

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 12F-BD028-SBD

3 **ACTIVE FUNDING GROUP, LLC; TDJ,**  
4 **L.L.C., MANAGING MEMBER, and UNION**  
5 **EQUITY, LLC, MANAGING MEMBER**  
16425 N. Pima Road, Suite 325  
Scottsdale, AZ 85260

**ORDER TO CEASE AND DESIST;  
NOTICE OF OPPORTUNITY FOR  
HEARING; CONSENT TO ENTRY OF  
ORDER**

6 Respondents.

7 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),  
8 makes the following Findings of Fact and Conclusions of Law and enters the following Order  
9 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137(A).

10 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the  
11 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to  
12 request a hearing to contest the allegations set forth in this Order. The Request for Hearing shall be  
13 filed with the Arizona Department of Financial Institutions (the "Department") pursuant to A.R.S. §  
14 6-137(D) within **thirty (30) days** of service of this Order and shall identify with specificity the  
15 action or order being appealed in accordance with A.R.S. § 41-1092.03(B).

16 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or  
17 her own behalf or by counsel. If Respondents are represented by counsel, the information required  
18 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a  
19 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for  
20 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**  
21 **reasonable accommodations such as interpreters, alternative formats, or assistance with**  
22 **physical accessibility.** Requests for special accommodations must be made as early as possible to  
23 allow time to arrange the accommodations. If accommodations are required, call the Office of  
24 Administrative Hearings at (602) 542-9826.

25 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.  
26 § 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled

1 hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an  
2 Informal Settlement Conference is requested, a person with the authority to act on behalf of the  
3 Department will be present (the “Department Representative”). Please note that in requesting an  
4 Informal Settlement Conference, Respondents waive any right to object to the participation of the  
5 Department Representative in the final administrative decision of this matter, if it is not settled. In  
6 addition, any written or oral statement made by Respondents at such informal settlement conference,  
7 including written documentation created or expressed solely for purposes of settlement negotiations,  
8 are inadmissible in any subsequent administrative hearing. (*See* A.R.S. § 41-1092.06 for rules  
9 regarding informal settlement conferences.) Conversely, any written or oral statement made by  
10 Respondent outside an Informal Settlement Conference is not barred from being admitted by the  
11 Department in any subsequent hearing.

12 If Respondents do not request a hearing, this Order shall become final. If Respondents  
13 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the  
14 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the  
15 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time  
16 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,  
17 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-  
18 132; (3) an order to pay restitution of any fees earned in violation of A.R.S. § 6-901 *et seq.*, pursuant  
19 to A.R.S. §§ 6-131(A)(3) and 6-137; and (4) an order or any other remedy necessary or proper for  
20 the enforcement of statutes and rules regulating mortgage bankers and commercial mortgage bankers  
21 pursuant to A.R.S. § 6-941 *et seq.* and A.R.S. § 6-971 *et seq.*

#### 22 **FINDINGS OF FACT**

23 1. Respondent Active Funding Group, LLC (hereafter referred to as “AFG”) is an  
24 Arizona limited liability company which has engaged in the business of a mortgage banker within  
25 the meaning of A.R.S. § 6-941 *et seq.* and in the business of a commercial mortgage banker within  
26 the meaning of A.R.S. § 6-971 *et seq.*

1           2.       Respondents TDJ, L.L.C. and Union Equity, LLC (collectively referred to as “AFG’s  
2 Managers”) are Arizona limited liability companies that have been designated as managing members  
3 of AFG at any time material herein and have, therefore, engaged in the business of a mortgage  
4 banker without the license required by A.R.S. § 6-941 *et seq.* and in the business of a commercial  
5 mortgage banker without the license required by A.R.S. § 6-971 *et seq.*

6           3.       AFG and AFG’s Managers (collectively referred to as “Respondents”) are not and  
7 were not, at any time material herein, authorized to transact business in Arizona as mortgage bankers  
8 or as commercial mortgage bankers.

9           4.       Respondents are not exempt from licensure as a mortgage banker pursuant to A.R.S.  
10 § 6-942 or as a commercial mortgage banker pursuant to A.R.S. § 6-972.

