

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License of:

No. 14F- BD084-SBD

3 **AMERIFIRST FINANCIAL, INC.**

CONSENT ORDER

4 1550 East McKellips Rd., Suite 117
5 Mesa, Arizona 85203

6 Respondent.

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**DEPARTMENT OF
FINANCIAL INSTITUTIONS**

7 On December 4, 2012, the Arizona Department of Financial Institutions (“Department”)
8 initiated an examination of AmeriFirst Financial, Inc. (“AmeriFirst” or “Respondent”). On March
9 28, 2014, the Department issued an Order to Cease and Desist: Notice of Opportunity for Hearing,
10 Consent to Entry of Order (“Cease and Desist Order”). In response, Respondent provided additional
11 information. Accordingly, this Consent Order amends and supersedes the findings and orders in the
12 Department’s March 28, 2014 Cease and Desist Order. Wishing to resolve this matter in lieu of an
13 administrative hearing, without admitting liability, AmeriFirst consents to the following Findings of
14 Fact and Conclusions of Law, and consent to the entry of the following Order.

15 **FINDINGS OF FACT**

16 1. Respondent Amerifirst Financial, Inc. (“Amerifirst”), an Arizona corporation, is
17 authorized to transact business in Arizona as a mortgage banker, license number BK-013635, within
18 the meaning of A.R.S. §§ 6-941 *et seq.* The nature of Amerifirst’s business is that of making,
19 negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by
20 Arizona real property, as defined in A.R.S. § 6-941(5).

21 2. Respondent Eric M. Bowlby (“Mr. Bowlby”) was at all times relevant to the Examination
22 the President of Amerifirst and is authorized to transact business in Arizona as a mortgage banker
23 within the meaning of A.R.S. § 6 941(5), as outlined within A.R.S. § 6-943(F).

24 3. Amerifirst (“Respondent”) is not exempt from licensure as a mortgage banker within the
25 meaning of A.R.S. § 6-942.

26 4. The Department conducted an Examination of AmeriFirst on December 4, 2012 and

1 completed on December 27, 2012. The Examination revealed that Respondent:

- 2 a. Failed to use their name and license number, as issued on their principal place of
3 business license, within the text of all regulated advertising or business solicitations.
- 4 b. Failed to conduct the minimum elements of reasonable employee investigations prior
5 to hiring employees.
- 6 c. Failed to provide accounting to the borrowers/mortgagors on an annual basis for the
7 periodic payments collected from them for the payments of taxes, assessments and
8 other charges against the real estate security and failed to promptly pay periodic
9 payments (i.e., taxes) collected from the borrower/mortgagor.
- 10 d. Failed to maintain originals or copies of all mortgage banking loan transactions.
- 11 e. Respondents commingled trust funds relating to the receipt and handling of funds for
12 property appraisals resulting in no harm to any borrowers.
- 13 f. Failed to comply with the disclosure requirements of Title I of the Consumer Credit
14 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
15 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
16 under these acts.
- 17 g. Allowed borrowers to sign regulated documents containing blank spaces without the
18 benefit of written authorization to complete the documents.
- 19 h. Contracted with or paid compensation to unlicensed, independent contractors.
20 Information provided to the Department by Respondent since the completion of the
21 examination demonstrates that AmeriFirst has implemented measures to prevent the
22 company from contracting with or paying compensation to unlicensed, independent
23 contractors.
- 24 i. Failed to truthfully account for the monies belonging to a party to a mortgage loan or
25 mortgage banking loan transaction regarding the handling of appraisal fees.
- 26 j. Respondent's loan originators: advertised for or solicited mortgage business in the

1 manner that includes the name and license number as issued on the employing
2 mortgage banker's principal place of business license; failed to obtain the approval of
3 the employing mortgage banker; and the unique identifier, which the loan originator
4 maintains with the nationwide mortgage licensing system and registry.

5 i. Amerifirst failed to ensure that its loan originators immediately notify the
6 superintendent of a change in the loan originator's residence address. Six
7 loan originators failed to notify the superintendent of a change in their
8 residential address.

9 ii. Failed to keep, maintain and produce the loan originator's license at the
10 request of the examiners for three employees.

11 iii. Failed to notify the Superintendent within five (5) business days that it
12 terminated the employment of one of its licensed loan originators,
13 specifically, the NMLS records indicate that although Spencer Dale Owens
14 was terminated as of March 15, 2011, the sponsorship for this originator
15 was not removed from the Department's records until December 6, 2012.

16 5. Information presented by AmeriFirst during and subsequent to the examination
17 demonstrates that AmeriFirst has actively taken steps to prevent the recurrence of the conduct set
18 forth in ¶¶ 1-4 of the Findings of Fact.

