

## FINAL ORDER SUMMARY – Case Number: C-12-0943

**Names** Nest Financial LLC  
Brian Heberling

**Order Number** C-12-0943-12-FO01

**Effective Date** December 10, 2012

**License Number** 51384  
(Revoked, suspended, stayed, application denied or withdrawn)  
 If applicable, you must specifically note the ending dates of terms.

**License Effect**  
 \_\_\_\_\_  
 \_\_\_\_\_

**Not Apply until**  
 \_\_\_\_\_

**Prohibition/Ban until** Permanent Cease and Desist

Investigation Costs	\$	Due	Paid		Date
			Y	N	

Assessment(s)	\$	Due	Paid		Date
			Y	N	

Monetary Penalty	\$	Due	Paid		Date
			Y	N	

**Other**  
 \_\_\_\_\_  
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**Special Instructions**  
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Distribution: Original to Enforcement File  
 Copy to Licensing Supervisor with Licensing File and copy of Final/Consent Order  
 Information to Database(s) – Branch, Individual, Contact Person



STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Mortgage Broker Practices Act of Washington by:

NEST FINANCIAL, LLC, and  
BRIAN HEBERLING, Owner,

Respondents.

NO. C-12-0943-12-FO01

FINAL ORDER TO CEASE AND DESIST

I. DIRECTOR'S CONSIDERATION

A. Procedural History. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director), through his designee, Consumer Services Division Director Deborah Bortner, pursuant to RCW 34.05.440(1). On October 5, 2012, the Director, through Consumer Services Division Director Deborah Bortner, entered a Temporary Order to Cease and Desist. A copy of the Temporary Order to Cease and Desist is attached and incorporated into this order by this reference. The Temporary Order to Cease and Desist was accompanied by a cover letter dated October 8, 2012, a Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for Respondents Nest Financial, LLC, and Brian Heberling. The Department served the Temporary Order to Cease and Desist, cover letter dated October 8, 2012, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for Respondents Nest Financial, LLC, and Brian Heberling on Respondents Nest Financial, LLC, and Brian Heberling on October 8, 2012, by First-Class mail and Federal Express overnight delivery. The documents sent via First-Class mail were not returned to the Department by the United States Post Office. The documents sent via Federal Express were not delivered to

1 Respondents. The Department resent the documents to Respondents via Federal Express to a different  
2 address. These documents were delivered by Federal Express on October 11, 2012, and signed for by  
3 B. Heberling.

4 Respondents Nest Financial, LLC, and Brian Heberling did not request an adjudicative hearing  
5 within twenty calendar days after the Department served them with the Notice of Opportunity to  
6 Defend and Opportunity for Hearing, as provided for in WAC 208-08-050(2).

7 B. Record Presented. The record presented to the Director's designee for her review and  
8 for entry of a final decision included the following:

- 9 1. Temporary Order to Cease and Desist;
- 10 2. Cover letter dated October 8, 2012;
- 11 3. Notice of Opportunity to Defend and Opportunity for Hearing; and
- 12 4. Blank Applications for Adjudicative Hearing for Respondents Nest Financial, LLC,  
13 and Brian Heberling, with documentation of service.

14 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(1), the  
15 Director's designee hereby adopts the Temporary Order to Cease and Desist, which is attached hereto.

## 16 II. FINAL ORDER

17 Based upon the foregoing, and the Director's designee having considered the record and  
18 being otherwise fully advised, NOW, THEREFORE:

19 A. IT IS HEREBY ORDERED, That:

20 Respondents Nest Financial, LLC, and Brian Heberling permanently cease and desist  
21 from participating in the conduct of the affairs of any mortgage broker or loan originator  
22 subject to licensure by the Director, in any manner, specifically including, but not limited  
23 to negotiating any terms of a residential mortgage loan, performing any loan  
24 modification services, performing short sale negotiations, or holding out as able to assist  
25 or perform any of the above listed services.

1           B.     Reconsideration.     Pursuant to RCW 34.05.470, Respondents have the right to file a  
2 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition  
3 must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150  
4 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,  
5 Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondents. The  
6 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for  
7 Reconsideration a prerequisite for seeking judicial review in this matter.  
8

9           A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date  
10 the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written  
11 notice specifying the date by which it will act on a petition.

