

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

No. 06F-BD056-BNK

3 **HOUSE LOANS MORTGAGE SERVICES**  
4 **CORP., AND BRYAN R. GRAVES, PRESIDENT**  
5 2001 West Camelback Road, #370  
6 Phoenix, Arizona 85015

**SUPERINTENDENT'S FINAL**  
**DECISION AND ORDER**

7 Petitioners.

8 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the  
9 record in this matter, including the Recommended Decision of the Administrative Law Judge  
10 attached and incorporated herein by this reference, adopts in part and modifies in part the  
11 Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order as  
12 follows.

13 FINDINGS OF FACT

14 The Superintendent adopts the Administrative Law Judge's Findings of Fact Paragraphs 2, 3,  
15 4, 6, 7, 8, and 9.

16 The Superintendent modifies Findings of Fact Paragraphs 1 and 5 as follows:

17 The Superintendent modifies Findings of Fact Paragraph 1, first sentence by replacing "to this  
18 matter" with the phrase "until March 28, 2006" and by adding a sentence at the end so that the  
19 paragraph reads:

- 20 1. At all times relevant until March 28, 2006, House Loans Mortgage Services Corp.  
21 ("House Loans Mortgage") was a California corporation authorized to transact business in  
22 Arizona as a Mortgage Broker, License Number MB 0906936. On March 28, 2006, House  
23 Loans Mortgage's mortgage broker license expired by operation of A.R.S. § 6-903(F).

24 Reasoning:

25 The modifications more precisely reflect the Findings of Fact. The original paragraph  
26 was inaccurate because it implied that after the expiration of House Loan Mortgage's license, it was  
27 still authorized to do business which would be factual inconsistent with the record and the other  
28 Findings of Fact and Conclusions of Law.

1 The Superintendent adopts and modifies Findings of Fact Paragraph 5 by correcting a  
2 typographical error in subsection 5(i) and adding new subsections as follows:

3 5.(i) The word "coy" is corrected to "copy".

4 5.(j) Mr. Graves received Mr. Howell's December 28, 2005 resignation letter, State's Exhibit  
5 1, and had knowledge of Mr. Howell's resignation in December 2005. (Transcript p. 74 lines  
6 1-3, 21-25, p. 95, lines 3-11)

7 5.(k) Mr. Graves received the Department's December 29, 2005 and March 13, 2006 letters,  
8 Exhibits 2 and 3 respectively, notifying him that House Loans Mortgage's license would  
9 expire on March 28, 2006. (Transcript p. 79, lines 11-20)

10 5.(l) The Department sent a third notice to House Loans Mortgage and Mr. Graves that its  
11 mortgage broker license expired effective March 28, 2006. This third notice was a certified  
12 letter dated April 21, 2006. The Department received the returned receipt indicating "L.M.  
13 Gowan" signed on behalf of "House Loans Mortgage, Attention: Bryan Graves" on April 25,  
14 2006. (Exhibit 4)

15 5.(m) After notification that House Loans Mortgage's License expired on March 28, 2006,  
16 Mr. Graves continued to do business as a mortgage broker, scheduling two loans to close in  
17 June 2006. (Transcript, p. 79, lines 3 - 10, p. 80; Exhibit 5)

18 Reasoning:

19 The Recommended Findings of Fact, Paragraph 5 omitted very relevant testimony of  
20 Mr. Graves that he received the first two letters from the Department notifying him that he had ninety  
21 days from the date of Mr. Howell's resignation to notify the Department of Mr. Howell's qualified  
22 replacement or the license would expire. Standing alone without the additional subsections,  
23 Paragraph 5(i) is inconsistent with the record because it does not include a finding that the April 21,  
24 2006 letter, Exhibit 4 was sent certified and that the Department received the receipt indicating  
25 service of notice to the licensee. Subparagraphs 5(j),(k) (l) and (m) are necessary to complete the  
26 Findings of Fact and more accurately reflect the record that shows that House Loans Mortgage and  
27 Mr. Graves had notice of the expiration of the license effective March 28, 2006.

1 The transcript of the hearing also reflects Mr. Graves' admission that he continued to do  
2 business as a mortgage broker even though he had notice of the expiration and the Department's  
3 explicit letters that he could not do business after March 28, 2006 without a qualified Responsible  
4 Individual.

