

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS
OFFICE OF THE COMMISSIONER

IN THE MATTER OF:)	
)	
LENDXFINANCIAL, LLC,)	TDFI NO.: 10-189-C
)	
Respondent.)	

TEMPORARY EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Tennessee Department of Financial Institutions (hereinafter "Commissioner"), having determined that LendXFinancial, LLC (hereinafter "Respondent") violated and is violating the "Tennessee Residential Lending, Brokerage and Servicing Act" (hereinafter "Tennessee Mortgage Act"), Tennessee Code Annotated Sections (hereinafter "TENN. CODE ANN. §§") 45-13-101, *et seq.*, and that extraordinary circumstances require immediate action in this matter, hereby issues the following TEMPORARY EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-13-201(a), TENN. CODE ANN. §§ 45-13-204(a) and (e), TENN. CODE ANN. § 45-13-401(5), TENN. CODE ANN. § 45-13-405(a), TENN. CODE ANN. § 45-13-405(b), and TENN. CODE ANN. § 45-13-406(c).

JURISDICTION AND IDENTIFICATION OF THE PARTIES

1. TENN. CODE ANN. § 45-1-104 provides that the Tennessee Department of Financial Institutions (hereinafter "Department") is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions).

2. TENN. CODE ANN. § 45-1-107(a)(4) provides that, in addition to other powers conferred by Title 45, the Commissioner has the authority to order any person to cease violating a provision of Title 45 or lawful regulation issued under Title 45. Pursuant to TENN. CODE ANN. § 45-1-107(c), notice and opportunity for a hearing shall be provided in advance of the Commissioner issuing such an order, except that in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

3. The Commissioner is responsible for the administration, enforcement, and interpretation of the Tennessee Mortgage Act, and any regulations promulgated pursuant to the Tennessee Mortgage Act.

4. Pursuant to TENN. CODE ANN. § 45-13-405(a)(1) of the Tennessee Mortgage Act, if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the Tennessee Mortgage Act or any administrative regulation issued pursuant to the Tennessee Mortgage Act, the Commissioner has the authority to order the person to cease and desist violating said Act or any regulations promulgated pursuant to said Act. However, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action by issuing a temporary emergency order without providing the opportunity for a prior hearing pursuant to TENN. CODE ANN. § 45-13-406(c) of the Tennessee Mortgage Act. In such circumstances, the Commissioner shall promptly afford a subsequent hearing upon an application to rescind the temporary emergency order that is filed with the Commissioner within

twenty (20) days after receipt of the notice of the Commissioner's emergency action pursuant to TENN. CODE ANN. § 45-13-406(c) of the Tennessee Mortgage Act. If no such appeal is timely filed, the temporary emergency order of the Commissioner shall become final pursuant to TENN. CODE ANN. § 45-13-406(c) of the Tennessee Mortgage Act.

5. The Respondent is a foreign, member managed limited liability company organized under the laws of the state of Delaware on or about May 22, 2008 (05/22/08). The Tennessee Department of State issued the Respondent a certificate of authority (control number 586134) on or about September 15, 2008 (09/15/08). According to the Tennessee Department of State, the principal office for the Respondent is located at 1718 Peachtree Street Northwest, Suite 676A, Atlanta, Georgia 30309. According to the Tennessee Department of State, the registered agent for service of process for the Respondent is CT Corporation System, 800 South Gay Street, Suite 2021, Knoxville, Tennessee 37929. As of the entry date of this temporary emergency order, the Respondent's status with the Tennessee Department of State is listed as "Inactive – Revoked (Administrative)" effective August 8, 2010 (08/08/10).

6. The Respondent is licensed by the Department (license number 4145; originally issued a Certificate of Registration on July 17, 2009 (07/17/09)) as a mortgage lender and mortgage loan broker pursuant to the Tennessee Mortgage Act. The Respondent's address of record on file with the Department is 1155 Perimeter Center West, Suite 600, Atlanta, Georgia 30338.

FACTUAL ALLEGATIONS

7. At all times pertinent herein, the Respondent was licensed by the Department (license number 4145; originally issued a Certificate of Registration on July 17, 2009 (07/17/09)) as a mortgage lender and mortgage loan broker pursuant to the Tennessee Mortgage Act.

8. On or about August 8, 2010 (08/08/10), the Department received a "Notice of Cancellation or Nonrenewal" (hereinafter "Notice") from Great American Insurance Company. Said Notice was dated August 2, 2010 (08/02/10) and concerned the intended cancellation of the Respondent's surety bond (surety bond number 1190128) issued by Great American Insurance Company. According to said Notice, Great American Insurance Company intended to cancel the Respondent's surety bond effective thirty (30) days after receipt of said Notice.

