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COMMISSIONERS OFFICE

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2017-AH-00024

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

EMERGENCY ORDER OF SUSPENSION

TITLE LOANS, INC.

RESPONDENT

* * * * *

Comes now the Commonwealth of Kentucky, by and through the Commissioner of the Department of Financial Institutions (hereinafter "DFI"), and hereby enters this Emergency Order of Suspension to Title Loans, Inc., Deferred Deposit License # 158-0.

FINDINGS OF FACT

1. DFI is responsible for regulating and licensing deferred deposit licensees in accordance with the provisions of KRS 286.9 and the regulations promulgated pursuant thereto.

2. Respondent Title Loans, Inc. is a Kentucky corporation with a principal business office location of 3586 Hickory Estates, Ashland KY 41102. Tom Salyer is the owner of record and registered agent for Title Loans, Inc.

3. On July 15, 1998, DFI issued License # 158-0 to Title Loans, Inc. to operate a deferred deposit transaction business with an operating location of 12484 US HWY 60, Ashland, Kentucky 41102.

4. A deferred deposit license may be granted by DFI to an applicant after the potential licensee submits a specific deferred deposit application, required materials that accompany the

application, and an investigation fee. Upon receipt of this information, the Commissioner for the Department of Financial Institutions will investigate and approve/deny the application. Currently there is a moratorium on the issuance of new deferred deposit licenses; therefore, a new licensee may only obtain a license through the transfer of control of an existing license. (See KRS 286.9-040, -050,-060 and -070 and 808 KAR 9:050 Sect. 8)

5. A deferred deposit licensee is required to enter specific personal identifying information of customers into the Veritec database, per KRS 286.140, in order to facilitate deferred deposit loan transactions. A deferred deposit licensee is provided designated, licensee specific log-in credentials in order to access the database and record transaction information for all deferred deposit transactions for the licensed entity. Access to this system is prohibited to unlicensed or unauthorized entities. As of the date of filing of this Emergency Order of Suspension, Title Loans, Inc. has seventeen (17) open and outstanding deferred deposit transactions listed in the Veritec database.

6. On March 6, 2017, DFI received the required Annual Report for Title Loans, Inc., d/b/a Tom's Discount Tobacco, License # 158-0, submitted to DFI by a Mr. Antonio P. Galindo, the purported new owner of Title Loans, Inc. The Annual Report contained a request to surrender the deferred deposit license to DFI and the following information:

“As of December 31, 2016 Title loans, Inc. [sic] license No. 158-0 has changed its ownership structure. Beginning as of January 1, 2017 Title Loans, Inc. is no longer owned or operated by Mr. Thomas G. Salyer. Or Sheila Salyer of _____Ashland, Kentucky 41102.

¹ Veritec is the third party database provider that develops, maintains and operates the database on behalf of DFI. Veritec works with DFI to provide information related to the business activities and transactions of all DFI deferred deposit licensees. DFI uses the database to facilitate regulatory oversight of the deferred deposit industry in Kentucky.

As of January 1, 2017 Title Loans, Inc. is now operated by the President of Title Loans, Inc. Mr. Antonio P. Galindo of ” [address intentionally omitted] “Russell, KY 41169.”

7. The aforementioned Annual Report for Title Loans, Inc. d/b/a Tom’s Discount Tobacco, stated, in response to a mandatory question regarding the current management structure:

“e) If the licensee is a corporation, the names and addresses of its principle officers and directors, or if the licensee is a partnership, the names and addresses of the partners, or if the licensee is a limited liability company, the names and addresses of the board of directors of the limited liability company:

*President- Antonio P. Galindo of ” [address intentionally omitted]
“Russell, KY 41169
Secretary-Tracy L. VanHoose of ” [address intentionally omitted]
Ashland, KY 41102”*

8. As of the date of the filing of this Emergency Order for Suspension, Tom Salyer, as the owner of record and on behalf of the licensed entity, Title Loans, Inc., has failed to file mandatory written notices with DFI, as required under KRS 286.9. These notices include a request for a change of control of the license, notice of the ceasing of business operations for the licensee and the location and custodian of all Title Loans, Inc. records.