5 The Superintendent rejects paragraph 10 because it does not contain any Findings of a Fact  
6 pertaining to the circumstances and events underlying the Department's administrative action.

7 The Superintendent modifies the Findings of Fact to include new paragraph 11 as follows:

8 11. Throughout his testimony and his letter to the Department of June 6, 2006, (Exhibit 5)  
9 Mr. Graves admitted that he was engaged in the business of a mortgage broker after March  
10 28, 2006, and wrote a letter to the Department requesting the license be "reinstated"  
11 claiming he had no notice of the expiration of his license. In his June 6, 2006 letter he  
12 writes, "We would greatly appreciate your immediate assistance with authorization to close  
13 2 loans that are set to close this week. Please keep in mind that we were not informed in  
14 any way of this change in our license status." He also pleaded that Arizona residents would  
15 be harmed if he wasn't allowed to close these loans stating "we now have residents of your  
16 state who are relying on loans that are scheduled to close in the next few days who will be  
17 directly impacted by this exclusionary policy." (Exhibit 5; Transcript p. 80, lines 5-22)

18 Reasoning:

19 Paragraph 11 provides an accurate finding of Mr. Graves' admission of unlicensed  
20 activity and his actions after receiving notice of the expiration, his continued insistence and pleas to  
21 be allowed to close two loans and his claims of harm to Arizona residents if the loans did not close.

22 **CONCLUSIONS OF LAW**

23 The Superintendent adopts the Administrative Law Judge's Conclusions of Law paragraphs  
24 1, 2, 12, 13, 14, 15, 17, 20, 21, 22, and 23.

25 The Superintendent rejects Conclusions of Law paragraphs 3, 4, 5, 6, 7, 8, 9, and 16 on the  
26 grounds that the contents of those paragraphs are not actual Conclusions of Law, but rather comment  
27 on the Department's argument and case law.

28 ...

1 The Superintendent modifies Conclusions of Law paragraphs 10, 11, 18, 19, and 24 as  
2 follows.

3 The Superintendent modifies Conclusions of Law Paragraph 10 by revising the second  
4 paragraph so that is now reads:

5 10. A.R.S. § 41-1092.11(B) requires that for the issuance of a summary suspension there  
6 be a finding that the public's health, welfare and safety requires such immediate action. A  
7 company that continues to do business with an expired license and without a responsible  
8 individual in active management and without a physical location in Arizona in violation of  
9 Arizona statutes is an immediate threat to the public health, welfare and safety.

10 Reason for modification:

11 The ALJ's second sentence is not a Conclusion of Law but a Finding of Fact and in  
12 the context of paragraph 10 is not relevant to the issue of public health, welfare and safety. The  
13 modification more accurately reflects the Findings of Fact and the application of A.R.S. § 41-  
14 1092.11 to those facts.

15 The Superintendent modifies Paragraph 11 to acknowledge that the two loan transactions  
16 were made after the license expired. Paragraph 11 now reads as follows:

17 11. The evidence of record reveals that House Loans Mortgage was engaged in unlicensed  
18 mortgage broker activity after expiration of the license. With respect to the two loan  
19 transactions, the evidence of record established that the Department "reactivated" the  
20 license for House Loans Mortgage to conclude the two transactions. The Administrative  
21 Law Judge will not address the legality of such transactions or action by the Department  
22 because it is not relevant to the decision in this matter.

23 The Superintendent modifies Conclusions of Law Paragraph 18 so that it reads:

24 18. The Superintendent has implied authority to exert jurisdiction over a licensee who  
25 continues to engage in the business of a mortgage broker after the license is expired because  
26 the mortgage broker is engaging in unlicensed activity. Roberts v. State of Arizona, 179  
27 Ariz. 613, 880 p.2d 1159 (App. 1994); Collins v. State of Arizona, 166 Ariz. 409, 803 p.2d  
28 30 (App. 1990).

1           Reasoning:

2           The Superintendent has implied authority to exert jurisdiction over a licensee who  
3 continues to engage in the business of a mortgage broker after the license is expired because the  
4 mortgage broker is engaging in unlicensed activity. Roberts v. State of Arizona, 179 Ariz. 613, 880  
5 p.2d 1159 (App. 1994); Collins v. State of Arizona, 166 Ariz. 409, 803 p.2d .30 (App. 1990).

