

**COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
ADMINISTRATIVE AGENCY ACTION NO. 2009-AH-115**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

**ORDER TO CEASE AND DESIST**

IDEAL MORTGAGE BANKERS, LTD. d/b/a  
LEND AMERICA, LENDING KEY and/or  
CONSUMER FIRST

RESPONDENT

Comes now the Commonwealth of Kentucky, by and through the Commissioner of the Department of Financial Institutions (“DFI”), and hereby enters this **Order** directing Ideal Mortgage Bankers, Ltd. d/b/a Lend America, Lending Key and/or Consumer First (“Ideal”) to **CEASE AND DESIST** from engaging in the mortgage lending process in Kentucky, except as specifically set forth herein.

**STATEMENT OF FACTS**

1. The DFI is responsible for regulating and licensing mortgage loan companies and mortgage loan brokers doing business in Kentucky in accordance with the provisions of Kentucky Revised Statutes (KRS) Chapter 286.8, the Mortgage Loan Company and Mortgage Loan Broker Act (the “Act”).

2. On July 28, 2006, Ideal was issued a Housing and Urban Development (“HUD”) exemption (ME17709) by DFI for the purpose of engaging in the mortgage company business in the Commonwealth of Kentucky with its principal place of business located at 520 Broadhollow Road, Melville, New York, 11747.

3. On or about November 30, 2009, the Federal Housing Administration (“FHA”) withdrew its approval of Ideal as an FHA-approved lender. The effect of this withdrawal prevents Ideal from originating and underwriting new FHA-insured mortgages and/or from participating in the FHA single family insurance program. In addition, the FHA imposed fines in the amount of \$512,000 for alleged violations.

4. On or about November 30, 2009, the Government National Mortgage Association (“Ginnie Mae”) provided a “Notice of Default” to Ideal which prevents it from issuing Ginnie Mae securities.

5. On December 10, 2009, Ideal sent a letter to the DFI advising that it would stop conducting business effective December 1, 2009. In addition, Ideal advised that it would surrender any exemptions existing in the respective states.

6. Ideal has an unspecified number of loans unfunded and outstanding relative to Kentucky residential real estate which it will not be able to fund.

7. Between December 1, 2009, and the date of this Order, several states have issued administrative Cease and Desist Orders against Ideal based on the foregoing. Those states include, but are not limited to: New York, New Jersey, and Pennsylvania.

#### **STATUTORY AUTHORITY**

1. Pursuant to KRS 286.8-010(26), person is defined as “means a natural person, or any type or form of corporation, company, partnership, proprietorship, or association.”

2. Pursuant to KRS 286.020(2), HUD exempt companies are exempt only from the licensing provisions of the Act, but are subject to all other provisions.

3. Pursuant to KRS 286.8-090(1)(a), the Commissioner may issue a cease and desist order upon a finding that a person “has failed to comply with the requirements of this subtitle.”

4. Pursuant to KRS 286.8-090(1)(b), the Commissioner may issue a cease and desist order upon a finding that the person “is unfit through lack of financial responsibility or experience to conduct the business of a mortgage loan company....”

5. Pursuant to KRS 286.8-090(1)(e), the Commissioner may issue a cease and desist order upon a finding that the person “is in such a financial condition that he cannot continue in business with safety to his customers.”

6. Pursuant to KRS 286.8-090(1)(f), the Commissioner may issue a cease and desist order upon a finding that the person “is the subject of an administrative cease and desist order or similar order.”

7. Pursuant to KRS 286.8-090(1)(l), the Commissioner may issue a cease and desist order upon a finding that the person “has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action.”

8. Pursuant to KRS 286.8-090(1)(n), the Commissioner may issue a cease and desist order upon a finding that the person “has demonstrated incompetence or untrustworthiness to act as a licensee or registrant or to continue a claim of exemption granted by application under this subtitle.”

9. Pursuant to KRS 286.8-090(7), the cease and desist order is in addition to any other penalties or remedies which may be available under the Act, including fines, restitution, revocation, or suspension.

