

**STATE OF ILLINOIS**

**DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION**

**DIVISION OF BANKS AND REAL ESTATE**

\_\_\_\_\_  
IN THE MATTER OF: )  
 )  
American Capital Mortgage Corporation )  
1900 East Golf Road, Suite 1010 )  
Schaumburg, Illinois 60173 )

DBR No. 2004-BBTC-70

**ORDER TO CEASE AND DESIST**

The SECRETARY OF THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION (“Secretary”) hereby issues American Capital Mortgage Corporation this ORDER TO CEASE AND DESIST (“Order”). This Order is authorized by and issued pursuant to the provisions of Section 46(d) of the Illinois Banking Act [205 ILCS 5/46(d)] (the “Act”).

**FINDINGS**

The Secretary is of the opinion and finds as follows:

1. American Capital Mortgage Corporation, a business entity located at 1900 East Golf Road, Suite 1010, Schaumburg, Illinois has engaged in a marketing program designed to solicit prospective Illinois customers in a Mortgage Re-Financing Program, (the “Program”);
2. As part of the Program, American Capital Mortgage Corporation delivered or caused to be delivered certain solicitation materials to customers of an Illinois state-chartered bank;
3. These solicitation materials specifically make reference to and used the name of the Illinois state-chartered bank;
4. Section 46(d) of the Act provides that unless otherwise expressly permitted by law, no person, firm, partnership or corporation may use the name of an existing bank when marketing to or soliciting business from customers if the reference is made without consent of the existing bank; and

5. The Illinois state-chartered bank identified in the American Capital Mortgage Corporation Program solicitation materials did not consent to the use of its name.

### **CONCLUSIONS**

BASED ON THE ABOVE FINDINGS, THE SECRETARY IS OF THE OPINION AND CONCLUDES that American Capital Mortgage Corporation has violated the provisions of Section 46 (d) of the Act.

### **ORDER**

BASED ON THE FINDINGS AND CONCLUSIONS STATED ABOVE, IT IS HEREBY ORDERED:

American Capital Mortgage Corporation shall CEASE AND DESIST from using the name of any existing Illinois state-chartered bank in connection with marketing or solicitation materials, absent express consent from such existing Illinois state-chartered bank and complete compliance with all the provisions of Section 46(d) of the Act.

IT IS HEREBY FURTHER ORDERED:

This ORDER shall be effective on the date it is signed and the provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER shall have been modified, terminated, suspended or set aside by the Secretary, or a court of competent jurisdiction.

DATED THIS NINTH DAY OF NOVEMBER, 2004.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois;  
FERNANDO E. GRILLO, SECRETARY

DIVISION OF BANKS AND REAL ESTATE

D. Lorenzo Padron  
Director of Banks and Real Estate

By:

SCOTT D. CLARKE  
Assistant Director

You are hereby notified that this Order is an administrative decision. Pursuant to 38 Ill. Adm. Code, Section 392, any party may file a request for a hearing on an administrative decision. The request for a hearing shall be filed within 10 days after the receipt of an administrative decision. A hearing shall be held within thirty (30) days after the receipt by the Director of Banks and Real Estate of a request for a hearing. Absent a request for hearing, this Order shall constitute a final administrative Order subject to the Administrative Review Law, [735 ILCS 5/3-101].