9. In response to said Notice, the Department forwarded the Respondent a letter, dated and mailed August 9, 2010 (08/09/10), via United States first class mail, postage prepaid, to the Respondent's address of record on file with the Department. According to the aforementioned letter, the Department stated that it had received written notification from Great American Insurance Company that it intended to cancel the Respondent's surety bond. Consequently, the Department specifically requested that the Respondent provide a replacement surety bond prior to the expiration of the surety bond in question. The Department enclosed a copy of said Notice with the

aforementioned letter. Said letter was returned to the Department with the label “return to sender...box closed...unable to forward...return to sender.”

10. In addition to the Department’s letter referenced in paragraph nine (9), the Department attempted to contact the Respondent via telephone on or about August 10, 2010 (08/10/10). The Department’s attempts to contact the Respondent via telephone were unsuccessful due to the fact that the Respondent’s telephone number on file with the Department, as well as the Respondent’s telephone number on file with the Nationwide Mortgage Licensing System & Registry, had been disconnected.

11. In addition to the Department’s letter referenced in paragraph nine (9) and the Department’s attempts to contact the Respondent via telephone, the Department forwarded the Respondent a second letter, dated and mailed September 13, 2010 (09/13/10), via United States first class mail, postage prepaid, via United States certified mail return receipt requested, and via Federal Express priority overnight delivery. The Department’s second letter was forwarded to the Respondent’s address of record on file with the Department, the address for the Respondent’s principal office, and to the address for the Respondent’s agent for service of process.

12. The Department’s second letter advised the Respondent that it intended to institute agency proceedings against the Respondent for the purposes of seeking a temporary emergency order (pursuant to TENN. CODE ANN. § 45-13-406(c) of the Tennessee Mortgage Act) and/or an order (pursuant to TENN. CODE ANN. § 45-13-405(a) of the Tennessee Mortgage Act). Specifically,

the Department's second letter advised the Respondent that the Department intended to institute agency proceedings against the Respondent based upon the allegation that the Respondent had violated the Tennessee Mortgage Act by failing to maintain a surety bond payable to the state as required by TENN. CODE ANN. §§ 45-13-204(a) and (e).

13. In light of the alleged violation referenced in paragraph twelve (12), the Department provided the Respondent with "...an opportunity to show compliance with all lawful requirements for the retention of the license" in conformity with TENN. CODE ANN. § 4-5-320(c). Specifically, according to the Department's second letter, the Department provided a deadline of Monday, September 20, 2010 (09/20/10), for the Respondent to demonstrate that it was complying with the surety bond requirement set forth in TENN. CODE ANN. §§ 45-13-204(a) and (e) of the Tennessee Mortgage Act. Finally, according to the Department's second letter, the Department provided written notice that it may institute agency proceedings against the Respondent if the Respondent failed to demonstrate compliance with the aforementioned surety bond requirement by the aforementioned deadline.

14. The United States certified mail return receipt indicates that the Respondent's registered agent for service of process received the Department's second letter via certified mail on September 14, 2010 (09/14/10). In addition, the tracking mechanism on the website for Federal Express indicates that the Respondent's registered agent for service of process received the Department's second letter via overnight priority delivery on September 14, 2010 (09/14/10).

15. As of the entry date of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER, the Respondent has failed to respond to the Department's second letter and has otherwise failed to demonstrate compliance with the surety bond requirement set forth in TENN. CODE ANN. §§ 45-13-204(a) and (e) of the Tennessee Mortgage Act.

16. The Respondent's pattern of engaging in the businesses of mortgage lending and mortgage loan brokering in the state of Tennessee without complying with the surety bond requirement set forth in TENN. CODE ANN. §§ 45-13-204(a) and (e) of the Tennessee Mortgage Act is a sufficient indicator that the Respondent will continue to commit said violation in the future.

CAUSES OF ACTION

17. The factual allegations as stated in paragraphs seven (7) through sixteen (16) of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent violated and is violating TENN. CODE ANN. §§ 45-13-204(a) and (e) of the Tennessee Mortgage Act, in that the Respondent is engaging in the businesses of mortgage lending and mortgage loan brokering in the state of Tennessee without complying with the surety bond requirement set forth in the Tennessee Mortgage Act.

18. The factual allegations as stated in paragraphs seven (7) through sixteen (16) of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that extraordinary circumstances require immediate action pursuant to TENN. CODE ANN. § 45-1-107(c) and TENN. CODE ANN. § 45-13-406(c) of the Tennessee Mortgage Act.