### CONCLUSIONS

Based upon the foregoing, the Commissioner has determined as follows:

1. Ideal is a HUD-exempt company subject to the provisions contained in the Act.

2. Ideal does not have sufficient warehouse funds available to fund, or any other available source of funds for loans relating to Kentucky residential real estate.

3. Ideal is the subject of at least four (4) administrative cease and desist orders or suspensions.

4. Ideal has ceased all operations; therefore, it is unable to transact business effectively for the benefit of Kentucky consumers.

5. Because of the foregoing, and except as specifically provided herein, the Commissioner has determined that it is necessary to order Ideal to immediately cease and desist from engaging in the mortgage lending process as defined by the Act, and except as specifically provided herein.

### ORDER

Based upon the foregoing Statement of Facts, Statutory Authority and Conclusions, the Commissioner **hereby ORDERS** as follows:

1. Except as otherwise provided herein, Ideal and any and all officers, directors, managers, employees, independent contractors, or agents operating on its behalf, as well as any successors or assigns, shall **CEASE AND DESIST** engaging in the mortgage

lending process as defined by the Act, which limitation shall include the solicitation, advertisement, or accepting of such activities, either directly or indirectly. This prohibition does not include servicing or transferring of loans to new servicers or lenders.

2. Ideal shall immediately place any fees previously collected from Kentucky consumers relative to any pending mortgage loan applications in a separate escrow account maintained at a federally insured bank. Ideal shall transfer to any new lender all fees paid by Kentucky consumers whose loans are placed with other lenders. Ideal shall return all fees paid by Kentucky consumers whose loans are not placed with other lenders. Within **five (5) days** of the issuance of this Order, Ideal shall provide proof of same to Nicole Biddle, Non-Depository Division Director, at [Nicole.biddle@ky.gov](mailto:Nicole.biddle@ky.gov). Ideal shall remain under an ongoing obligation to provide updated information to Director Stewart on a weekly basis until all loans relative to Kentucky consumers and residential property have been funded, transferred to a new lender or broker, or withdrawn by the applicant;

3. Ideal shall immediately provide a Pipeline Report for the following categories of loans:

- a. loans that have closed, but have not yet funded;
- b. loans that have been approved but that have not closed;
- c. applications that have been received, but no decision has been made on approving the applications;
- d. applications that are in the initial stages of review and document gathering; and

The Pipeline Report shall include the following information:

- a. the name, address and telephone number of the applicant consumer;
- b. the loan number;
- c. the rate-lock and expiration date of rate-lock;
- d. the amount of all prepaid loan fees submitted by the applicant consumer;
- e. the amount of each loan;
- f. the status of the loan;
- g. the purpose of the loan (i.e. purchase or refinance);
- h. contact information for the broker who referred the loan to Ideal (if applicable);
- i. status of what is being done with the loan (funded by Ideal, referred to another broker/lender, returned to broker, withdrawn by the applicant); and
- j. contact information for the broker/lender where the loan is placed, should Ideal not fund the loan itself.

This Pipeline Report shall be updated every Monday at 9:00 a.m. EST and shall be sent to Nicole Biddle, Non-Depository Division Director at [Nicole.biddle@ky.gov](mailto:Nicole.biddle@ky.gov). Ideal shall continue to update the Pipeline Report until all of the loans have been funded, placed with another broker or lender, or withdrawn by the applicant;

4. **Not later than January 31, 2010**, Ideal shall transfer all servicing of any Kentucky consumer mortgage loans which Idea; currently services to another qualified mortgage servicer. This transfer should include transferring any and all related funds or

documents to the new mortgage servicer in compliance with all applicable state or federal laws.

