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13 **ARIZONA SUPERIOR COURT**

14 **COUNTY OF PIMA**

15 State of Arizona, ex rel. Terry Goddard,
16 Attorney General,

17 Plaintiff,

18 vs.

19 Deed and Note Traders, L.L.C.

20 Defendant.

No. _____

ORDER RE: CONSENT DECREE

21 Based on the parties' Joint Motion to Enter Consent Decree and good cause
22 appearing,

23 THE COURT HEREBY FINDS AND ORDERS:

24 The State of Arizona has filed a complaint alleging violations of A.R.S. § 44-
25 1521 *et seq.*, the Consumer Fraud Act against defendant Deed and Note Traders,
26 L.L.C., (hereinafter, "DNT"), an Arizona limited liability company. DNT, after consulting
27 with its counsel a) waives its right to trial; b) admits the jurisdiction of this Court over
28 the subject matter and the parties for the purpose of entry of this Consent Decree;
and, c) acknowledges that the Court retains jurisdiction for the purpose of enforcing
this Consent Decree.

1 1. This Order incorporates the parties' Joint Motion to Enter Consent Decree
2 in *State v. Deed and Note Traders, L.L.C.*

3 2. This Consent Decree does not constitute an admission for any purpose
4 by DNT of any fact or of any violation of state law, rule or regulation, nor does this
5 Decree constitute evidence of any liability, fault or wrongdoing. This Consent Decree is
6 made without a trial or adjudication of any issues of fact or law or finding of liability.
7

8 3. DNT shall not represent or imply that the Attorney General, the State of
9 Arizona or any state agency has approved any of DNT's actions or has approved any
10 of its past, present or future business practices, and DNT is enjoined from directly or
11 indirectly representing anything to the contrary.
12

13 4. DNT enters into this Consent Decree voluntarily and that neither the
14 Attorney General's Office nor any member of the Attorney General's Office has made
15 any promises or threats to induce DNT to enter into this Consent Decree.

16 5. This Order applies to DNT with members, David A. Kinas and The David
17 A. Kinas Exempt Trust, partners, employees, representatives, assignees, successors
18 in interest, agents and to all persons, corporations and other entities who act in
19 concert or participation with DNT with respect to the subject matter of this Order.
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21 6. For purposes of this Consent Decree, the following definitions apply:
22 a. "Clear and Conspicuous" means printed information in a contract
23 or any other document that DNT provides consumers that is in
24 such size, color, contrast and location that it is readily noticeable,
25 readable and understandable; is presented in proximity to all
26 information necessary to prevent the information from being
27 misleading or deceptive; is not obscured in any manner; and
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appears in a type size, contrast and location sufficient for a consumer to read and comprehend the information. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information and must conform to all of the requirements set out in this paragraph.

- b. "DNT" means Deed and Note Traders, L.L.C., with members David A. Kinas, a 50% member and The David A. Kinas Exempt Trust, a 50% member.
- c. "Down Payment" means the total amount required to be paid in order for the consumer in a "Rent-to-Own Transaction" to complete the closing of the purchase of the property, including but not limited to any portion of the "Option Payment" or rent that is to be applied to the Down Payment.
- d. "Foreclosure Assistance" means DNT's offer, guarantee or promise to save a consumer's home from foreclosure in exchange for the consumer's transfer by warranty or otherwise to DNT and DNT's conveyance to the consumer of a lease with an oral or written option to repurchase the property.
- e. "Monthly Payment" means principal, interest, taxes and insurance (also known as "PITI").

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f. "Option Payment" means the amount of money a consumer in a Rent-to-Own Transaction must pay DNT in order to obtain an option to purchase the property in the future.

g. "Rent-to-Own Transaction" means DNT's conveyance of an interest in real property to a consumer by which the consumer rents real property from DNT based on the DNT's written or oral statement that the consumer will be able to purchase the property at a future date.

h. "Security Deposit" means the amount, if any, required of a consumer in a Rent-to-Own Transaction to be deposited with DNT as security of payment for rent and/or for repairs following the termination of the lease, but shall not be included as a part or portion of the Option Payment or Down Payment.