POLICY STATEMENT

19. TENN. CODE ANN. § 45-13-201(a) of the Tennessee Mortgage Act states, in pertinent part, that “[n]o person shall act as a mortgage lender, mortgage loan broker or mortgage loan servicer in this state without first obtaining a license under this chapter;....”

20. TENN. CODE ANN. § 45-13-204(a) of the Tennessee Mortgage Act states that “[a]t the time of filing an application for a license under § 45-13-201(a), the applicant shall also file with the commissioner a surety bond payable to the state, in a form to be approved by the commissioner, for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the licensee. The bond must be issued by a bonding company qualified to do business in this state.”

21. TENN. CODE ANN. § 45-13-204(e) of the Tennessee Mortgage Act states “[t]he bond shall be maintained for not less than twenty-four (24) months following the expiration, revocation, suspension or surrender of the license.”

22. TENN. CODE ANN. § 45-13-401(5) of the Tennessee Mortgage Act states that it is a violation of the Tennessee Mortgage Act for any person subject to said Act to “[f]ail to comply with this chapter or any rules or regulations promulgated under this chapter;”

23. TENN. CODE ANN. § 45-13-405(a) of the Tennessee Mortgage Act states “[i]f, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter or any administrative rule issued pursuant to this chapter, the commissioner may take any or all of the following actions: (1) [o]rder the person to cease and desist violating this chapter or any administrative rule issued pursuant to this chapter; (2) [r]equire the refund of any interest, fees or charges collected by the person in violation of this chapter or any administrative rule issued pursuant to this chapter; (3) [o]rder the person to pay the commissioner a civil monetary penalty of not more than ten thousand dollars (\$10,000) for each violation of this chapter or administrative rule issued pursuant to this chapter; or (4) [s]uspend or revoke any license issued under this chapter.”

24. TENN. CODE ANN. § 45-13-405(b) of the Tennessee Mortgage Act states, in pertinent part, that “...The commissioner may also, after notice and opportunity for a hearing, suspend or revoke any license issued under this chapter for failure to maintain the requirements for licensure.”

25. TENN. CODE ANN. § 45-13-406(c) of the Tennessee Mortgage Act states “[i]n cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter by issuing a temporary emergency order without providing the

opportunity for a prior hearing. In such cases, the commissioner shall promptly afford a subsequent hearing upon an application to rescind the emergency order that is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action. If no such appeal is timely filed, the temporary emergency order of the commissioner shall become final."

26. The factual allegations as stated in paragraphs seven (7) through sixteen (16) of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent violated and is violating TENN. CODE ANN. §§ 45-13-204(a) and (e) by engaging in the businesses of mortgage lending and mortgage loan brokering in the state of Tennessee without complying with the surety bond requirement set forth in the Tennessee Mortgage Act. Said violations have deprived borrowers of a guaranteed form of payment for the benefit of any person injured by the wrongful act, default, fraud, or misrepresentation of the Respondent, and thus, the likelihood exists that borrowers will suffer irreparable harm. The Respondent is engaging in the businesses of mortgage lending and mortgage loan brokering in the state of Tennessee without complying with the aforementioned statutorily mandated consumer protection measure.

EMERGENCY RELIEF

27. Having considered the factual allegations contained herein, the Commissioner has determined that the Respondent violated and is violating the Tennessee Mortgage Act and that extraordinary circumstances warrant immediate action in this matter.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

a. That the Respondent shall cease and desist IMMEDIATELY from engaging in the businesses of mortgage lending and mortgage loan brokering in the state of Tennessee pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-13-201(a), TENN. CODE ANN. §§ 45-13-204(a) and (e), TENN. CODE ANN. § 45-13-401(5), TENN. CODE ANN. § 45-13-405(a), TENN. CODE ANN. § 45-13-405(b), and TENN. CODE ANN. § 45-13-406(c);

b. That the Respondent shall provide the Department with a detailed pipeline report within ten (10) days of the Respondent's receipt of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER concerning any and all residential mortgage loans involving dwellings and/or residential real estate located in the state of Tennessee. Said pipeline report shall reflect the following categories: (1) residential mortgage loans that have closed but have not yet funded; (2) residential mortgage loans that have been approved but that have not yet closed; and (3) residential mortgage loan applications that have been solicited, placed,

negotiated, and/or originated and are in the process of being reviewed, underwritten, or approved;

