

**STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS**

IN THE MATTER OF:)
) **TDFI No. 10-53-C**
BKLA, LLC dba)
WESTMORELAND PAWN & GUN)

EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Tennessee Department of Financial Institutions (“Commissioner”), having determined that he has reason to believe that BKLA, LLC dba Westmoreland Pawn & Gun (“Respondent”) violated and is violating the Tennessee Deferred Presentment Services Act, TENN. CODE ANN. §§ 45-17-101, *et seq.* (“DP Act”) and the Tennessee Title Pledge Act, TENN. CODE ANN. §§ 45-15-101, *et seq.* (“TP Act”), and that circumstances warrant immediate action, hereby issues the following **EMERGENCY CEASE AND DESIST ORDER** (“Order”) pursuant to TENN. CODE ANN. §§ 45-1-107(a)(4), 107(c), TENN. CODE ANN. §§ 45-17-103, 115(1), 116(c), and TENN. CODE ANN. §§ 45-15-105(a), 118(a)(1), 118(b)(3).

JURISDICTION AND IDENTIFICATION OF THE PARTIES

1. Pursuant to TENN. CODE ANN. § 45-1-104, the Tennessee Department of Financial Institutions (“Department”) is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions) of the Tennessee Code.

2. TENN. CODE ANN. § 45-1-107(a)(4) provides that, in addition to other powers conferred by Title 45 of the Tennessee Code, the Commissioner has the power to order any person to cease violating a provision of Title 45 of the Tennessee Code or lawful regulation issued thereunder, and TENN. CODE ANN. § 45-17-115 provides that if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the DP Act or any administrative regulation issued pursuant to the DP Act, the Commissioner may take any or all of certain actions, one of which is to order the person to cease and desist violating the DP Act or any administrative rule issued pursuant to the DP Act. TENN. CODE ANN. § 45-15-118(a) provides that if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the TP Act or any administrative regulation issued pursuant to the TP Act, the Commissioner may take any or all of certain actions, one of which is to order the person to cease and desist violating the TP Act or any administrative rule issued pursuant to the TP Act.

3. Pursuant to TENN. CODE ANN. § 45-1-107(c), notice and opportunity for a hearing shall be provided in advance of the Commissioner issuing such an order, except that in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

4. Pursuant to TENN. CODE ANN. §§ 45-17-101, *et seq.*, the Commissioner is responsible for the administration, enforcement and interpretation of the DP Act, and any regulations promulgated pursuant to the DP Act.

5. TENN. CODE ANN. § 45-17-103 states “[n]o person shall engage in the business of deferred presentment services without having first obtained a license. A

separate license shall be required for each location from which the business is conducted.”

6. Pursuant to TENN. CODE ANN. § 45-17-115(1), if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the DP Act or any administrative regulation issued pursuant to the DP Act, the Commissioner has the authority to order the person to cease and desist violating the DP Act and/or any administrative rules issued pursuant to the DP Act. However, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action without providing the opportunity for a prior hearing pursuant to TENN. CODE ANN. § 45-17-116(c). In such circumstances, the Commissioner shall promptly afford a subsequent hearing upon an application to rescind the action that is filed with the Commissioner within twenty (20) days after receipt of the notice of the Commissioner’s emergency action. TENN. CODE ANN. § 45-17-116(c).

7. TENN. CODE ANN. § 45-15-105 states “[n]o person shall engage in the business of title pledge lending without having first obtained a license. A separate license shall be required for each location from which the business is conducted.”