6           The Superintendent modifies Paragraph 19 by excising the last sentence because there is no  
7 evidence in the record that as of September 20, 2006, House Loans has rectified its lack of a  
8 responsible individual or principal place of business in Arizona. The Post Hearing Memorandum  
9 indicates those issues have been resolved, "subject to re-application for licensure". The presumption  
10 of the ALJ is inappropriate and premature.

11           The Superintendent modifies Paragraph 24 to read as follows:

12           24. Pursuant to A.R.S. §6-132, Mr. Graves could be named as a party after the expiration of  
13 the license, Mr. Graves knowingly continued to engage in the business of a mortgage broker  
14 and thus, engaged in unlicensed activity in violation of A.R.S. §§ 6-903(A) and 6-909(B).

15           Reasoning:

16           The modification more appropriately applies the Findings of Fact to the law. The  
17 Department maintained jurisdiction over a licensee who refused to acknowledge its violations of  
18 Arizona law and refused to stop doing business after its license expired. The ALJ's Recommended  
19 Findings of Fact and Conclusions of Law, without modification, would have the consequence of  
20 allowing any licensee the ability to ignore the statutory expiration of the license and continue to  
21 engage in unlicensed activity without any recourse whatsoever. The legislature provided express  
22 authority to the Superintendent to regulate unlicensed activity.

23           New Paragraph 25:

24           25. Between December 28, 2005 and March 28, 2006, House Loans Mortgage and Mr.  
25 Graves violated A.R.S. § 6-904(F) by not maintaining a principal place of business in  
26 Arizona for the transaction of business.

27           ...

28           ...



1 Lewis D. Kowal, Administrative Law Judge  
2 Office of Administrative Hearings  
3 1400 West Washington, Suite 101  
4 Phoenix, AZ 85007

5 Craig A. Raby, Assistant Attorney General  
6 Office of the Attorney General  
7 1275 West Washington  
8 Phoenix, AZ 85007

9 Christopher Munns  
10 Assistant Attorney General  
11 Attorney General's Office  
12 1275 West Washington  
13 Phoenix, Arizona 85007

14 Richard A. Fergus, Senior Examiner  
15 Arizona Department of Financial Institutions  
16 2910 N. 44th Street, Suite 310  
17 Phoenix, AZ 85018

18 Robert D. Charlton, Assistant Superintendent  
19 Arizona Department of Financial Institutions  
20 2910 N. 44th Street, Suite 310  
21 Phoenix, AZ 85018

22 AND COPY MAILED SAME DATE by  
23 Certified Mail, Return Receipt Requested, to:

24 Bryan R. Graves, President  
25 House Loans Mortgage Services Corp.  
26 2001 West Camelback Road, #370  
27 Phoenix, AZ 85015

28 Bryan R. Graves, President  
House Loans Mortgage Services Corp.  
5101 E. La Palma Avenue, Suite 203  
Anaheim, CA 92807

Charles L. Firestein, Esq.  
CHARLES L. FIRESTEIN, P.C.  
1300 E. Missouri Avenue, Suite D-200  
Phoenix, AZ 85014  
Attorney for Respondents

29 BY: June Beckwith

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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of the Mortgage Broker  
License of:

HOUSE LOANS MORTGAGE SERVICES  
CORP. AND BRYAN R. GRAVES,  
PRESIDENT  
2001 West Camelback Road, #370  
Phoenix, AZ 85015

**No. 06F-BD056-BNK**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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**HEARING:** August 15, 2006. The record remained open until August 31, 2006  
for the submission of a status report and legal memoranda. The record closed on  
August 31, 2006.

