

# TERMS COMPLETE

## CONSENT ORDER SUMMARY - Case Number: C-08-273

<b>Name(s)</b>	American Home Equity Corporation		
	Alan M. Potts		
<b>Order Number</b>	C-08-273-09-CO01		
<b>Effective Date</b>	August 17, 2009		
<b>License Number</b>	DFI: 22873		
<b>License Effect</b>	N/A		
<b>Not Apply until</b>	August 17, 2014		
<b>Prohibition/Ban until</b>	August 17, 2014		
<b>Investigation Costs</b>	\$1,173	Due	Paid Y Date: 8/17/2009
<b>Assessment(s)</b>	\$N/A	Due	Paid Y N Date
<b>Monetary Penalty</b>	\$20,000	Due	Paid Y Date: 8/17/2009
<b>Other</b>	Restitution Paid - \$10,935.33		
	Exam Fee Paid - \$7,015.43.		
<b>Special Instructions</b>			

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5 **STATE OF WASHINGTON**  
6 **DEPARTMENT OF FINANCIAL INSTITUTIONS**  
7 **DIVISION OF CONSUMER SERVICES**

8 IN THE MATTER OF DETERMINING  
9 Whether there has been a violation of the  
10 Consumer Loan Act of Washington by:

NO. C-08-273-09-CO01

11 AMERICAN HOME EQUITY  
12 CORPORATION  
13 and  
14 ALAN M. POTT, President and Owner,

CONSENT ORDER

15 Respondents

16 COMES NOW the Director of the Department of Financial Institutions (Director), through his  
17 designee Deborah Bortner, Division Director, Division of Consumer Services, and American Home  
18 Equity Corporation and Alan M. Pott, President and Owner, and finding that the issues raised in the  
19 above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent  
20 Order. This Consent Order is entered pursuant to chapter 31.04 of Revised Code of Washington (RCW)  
21 and RCW 34.05.060 of the Administrative Procedure Act based on the following:

22 **AGREEMENT AND ORDER**

23 The Department of Financial Institutions, Division of Consumer Services (Department) and  
24 Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges No.  
25 C-08-273-09-SC01 (Statement of Charges), entered February 2, 2009, (copy attached hereto). Pursuant  
to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the Administrative

CONSENT ORDER  
C-08-273-09-CO01  
AMERICAN HOME EQUITY CORPORATION  
and  
ALAN M. POTT

1 Procedure Act, Respondents hereby agree to the Department's entry of this Consent Order and further  
2 agree that the issues raised in the above-captioned matter may be economically and efficiently settled by  
3 entry of this Consent Order. The parties intend this Consent Order to fully resolve the Statement of  
4 Charges. Respondents are agreeing not to contest the Statement of Charges in consideration of the terms  
5 of this Consent Order.

6 Based upon the foregoing:

7  
8 **A. Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of  
9 the activities discussed herein.

10 **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a  
11 hearing before an administrative law judge, and that they hereby waive their right to a hearing and any  
12 and all administrative and judicial review of the issues raised in this matter, or of the resolution reached  
13 herein. Accordingly, by the signatures below, Respondents hereby withdraw their appeal.

14 **C. No Admission of Liability.** It is AGREED that Respondents do not admit to any  
15 wrongdoing by entry of this Consent Order.

16 **D. Prohibition from Industry.** It is AGREED that Respondents are prohibited from  
17 participating in the conduct of the affairs of any consumer lender licensed by the Department or any  
18 person subject to licensure or regulation by the Department for five years from the date of entry of this  
19 Consent Order in any capacity, including but not limited to: (1) any financial capacity whether active or  
20 passive or (2) as an officer, director, principal, manager, employee, or loan originator. It is further  
21 AGREED that Respondents shall not apply for a Washington Consumer Loan License before the  
22 expiration of the prohibition.  
23  
24

1 E. **Fine.** It is AGREED that Respondents shall pay to the Department a fine of \$20,000 in the  
2 form of a cashier's check made payable to the "Washington State Treasurer" upon entry of this Consent  
3 Order.

4 F. **Restitution.** It is AGREED that Respondents have paid, in full, restitution in the amount of  
5 \$10,935.33 to the borrowers more specifically set forth in the Statement of Charges, Appendix A.

6 G. **Examination Fee.** It is AGREED that Respondent's have paid, in full, an examination fee in  
7 the amount of \$7,015.43.