11          5.       A person is engaging in the business of a “mortgage banker” if that person “for  
12 compensation or in the expectation of compensation either directly or indirectly makes, negotiates or  
13 offers to make or negotiate a mortgage banking loan or a mortgage loan.” *See* A.R.S. § 6-941(5).<sup>1</sup>

14          6.       A person is engaging in the business of a “commercial mortgage banker” if that  
15 person engages in the following: “(a) Originating commercial mortgage loans. (b) Servicing  
16 commercial mortgage loans. (c) Either directly or indirectly making, negotiating or offering to make  
17 or negotiate commercial mortgage loans.” A.R.S. § 6-971(2).<sup>2</sup>

18 \_\_\_\_\_  
19           <sup>1</sup> The term “mortgage banking loan” means “a loan which is funded exclusively from the  
20 mortgage banker’s own resources, which is directly or indirectly secured by a mortgage or deed of  
21 trust or any lien interest on real estate located in this state and which is created with the consent of  
22 the owner of the real property.” A.R.S. § 6-941(6). The term “mortgage loan” means “any loan,  
other than a mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on  
real estate located in this state and created with the consent of the owner of the real estate.” A.R.S. §  
6-941(8).

23           <sup>2</sup> The term “commercial mortgage loan” means “a loan that is directly or indirectly secured  
24 by a mortgage or deed of trust or any lien interest on commercial property and created with the  
25 consent of the owner of the commercial property.” A.R.S. § 6-971(3). The term “commercial  
26 property” means “real estate that is located in this state and that is not used for a one to four family  
residence.” A.R.S. § 6-971(5).

1           7.       AFG advertises as a “specialty finance” company based in Arizona, hard-money  
2 lender, asset-based lender, and/or a local direct source, private lender, issuing loans exclusively to  
3 professionals, investors or individual who are not consumers.

4           8.       The terms of a typical transaction administered by AFG provide for a six (6) month  
5 loan at 18% annual interest rate, with \$1,000.00 “additional interest one-time payment.”

6           9.       AFG’s advertisement states that AFG is “not associated or affiliated with any  
7 regulatory agency in any state,” “do[es] not hold any mortgage broker or mortgage banker licenses,”  
8 and “do[es] not subscribe to any governing policies or limitations that conventional lenders might  
9 adhere to or be restricted by.”

10          10.       Upon information and belief, AFG recorded in excess of 125 deeds of trust, 125  
11 mortgages and 115 assignments of deeds of trust since January 1, 2011. According to AFG’s  
12 website, “the principals at AFG have purchased, repositioned and resold over 5,000 residential  
13 properties during the last ten years.” *See* [http://www.youtube.com/watch?v=pl-Rex4d\\_A0Y&](http://www.youtube.com/watch?v=pl-Rex4d_A0Y&feature=player_embedded)  
14 [feature=player\\_embedded](http://www.youtube.com/watch?v=pl-Rex4d_A0Y&feature=player_embedded).

15          11.       AFG makes, negotiates or offers to make or negotiate mortgage banking  
16 loans/mortgage loans, and it does so for compensation or in the expectation of compensation while  
17 unlicensed as a mortgage banker. Specifically:

- 18           a.       AFG collects or expects to collect compensation in the amount of \$1,000 as  
19 “additional interest one-time payment,” or “a one-time additional interest cost,”  
20 which is “due and payable upon funding of the loan,” and which, by definition,  
21 does not constitute a “periodic interest” payment.<sup>3</sup>

22  
23  
24           <sup>3</sup> The term “compensation” means “in applying that term’s definition in A.R.S. §§ 6-901, 6-  
25 941, and 6-971, anything of value or any benefit including points, commissions, bonuses, referral  
26 fees, loan origination fees and other similar fees but excluding periodic interest resulting from the  
application of the note rate of interest to the outstanding principal balance remaining unpaid from  
time to time.” A.R.S. § 6-941(2).

1           12.     AFG makes, negotiates or offers to make or negotiate commercial mortgage loans  
2 while unlicensed as a commercial mortgage banker. Specifically:

3           a.     AFG's advertisement states that it "will consider lending on ANY acceptable real  
4 estate asset," specifying "allowed collateral types" as the following types of real  
5 property:

- 6                     •     Single family residential, detached
- 7                     •     Single family residential, attached
- 8                     •     Town homes, detached
- 9                     •     Town homes, attached
- 10                    •     Condominiums
- 11                    •     Multi-family rental properties (under 20 units)
- 12                    •     Commercial retail under \$1M loan amount
- 13                    •     Commercial office under \$1M loan amount.

