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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

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IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Consumer Loan Act of Washington by:

NO. C-07-432-09-CO01

INDEPENDENT FINANCIAL MORTGAGE  
INC., and  
BRIAN L. CUNNINGHAM (Owner, CEO, and  
Director),

CONSENT ORDER

Respondents.

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Independent Financial Mortgage Inc. (hereinafter Respondent Independent) and Brian L. Cunningham, owner, CEO and Director (hereinafter Respondent Cunningham), and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.04 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

**AGREEMENT AND ORDER**

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-07-432-09-SC01 (Statement of Charges), entered July 29, 2009, (copy attached hereto). Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent Order and further agree that the issues raised in the above-captioned matter may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges

Based upon the foregoing:

CONSENT ORDER  
C-07-432-09-CO01  
INDEPENDENT FINANCIAL MORTGAGE INC. and  
BRIAN L. CUNNINGHAM

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Division of Consumer Services  
150 Israel Rd SW  
PO Box 41200  
Olympia, WA 98504-1200  
(360) 902-8703

1           **A. Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the  
2 activities discussed herein.

3           **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a hearing  
4 before an administrative law judge, and that they hereby waive their right to a hearing and any and all  
5 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein. The  
6 Respondents did not request an administrative hearing with the Office of Administrative Hearings.

7           **C. License Revocation.** It is AGREED that Respondent Independent's consumer loan license is  
8 revoked upon entry of this Consent Order.

9           **D. Investigation Fee.** It is AGREED that Respondents shall pay to the Department an investigation fee  
10 of \$1,104.16, in the form of a cashier's check made payable to the "Washington State Treasurer," upon entry of  
11 this Consent Order.

12           **E. Annual Assessment.** It is AGREED that Respondents shall pay to the Department a 2007 annual  
13 assessment of \$223.88, in the form of a cashier's check made payable to the "Washington State Treasurer," upon  
14 entry of this Consent Order.

15           **F. Authority to Execute Order.** It is AGREED that the undersigned Respondents have represented and  
16 warranted that they have the full power and right to execute this Consent Order on behalf of the parties  
17 represented.

18           **G. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to abide  
19 by the terms and conditions of this Consent Order may result in further legal action by the Director. In the  
20 event of such legal action, Respondents may be responsible to reimburse the Director for the cost incurred in  
21 pursuing such action, including but not limited to, attorney fees.

22           **H. Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily entered into  
23 this Consent Order, which is effective when signed by the Director's designee.  
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1 I. Completely Read, Understood, and Agreed. It is AGREED that Respondents have read this  
2 Consent Order in its entirety and fully understand and agree to all of the same.

3 **RESPONDENTS:**  
4 **INDEPENDENT FINANCIAL MORTGAGE INC. AND**  
5 **BRIAN L. CUNNINGHAM**

6 By:

7 Brian L. Cunningham

8 Brian L. Cunningham, Owner, CEO and Director  
9 of Independent Financial Mortgage Inc.

10 11-4-09

11 Date

12 Brian L. Cunningham

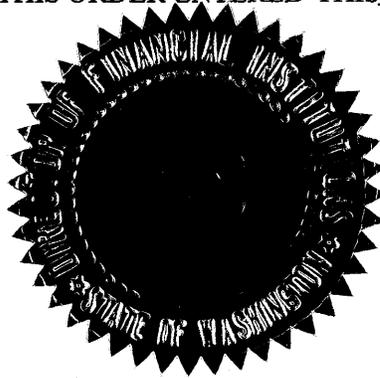
13 Brian L. Cunningham, individually

14 11-4-09

15 Date

16 DO NOT WRITE BELOW THIS LINE

17 THIS ORDER ENTERED THIS 23<sup>rd</sup> DAY OF April, 2009.



18 Deborah Bortner

19 DEBORAH BORTNER

20 Director

21 Division of Consumer Services

22 Department of Financial Institutions

23 Presented by:

24 William Halstead

25 WILLIAM HALSTEAD  
Financial Legal Examiner

Approved by:

James R. Brusselback

JAMES R. BRUSSELBACK  
Enforcement Chief

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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
CONSUMER SERVICES DIVISION**

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IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Consumer Loan Act of Washington by:

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INDEPENDENT FINANCIAL  
MORTGAGE INC., and  
BRIAN L. CUNNINGHAM (Owner,  
CEO, and Director),

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Respondents.