c. That the Respondent shall fully comply with any and all obligations to any and all borrowers who have a residential mortgage loan pending, approved, or closed but not funded, including but not limited to, making reasonable efforts, at no cost or loss to said borrowers, to cause said residential mortgage loans to be placed with other licensed mortgage lenders and mortgage loan brokers in order to ensure that said residential mortgage loan transactions are completed in a timely manner. The Respondent shall provide the Department with a written report detailing its reasonable efforts and the resolution of each and every residential mortgage loan when said loans have been placed;

d. That the Respondent shall IMMEDIATELY place any and all commissions and fees, previously collected from borrowers and/or associated with any pending applications concerning dwellings and/or residential real estate located in the state of Tennessee, into a separate escrow account maintained at a federally insured depository institution and shall IMMEDIATELY provide an accounting of said monies to the Department;

e. That the Respondent shall IMMEDIATELY release any and liens recorded on dwellings and/or residential real estate located in the state of Tennessee concerning any and all residential mortgage loans that were closed with the Respondent but were not funded. In the event the

residential mortgage loan is subsequently funded, the Respondent may record a lien against said property after said time; and

f. That the provisions of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER shall remain in full force and effect unless and until such time as any provision is modified, terminated, suspended or set aside by the Commissioner, an administrative judge, or any court having jurisdiction over the matters addressed herein.

NOTICE

28. The Respondent has the right to a prompt hearing for the purpose of contesting and obtaining rescission of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER. If a prompt hearing is timely requested by the Respondent, the hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and pursuant to the Official Compilation Rules & Regulations of the State of Tennessee 1360-04-01.

29. The sole issue to be considered at the prompt hearing is whether extraordinary circumstances required immediate action in this matter. This TEMPORARY EMERGENCY CEASE AND DESIST ORDER does not constitute a final adjudication upon the merits, but merely constitutes a temporary, emergency order until such time that a contested case may be promptly instituted by the filing of a Notice of Charges and Opportunity for Hearing.

30. In order to request a prompt hearing, the Respondent must file a written request with the Commissioner within twenty (20) days from receipt of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER. Any written request for a hearing must be filed with the Commissioner, Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Nashville, Tennessee 37219. If no such written request is timely filed with the Commissioner, this TEMPORARY EMERGENCY CEASE AND DESIST ORDER shall be deemed a Final Order without further legal process.

31. The Respondent may file a Petition for Appeal with the Commissioner within fifteen (15) days of entry of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 4-5-315(b).

32. The Respondent may submit to the Commissioner a petition for stay of effectiveness of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER or the Final Order within seven (7) days of entry pursuant to TENN. CODE ANN. § 4-5-316.

33. The Respondent may file a Petition for Reconsideration with the Commissioner, stating the specific grounds upon which the relief is requested, within fifteen (15) days of entry of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER or the Final Order pursuant to TENN. CODE ANN. § 4-5-317.

34. The Respondent may seek judicial review of this TEMPORARY EMERGENCY CEASE AND DESIST ORDER by filing a Petition for Judicial Review in the chancery court of Davidson County, Tennessee, within sixty (60) days of the date this Order becomes a Final Order pursuant to TENN. CODE ANN. § 4-5-322. A Petition for Reconsideration does not act to extend the sixty (60) day period; however, if the Petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the Petition.

ENTERED AND EFFECTIVE this 5TH day of October 2010.

On behalf of the Department:



Greg Gonzales, Commissioner
Tennessee Department of Financial Institutions

CERTIFICATE OF SERVICE

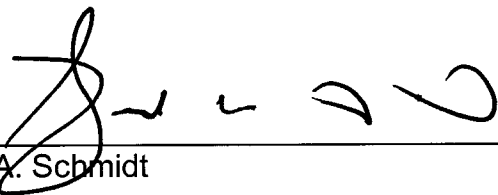
I hereby certify that true and correct copies of the foregoing Order have been forwarded via United States First Class Mail, Postage Prepaid, via United States Certified Mail Return Receipts Requested, Certified Mail Numbers 7009 0080 0000 1124 2860, 7009 0080 0000 1124 2884, 7009 0080 0000 1124 2877, and via Federal Express Priority Overnight Delivery, Tracking Numbers 8731 1893 3888, 8731 1893 3899, 8731 1893 3903, to the following:

LendXFinancial, LLC
1718 Peachtree Street Northwest
Suite 676A
Atlanta, Georgia 30309

LendXFinancial, LLC
1155 Perimeter Center West
Suite 600
Atlanta, Georgia 30338

CT Corporation System
800 South Gay Street
Suite 2021
Knoxville, Tennessee 37329

This 5TH day of October 2010.



Joseph A. Schmidt
Attorney
Tennessee Department of Financial Institutions