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**APPEARANCES:** Assistant Attorney General Craig A. Raby for the Arizona  
Department of Financial Institutions; Charles G. Firestein, Esq. for House Loans  
Mortgage Services Corp. and Bryan R. Graves

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**ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

17

**FINDINGS OF FACT**

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1. At all times relevant to this matter, House Loans Mortgage Services Corp.  
("House Loans Mortgage") was a California corporation authorized to transact business  
in Arizona as a mortgage broker, license number MB 0906936.
  2. At all times material to this matter, Bryan R. Graves ("Mr. Graves") was the  
President of House Loans Mortgage.
  3. On June 26, 2006, the Arizona Department of Financial Institutions  
("Department") issued an Order of Summary Suspension and Notice of Hearing, bringing  
this matter before the Office of Administrative Hearings.
  4. Richard Fergus ("Mr. Fergus"), Division Manager for Licensing and Consumer  
Affairs for the Department, testified:
    - a. On December 28, 2005, the Department received written notification from  
Randy Howell ("Mr. Howell") that he immediately ceased being the responsible  
individual in active management for House Loan Mortgage.

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

1 b. Mr. Howell indicated in the December 28, 2005 letter that he sent a copy  
2 of the notification to Mr. Graves at House Loans Mortgage's corporate office  
3 located at 5101 East La Palma Avenue.<sup>1</sup> See Exhibit 1, Mr. Howell's notification  
4 letter to the Department.

5 c. The 90-day time frame in which House Loans Mortgage had to notify the  
6 Department that it had replaced Mr. Howell with another person to act as its  
7 responsible individual began to run as of December 28, 2005.

8 d. He is unaware of any statute that extends the 90-day deadline for  
9 replacement of a responsible individual of a mortgage broker licensee.

10 e. On December 29, 2005, the Department sent a letter to House Loans  
11 Mortgage to the attention of Mr. Graves at 5101 E. La Palma, Suite 203,  
12 Anaheim, California. The letter stated that the Department was notified on  
13 December 28, 2005, that Mr. Howell had ceased active management and that  
14 House Loans Mortgage had until March 28, 2006 to hire another responsible  
15 individual and notify the Department. See Exhibit 2.

16 f. On March 13, 2006, the Department sent a letter to House Loans  
17 Mortgage to the attention of Mr. Graves at 5101 E. La Palma, Suite 203,  
18 Anaheim, California, notifying them that House Loans Mortgage's mortgage  
19 broker license would be subject to cancellation on March 28, 2006, if the  
20 Department was not notified by that date that a responsible individual had been  
21 hired. See Exhibit 3.

22 g. By letter dated April 21, 2006, the Department notified House Loans  
23 Mortgage that its mortgage broker license had expired effective March 29, 2006  
24 pursuant to A.R.S. § 6-903(F). The letter was sent to House Loans Mortgage at  
25 2001 West Camelback Road, #370, Phoenix, Arizona 85015 ("Camelback  
26 address"), the address on file with the Department as House Loans Mortgage's  
27 principal place of business in Arizona. The Department received a return receipt  
28 indicating that the April 21, 2006 letter was received at the Camelback address  
29 on April 25, 2006. See Exhibit 4a.

30 <sup>1</sup> The evidentiary record reflects that the complete address of the corporate office is 5101 East La Palma,

1 h. The Department did not receive notification that the principal place of  
2 business for House Loans Mortgage would no longer be the Camelback address  
3 until the Department received such information from Mr. Graves in June 2006.  
4 From the Department's perspective, until that time, the Camelback address was  
5 the Arizona business address for House Loans Mortgage.

6 i. On June 6, 2006, the Department received a facsimile transmission from  
7 Mr. Graves acknowledging that Mr. Howell was going to cease being the  
8 responsible individual in active management had notified House Loans  
9 Mortgage. See Exhibit 5. In that document, Mr. Graves also acknowledged that  
10 House Loans Mortgage did not have a physical address in Arizona.

11 j. The Department viewed House Loans Mortgage's lack of a responsible  
12 individual and lack of a principal place of business in Arizona as an immediate  
13 threat to the consumers of Arizona should any business be conducted by House  
14 Loans Mortgage and believes they are serious violations of the law.

15 k. In the past, the Department has assessed civil penalties up to \$10,000.00  
16 for violations similar to that committed by House Loans Mortgage.

17 l. The Department is seeking a civil penalty jointly and severally against  
18 House Loans Mortgage and Mr. Graves. This is because Mr. Graves was a 50%  
19 owner of House Loans Mortgage, he was the president of the company and he  
20 was the person who responded to the Department regarding the issues in  
21 dispute.

