arizona in his individual capacity, both in his own name and as SMFA.  
11 From approximately September 4, 2002, to the present, SIR conducted business within and from  
12 Arizona in his individual capacity and on behalf of 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 3. SMFA and SIR may be collectively referred to as "RESPONDENT(S)."

16 4. From on or about January 7, 2000, to September 24, 2009, RESPONDENTS  
17 offered and sold securities within and from Arizona in the form of notes and investment  
18 contracts.

19 5. At all times relevant, RESPONDENTS represented to offerees and investors that  
20 they were engaged in the business of originating and funding real estate loans.

21 6. RESPONDENTS' website at [www.sirmortgage.com](http://www.sirmortgage.com) ("Website") notes that SMFA  
22 "provides private money lending, often referred to as hard money lending for all types of Real  
23 Estate projects." RESPONDENTS' Website represents that SMFA provides borrowers with loans  
24 for a variety of real estate ventures, including complex commercial, bridge, construction, vacant  
25 land, subdivision development, industrial and single family home loans.  
26

1           7.       SMFA's "Articles of Incorporation" filed with the Corporations Division of the  
2 Commission and signed by SIR as its incorporator state that SMFA is engaged in the "business of  
3 selling of mortgages and deeds of trust, as well as other real estate investments."

4           8.       The maturity dates of RESPONDENTS' loans vary and range from approximately  
5 six months to ten years. Loan interest rates range from approximately eleven to fourteen percent  
6 per year. RESPONDENTS also fund interest-only Loans.

7           9.       Principal loan amounts vary from approximately \$100,000 to over \$4,500,000.

8           10.       RESPONDENTS' loans are evidenced by promissory notes ("Notes") executed by  
9 borrowers in favor of SMFA, and secured by real property and other collateral. To create and  
10 perfect the security interest in the collateral, RESPONDENTS prepared deeds of trust, UCC  
11 financing statements and similar documents executed by borrowers in favor of SMFA and recorded  
12 in the county where the collateral is located. RESPONDENTS' various collateral securitization  
13 documents may be referred to collectively as the "DOT(s)."

14           11.       At all times relevant, RESPONDENTS funded loans with investor money (the  
15 "Investment(s)"). RESPONDENTS also funded a loan themselves, and then sold some or all of  
16 their interest in the loan to one or more investors as an Investment. Principal Investment amounts  
17 varied and ranged from approximately \$40,000 to over \$250,000.

18           12.       Investors provided their Investment money directly to SMFA's funding trust  
19 account. Thereafter, RESPONDENTS assigned to one or more investors an interest in the original  
20 loan Notes and DOTs in proportion to their principal Investment(s).

21           13.       RESPONDENTS often combined investor money to fund a single loan, resulting in  
22 fractionalized Notes and DOTs recorded in favor of multiple investors.

23           14.       RESPONDENTS sometimes sold and assigned one hundred percent of their interest  
24 in a loan to one investor as an Investment.

25           15.       Oftentimes, SMFA and/or SIR, through his family trust or one of his other  
26 companies, retained a significant interest in a Note and DOT associated with a loan Investment.

1           16.     RESPONDENTS collected various fees from loan borrowers, including a mortgage  
2 banker's discount/loan fee and a property inspection fee.

3           17.     RESPONDENTS prepared and had investors execute a standard form document  
4 called, "Beneficiary Instructions and Authorizations" ("Agency Agreements") that permitted  
5 RESPONDENTS to perform loan related tasks on behalf of investors.

6           18.     As documented, in part, by the Agency Agreements, RESPONDENTS received a  
7 portion of the monthly loan interest payments made by borrowers in the form of an "interest  
8 participation" fee of ".25%" up to ".30%." Investors also executed an "Irrevocable Money  
9 Assignment" in favor of RESPONDENTS and/or one of SIR's other companies that allowed  
10 RESPONDENTS and/or one of SIR's other companies to retain, for instance, one-half of one percent  
11 (*i.e.*, ".50%") of loan interest payments made by a loan borrower under a Note.

12           19.     Some loan servicing work, such as the recordation of documents with the county  
13 recorder, was handled by a third-party title company selected by RESPONDENTS as provided by  
14 the Agency Agreements.

15           20.     RESPONDENTS and the title company managed the essential aspects of the loans  
16 on behalf of investors. For instance, and without limitation, they:

- 17           A.     Negotiated the terms and conditions of the loans with borrowers;
- 18           B.     Prior to originating and funding loans, RESPONDENTS evaluated borrowers and  
19 collateral, and obtained and reviewed borrower financial statements and balance  
20 sheets, and evaluated the risk of the loans (the "Due Diligence");
- 21           C.     Prepared and had borrowers execute DOTs and a myriad of related documents  
22 setting forth loan terms and fees, and securing the collateral;
- 23           D.     Arranged for and participated in escrow closings, including the preparation of escrow  
24 instructions, recording instructions, good faith estimates and HUD-1 settlement  
25 statements and loan disbursement and borrower payment instructions and statements  
26 tailored to the terms and conditions of each loan; and

1 E. Evaluated and attempted to favorably resolve issues arising from non-performing  
2 loans in consultation with investors.