14           b.     AFG's website describes AFG's "Current Financing Programs" as follows: "Asset  
15 based investor financing is always available from [AFG]. These products **are**  
16 **available on any properties** that our investor clients would like to purchase,  
17 provided they fall under our "accepted collateral" category including without  
18 limitation . . . commercial properties (retail/office under \$1M), purchases out of  
19 bankruptcy, or just about any other real estate asset that is being acquired at a below  
20 market price by an Investor." (Emphasis in the original.) See <http://www.activefundinggroup.com/AZ/content/view/173>.

21           13.     The above-referenced practices of Respondents demonstrate that AFG and/or AFG's  
22 Managers has/have engaged in the business of both mortgage banker and commercial mortgage  
23 banker, even though they are not licensed by the Department.

24           14.     AFG failed to make its records available for inspection and examination by the  
25 Department and/or made false statements or misrepresentations to the Department. Specifically:

26           a.     On March 16, 2011, the Department corresponded with AFG's Statutory Agent,  
requesting that AFG provide "[c]opies of loan agreements and settlement statements."

1 On March 30, 2011, AFG's Statutory Agent responded to the Department's request,  
2 claiming that AFG issues "residential mortgage loans," and also stating that "AFG  
3 does not fall into any of the categories requiring a license from AZDFI." AFG's  
4 response did not contain any documents.

5 b. The Department sent a second letter dated May 6, 2011 to AFG, requesting copies of  
6 supporting documentation such as a HUD1, closing documents, settling documents,  
7 promissory notes, etc. On May 13, 2011, AFG responded by providing a copy of  
8 supporting documentation as an example of a loan as documented and funded by  
9 AFG.

10 c. On August 16, 2011, the Department sent a third letter to AFG, requesting copies of  
11 the Final Settlement Statements (aka Final HUD1, Borrower's Final Settlement  
12 Statement, etc.). AFG responded on August 18, 2011, stating that AFG would not be  
13 supplying any HUD1s (final statements or otherwise) because none exist.

14 d. On September 20, 2011, the Department received records from Equity Title Agency,  
15 Inc. consisting of HUD1 Final Settlement Statements for at least (2) two files  
16 showing that in 2010, AFG acted as a lender and collected \$1,000.00 additional  
17 interest at the time of closing, in addition to default interest reserve payment and first  
18 month interest.

19 e. On September 20, 2011, the Department sent a letter to Title Security Agency of  
20 Arizona, requesting copies of Final Settlement Statements of open and closed  
21 transactions involving AFG as the broker and/or the lender. On September 30, 2011,  
22 the Department received copies of Final Settlement Statements, showing that for a  
23 period from January 2008 to September 2011, AFG was involved as a lender in at  
24 least 37 transactions, having collected compensation in the form of an "additional  
25 interest cost" in at least four (4) transactions, three of which took place in 2010.

26 15. These Findings of Fact shall also serve as Conclusions of Law.

1 CONCLUSIONS OF LAW

2 1. Pursuant to A.R.S. § 6-941 *et seq.* and A.R.S. § 6-971 *et seq.*, the Superintendent has  
3 the authority and duty to regulate all persons engaged in the mortgage banker and commercial  
4 mortgage banker business and with the enforcement of statutes, rules and regulations relating to  
5 mortgage bankers and commercial mortgage bankers.

6 2. AFG and AFG's Managers had engaged and/or are engaging in unlicensed activity as  
7 a mortgage banker and a commercial mortgage banker. By the conduct set forth in the Findings of  
8 Fact, AFG and AFG's Managers have violated the following provisions:

- 9 a. A.R.S. § 6-943(A), by acting as a mortgage banker in Arizona without having first  
10 applied for and obtained a mortgage banker license.
- 11 b. A.R.S. § 6-973(A), by acting as a commercial mortgage banker in Arizona without  
12 having first applied for and obtained a commercial mortgage banker license.
- 13 c. A.R.S. §§ 6-101(6), 6-124, by failing to make its books and records available for  
14 inspection and examination by the Department.<sup>4</sup>