22 5. Mr. Graves, on behalf of House Loans Mortgage, testified:

23 a. House Loans Mortgage had a verbal arrangement with Mr. Howell to be  
24 the responsible individual for House Loans Mortgage in Arizona in 2004 or 2005.

25 b. During 2005, House Loans Mortgage learned that it had not filed an  
26 application for authority to transact business in Arizona. Because of that  
27 situation, House Loans Mortgage and Mr. Howell had a disagreement about their  
28 arrangement. Mr. Howell claimed certain compensation from House Loans  
29 Mortgage, which it did not feel obligated to pay.  
30

1 c. House Loans Mortgage made several unsuccessful attempts to replace its  
2 responsible individual after Mr. Howell's resignation. Initially, the intent was to  
3 have the responsible individual for Mountain Home Mortgage become House  
4 Loans Mortgage's responsible individual.

5 d. House Loans Mortgage thought that the responsible individual for  
6 Mountain Home Mortgage had become listed as the responsible individual for  
7 House Loans Mortgage. When House Loans Mortgage found out that the  
8 responsible individual for Mountain Homes Mortgage had not become the  
9 responsible individual for House Loans Mortgage, two loans needed to be  
10 concluded. House Loans Mortgage requested that the Department allow it to  
11 complete the two loans and obtained such approval,

12 e. House Loans Mortgage intended to hire one of two individuals mentioned  
13 below as its responsible individual. Of those two individuals, House Loans  
14 Mortgage would hire whoever became qualified first. Daniel Richardson and T.  
15 J. Anderson accepted House Loans Mortgage's offer.

16 f. House Loans Mortgage also contacted Brittan Smith, who was already a  
17 responsible individual for another mortgage broker licensee and was agreeable  
18 to becoming the responsible individual for House Loans Mortgage.

19 g. As of the date of the hearing, House Loans Mortgage had not hired Brittan  
20 Smith because until the suspension was lifted, there was no license.

21 h. Other than action taken to obtain a responsible individual, House Loans  
22 Mortgage did not change its principal place of business in Arizona with the  
23 Department until the date of the hearing.

24 i. He did not receive a copy of the Department's notification that House  
25 Loans Mortgage's license expired as of March 29, 2006 (Exhibit 4) that was  
26 mailed to House Loans Mortgage at the Camelback address.

27 6. Mr. Graves acknowledged that House Loans Mortgage did not notify the  
28 Department of the business address because until its mortgage broker license was  
29 active, he was under the belief there could be no business address. Mr. Graves has  
30 now arranged for his daughter and her husband to move to Arizona and House Loans  
Mortgage will use that address as its principal place of business in Arizona.

1 7. It was undisputed that as of the date of the hearing, House Loans Mortgage had  
2 not employed a responsible individual and the Department was not advised of any  
3 responsible individual being in active management for House Loans Mortgage.

4 8. The record of this matter remained open for the submission of a status report of  
5 this matter and for the submission of legal memoranda.

6 9. On August 31, 2006, the Department notified this Tribunal that "the issues  
7 regarding the Respondents' naming a qualified responsible individual and obtaining a  
8 principal place of business in Arizona have been resolved, subject to re-application for  
9 licensure."

10 10. Although the parties stipulated to keeping the record open for possible resolution  
11 of the above-mentioned issues, the Department represented that in the event the  
12 issues were resolved, it would still be seeking a civil penalty for House Loans  
13 Mortgage's violation of applicable law. In addition, Respondents wanted to present  
14 legal argument in support of their position that Mr. Graves is not an appropriate party to  
15 this matter.

#### 16 CONCLUSIONS OF LAW

17 1. The Superintendent of the Department is vested with the authority to regulate  
18 persons engaged in the mortgage broker business and has the duty to enforce statutes  
19 and rules relating to mortgage brokers. See A.R.S. § 6-901 *et seq.*

20 2. The Department bears the burden to prove by a preponderance of the evidence  
21 that House Loans Mortgage and Mr. Graves have violated State laws pertaining to  
22 mortgage brokers. See A.A.C. R2-19-119. A preponderance of the evidence is "such  
23 proof as convinces the trier of fact that the contention is more probably true than not."  
24 Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

25 3. The Department asserted that expiration of a license does not terminate the  
26 license and that the violations alleged in the Notice of Hearing may be rectified. The  
27 Department maintained that because House Loans Mortgage has property rights in the  
28 license, a hearing is required to be held. In support of that position, the Department  
29 cited A.R.S. § 41-1092.11(B), which addresses the need for an agency to hold an  
30 administrative hearing before a license is revoked, suspended, annulled or withdrawn.  
The statute is silent with respect to an expired license.