STATUTORY AUTHORITY AND VIOLATIONS

9. Pursuant to KRS 286.9-070(5) and (6):

(5) “A licensee shall file a written request for a change of control of that licensee with the commissioner at least fifteen (15) business days prior to any change of control of the licensee. The commissioner may require additional information considered necessary to determine whether a new application for a license is required. The person who requests the approval for a change of control shall pay the cost incurred by the commissioner in investigating the change of control request.

(6) "A license issued under this subtitle shall be transferrable or assignable in cases of ownership changes of the business or to facilitate the transfer or assignment of a license if the licensee is closing an alternative office location, subject to approval of the commissioner and based on existing criteria of new applicant approvals in accordance with this section."

10. Pursuant to KRS 286.9-074(3):

"Any person who ceases operating a business licensed under this subtitle shall, at least thirty (30) days prior to the discontinuance of the business, notify the commissioner in writing of the physical location where the records required to be kept under this subtitle will be preserved or archived. The records shall be made accessible to the commissioner upon five (5) business days' written notice.

11. Pursuant to KRS 286.9-074(4):

Any person who ceases operating as a business licensed under this subtitle shall designate a custodian of records and notify the commissioner of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve all records required under this subtitle and allow the commissioner access to the records for examination and investigation upon demand.

12. Pursuant to KRS 286.9-010(8) "control" means:

- (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent (25%) or more of a class of voting securities or voting interests of a licensee or applicant, or the person in control of a licensee or applicant;
- (b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority over a licensee or applicant, or the person in control of a licensee or applicant; or
- (c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or the person in control of a licensee or applicant;

13. KRS 286.9-110 states, in relevant part;

(1) The commissioner may suspend, revoke, place on probation, condition, restrict, refuse to issue or renew a license, accept the surrender of a license in lieu of revocation or suspension, order that refunds to customers be made, or issue a cease-and-desist order, if the commissioner finds that the person, licensee, or a person in control of a licensee:

(b) Does not meet, has failed to comply with, or has violated any provisions of this subtitle or any administrative regulation issued pursuant thereto, or any order of the commissioner issued pursuant thereto, or has violated any other law in the course of its or his or her dealings as a licensee...

(f) Does not conduct his or her business in accordance with the law or conducts business by a method that includes, or would include, activities that are illegal where performed, or has willfully violated any provision of this subtitle; or any administrative regulation promulgated or order of the commissioner issued hereunder;

(5) Any person whose license has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is prohibited from participating in any business activity of a licensee under this subtitle and from engaging in any business activity on the premises where a licensee under this subtitle is conducting its business.

14. Pursuant to KRS 286.9-125:

(1) The commissioner may enter an emergency order suspending, conditioning, limiting, or restricting a license issued under this subtitle without notice or hearing if it appears upon grounds satisfactory to the commissioner that the licensee has engaged or is engaging in unsafe, unsound, or illegal practices that pose an imminent threat to the public interest.

(2) One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the commissioner that:

- (a) The licensee does not meet or has failed to comply with more than one (1) of the requirements of this subtitle and the violations appear to be willful;
- (b) The licensee is in such financial condition that it cannot continue in business with safety to its customers;
- (c) The licensee has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;
- (d) The licensee has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of doing business, or has engaged in any course of business that has worked or tended to work a fraud or deceit upon any person or would so operate;
- (e) The licensee has refused to permit an examination, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the commissioner in connection with an investigation or examination;
- (f) The licensee 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; or
- (g) The deposit required under KRS 286.9-040(1) has terminated, expired, or otherwise no longer remains in effect.

(3) An emergency order issued under this section becomes effective when signed by the commissioner. The emergency order shall be delivered by personal delivery or certified mail to the last known address of the person. The order shall be deemed served upon delivery or upon return of the order.