5. Ideal shall provide a daily report to DFI of the status of all Kentucky consumer mortgage loans that it continues to service until said loans are properly transferred as required by this Order. This daily status report shall include, at a minimum, the following information:

- a. the name, address and telephone number of the consumer;
- b. the state in which the consumer resides;
- c. the identity of the account/loan owner;
- d. loan account number;
- e. loan account balance;
- f. escrow account number
- g. escrow balance;
- h. the bank or other institution in which the funds are located; and
- i. demonstration of compliance with any servicing transfer agreements applicable to the loan, including, but not limited to:
  - i. the status of the transfer of the electronic and paper mortgage loan files;
  - ii. the status of the transfer of any funds; and
  - iii. any other provision relating to the safe transfer of the servicing of the mortgage loans.

This daily report shall be provided to Nicole Biddle, Non-Depository Division Director at [Nicole.biddle@ky.gov](mailto:Nicole.biddle@ky.gov).

6. Ideal shall provide to DFI copies of all servicing transfer agreements entered into between Ideal and the new mortgage loan servicer for all Kentucky consumer mortgage loans within **one (1) day** of execution.

7. Ideal shall include in its new servicing agreements with any new mortgage loan servicer, with respect to any loans currently in its servicing portfolio that are not “federally-related mortgage loans” as defined by 12 U.S.C. §2602, a provision that the new mortgage loan servicer not impose late fees and not report late fees to any credit reporting bureau for sixty (60) days commencing on the date the first payment is due at the new mortgage loan servicer’s address. Such provision and sixty (60) day period shall be conditioned upon the borrower demonstrating to the new mortgage loan servicer that an attempt to make the required payment has been made.

8. Ideal shall make maximum efforts to facilitate the safe, sound and orderly transfer of all Kentucky consumer loans to the new mortgage loan servicer in and ensure compliance with all applicable state and federal laws.

9. Ideal shall work with any new mortgage loan servicers to provide notices to all Kentucky consumers advising them of the transfer within **ten (10) days** of the transfer. The notices shall provide, at a minimum, the following information:

- a. The name and address of the new servicer;
- b. The date that Ideal will stop accepting payments;
- c. The date the new servicer will begin accepting payments;
- d. Toll-free telephone numbers for both Ideal and the new servicer that the consumer may use to obtain more information about the transfer; and



- e. A statement that the transfer will not affect any terms or conditions of the consumer's mortgage loan contract, except those directly related to the servicing of the mortgage loan.

10. Ideal shall immediately implement revised internal controls for its servicing department, which shall include at a minimum, the following:

- a. Supervisory and compliance procedures reasonably designed to prevent and detect future violations of applicable state and federal laws; and
- b. Retain an experienced independent contractor to oversee the day-to-day operations of the servicing department.

12. Ideal shall immediately place any and all payments collected from Kentucky consumers in an escrow account to be controlled by an independent third party and maintained at a federally-insured bank. Such escrow account shall be separate and apart from any Ideal operating account(s). **Not later than five (5) days** after entry of this Order, Ideal shall provide proof of that such funds have been appropriately transferred. This information shall be provided to Nicole Biddle, Non-Depository Division Director at [nicole.biddle@ky.gov](mailto:nicole.biddle@ky.gov). Each Monday, by 9:00 a.m., EST, IDEAL shall provide updated reports regarding such payments and placement in an escrow account in accordance with this Order.

13. Nothing in this Order shall prevent Ideal from selling or assigning the servicing of Kentucky consumer mortgage loans.

14. Ideal shall comply fully with all the obligations to each consumer who has a mortgage loan currently pending, approved or closed but not funded, including, but not

limited to, making every reasonable effort, at no cost or loss to any such consumer, to cause such loans to be placed with another authorized lender or broker so the transaction may be completed.

15. In the event a loan is placed with another broker or lender, Ideal shall ensure that the consumer is in the same position with the new lender or broker as the consumer would have been if the loan had been funded with Ideal. This includes customers with a rate-lock. Ideal shall be responsible to the consumer for any difference or financial loss suffered by the consumer.

16. Ideal shall immediately cease and desist from commencing or proceeding with any foreclosure proceedings relative to any Kentucky residential real property.