1 4. The Department acknowledged that "a review of the statutes and rules governing  
2 the Arizona Department of Financial Institutions did not reveal a specific provision  
3 giving the Department jurisdiction over an expired license, unlike statutes pertaining to  
4 several other agencies where such jurisdiction is stated." Department's Post-Hearing  
5 Memorandum, at 9.

6 5. The Department cited case law in its memorandum in support of its argument  
7 that the Superintendent has implied authority to exert jurisdiction over an expired  
8 license but recognized that "there was no definitive Arizona case addressing the  
9 specific questions raised by the [instant tribunal]." *Id.* at 5.

10 6. In its memorandum, the Department cited *Collins v. State of Arizona*, 166 Ariz.  
11 409, 803 P.2d 130 (App 1990) as support for the Superintendent's authority to exercise  
12 jurisdiction. In *Collins*, the Court upheld the Superintendent's authority to act against an  
13 unlicensed person for acts that violate the law regarding financial institutions).

14 7. The Department cited *Brown v. Arizona Department of Real Estate*, 818, Ariz.  
15 320, 800 P.2d 615 (App. 1995) in support of the position that an agency may act  
16 against an expired license. In *Brown*, the Court upheld the Real Estate Commissioner's  
17 authority to revoke a lapsed license, relying on a specific statute that provided the  
18 Commissioner with such authority.

19 8. In *Brown* and *Collins* are distinguishable from the instant matter. There is no  
20 express authority in the relevant statutes that provides the Superintendent with the  
21 authority to take disciplinary action on an expired license.

22 9. The Department cited in its memorandum cases in other jurisdictions that vary as  
23 to the determinations made regarding whether jurisdiction may be exercised over an  
24 expired license. The cases cited by the Department are not on point. None of the  
25 cases involved a situation where there was a statute that provided the license would  
26 expire, such as in the instant matter. Further, this case involved a situation where the  
27 Department issued an Order of Summary Suspension and Notice of Hearing months  
28 after the license had expired.

29 10. A.R.S. § 41-1092.11(B) requires that for issuance of summary suspension there  
30 be a finding that the public's health, welfare and safety requires such immediate action.

1 In the instant case, Mr. Fergus testified, and the Department acknowledged, that once a  
2 mortgage broker's license expired, there is to be no business activity under the license.

3 11. The evidence of record did not reveal any facts showing that, with the exception  
4 of above-mentioned two loan transactions, House Loans Mortgage was engaged in  
5 mortgage broker activity after expiration of the license. With respect to the two loan  
6 transactions, the evidence of record established that the Department "reactivated" the  
7 license for House Loans Mortgage to conclude the two transactions. The  
8 Administrative law Judge will not address the legality of such transactions or action by  
9 the Department because it is not relevant to the decision in this matter.

10 12. A.R.S. § 6-903(F) provides that a mortgage broker's license expires when the  
11 Superintendent is not notified that the license is under active management of a qualified  
12 responsible individual within ninety days after the Superintendent has received  
13 notification that the responsible individual for the license will no longer be in active  
14 management of the license. The evidence of record established that House Loans  
15 Mortgage's responsible individual resigned effective December 28, 2005, and that prior  
16 to the hearing of this matter, the license was not under active management of a  
17 qualified responsible individual.

18 13. The term "expiration" is defined as "cessation; ... Coming to close; termination or  
19 end." BLACK'S LAW DICTIONARY 579 (6<sup>th</sup> ed. 1990).

20 14. A.R.S. § 6-904(F) requires a licensee to maintain a principal place of business in  
21 Arizona for the transaction of business.