(4) A party aggrieved by an emergency order issued by the commissioner under this section may request an emergency hearing. The request for hearing shall be filed with the commissioner within twenty (20) days of service of the emergency order.

(5) Upon receipt of a written request for an emergency hearing, the commissioner shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the request for hearing, unless the parties agree otherwise.

15. Title Loans, Inc., as the licensed entity, did not file, pursuant to KRS 286.9-070(5), a written request with the Commissioner for a change of control of deferred deposit license #158-0 at least fifteen (15) business days prior to the change of control of that license.

16. Furthermore, no other person filed, pursuant to KRS 286.9-070(5), a written request with the Commissioner for a change of control of deferred deposit license #158-0 at least fifteen (15) business days prior to the reported change of control of the license.

17. Title Loans, Inc. and Tom Salyer, as the owner of record for the licensed entity, failed to notify the Commissioner in writing, at least thirty (30) days prior to the discontinuance of the business, pursuant to KRS 286.9-074(3).

18. Title Loans, Inc. and Tom Salyer, as the owner of record for the licensed entity, failed to notify the Commissioner in writing of the physical location where the records will be preserved or archived as required under KRS 286.9-074(4).

19. Pursuant to KRS 286.9-125, the Commissioner may enter an emergency order suspending, conditioning, limiting, or restricting a license issued under this subtitle without notice or hearing if it appears upon grounds satisfactory to the Commissioner that the licensee has engaged or is engaging in unsafe, unsound, or illegal practices that pose an imminent threat to the public interest.

20. Title Loans, Inc., an established and experienced deferred deposit licensee, engaged in unsafe, unsound and illegal practices by failing to comply with statutory requirements to notify DFI, in writing, of,

1) a change of ownership for the licensed entity;

2) a request for a change of control of the license;

And;

3) the location of all records that are to be preserved and archived for Title Loans, Inc. and the name and contact information of the custodian of those records.

DFI was unaware of the change in the licensee's ownership and control until DFI received the 2016 Annual Report from the alleged "new" owner of Title Loans, Inc. This report stated the name of the new owner and the facts of the purported transfer to the new unapproved business entity. Thus, Title Loans, Inc. intentionally and willfully failed to comply with the above referenced statutes thereby placing customers and the industry at risk.

21. Without proper notice to DFI, the agency would not have information relating to the "controlling" entity of the business operations, the information required to evaluate a new potential licensee and would not have information related to records and records maintenance under the current licensee. Failure to notify DFI of a change of ownership and control of the license puts customers at risk based on an unapproved entity having access to personal information of customers through the Veritec database log-in information and access to the database transaction records.

22. Furthermore, DFI cannot properly investigate current or future customer or other licensees' complaints against the current legal license holder, Title Loans, Inc. without complete and accurate licensee information. DFI's regulatory functions are hindered by the lack of

information related to current business management practices and regulatory compliance of Title Loans, Inc. if the business is under the operation of an unknown, unauthorized and unvetted entity. DFI must consistently enforce regulatory and statutory requirements for compliance or be viewed as arbitrary and capricious to all other licensees who strive for compliance and transparency with DFI.

23. Moreover, allowing another unauthorized business entity to control the license and, in this case, to offer to surrender the license would be an unlawful surrender of the license to DFI. An unlicensed entity cannot legally control a license without the Commissioner's approval and is not legally bound to the license. Consequently, an unapproved business entity cannot legally surrender the license to DFI. Based on the moratorium, per KRS 286.9-071, the surrender of a license would be irrevocable and the legal licensee would be irreversibly harmed by the surrender of the license if that were not what the legally licensed owner intended. It would be irresponsible of DFI to accept the surrender of a license unless the license is surrendered by the business entity legally in control of that license.