19 6. AmeriFirst self-reported to the Department that two of its loan originators made false
20 promises or misrepresentations or concealed an essential or material fact in the course of the
21 mortgage banker business and engaged in illegal or improper business practices. AmeriFirst
22 detected the improper activities of its loan originators as a result of systems it implemented to detect
23 illegal or improper business practices undertaken by its loan originators.

24 a. AmeriFirst reported to the Department that a loan originator was or should have been
25 on notice that the borrower was terminated from his employment at the time of the
26 loan application. However, in violation of AmeriFirst's policies, the loan originator

1 and other employees allowed for a false verification-of-employment form to remain
2 in the file, which resulted in the funding of a loan predicated in part on
3 misrepresentation made that the borrower was still employed. Upon discovery of
4 these facts, AmeriFirst terminated employment of several employees and repurchased
5 the loan from the lender.

6 b. AmeriFirst reported to the Department that in the course of originating loans, a loan
7 originator improperly used the services of an unlicensed individual who represented
8 himself as an employee of AmeriFirst, in violation of AmeriFirst's policies. The loan
9 originator permitted the unlicensed person to use his company email and provided the
10 unlicensed person with his logon information. Upon discovery of these facts,
11 AmeriFirst terminated the loan originator's employment and took steps to ensure that
12 no customers were harmed.

13 CONCLUSIONS OF LAW

14 1. Pursuant to A.R.S. §§ 6-941, et seq., the Superintendent has the authority and duty to
15 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,
16 rules, and regulations relating to mortgage bankers.

17 2. By the conduct set forth in ¶¶ 1-4 of the Findings of Fact, Amerifirst and Mr. Bowlby
18 violated the following:

- 19 a. A.R.S. § 6-943(N) by failing to use their name and license number, as issued on their
20 principal place of business license, within the text of all regulated advertising or
21 business solicitations.
- 22 b. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum
23 elements of reasonable employee investigations prior to hiring employees.
- 24 c. A.R.S. § 6-946(D) by failing to account annually to the borrowers for the various
25 periodic charges (i.e., taxes) against the real estate security and to ensure the prompt
26 payment of all collected funds.

- 1 d. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B) by failing to keep and maintain
2 original documents or clearly legible copies of all mortgage banking loan
3 transactions.
- 4 e. A.R.S. §§ 6-946(C) and 6-947(C) by commingling trust funds held for property
5 appraisals with non-trust funds, although the commingling resulted in no harm to any
6 borrowers.
- 7 f. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e) by failing to comply with the
8 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.
9 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§
10 2601 through 2617), and the regulations promulgated under these acts.
- 11 g. A.R.S. § 6-947(A) and A.A.C. R20-4-1808 by allowing borrowers to sign regulated
12 documents containing blank spaces without the benefit of written authorization to
13 complete the documents.
- 14 h. A.R.S. § 6-947(B) and A.A.C. R20-4-102 by contracting with or paying
15 compensation to unlicensed, independent contractors.
- 16 i. A.R.S. § 6-947(M) by failing to account for the monies belonging to a party to a
17 mortgage banking loan transaction held for property appraisals.
- 18 j. A.R.S. § 6-947(P) by failing to provide timely notice of the change of loan
19 originators' residential addresses pursuant to A.R.S. § 6-991.04(J); maintenance of
20 loan originators' licenses for public inspection pursuant to A.R.S. § 6-991.04(I); and
21 notification of loan originators' termination and return of the licensees to the
22 superintendent pursuant to A.R.S. § 6-991.04(K).

23 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
24 pursuant to A.R.S. § 6-137 directing Respondent to take the appropriate affirmative actions, within
25 a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from
26 the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant

1 to A.R.S. § 6-132; (3) the suspension or revocation of Respondents' license pursuant to A.R.S. § 6-
2 945; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and
3 rules regulating mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-131..

4 **ORDER**

5 1. Amerifirst and Mr. Bowlby shall comply with all Arizona statutes and rules regulating
6 Arizona mortgage bankers. Specifically, Amerifirst:

- 7 a. Shall use their name and license number, as issued on their principal place of business
8 license, within the text of all regulated advertising or business solicitations.
- 9 b. Shall conduct the minimum elements of reasonable employee investigations prior to
10 hiring employees.
- 11 c. Shall account annually to the borrowers for the various periodic charges (i.e., taxes)
12 against the real estate security and ensure the prompt payment of all collected funds.
- 13 d. Shall keep and maintain original documents or clearly legible copies of all mortgage
14 banking loan transactions.
- 15 e. Shall not commingle trust funds held for property appraisals with non-trust funds.
- 16 f. Shall comply with the disclosure requirements of Title I of the Consumer Credit
17 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
18 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
19 under these acts.
- 20 g. Shall not allow borrowers to sign regulated documents containing blank spaces
21 without the benefit of written authorization to complete the documents.
- 22 h. Shall not contract with or pay compensation to unlicensed, independent contractors
23 when a license is required.
- 24 i. Shall account for the monies belonging to a party to a mortgage banking loan
25 transaction funds held for property appraisals.
- 26 j. Shall maintain a complete listing of all executed loan applications or executed fee

1 agreements as required.