A. GENERAL TERMS

7. DNT shall comply with the Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*, as it is currently written or as is amended in the future.

8. The Effective Date of this Order is the date on which the Court signs this Order.

B. FORECLOSURE ASSISTANCE AND OTHER TRANSACTIONS

9. DNT shall no longer engage in the provision of Foreclosure Assistance.

10. With regard to consumers listed in Exhibit A, attached hereto and incorporated by reference, DNT shall take the following actions:

a. Immediately cease filing or enforcing forcible entry and detainer actions.

b. Freeze the consumers' monthly rental payment at the September 30, 2006, payment amount.

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c. Within forty-five (45) days from the Effective Date, DNT shall provide its proposed non-recourse, carry-back secured financing for each of the consumers to the Attorney General for review. The Attorney General shall review the terms of the non-recourse, carry-back secured financing to ensure that the terms comply with the requirements set out in Paragraph No. 11, below.

d. The Attorney General shall have fifteen (15) business days to review the terms.

1) On or before the expiration of fifteen (15) days, the Attorney General shall inform counsel for DNT that the terms comply with the requirements of Paragraph No. 11 below, and DNT has thirty (30) days thereafter to provide the consumers listed in Exhibit A with execution copies of the Loan and Security Documents evidencing the approved non-recourse, carry-back secured financing.

2) If the Attorney General determines that the terms DNT is offering consumers do not meet the requirements of Paragraph 11 below, the Attorney General shall provide counsel for DNT with an explanation as to why the proposed terms are not in compliance with Paragraph 11 below, and DNT shall have fifteen (15) business to submit revised terms for approval by the Attorney General. Thereafter, the provisions of sub-paragraphs (d)(1) and (2), above, shall apply to the revised terms submitted by DNT.

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11. Prior to providing non-recourse, carry-back secured financing, DNT must comply with the following requirements:

a. DNT must possess the consumer’s completed credit application and other documentation that establishes the consumer’s creditworthiness and ability to make the Monthly Payment. DNT shall use the credit application and other information to set the consumer’s Monthly Payment and to set the number of years that the consumer has to pay DNT.

b. DNT shall not charge consumers the following:

- 1) A late payment fee that exceeds 3% of the Monthly Payment;
- 2) Prepayment penalties; or,
- 3) An increase in the interest rate upon default.

c. DNT shall obtain a title report and provide title insurance to the consumers.

d. DNT shall make provisions for the consumers to make payments through a title company for appropriate payment of any underlying notes. DNT shall obtain any modification necessary to any underlying notes to ensure that the consumers’ Monthly Payment appropriately satisfies any underlying notes.

e. Prior to providing non-recourse, carry-back financing, DNT must repair, at its own expense, the property to a “rent ready” condition in compliance with the Arizona Residential Landlord Tenant Act.

f. DNT’s non-recourse, carry-back financing shall contain the following terms:

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1) A payoff date of no less than fifteen (15) years, provided however, the loan and security documents shall require the consumers to make a good faith attempt to obtain financing from the source of their choosing on the same or better terms within three (3) years following the date of DNT’s conveyance of the property to the consumers.

i. If the consumers are approved for financing on the “same or better terms,” the consumers must refinance the property and pay off any balance then due and owing to DNT. If the proposed financing is recourse financing, DNT shall send a prompt, clear and conspicuously written letter explaining to the consumers that recourse financing includes the possibility of a deficiency judgment against the consumers and an explanation of “deficiency judgment.”

ii. In the event the consumers fail to be approved for financing on the same or better terms from the source of their choosing, the terms of the original financing from DNT shall remain in place for the duration of the terms thereof. The consumers shall provide proof of their

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inability to obtain financing from the source of their choosing to DNT prior to the end of such three (3) year period.

iii. In the event that consumers fail to timely provide evidence of their efforts to obtain financing, DNT shall provide the consumers with written notice of their failure to provide such evidence on three successive occasions, each such notice to be no sooner than sixty days following the previous notice. The last of such notices shall advise the consumers that should they fail to provide such evidence within sixty (60) days of date of such written notice, DNT may accelerate the maturity date of the Loan to a date that is thirty-six (36) months from the date of the expiration of the third written notice. At the time DNT sends the notices to consumers, DNT shall also send copies of the notices to the Tucson Office of the Attorney General in care of the Consumer Protection and Advocacy Section.