22 15. A.R.S. § 6-904(B) provides a grace period for a renewal of a license by October  
23 31 with submission of an application for renewal, and payment of the renewal fee plus  
24 \$25.00 per day after September 30. If the license is not renewed by October 31, it  
25 expires. The statute also provides that in the event of expiration of a license, "[a]  
26 license shall not be granted to the holder of an expired license except as provided in  
27 this article for the issuance of an original license." Such provision indicates that the  
28 only "cure" for an expired license is for the holder of the license to apply for issuance of  
29 an original license.

30 16. As the Department pointed out in its memorandum, other agencies such as the  
Arizona Department of Real Estate, the Arizona Registrar of Contractors, and the

1 Arizona Department of Liquor Licenses and Control have specific statutory authority to  
2 exert jurisdiction over an expired license. If, as the Department contends, there is  
3 implied power for an agency to exert jurisdiction over an expired license, there would  
4 have been no need for those statutes to have been enacted.

5 17. An agency only can act in a manner consistent with the authority expressly  
6 conferred upon it or necessarily implied. See *Sims v. Napolitano*, 205 Ariz. 500, 73  
7 P.3d 631 (App. 2004).

8 18. The Administrative Law Judge concludes that there is no express or implied  
9 authority for the Department to exert jurisdiction over an expired license.

10 19. The evidence of record established that, as of the hearing date, House Loans  
11 Mortgage did not have a responsible individual in active management of the business  
12 and did not have a principal place of business in Arizona. As of the drafting of this  
13 decision, House Loans Mortgage has rectified those issues.

14 20. If jurisdiction had been found to exist over House Loans Mortgage in this matter,  
15 this Tribunal would have concluded that Mr. Graves is a proper party to this matter. Mr.  
16 Graves argues that House Loans Mortgage is the licensee, and that he is a "natural  
17 person" and not a "person" against whom an award of fees and other expenses under  
18 A.R.S. § 6-131 can be obtained. Mr. Graves acknowledged that the statute is silent on  
19 whether a natural person can be liable for such fees and expenses.

20 21. A.R.S. § 6-132 provides that the Department may assess a civil penalty against  
21 a person including a licensee's principal officer, agent, employee or other person who  
22 participates in the affairs of the person for knowing violations of the law governing  
23 financial institutions. Mr. Graves argues that unless there is evidence that he  
24 participated in a knowing violation, there can be no imposition of penalty.

25 22. The Department maintained that Mr. Graves is a principal officer of House Loans  
26 Mortgage and that the term "knowing" as defined in A.R.S. § 1-215(7), requires only the  
27 knowledge that facts exist that bring the act or omission within the provisions of the  
28 statute using such a word. It does not require knowledge of the unlawfulness of the act  
29 or omission.  
30

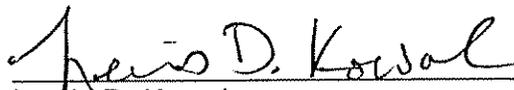
1 23. The evidence of record established that Mr. Graves was aware that Mr. Howell  
2 had terminated his position as the responsible individual in active management of  
3 House Loans Management and the Department had been notified of such act.

4 24. The Administrative Law Judge concludes that pursuant to A.R.S. § 6-132, Mr.  
5 Graves could be named as party to a disciplinary matter. However, due to the  
6 expiration of the license prior to the issuance of the Order of Summary Suspension and  
7 Notice of Hearing, the Department does not have jurisdiction over House Loans  
8 Mortgage or Mr. Graves with respect to the allegations set forth in the Order of  
9 Summary Suspension and Notice of Hearing. The Administrative Law Judge also  
10 concludes that the Order of Summary Suspension is null and void.

11 ORDER

12 Based on the above, no disciplinary action shall be taken against House Loans  
13 Mortgage or Mr. Graves and the Summary Suspension Order is quashed.

14 Done this day, September 20, 2006.

15 

16 \_\_\_\_\_  
17 Lewis D. Kowal  
18 Administrative Law Judge

19  
20 Original transmitted by mail this  
21 20 day of Sept., 2006, to:

22 Arizona Department of Financial Institutions  
23 Felecia Rotellini, Superintendent  
24 ATTN: June Beckwith  
25 2910 North 44th Street, Suite 310  
26 Phoenix, AZ 85018

27 By  \_\_\_\_\_  
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