8. Pursuant to TENN. CODE ANN. § 45-15-118(a)(1), if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the TP Act or any administrative regulation issued pursuant to the TP Act, the Commissioner has the authority to order the person to cease and desist violating the TP Act and/or any administrative rules issued pursuant to the TP Act. However, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action without providing the opportunity for a prior hearing pursuant to TENN. CODE

ANN. § 45-15-118(b)(3). In such circumstances, the Commissioner shall promptly afford a subsequent hearing upon an application to rescind the action that is filed with the Commissioner within twenty (20) days after receipt of the notice of the Commissioner's emergency action. *Id.*

9. Respondent is a for-profit limited liability company organized under the laws of the state of Tennessee on October 13, 2009 (10/13/09). Respondent's principal place of business is located at 5426 New Highway 31 East, Westmoreland, Tennessee 37186. Respondent's registered agent is National Registered Agents, Inc., 2300 Hillsboro Road, Suite 305, Nashville, Tennessee 37212. Respondent's identification number with the Tennessee Department of State is 000615285.

10. The Commissioner has never issued Respondent a license to lawfully engage in the business of deferred presentment services in the state of Tennessee.

11. The Commissioner has never issued Respondent a license to lawfully engage in the business of title pledge lending in the state of Tennessee.

FACTUAL ALLEGATIONS

12. At all times relevant hereto, the Respondent did not possess a license from the Commissioner to lawfully engage in the business of deferred presentment services in the state of Tennessee.

13. The Department received an anonymous tip that the Respondent was engaging in deferred presentment services in the state of Tennessee without a license from the Commissioner.

14. On April 6, 2010 (04/06/10), the Department conducted an onsite examination of Respondent at Respondent's principal place of business pursuant to the DP Act.

15. During the course of the onsite examination referenced in paragraph fourteen (14), the Department uncovered evidence that the Respondent had engaged in the business of deferred presentment services in the state of Tennessee without first obtaining a license from the Commissioner.

16. Specifically, pursuant to the onsite examination referenced in paragraph fourteen (14), the Department documented at least twenty-three (23) deferred presentment transactions conducted while Respondent was unlicensed from January 6, 2010 (01/06/10) to April 6, 2010 (04/06/10). Additionally, the evidence gathered indicated that the Respondent had contracted for at least six hundred eighty two dollars and six cents (\$682.06) in fees during said time period. *See* Exhibit 1.

17. Pursuant to the onsite examination referenced in paragraph fourteen (14), the Department provided Respondent with an examination report dated April 6, 2010 (04/06/10) that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, the Department specifically noted "[e]ntity is not currently licensed to engage in the Deferred Presentment Services Business. . . . TCA 45-17-103 provides that no person shall engage in the business of deferred presentment services without having first obtained a license. A separate license is required for each location from which the business is conducted. TCA 45-17-115 provides that the Commissioner may take an administrative action against any person found to be in violation of the Deferred Presentment Services Act."

18. The aforementioned pattern of engaging in the business of deferred presentment services without having first obtained a license from the Commissioner is an indicator that Respondent will continue to engage in the business of deferred presentment services in the state of Tennessee in the future.

19. At all times relevant hereto, the Respondent did not possess a license from the Commissioner to lawfully engage in the business of title pledge lending in the state of Tennessee.

20. The Department received an anonymous tip that that the Respondent was engaging in the business of title pledge lending in the state of Tennessee without a license from the Commissioner.

21. On April 6, 2010 (04/06/10), the Department conducted an onsite examination of Respondent at Respondent's principal place of business pursuant to the TP Act.

22. During the course of the onsite examination referenced in paragraph twenty-one (21), the Department uncovered evidence that the Respondent had engaged in the business of title pledge lending in the state of Tennessee without first obtaining a license from the Commissioner.

23. Specifically, pursuant to the onsite examination referenced in paragraph twenty-one (21), the Department documented at least nineteen (19) title pledge transactions conducted while Respondent was unlicensed from January 6, 2010 (01/06/10) to April 6, 2010 (04/06/10). Additionally, the evidence gathered indicated that the Respondent had contracted for at least one thousand four hundred twenty dollars (\$1,420.00) in fees during said time period. *See Exhibit 2.*

24. Pursuant to the onsite examination referenced in paragraph twenty-one (21), the Department provided Respondent with an examination report dated April 6, 2009 (04/06/09) that included a “Violations from Examination” section. According to said examination report, under the “Violations from Examination” section, the Department specifically noted “[e]ntity is not currently licensed as a title pledge lender. TCA 45-15-105(a) provides that no person shall engage in the business of title pledge lending services without having first obtained a license. . . . TCA 45-15-118 provides that the Commissioner may take an administrative action against any person found to be in violation of the Title Pledge Act.”