8 H. **Investigation Fee.** It is AGREED that Respondents shall pay to the Department an  
9 investigation fee of \$1,173 in the form of a cashier's check made payable to the "Washington State  
10 Treasurer" upon entry of this Consent Order. Respondents may pay both the fine and investigation fee in  
11 a single cashier's check made payable to the "Washington State Treasurer."  
12

13 I. **Authority to Execute Order.** It is AGREED that the undersigned Respondents have  
14 represented and warranted that they have the full power and right to execute this Consent Order on behalf  
15 of the parties represented.

16 J. **Non-Compliance with Order.** It is AGREED that Respondents understand that failure to  
17 abide by the terms and conditions of this Consent Order may result in further legal action by the  
18 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director  
19 for the cost incurred in pursuing such action, including but not limited to, attorney fees.  
20

21 K. **Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily  
22 entered into this Consent Order, which is effective when signed by the Director's designee.

23 L. **Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read  
24 this Consent Order in its entirety and fully understand and agree to all of the same.

1 **RESPONDENTS:**

2 AMERICAN HOME EQUITY CORPORATION

3 By:

4 [Redacted Signature]

5 Alan M. Pott  
6 President and Owner

7/28/09  
Date

6 [Redacted Signature]

7 Alan M. Pott  
8 Individually

7/29/09  
Date

9 **DO NOT WRITE BELOW THIS LINE**

10 THIS ORDER ENTERED THIS 17<sup>th</sup> DAY OF August, 2009.

11 [Redacted Signature]

12  
13 DEBORAH BORTNER  
14 Director  
15 Division of Consumer Services  
16 Department of Financial Institutions

16 Presented by:

17 [Redacted Signature]

18 STEVEN C. SHERMAN  
19 Financial Legal Examiner



21 Approved by:

22 [Redacted Signature]

23 JAMES R. BRUSSELBACK  
24 Enforcement Chief

25 CONSENT ORDER  
C-08-273-09-CO01  
AMERICAN HOME EQUITY CORPORATION  
and  
ALAN M. POTT

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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Consumer Loan Act of Washington by:

AMERICAN HOME EQUITY CORPORATION  
and  
ALAN M. POTT, President and Owner,

Respondents.

NO. C-08-273-09-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENTION TO ENTER  
AN ORDER TO PROHIBIT FROM  
INDUSTRY, IMPOSE FINE, ORDER  
RESTITUTION, COLLECT  
EXAMINATION FEE, AND COLLECT  
INVESTIGATION FEE

**INTRODUCTION**

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondents.**

A. American Home Equity Corporation (Respondent American Home Equity) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on December 19, 2001. Respondent American Home Equity surrendered its license effective February 28, 2008. At the time of surrender, Respondent American Home Equity was licensed to conduct business as a Consumer Loan Company at 2677 North Main Street, Suite 225, Santa Ana, California.



1 lower half of Truth in Lending Disclosures, failing to disclose a prepayment penalty on a Truth in  
2 Lending Disclosure, and listing mortgage broker fees on line 801 of the HUD-1 Settlement Statement  
3 while listing Respondents' fees on line 805.

4 **1.6 Imposing Unlawful Prepayment Penalties.** Respondents imposed a prepayment penalty on  
5 two junior lien mortgage loans.

6 **1.7 Failure to Maintain Adequate Records.** Respondents were unable to locate four entire loan  
7 files which the Department's examiners had requested for review.

8 **1.8 Understating Finance Charges.** Respondents understated the finance charges in two loans.

9 **1.9 On-Going Investigation.** The Department's investigation into the alleged violations of the  
10 Act by Respondents continues to date.

## 11 **II. GROUNDS FOR ENTRY OF ORDER**

12 **2.1 Requirement to Timely Pay Examination Invoices.** Based on the Factual Allegations set  
13 forth in Section I above, Respondents are in apparent violation of RCW 31.04.145 and WAC 208-620-  
14 590(3) for failing to pay the examination invoices within thirty days.

15 **2.2 Charging Unlawful Fees.** Based on the Factual Allegations set forth in Section I above,  
16 Respondents are in apparent violation of RCW 31.04.027(2), (3), (6), (7), and (10), RCW 31.04  
17 105(2), WAC 208-620-560, and 24 C.F.R. Section 3500.21(b)(1) [Regulation X] for charging  
18 undisclosed loan origination fees, loan origination fees on second lien mortgages which exceeded the  
19 statutory limits, processing fees, and a document preparation fee.