NO. C-07-432-09-SC01

STATEMENT OF CHARGES and NOTICE OF INTENTION  
TO ENTER AN ORDER TO REVOKE LICENSE, IMPOSE  
FINE, COLLECT ANNUAL ASSESSMENT, COLLECT  
LATE PENALTIES, AND COLLECT INVESTIGATION  
FEES

**INTRODUCTION**

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondents.**

**A. Independent Financial Mortgage Inc.** (Respondent Independent) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on March 8, 2006, and continues to be licensed to date.

**B. Brian L. Cunningham** (Respondent Cunningham) is the Owner, Chief Executive Officer (CEO) and Director for Respondent Independent.

**1.2 Licensed Location:** Respondent Independent is licensed to conduct the business of a Consumer Lender at 2 S Pointe Dr. Ste. 185 Lake Forest, California 92630.

**1.3 Surety Bond.** The Hartford Fire Insurance Company notified the Department on June 11, 2007, that Respondent Independent's surety bond would be cancelled effective July 26, 2007. To date, Respondents have not provided a reinstatement of the cancelled surety bond, a replacement surety bond, or approved alternative.

1 **1.4 Records Location:** Respondents have not received approval from the Department to maintain the  
2 records relating to their Consumer Loan license at any location outside the State of Washington

3 **1.5 Annual Report:** An annual report is due to the Department on or before the first day of March  
4 concerning the business and operations of each licensed place of business conducted during the preceding  
5 calendar year and within 30 days of ceasing operations. The annual report must be made under oath and must be  
6 in the form prescribed by the Director. To date, Respondent Independent has not provided the annual report  
7 relating to calendar years 2007 and 2008.

8 **1.6 Annual Assessment:** A calculation worksheet and an annual assessment fee are due to the Department  
9 on or before the first day of March relating to the previous calendar year or within 30 days of ceasing  
10 operations. To date, Respondents have not provided the calculation worksheets or paid the annual assessment  
11 fee for calendar years 2007 and 2008.

12 **1.7 Failing to Report Significant Developments to the Department.** Respondents did not notify the  
13 Department within 20 days of ceasing operations in the State of Washington.

14 **1.8 Failing to Respond to Department Directive.** On May 8, 2009, the Department sent Respondents a  
15 directive outlining its responsibilities under the Act, including the requirements to file an Annual Assessment  
16 Report, Consolidated Annual Report, and Closure/Surrender Forms. Respondents have not responded to the  
17 directive and have failed to file the proper license surrender forms. As a result, Respondent Independent  
18 continues to be licensed with the Department.

19 **1.9 On-Going Investigation:** The Department's investigation into the alleged violations of the Act by  
20 Respondents continues to date.

21 **II. GROUNDS FOR ENTRY OF ORDER**

22 **2.1 Requirement to Maintain Surety Bond:** Based on the Factual Allegations set forth in Section I  
23 above, Respondents are in apparent violation of RCW 31.04.045(3) and WAC 208-620-320 for failing to file  
24 and maintain a surety bond or approved alternative with the Director.

1 **2.2 Requirement to File Closure Forms.** Based on the Factual Allegations set forth in Section I above,  
2 Respondents are in apparent violation of WAC 208-620-475 for failing to notify the Department it had ceased  
3 doing business in the State of Washington and for not filing the Consumer Loan Closure Form.

4 **2.3 Requirement to File Annual Report:** Based on the Factual Allegations set forth in Section I above,  
5 Respondents are in apparent violation of RCW 31.04.155 and WAC 208-620-220(1) for failing to provide an  
6 annual report to the Director, under oath and in the form prescribed by the Director, on or before the first day of  
7 March, concerning the business and operations of each licensed place of business conducted during the  
8 preceding calendar year .

9 **2.4 Requirement to Calculate and Pay Annual Assessment:** Based on the Factual Allegations set forth  
10 in Section I above, Respondents are in apparent violation of RCW 31.04.085, WAC 208-620-190(3) and WAC  
11 208-620-220(1) for failing to provide to the Director a completed annual assessment calculation worksheet and  
12 failing to pay to the Director an annual assessment fee on or before the first day of March, relating to the  
13 previous calendar year.

14 **2.5 Requirement to Report Significant Developments.** Based upon the Factual Allegations set forth in  
15 Section I above, Respondents are in apparent violation of WAC 208-620-475 and 480 for failing to notify the  
16 Department within 20 days that it had ceased operations in the State of Washington.

17 **2.6 Requirement to Comply with Directive.** Based upon the Factual Allegations set forth in Section I  
18 above, Respondents are in apparent violation of RCW 31.04.145, for not complying with a directive issued by  
19 the Department.