2 k. Shall maintain originals or copies of all mortgage banking loan transactions.

3 1. Shall provide timely notice of the change of loan originators' residential addresses
4 pursuant to A.R.S. § 6-991.04(J); maintenance of loan originators' licenses for public
5 inspection pursuant to A.R.S. § 6-991.04(I); and notification of loan originators'
6 termination and return of the licensees to the superintendent pursuant to A.R.S. § 6-
7 991.04(K).

8 2. Amerifirst and Mr. Bowlby shall immediately pay to the Department a civil money
9 penalty in the amount of **sixty thousand dollars (\$60,000.00)**. Amerifirst and Mr. Bowlby are
10 jointly and severally liable for payment of the civil money penalty, within thirty (30) days of the date
11 of this Order, pursuant to A.R.S. § 6-122(B)(3), and any applicable late fees pursuant to A.R.S.
12 § 6-125(D).

13 3. AmeriFirst and Mr. Bowlby have already paid the Department an examination fee in the
14 amount of **thirty-five thousand four hundred ninety dollars (\$35,490.00)**.


15 4. Respondent shall comply with all Arizona statutes and rules regulating Arizona mortgage
16 bankers (A.R.S. §§ 6-941, et seq.).

17 5. The provisions of this Order shall be binding upon Respondent, their employees, agents,
18 and other persons participating in the conduct of the affairs of Respondents.

19 6. This Order shall become effective upon service, and shall remain effective and
20 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
21 or set aside.

22 SO ORDERED this 28 day of July, 2014.

23 Lauren W. Kingry
24 Superintendent of Financial Institutions

25 By: 
26 Robert D. Charlton
Assistant Superintendent of Financial Institutions

1 CONSENT TO ENTRY OF ORDER

2 1. Respondent acknowledges, through its authorized representatives, that they have been
3 served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-
4 referenced matter, have read the same, are aware of their right to an administrative hearing in this
5 matter, and have waived the same.

6 2. Respondent admits the jurisdiction of the Superintendent and consent to the entry of the
7 foregoing Findings of Fact, Conclusions of Law, and Order.

8 3. Respondent states that no promise of any kind or nature has been made to induce them to
9 consent to the entry of this Order, and that they have done so voluntarily.

10 4. Respondent agrees to comply with all applicable Arizona statutes and rules. Respondent
11 acknowledges that the acceptance of this Agreement by the Superintendent is solely to settle this
12 matter and does not preclude this Department, any other agency or officer of this state or subdivision
13 thereof from instituting other proceedings as may be appropriate now or in the future.

14 5. Eric M. Bowlby, on behalf of Amerifirst Financial, Inc. and himself, represents that he is
15 the CEO and that, as such, has been authorized by Amerifirst Financial, Inc. to consent to the entry
16 of this Order on its behalf.

17 6. Respondent waives all rights to seek judicial review or otherwise to challenge or contest
18 the validity of this Cease and Desist Order.

19 DATED this 17th day of July, 2014.

20 By 
21 Eric M. Bowlby, CEO
22 Amerifirst Financial, Inc.

23 ORIGINAL OF THE CONSENT ORDER filed
this 29th day of July, 2014 in the office of:

24 Lauren W. Kingry, Superintendent of Financial Institutions
25 Arizona Department of Financial Institutions
26 Attn: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

1 COPY of the foregoing mailed/delivered same date to:

2 Natalia A. Garrett, Assistant Attorney General
3 Arizona Attorney General's Office
4 1275 W. Washington Street
5 Phoenix, AZ 85007

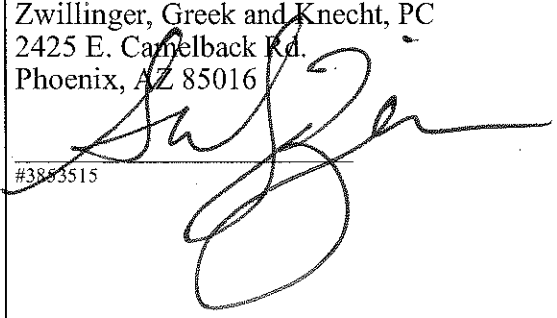
6 Robert D. Charlton, Assistant Superintendent
7 Dawn Wismer, Examiner in Charge
8 Attn: Sabrina Zimmerman
9 Arizona Department of Financial Institutions
10 2910 N. 44th Street, Suite 310
11 Phoenix, AZ 85018

12 AND COPY mailed or emailed same date, to:

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