12           C.     Stay of Order.     The Director's designee has determined not to consider a Petition  
13 to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition  
14 for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

15           D.     Judicial Review.     Respondents have the right to petition the superior court for  
16 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements  
17 for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

18           F.     Service.     For purposes of filing a Petition for Reconsideration or a Petition for  
19 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service  
20 attached hereto.  
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DATED this 10<sup>th</sup> day of December, 2012.



STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS



DEBORAH BORTNER  
DIRECTOR  
DIVISION OF CONSUMER SERVICES

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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  
Mortgage Broker Practices Act of Washington by:

C-12-0943-12-TD01

NEST FINANCIAL, LLC, and  
BRIAN HEBERLING, Owner,

TEMPORARY ORDER TO  
CEASE AND DESIST

Respondents.

THE STATE OF WASHINGTON TO: Nest Financial, LLC  
Brian Heberling

COMES NOW the Director of the Washington State Department of Financial Institutions (Director),  
by and through his designee Deborah Bortner, Division Director, Division of Consumer Services, and  
finding that the public is likely to be substantially injured by delay in issuing a cease and desist order,  
enters this Temporary Order to Cease and Desist pursuant to chapter 19.146 RCW, the Mortgage Broker  
Practices Act (Act), based on the following:

**I. FACTUAL FINDINGS**

**1.1 Respondents.**

**A.** Respondent Nest Financial, LLC, (Respondent Nest Financial) is located at 2018 156th  
Avenue NE, Suite 100, Bldg F, Bellevue, Washington, 98007. On or about March 13, 2009,  
Respondent Nest Financial obtained a mortgage broker license with the Washington State Department  
of Financial Institutions (Department).

**B.** Respondent Brian Heberling (Respondent Heberling) is the President and Owner of  
Respondent Nest Financial. Respondent Heberling has never been licensed by the Department to  
conduct business as a loan originator in Washington.

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1 **1.2 Unlicensed Conduct.**

2 A. On or about December 22, 2011, Respondent submitted via the Nationwide Mortgage  
3 Licensing System (NMLS) a sponsorship removal for its designated broker and sole loan originator.  
4 The Department provided Respondent until February 1, 2012, to obtain a designated broker. On or  
5 about January 23, 2012, the Department sent a reminder email to Respondent Heberling stating “you  
6 only have until February 1<sup>st</sup> to obtain a designated broker.” The email further stated that if  
7 Respondents did not obtain a designated broker by February 1, 2012, that the license would be  
8 suspended. On February 2, 2012, the Department issued a Resolution and Request for Action stating  
9 that Respondents were required to obtain a loan originator and designated broker not later than  
10 February 17, 2012. Respondents did not obtain a loan originator or designated broker by February 17,  
11 2012. In a Declaration and Voluntary Agreement to Cease and Desist signed by Respondent  
12 Heberling dated February 23, 2012, Respondent Heberling agreed to accept no new clients and  
13 acknowledged that he understood that Nest Financial must have a designated broker and licensed,  
14 sponsored loan originator to engage in short sale negotiations. As of the date of this Order,  
15 Respondents have not obtained a designated broker and loan originator.

16 B. Respondents accepted at least ten new short sale clients after February 23, 2012.

17 C. Respondents have continued to maintain an active website advertising as able to assist  
18 homeowners by offering short sale negotiations.

19 **II. GROUNDS FOR ENTRY OF ORDER**

20 **2.1 Failure to Obtain and Maintain a Loan Originator.** Based on the Factual Allegations set  
21 forth in Section I above, Respondents are in apparent violation of RCW 19.146.200(1) for engaging in  
22 the business of a loan originator without first obtaining a license under the Act.

23 **2.2 Failure to Obtain and Maintain a Designated Broker.** Based on the Factual Allegations set  
24 forth in Section I above, Respondents are in apparent violation of RCW 19.146.200(4), for failing to

1 have at all times a designated broker responsible for all activities of the mortgage broker in conducting  
2 the business of a mortgage broker.