20 **2.3 Requirement to Provide Timely and Accurate Disclosures.** Based on the Factual  
21 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 31.04.027(2),  
22 (6), (7), and (10), RCW 31.04.102(2) and (3), WAC 208-620-505, WAC 208-620-510, 24 C.F.R.  
23 Section 3500.21(b)(1) [Regulation X], and 12 C.F.R. Section 226.5b [Regulation Z] for failing to



1 provide timely and accurate Good Faith Estimate Disclosures, Truth in Lending Disclosures, Loan  
2 Servicing Disclosures, Variable Rate Disclosures, Home Equity Plan Disclosures, and HUD-1  
3 Settlement Statements.

4 **2.4 Imposing Unlawful Prepayment Penalties.** Based on the Factual Allegations set forth in  
5 Section I above, Respondents are in apparent violation of RCW 31.04.027 (2) and WAC 208-620-  
6 130(7) for making a junior lien loan to a borrower which contained a prepayment penalty provision in  
7 the note.

8 **2.5 Requirement to Maintain Adequate Records.** Based on the Factual Allegations set forth in  
9 Section I above, Respondents are in apparent violation of RCW 31.04.155 for failing to maintain  
10 sufficient records to enable the Director to determine whether the licensee is complying with the Act.

11 **2.6 Requirement to Accurately Disclose Finance Charges.** Based on the Factual Allegations set  
12 forth in Section I above, Respondents are in apparent violation of RCW 31.04.027(2), (6), (7), and  
13 (10), RCW 31.04.102(2), WAC 208-620-505, WAC 208-620-510, and 12 C.F.R. Section 226.5b  
14 [Regulation Z] for disclosing a finance charge that was understated by more than \$100.

### 15 **III. AUTHORITY TO IMPOSE SANCTIONS**

16 **3.1 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6)(e), the Director  
17 may issue an order prohibiting from participation in the affairs of any licensee, any officer, principal,  
18 employee, or any other person subject to the Act for any violation of RCW 31.04.027.

19 **3.2 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of  
20 up to one hundred dollars per day upon the licensee, its employee, or any other person subject to the  
21 Act for any violation of the Act.

1 **3.3 Authority to Order Restitution.** Pursuant to RCW 31.04.093(5), the Director may issue an  
2 order directing a licensee, its employee, or any other person subject to the Act to make restitution to a  
3 borrower or other person who is damaged as a result of a violation of the Act.

4 **3.4 Authority to Charge Examination Fee and Investigation Fee.** Pursuant to RCW  
5 31.04.145(3) and WAC 208-620-590, every licensee examined or investigated by the Director or the  
6 Director's designee shall pay for the cost of the examination or investigation, calculated at the rate of  
7 sixty-nine dollars and one cent (\$69.01) per staff hour devoted to the examination or investigation, and  
8 shall pay travel costs if the licensee maintains its records outside the state.

#### 9 **IV. NOTICE OF INTENTION TO ENTER ORDER**

10 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as  
11 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose  
12 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW  
13 31.04.205. Therefore, it is the Director's intention to ORDER that:

14 **4.1** Respondent American Home Equity Corporation be prohibited from participation in the  
15 conduct of the affairs of any consumer loan company subject to licensing by the Director, in  
any manner, for a period of five years; and

16 **4.2** Respondent Alan M. Pott be prohibited from participation in the conduct of the affairs of any  
17 consumer loan company subject to licensing by the Director, in any manner, for a period of  
five years; and

18 **4.3** Respondents American Home Equity Corporation and Alan M. Pott jointly and severally pay  
19 a fine which as of the date of these charges totals \$75,000 for the violations set forth above;  
and

20 **4.4** Respondents American Home Equity Corporation and Alan M. Pott pay restitution in the  
21 aggregate amount of \$10,935.33 as set forth in Appendix A; and

22 **4.5** Respondents American Home Equity Corporation and Alan M. Pott jointly and severally pay  
23 the costs of the 2007 examination in the amount of \$7,015.43, consisting of an examination  
fee of \$4,830.00, calculated at \$69.00 per hour for seventy staff hours devoted to the  
24 examination, and \$2,185.43 for travel expenses, and interest which continues to accrue at the  
rate of 1% per month; and



## RESTITUTION SCHEDULE

Borrower	Loan Number	Amount Due
T.P.		\$2,415.00
A.A.		\$2,256.00
M.M.-T.		\$ 395.00
J.M.		\$1,425.00
C.K.		\$1,950.00
T.S.		\$1,873.00
E.H.		\$ 276.23
E.G.		\$ 345.10
TOTAL		\$10,935.33