- 2) A fixed rate of interest no higher than DNT pays on any underlying notes; and
- 3) A fixed amount for principal and interest.

1 12. Within ninety (90) days of the Effective Date, DNT shall provide the
2 complete file for each of the consumers listed in Exhibit A, which file shall contain
3 documents to demonstrate DNT’s compliance with Paragraph 11, above.

4 13. In lieu of the resale and financing of the properties to the consumers
5 identified in Exhibit A, DNT may offer the consumers the option of accepting a cash
6 settlement. Any cash settlement offer shall be subject to prior approval by the
7 Attorney General. If the cash settlement offer is rejected by the Attorney General,
8 DNT may resubmit a revised cash settlement offer to the Attorney General, following
9 the time periods set forth in paragraph 10(d), above.

- 10 a. The Attorney General shall communicate DNT’s monetary offer to
- 11 the consumers.
- 12 b. If any consumer accepts DNT’s cash offer, the Attorney General
- 13 shall promptly communicate the acceptance to DNT’s counsel,
- 14 and DNT shall deliver payment to the consumer within thirty (30)
- 15 days following the communication from the Attorney General.
- 16 c. DNT shall allow consumers who accept a cash payment to remain
- 17 in the house six (6) months from the date of payment at the rental
- 18 amount the consumers were paying DNT on the date the
- 19 consumers accept the cash settlement.
- 20 d. The consumer shall be under no obligation to accept the cash
- 21 settlement offer.
- 22

23 **C. RENT-TO-OWN TRANSACTIONS**

- 24 14. DNT shall comply with the following:
- 25 a. Prior to entering into a Rent-to-Own Transaction with a consumer,
- 26 DNT must possess the consumer’s completed credit application
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and other documentation that establishes the consumer's creditworthiness and ability to pay the rent.

- b. Prior to entering into a Rent-to-Own Transaction with a consumer, DNT shall specifically identify all structural and other material defects that DNT knows or should know exist in the real property. DNT shall make a Clear and Conspicuous written disclosure regarding such defects in a separate document, such document to contain the consumer's signed acknowledgment that he or she has read and understood the existence of the defects. DNT must keep this document in the file with each consumer's contracts and other documents.

15. DNT shall disclose all other terms of a Rent-to-Own agreement in one contract document, the terms of which are Clear and Conspicuous. These terms include, but are not limited to the following:

- a. The fixed monthly rental payment; the dollar amount that DNT will charge for late fees; and the dollar amount, if any, that shall apply to the Option Payment or the Down Payment.
- b. The number of months the lease covers.
- c. The total amount of the Security Deposit, including whether DNT will refund the Security Deposit or a portion of same and under what terms, including but not limited to terms for a consumer who vacates the property at the end of the lease term and terms for a consumer who defaults on the rental payment.
- d. The total amount of the Option Payment including whether DNT shall refund the Option Payment or a portion of same and under what terms, including but not limited to terms for a consumer who

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vacates the property at the end of the lease term and terms for a consumer who defaults on the rental payment.

e. Whether the Option Payment becomes part of the Down Payment at the time the consumer exercises his or her right to purchase the property and the amount of the Option Payment that becomes part of the Down Payment.

f. The total amount of the Down Payment DNT requires in order for a consumer to exercise the option to purchase; when such Down Payment is due; and under what terms the Down Payment will be refunded, if any, including but not limited to terms for a consumer who vacates the property and terms for a consumer who defaults on a rental payment.

g. The fixed purchase price.

h. The earliest date a consumer can exercise the option to purchase.

i. All other terms that apply if a consumer defaults on a rental payment or decides not to purchase at the end of rental period.

16. DNT shall not require consumers to do the following:

- a. Contact certain lenders in order to exercise their purchase option.
- b. Contact more than three lenders.
- c. Obtain DNT's approval before accepting a loan.
- d. Accept the terms of the first lender that approves the consumers' loans or of any lender that approves the consumers' loans.
- e. Waive the right to sue DNT for repair or other work that DNT or their agents performed, which work was not completed in a workmanlike manner and/or to code, if code is applicable.