3 **III. AUTHORITY TO ISSUE TEMPORARY ORDER TO CEASE AND DESIST**

4 **3.1 Authority to Issue Temporary Order to Cease and Desist.** Pursuant to RCW 19.146.227, the  
5 Director is authorized to issue a temporary order to cease and desist whenever the Director determines  
6 that the public is likely to be substantially injured by delay in issuing a cease and desist order. Based  
7 on the Factual Findings and Grounds for Entry of Order set forth above, Respondents engaged in the  
8 business of a Mortgage Broker or Loan Originator without proper licensure and failed to comply with  
9 its agreement to the Department to cease accepting new clients and the public is likely to be  
10 substantially injured due to Respondents' disregard for the applicable laws.

11 **IV. ORDER**

12 Based on the above Factual Findings, Grounds for Entry of Order, and Authority to Issue  
13 Temporary Order to Cease and Desist, and pursuant to RCW 19.146.227, the Director determines that  
14 the public is likely to be substantially harmed by a delay in entering a cease and desist order.

15 Therefore, the Director ORDERS that:

16 **4.1** Respondents shall immediately cease and desist from participating in the conduct of the affairs of  
17 any mortgage broker or loan originator subject to licensure by the Director, in any manner, specifically  
18 including but not limited to negotiating any terms of a residential mortgage loan, performing any loan  
19 modification services, performing short sale negotiations, or holding out as able to assist or perform  
20 any of the above listed services.

21 **4.2** This order shall take effect immediately and shall remain in effect unless set aside, limited, or  
22 suspended in writing by an authorized court.

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1 **NOTICE**

2 PURSUANT TO CHAPTER 19.146 RCW, YOU ARE ENTITLED TO A HEARING TO  
3 DETERMINE WHETHER THIS ORDER SHALL BECOME PERMANENT. IF YOU DESIRE A  
4 HEARING, YOU MUST COMPLETE AND RETURN THE ATTACHED APPLICATION FOR  
5 ADJUDICATIVE HEARING.

6 **FAILURE TO COMPLETE AND RETURN THE APPLICATION FOR ADJUDICATIVE**  
7 **HEARING SO THAT IT IS RECEIVED BY THE DEPARTMENT WITHIN 20 DAYS OF**  
8 **THE DATE THAT THIS ORDER WAS SERVED ON YOU WILL CONSTITUTE A**  
9 **DEFAULT, AND WILL RESULT IN THE LOSS OF YOUR RIGHT TO A HEARING.**

10 SERVICE ON YOU IS DEFINED AS POSTING IN THE U.S. MAIL, POSTAGE PREPAID,  
11 TO YOUR LAST KNOWN ADDRESS, A COPY OF THIS TEMPORARY CEASE AND DESIST  
12 ORDER, NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING,  
13 AND APPLICATION FOR ADJUDICATIVE HEARING. BE ADVISED THAT DEFAULT WILL  
14 RESULT IN THIS TEMPORARY ORDER TO CEASE AND DESIST BECOMING PERMANENT  
15 ON THE 21<sup>ST</sup> DAY FOLLOWING SERVICE OF THIS ORDER UPON YOU.

16 WITHIN TEN DAYS AFTER YOU HAVE BEEN SERVED WITH THIS TEMPORARY  
17 ORDER TO CEASE AND DESIST, YOU MAY APPLY TO THE SUPERIOR COURT IN THE  
18 COUNTY OF YOUR PRINCIPAL PLACE OF BUSINESS FOR AN INJUNCTION SETTING  
19 ASIDE, LIMITING, OR SUSPENDING THIS ORDER PENDING THE COMPLETION OF THE  
20 ADMINISTRATIVE PROCEEDINGS PURSUANT TO THIS NOTICE.

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DATED this 5<sup>th</sup> day of October, 2012.

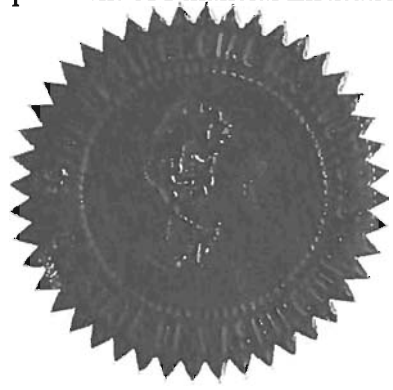


DEBORAH BORTNER  
Director, Division of Consumer Services  
Department of Financial Institutions

Presented by:



DEBORAH TALLIOUS  
Financial Legal Examiner



Approved by:



CHARLES E. CLARK  
Enforcement Chief