### III. AUTHORITY TO IMPOSE SANCTIONS

20 **3.1 Authority to Revoke License:** Pursuant to RCW 31.04.093(3)(a) and (b), the Director may revoke a  
21 license if a licensee fails to pay any fee due the state of Washington, fails to maintain in effect the required bond  
22 or permitted substitute, or fails to comply with any specific order or demand of the Director, or violates any  
23 provision of the Act or any rule adopted under the Act.

24 **3.2 Authority to Impose Fine:** Pursuant to RCW 31.04.093(4)(a), the Director may impose fines of up to  
25 one hundred dollars per day upon the licensee for any violation of the Act.

1 **3.3 Authority to Collect Annual Assessment.** Pursuant to RCW 31.04.085, WAC 208-620-430(1) and  
2 WAC 208-620-440, a licensee shall pay to the director an annual assessment.

3 **3.4 Authority to Impose Late Penalties:** Pursuant to RCW 31.04.155 and WAC 208-620-220(2), a  
4 licensee that fails to file a report required to be filed by the Act within the time required is subject to a penalty  
5 of fifty dollars per day, per report, for each day's delay.

6 **3.5 Authority to Charge Examination and Investigation Fees:** Pursuant to RCW 31.04.145(3) and  
7 WAC 208-620-590, every licensee investigated by the Director or the Director's designee shall pay for the cost  
8 of the investigation, calculated at the rate of \$69.01 per staff hour devoted to the investigation.

9 **3.6 Authority to Issue Orders Directing Action:** Pursuant to RCW 31.04.093(5)(b), the Director may  
10 issue an order directing a licensee to take such affirmative action as is necessary to comply with the Act.

#### 11 **IV. NOTICE OF INTENTION TO ENTER ORDER**

12 Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in  
13 the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under  
14 RCW 31.04.093, RCW 31.04.165 and RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

15 4.1 Respondent Independent Financial Mortgage Inc.'s license to conduct the business of a Consumer  
16 Loan Company be revoked;

17 4.2 Respondents Independent Financial Mortgage Inc. and Brian L. Cunningham jointly and severally pay  
18 a fine which as of the date of these charges totals \$20,000;

19 4.3 Respondents Independent Financial Mortgage Inc. and Brian L. Cunningham provide to the Director  
20 completed Consolidated Annual Reports and Annual Assessment Worksheets for 2007 and 2008;

21 4.4 Respondents Independent Financial Mortgage Inc. and Brian L. Cunningham pay the delinquent  
22 Annual Assessments due for the years ended December 31, 2007, and 2008, as calculated in  
23 accordance with the instructions for the Annual Assessment Worksheets for the same year;

24 4.5 Respondents Independent Financial Mortgage Inc. and Brian L. Cunningham jointly and severally pay  
25 a late penalty which, at the time of this document, totals \$54,500 calculated at \$50 per day for each  
report (4) since they were due (545 days).

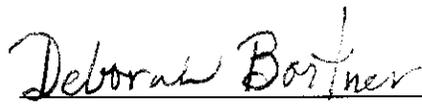
4.6 Respondents Independent Financial Mortgage Inc. and Brian L. Cunningham jointly and severally pay  
an investigation fee which, at the time of this document, totals \$1,104.16 calculated at \$69.01 per hour  
for 16 staff hours devoted to the investigation; and

1 4.7 Respondents Independent Financial Mortgage Inc. and Brian L. Cunningham jointly and severally  
2 maintain records in compliance with the Act and provide the Director with the location of the books,  
3 records and other information relating to Respondent Independent's consumer loan company business,  
4 and the name, address and telephone number of the individual responsible for maintenance of such  
5 records in compliance with the Act.

6 **IV. AUTHORITY AND PROCEDURE**

7 This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fine,  
8 Collect Annual Assessment, Collect Late Penalties, and Collect Investigation Fees is entered pursuant to the  
9 provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the  
10 provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written  
11 request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY  
12 FOR HEARING accompanying this Statement of Charges and Notice of Intention to Enter an Order to Revoke  
13 License, Prohibit from Industry, Impose Fine, Collect Annual Assessments, Collect Late Penalties, and Collect  
14 Investigation Fees.

15 Dated this 29<sup>th</sup> day of July, 2009.

16   
17 DEBORAH BORTNER  
18 Director Division of Consumer Services  
19 Department of Financial Institutions

20 Presented by:

21   
22 WILLIAM HALSTEAD  
23 Financial Legal Examiner



24 Approved by:

25   
26 JAMES R. BRUSSELBACK  
27 Enforcement Chief