17. Ideal shall release any liens filed on any Kentucky residential real property or filed on such property owned by Kentucky consumers as a result of a residential mortgage loan closing with Ideal but not being funded. In the event that the loan is subsequently funded, Ideal may file a lien against the property at that time.

18. Ideal shall maintain all required records at its Corporate Office, and allow the Department free access to examine the records as required under the Act.

19. Ideal shall provide contact information for an employee of Ideal that the DFI may contact with questions as well as contact information for an employee of IDEAL that consumers and mortgage brokers may contact with questions. This information shall be provided immediately to Nicole Biddle, Non-Depository Division Director, at [Nicole.biddle@ky.gov](mailto:Nicole.biddle@ky.gov).

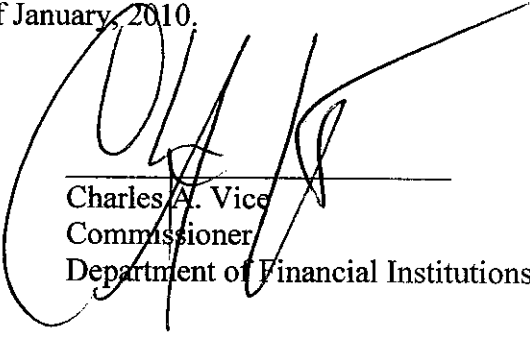
20. Nothing in this Order shall prevent Ideal from selling or assigning residential mortgage loans to another entity, servicing mortgage loans, or engaging in other activity not prohibited by the Act or this Order.

21. **Within five (5) days** of the issuance of this Order, Ideal shall submit to the DFI a balance sheet and year-to-date income statement, prepared as of the date of submission, and attested by a duly authorized officer of Ideal. This information shall be provided to Nicole Biddle, Non-Depository Division Director, at Nicole.biddle@ky.gov.

22. Nothing in this Order shall prevent the DFI or any other authority from taking any further administrative or enforcement action under the Act or any other applicable law.

23. This **ORDER** shall become effective upon receipt, but no later than three (3) days after mailing.

**IT IS SO ORDERED** on this the 4<sup>th</sup> day of January, 2010.



Charles A. Vice  
Commissioner  
Department of Financial Institutions

### **NOTICE OF APPEAL RIGHTS**

1. You are hereby notified that you have a right to request a hearing in this matter, in writing, within twenty (20) days of the entry date of this Order. If requested, an administrative hearing shall be held pursuant to the provisions of KRS Chapter 13B and 808 KAR 12:030. **If a request for a hearing is not filed with DFI within twenty (20) days after the certified mailing of this Order, it shall be made final and shall remain in effect until withdrawn by the Commissioner or terminated by a court order.**

2. You are hereby advised that you have a right to legal counsel at all stages of these proceedings, including but not limited to preliminary matters, and including a hearing, if one is requested.

3. You are advised that all parties to these proceedings have a right to examine, at least five (5) days prior to any hearing in this matter, a list of witnesses the parties, including DFI, expect to call at the hearing, any evidence to be used at the hearing, and any exculpatory information in the possession of DFI. The time limits established herein shall accrue from the actual date of the hearing once that date is established. However, no hearing will be set if the parties fail to timely request a hearing.

4. You are advised that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default and the proceedings may be determined against the defaulting party.

**Certificate of Service**

I hereby certify that a copy of the foregoing **Order to Cease and Desist** was sent by certified mail, return receipt requested, on this the 5 day of January, 2010, to the following:

Helene DeCillis  
Executive Vice President  
Lend America Bankers, LTD  
520 Broadhollow Road  
Melville, NY 11747

Cherud Wilkerson  
Chief Compliance Officer  
Lend America Bankers, LTD  
520 Broadhollow Road  
Melville, NY 11747

Mitchell H. Kider  
Weiner Brodsky Sidman Kider PC  
1300 19<sup>th</sup> Street, NW, Fifth Floor  
Washington, DC 21609



---

Christine Lewis  
Legal Counsel  
Department of Financial Institutions  
1025 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
(502) 573-3390 Ext. 240  
(502) 573-2183 (facsimile)