3 **The Due Diligence**

4 21. The Due Diligence services performed by RESPONDENTS on behalf of investors  
5 for each loan were extensive, often documented in a detailed, customized "Loan Checklist"  
6 prepared by RESPONDENTS and included, without limitation, the procurement and review of: (a)  
7 preliminary and final title insurance policies; (b) borrower/tenant lease agreements, a "detailed rent  
8 roll," or in the case of a an apartment-to-condo conversion loan, an "affidavit of no leases" to prove  
9 fee simple ownership and control; (c) construction contracts; (d) construction cost breakdowns or  
10 budgets; (e) building or plat site plans, ALTA surveys, blue prints, and construction and  
11 architectural plans; (f) drainage and engineering studies; (g) zoning information, and flood maps; (h)  
12 environmental reports; (i) borrower financial statements, "net worth" statements and profit and loss  
13 statements for self employed borrowers; (j) borrower tax returns; (k) borrower credit reports and/or  
14 FICO scores; (l) detailed borrower loan applications; (m) borrower and/or collateral insurance  
15 information; (n) income documentation such as W-2's and pay stubs; (o) corporate borrower  
16 documents such as operating agreements, by-laws, articles of incorporation and loan related  
17 resolutions; (p) purchase contracts, and previous loan settlement documents; (q) collateral appraisals,  
18 and tax parcel numbers; (r) city development and tax rebate agreements; (s) project development,  
19 sewer, utility and impact fee information; (t) borrower project marketing materials; (u) collateral  
20 improvements and related cost breakdowns; (v) building permits or certificates of occupancy; (w)  
21 property photos; (x) collateral deferred maintenance information; (y) in one example, detail regarding  
22 the apartment complex serving as loan collateral, including unit count, size, bedrooms and bathrooms,  
23 CCR's and HOA documents; and (z) other types of information as applicable to the often diverse  
24 and/or complex loans discussed above.



1 in 2002; (d) thirty-eight loans in 2003; (e) forty loans in 2004; (f) thirty-four loans in 2005; (g)  
2 forty-six loans in 2006; (h) thirty-six loans in 2007; (i) twenty-seven loans in 2008; and (j) thirteen  
3 loans in 2009.

4 27. According to documents provided to the Division by SMFA, from 2002 to September  
5 24, 2009, RESPONDENTS closed \$413,748,735 in Loans funded in whole or in part with investor  
6 money, or: (a) \$36,859,600 in 2002; (b) \$54,986,000 in 2003; (c) \$67,182,500 in 2004; (d)  
7 \$95,103,722 in 2005; (e) \$69,864,500 in 2006; (f) \$58,942,500.99 in 2007; (g) \$26,468,911.59 in  
8 2008; and (h) \$4,341,000 in 2009.

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

12 **II.**

13 **CONCLUSIONS OF LAW**

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

16 2. RESPONDENTS offered or sold securities within or from Arizona, within the  
17 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

18 3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that  
19 were neither registered nor exempt from registration.

20 4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while  
21 neither registered as dealers or salesmen nor exempt from registration.

22 5. The Commission has grounds for a cease and desist order pursuant to A.R.S. § 44-  
23 2032.

24 6. The Commission has grounds for administrative penalties under A.R.S. § 44-2036.



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IT IS FURTHER ORDERED, that if any of the RESPONDENTS fail to comply with this order, the Commission may bring further legal proceedings against the RESPONDENT(S), including application to the superior court for an order of contempt.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_ day of \_\_\_\_\_, 2010.

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

(MD)

**CONSENT TO ENTRY OF ORDER**

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1. Respondents GREGORY M. SIR (a/k/a "GREG SIR") ("SIR") and SIR MORTGAGE & FINANCE OF ARIZONA, INC. ("SMFA"), an Arizona corporation (sometimes collectively referred to as "RESPONDENTS") admit the jurisdiction of the Commission over the subject matter of this proceeding. RESPONDENTS acknowledge that they have been fully advised of their right to a hearing to present evidence and call witnesses and RESPONDENTS knowingly and voluntarily waive any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. RESPONDENTS acknowledge that this Order to Cease and Desist, Order for Administrative Penalties ("Order") and Consent to Same constitutes a valid final order of the Commission.

2. RESPONDENTS knowingly and voluntarily waive any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. RESPONDENTS acknowledge and agree that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. RESPONDENTS acknowledge that they have been represented by an attorney in this matter, that they have reviewed this Order with their attorneys, without limitation, Paul Roshka, Esq. and Tim Sabo, Esq. of Roshka DeWulf & Patton, P.L.C., and RESPONDENTS understand all terms it contains. RESPONDENTS acknowledge that their attorneys have apprised them of their rights regarding any conflicts of interest arising from dual representation. RESPONDENTS acknowledge that they have each given their informed consent to such representation.

5. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order. This Order is entered without trial of any issue or fact and is not intended to have any collateral estoppel or res judicata effect against RESPONDENTS except for

1 this case, and any other proceeding involving the Commission. RESPONDENTS agree that they  
2 shall not challenge, dispute, or contest the Commission's Findings of Fact and Conclusions of Law  
3 contained in this Order in any present or future proceeding before the Commission.

4       6. By consenting to the entry of this Order, RESPONDENTS agree not to take any  
5 action or to make, or permit to be made, any public statement denying, directly or indirectly, any  
6 Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is  
7 without factual basis. RESPONDENTS will undertake steps necessary to assure that all of their  
8 agents, entities and employees understand and comply with this agreement.

9       7. While this Order settles this administrative matter between RESPONDENTS and  
10 the Commission, RESPONDENTS understand that this Order does not preclude the Commission  
11 from instituting other administrative or civil proceedings based on violations that are not addressed  
12 by this Order.

13       8. RESPONDENTS understand that this Order does not preclude the Commission  
14 from referring this matter to any governmental agency for administrative, civil, or criminal  
15 proceedings that may be related to the matters addressed by this Order.

16       9. RESPONDENTS understand that this Order does not preclude any other agency or  
17 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal  
18 proceedings that may be related to matters addressed by this Order.

19       10. RESPONDENTS agree that they will not sell any securities in or from Arizona  
20 without being properly registered in Arizona as a dealer or salesman, or exempt from such  
21 registration; RESPONDENTS will not sell any securities in or from Arizona unless the securities  
22 are registered in Arizona or exempt from registration; and RESPONDENTS will not transact  
23 business in Arizona as an investment adviser or an investment adviser representative unless  
24 properly licensed in Arizona or exempt from licensure.

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1 11. RESPONDENTS agree that they will continue to cooperate with the Securities  
2 Division including, but not limited to, providing complete and accurate testimony at any hearing  
3 involving the Commission.

4 12. RESPONDENTS consent to the entry of this Order by the Commission and agree to  
5 be fully bound by all of its terms and conditions, and each and every provision of this Consent to  
6 Entry of Order.

7 13. RESPONDENTS acknowledge and understand that if they fail to comply with the  
8 provisions of the order and this consent, the Commission may bring further legal proceedings  
9 against RESPONDENTS, including application to the superior court for an order of contempt.

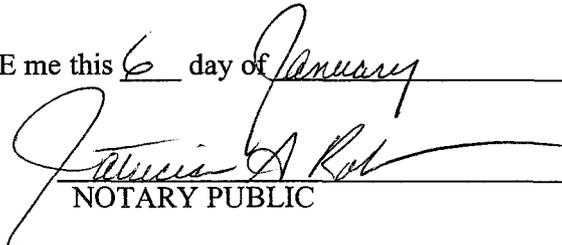
10 14. RESPONDENTS understand that violations of this Order shall render them liable to  
11 the Commission for its reasonable attorneys' fees and costs incurred in enforcing the Order.

12 15. SIR represents that from September 4, 2002 to the present, he has been the  
13 president, secretary, treasurer and director of SMFA and has been authorized by name of SMFA to  
14 enter into this Order for and on behalf of it.

15  
16   
17 GREGORY M. SIR (a/k/a "GREG SIR")

18 STATE OF ARIZONA )  
19 County of Maricopa ) ss

20 SUBSCRIBED AND SWORN TO BEFORE me this 6 day of January, <sup>2010</sup>~~2009~~.

21   
22 NOTARY PUBLIC

23 My commission expires:  
24 12/17/2012



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**SIR MORTGAGE & FINANCE OF ARIZONA,  
INC., an Arizona corporation**

*[Handwritten Signature]*

By: GREGORY M. SIR (a/k/a "GREG SIR")  
Its: President, secretary, treasurer and Director

STATE OF ARIZONA       )  
  ) ss  
County of Maricopa       )

SUBSCRIBED AND SWORN TO BEFORE me this 6th day of January, 2010.

*[Handwritten Signature]*  
NOTARY PUBLIC

My commission expires:

12/17/2012



1 SERVICE LIST FOR: In re Sir Mortgage & Finance of Arizona, Inc., S-20703A-09-0461

2 Paul Roshka, Esq.

3 Tim Sabo, Esq.

4 Roshka DeWulf & Patten

5 One Arizona Center

6 400 East Van Buren Street

7 Suite 800

8 Phoenix, Arizona 85004

9 *Attorneys for Respondents Greg & Erin Sir, and Sir Mortgage*

10 *& Finance of Arizona, Inc.*

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