24. Pursuant to KRS 286.9-125(2), in relevant part,... "the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the Commissioner that:

- (a) the licensee does not meet or has failed to comply with more than one (1) of the requirements of this subtitle and the violations appear to be willful".

25. Pursuant to KRS 286.9-125(3) an emergency order issued under this section becomes effective when signed by the Commissioner.

26. Based on the above referenced circumstances and violations, it is in the best interest of all licensees, deferred deposit customers and DFI to suspend the license of Title Loans, Inc.

CONCLUSIONS OF LAW

27. Respondent Title Loans, Inc. failed to file a written request with the Commissioner at least fifteen (15) business days prior to its purported January 1, 2017 change of control in violation of KRS 286.9-070(5).

28. Respondent Title Loans, Inc. failed to notify the Commissioner in writing at least thirty (30) days prior to its January 1, 2017 discontinuance of the business, in violation of KRS 286.9-074(3).

29. Respondent Title Loans, Inc., in violations of KRS 286.9-074(3) and (4), failed to notify the Commissioner of the designated custodian and the physical location of records required to be preserved or archived.

ORDER

Based on the foregoing Findings of Fact, Statutory Authority, and Conclusions of Law, the Commissioner hereby **ORDERS** as follows:

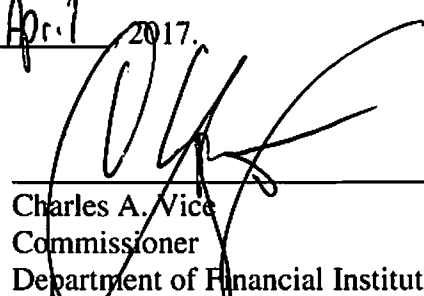
1. Deferred Deposit License # 158-0 held by Title Loans, Inc. is hereby **SUSPENDED** pursuant to KRS 286.9-125 (1) and (2);

AND

2. Title Loans, Inc. and all business entities associated with Title Loans, Inc., in relation to all deferred deposit activities, shall immediately **CEASE** from any and all deferred deposit business activity of the licensee under this subtitle and from engaging in any deferred deposit business activity on the premises where a licensee under this subtitle is conducting its business in Kentucky, pursuant to KRS 286.9-110(5);

3. Title Loans, Inc. shall maintain any and all of its books, accounts, financial reports, and records, pursuant to KRS 286.9-074(3) and (4), and shall notify DFI of the location and the designated custodian of all Title Loans, Inc. records.

It is so **ORDERED** on this the 4th day of April 2017.



Charles A. Vice
Commissioner
Department of Financial Institutions
1025 Capital Center Drive, Ste. 200
Frankfort, KY 40601

HEARING RIGHTS

You are hereby notified that pursuant to KRS 286.9-120(2) no license shall be denied, limited, conditioned, restricted, probated, suspended, or revoked unless the applicant or licensee is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B. Pursuant to KRS 286.9-125(3) an emergency order issued under this section becomes effective when signed by the Commissioner. Pursuant to KRS 286.9-125(4) a party aggrieved by an emergency order issued by the Commissioner under this section may request an emergency hearing. The request for hearing shall be filed with the Commissioner within twenty (20) days of service of the emergency order. Upon receipt of a written request for an emergency hearing, the Commissioner shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the request for hearing, unless the parties agree otherwise. An emergency order issued under this section shall remain in effect until it is stayed, withdrawn, or superseded by an order of the Commissioner or until it is terminated by a court order.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Emergency Order of Suspension** was served by certified mail on this the 4 day of ~~April~~ 2017 to:

Tom Salyer
Registered Agent for Title Loans, Inc.
12484 US 60
Ashland, KY 41102

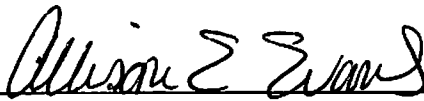
Tom Salyer
3586 Hickory Estates
Ashland, KY 41102

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and

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Department of Financial Institutions
Name: Allison E Evans
Title: Executive Staff Advisor