15 3. The violations set forth above constitute grounds for: (1) the issuance of an order  
16 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and  
17 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
18 Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions;  
19 (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132; and (3) an order or any  
20 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage  
21 bankers and commercial mortgage bankers pursuant to A.R.S. §§ 6-941 *et seq.*, 6-971 *et seq.*

22 \_\_\_\_\_  
23 <sup>4</sup> A financial institution or enterprise has a duty to follow provisions of Title 6 and act openly,  
24 honestly and collaboratively when examined or investigated by the Department. *Cf.* A.R.S. § 6-133  
25 (imposing criminal sanctions for knowing violation of Title 6, making misrepresentation in any  
26 document filed with the Department, or omitting a material entry in any statement with intent to  
deceive the superintendent or any agent or examiner appointed by the superintendent to examine the  
affairs of the financial institution.); *see also* A.R.S. §§ 6-945(A)(3), 6-982(A)(3) (failure to furnish  
information to the Department is the basis for a license denial).

1 **ORDER**

2 1. Respondents shall immediately stop the violations set forth in the Findings of Fact  
3 and Conclusions of Law.

4 2. Respondents shall immediately cease all mortgage banker and commercial mortgage  
5 banker business in Arizona until such time as they have obtained mortgage banker and commercial  
6 mortgage banker licenses from the Superintendent as prescribed by A.R.S. § 6-941 *et seq.* and  
7 A.R.S. § 6-971 *et seq.*

8 3. Respondents shall immediately pay to the Department a civil money penalty in the  
9 amount of **twenty-five thousand dollars (\$25,000.00)**.

10 4. Respondents are jointly and severally liable for payment of the civil money penalty.

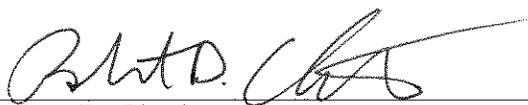
11 5. Respondents shall immediately refund all compensation they received while  
12 unlicensed.

13 6. The provisions of this Order shall be binding upon Respondents, their employees,  
14 agents and other persons participating in the conduct of the affairs of Respondents.

15 7. This Order shall become effective upon service, and shall remain effective and  
16 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated  
17 or set aside.

18 SO ORDERED this 12th day of October, 2011.

19 Lauren W. Kingry  
20 Superintendent of Financial Institutions

21 By:   
22 Robert D. Charlton  
Assistant Superintendent

23 **CONSENT TO ENTRY OF ORDER**

24 1. Respondents acknowledge that they have been served with a copy of the foregoing  
25 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the  
26 same, are aware of their right to an administrative hearing in this matter, and have waived the same.



1 ORIGINAL of the foregoing filed this 12th  
2 day of October, 2011, in the office of:

3 Lauren W. Kingry, Superintendent of Financial Institutions  
4 Arizona Department of Financial Institutions  
5 ATTN: June Beckwith  
6 2910 N. 44th Street, Suite 310  
7 Phoenix, AZ 85018

8 COPY mailed/delivered same date to:

9 Natalia A. Garrett, Assistant Attorney General  
10 Office of the Attorney General  
11 1275 W. Washington St.  
12 Phoenix, AZ 85007

13 Robert D. Charlton, Assistant Superintendent  
14 Tammy Seto, Senior Examiner  
15 ATTN: Sabrina Hampton  
16 Arizona Department of Financial Institutions  
17 2910 N. 44th Street, Suite 310  
18 Phoenix, AZ 85018

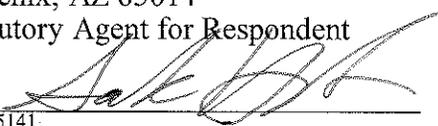
19 AND COPY MAILED SAME DATE by  
20 Certified Mail, Return Receipt Requested, to:

21 Active Funding Group, LLC  
22 8925 E. Pima Center Pkwy, # 125-135  
23 Scottsdale, AZ 85258  
24 Respondent

25 TDJ LLC  
26 ATTN: Gregg Reichman  
P.O. Box 5377  
Scottsdale, AZ 85261-5377  
Respondent

Union Equity LLC  
ATTN: Jody Angel  
20701 N. Scottsdale Rd. #107-145  
Scottsdale, AZ 85255  
Respondent

Andrew Abraham, Esq.  
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702 E. Osborn Rd., # 200  
Phoenix, AZ 85014  
Statutory Agent for Respondent

25 By:   
26 # 2325141