1 f. Waive the right to report any problems or otherwise to the
2 Attorney General's Office.

3 17. No later than one hundred and twenty (120) days before the expiration
4 date of the consumer's purchase option, DNT shall send a Clear and Conspicuous
5 letter by certified mail to the consumer that contains the following information:

- 6 a. A reiteration of the fixed purchase price;
- 7 b. A summary of the structural and material defects that DNT
- 8 disclosed prior to the Rent-to-Own Transaction and any other
- 9 structural and material defects that DNT discovered or should
- 10 have discovered from the inception of the Rent-to-Own
- 11 Transaction.
- 12 c. The expiration date of the purchase option.

13 18. In all Rent-to-Own Transactions, DNT shall comply with the Residential
14 Landlord and Tenant Act, A.R.S. § 33-3301 *et seq.*

15 19. DNT shall not engage in any retaliatory action against consumers who
16 are currently parties to Rent-to-Own agreements with DNT.

17 **ADDITIONAL TERMS**

18 20. DNT shall not use the services of Tara Alegria or Barbi Stewart for any
19 matter.

20 21. DNT shall not instruct an escrow agent or any person who is not a DNT
21 employee to keep confidential any term of a contract or any other document from
22 consumers, investors or otherwise.

23 22. For a period of five (5) years, beginning on the date the Court signs the
24 Consent Decree, and within fifteen (15) days of a written request by the Attorney
25 General, DNT will provide to the Attorney General such records and documents as the
26 Attorney General determines bears on compliance with the Consent Decree.
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23. DNT’s advertising shall be Clear, Conspicuous and truthful.¹

24. DNT shall immediately discontinue any advertising for Foreclosure Assistance.

25. DNT shall immediately destroy all advertising dealing with Foreclosure Assistance and transactions of similar import, including, but not limited to videotapes, CDs and DVDs. With regard to DNT’s home website or any related websites, DNT shall immediately remove any information and links regarding Foreclosure Assistance.

26. If a consumer calls DNT for information regarding Foreclosure Assistance or transactions of similar import, DNT shall respond that it does not deal with Foreclosure Assistance and shall not refer the consumer to any other person or entity.

27. Except for any documents that are required to be recorded in any public record, in any transaction in which DNT provides a Spanish-speaking consumer or a consumer whose primary language is Spanish (even if another person entering into the transaction speaks English) with an interest in real property, DNT shall provide the consumer with Spanish-language contracts and will provide all other documents in Spanish, *provided however*, that DNT shall have no obligations under this subparagraph, if providing such a document or agreement in a language other than English shall violate any government statute, rule, regulation or ordinance.

RESTITUTION

28. DNT shall make restitution to those consumers listed in paragraph 29 below for the amount listed next to each consumer’s name.

¹ For example, DNT shall not advertise “no qualifying” or words or phrases of similar import in advertising Rent-to-Own Transactions or other rental or sales transactions to consumers.

1 29. DNT shall deliver checks backed by good and sufficient funds to the
2 Attorney General’s Office and made out to each consumer:

3 a. At the time DNT delivers the signed Consent Decree to the
4 Attorney General, DNT shall deliver checks made out to the
5 following consumers:

- 6 1) Rosario G. \$1,709
- 7 2) Jessie and Diane J. \$4,576
- 8 3) Kathryn M. \$2,015
- 9 4) Oscar and Nelda N. \$13,000
- 10 5) Jean S. \$10,000
- 11 6) Mary W. \$10,700

12 b. Within one hundred and eighty days (180) of the Effective Date,
13 DNT shall deliver checks made out to the following consumers:

- 14 1) Arturo A. \$17,467
- 15 2) Edith B. \$43,566
- 16 3) Sarah E. \$23,700
- 17 4) Marianne G. \$24,000
- 18 5) Christine R. \$19,053
- 19 6) Norman S. \$30,438
- 20 7) Stephen S. \$12,956
- 21 8) Mercy V. \$23,388

22 30. Should DNT default on any restitution payment to the State, the entire
23 amount becomes immediately due and owing. Interest on any unpaid balance shall
24 accrue at the statutory rate.

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1 31. Upon receipt of the restitution checks, the Attorney General's Office shall
2 promptly send the checks by certified mail to the consumers listed in paragraph 29,
3 above.

4 a. Should the restitution check be returned to the Attorney General,
5 the Attorney General shall make a diligent effort to locate the
6 consumer(s). If, after three (3) months from the date the check is
7 returned, the Attorney General has been unable to locate the
8 consumer(s), the Attorney General shall notify DNT. DNT shall
9 cancel the consumer's check and re-write the check in the name
10 of the Attorney General whose office shall place the check in an
11 interest-bearing account for a period of nine (9) months from the
12 date of the re-written check. If after nine (9) months, the Attorney
13 General has not located the consumer(s), the Attorney General
14 shall apply the amount represented by the restitution check to the
15 attorneys' fees provided for in paragraphs 33-34, below.

16 b. If the consumer does not cash the check within six (6) months of
17 the date of the check, DNT shall cancel that check and re-write a
18 check to the Attorney General. The Attorney General's Office shall
19 place the check in an interest-bearing account for a period of six
20 (6) months from the date of re-written check. If after six (6)
21 months, the Attorney General is unable to locate the consumer(s),
22 the Attorney General shall apply the amount represented by the
23 restitution check to the attorneys' fees provided for in paragraphs
24 33-34, below.

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c. With regard to paragraphs 31(a) and (b) above, any funds consumers do not claim within the specified time periods shall no longer be deemed restitution.

RELEASE OF SECURITY LIENS

32. Within fifteen (15) days of the Effective Date, DNT shall release the security liens for the following consumers:

- a. Mario and Ana L.
- b. Ramon S. and Maria A.
- c. Helen W.

ATTORNEYS FEES AND COSTS

33. Pursuant to A.R.S. § 44-1534, DNT shall pay the Attorney General, in checks backed by good and sufficient funds, two hundred thousand dollars (\$200,000.00) in costs and attorneys' fees to be used in the sole discretion of the Attorney General for consumer fraud education and for the investigative and enforcement operation of the consumer protection division as set out in A.R.S. § 44-1531.01(C). The payment of attorneys' fees and costs and other obligations herein, shall not be considered a civil fine or penalty and is paid pursuant to A.R.S. §§ 44-1531 and 1534.

34. DNT shall pay the \$200,000.00 in the following manner:
- a. \$65,000 on or before May 1, 2007;
 - b. \$65,000 on or before October 1, 2007: and
 - c. \$70,000 on or before February 1, 2008.

State v. Deed and Note Traders, L.L.C.

1 35. Should DNT default on any payment to the State, the entire amount
2 becomes immediately due and owing. Interest on any unpaid balance shall accrue at
3 the statutory rate.

4 DATED this ____ day of December, 2006.
5
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7 _____
8 JUDGE OF THE SUPERIOR COURT

8 Copy of the foregoing mailed this
9 ____ day of December, 2006, to:

10 Noreen R. Matts, Esq.
11 Assistant Attorney General
12 Consumer Protection & Advocacy Section
13 400 West Congress, South Bldg., Suite 315
14 Tucson, Arizona 85701

15 Scott Gibson, Esq.
16 2941 North Swan Road, Suite 101
17 Tucson, Arizona 85712

18 Cynthia T. Kuhn, Esq.
19 Rusing & Lopez, P.L.L.C.
20 6262 North Swan Road, Suite 200
21 Tucson, Arizona 85718

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Exhibit A

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<u>Name</u>	<u>Purchase Price</u>
Juan and Jolene B.	\$129,036
Miguel C and Guadalupe S.	\$ 48,470
Jessie, C.	\$ 31,174
Steve G. and Rachel C.	\$182,145
Rafael H.	\$140,384
Verna May L. and Wanda Y.	\$ 55,500
Gloria L.	\$119,025
Benjamin and Yolanda M.	\$ 77,063
Mario M.	\$ 72,610
Paul and Janet P.	\$ 90,297
Fleming S.	\$ 47,087
Robert T.	\$ 68,773
Mary and Joseph V.	\$ 94,879
Steve and Clarissa W.	\$109,000