25. The aforementioned pattern of engaging in the business of title pledge lending without having first obtained a license from the Commissioner is an indicator that Respondent will continue to engage in the business of title pledge lending in the state of Tennessee in the future.

CAUSES OF ACTION

26. The factual allegations as stated in paragraphs twelve (12) through eighteen (18) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that Respondent has violated TENN. CODE ANN. § 45-17-103 in that Respondent has engaged in the business of deferred presentment services in the state of Tennessee without having first obtained a deferred presentment services license from the Commissioner.

27. The factual allegations as stated in paragraphs nineteen (19) through twenty-five (25) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by

reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that Respondent has violated TENN. CODE ANN. § 45-15-105(a) in that Respondent has engaged in the business of title pledge lending in the state of Tennessee without having first obtained a license from the Commissioner.

28. The factual allegations as stated in paragraphs twelve (12) through eighteen (18) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that extraordinary circumstances require immediate action pursuant to TENN. CODE ANN. § 45-1-107(c) and TENN. CODE ANN. § 45-17-116(c).

29. The factual allegations as stated in paragraphs nineteen (19) through twenty-five (25) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that extraordinary circumstances require immediate action pursuant to TENN. CODE ANN. § 45-1-107(c) and TENN. CODE ANN. § 45-15-118(b)(3).

POLICY STATEMENT

30. In order to qualify for a deferred presentment services license, TENN. CODE ANN. § 45-17-104(a)(2) requires an applicant, in addition to other requirements, to demonstrate the financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly.

31. Additionally, TENN. CODE ANN. § 45-17-104(a)(1) requires an applicant seeking a deferred presentment services license to demonstrate a minimum net worth,

determined in accordance with generally accepted accounting principles, of at least twenty-five thousand dollars (\$25,000.00) available for the operation of each location.

32. The factual allegations as stated in paragraphs twelve (12) through eighteen (18) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that Respondent has violated TENN. CODE ANN. § 45-17-103 by engaging in the business of deferred presentment services in the state of Tennessee without having first obtained a deferred presentment services license from the Commissioner. Said violation has deprived the Commissioner of the opportunity to determine whether the Respondent has the requisite financial responsibility, financial condition, business experience, character and general fitness sufficient enough to reasonably warrant the belief that its business will be conducted lawfully and fairly, as well as the opportunity to determine whether the Respondent has satisfied the statutorily mandated minimum net worth requirement. Consequently, the Commissioner has been deprived of the opportunity to make an informed determination of whether to grant Respondent a license under the DP Act prior to Respondent entering into deferred presentment service agreements with Tennessee consumers.

33. In order to qualify for a title pledge license, TENN. CODE ANN. § 45-15-106(2) requires an applicant, in addition to other requirements, to demonstrate the financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly.

34. Additionally, TENN. CODE ANN. § 45-15-106(1) requires an applicant seeking a title pledge license to demonstrate a minimum net worth, determined in accordance with generally accepted accounting principles, of at least seventy-five thousand dollars (\$75,000.00) available for the operation of each location.

35. The factual allegations as stated in paragraphs nineteen (19) through twenty-five (25) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that Respondent has violated TENN. CODE ANN. § 45-15-105(a) by engaging in the business of title pledge lending in the state of Tennessee without having first obtained a title pledge lending license from the Commissioner. Said violation has deprived the Commissioner of the opportunity to determine whether the Respondent has the requisite financial responsibility, financial condition, business experience, character and general fitness sufficient enough to reasonably warrant the belief that its business will be conducted lawfully and fairly, as well as the opportunity to determine whether the Respondent has satisfied the statutorily mandated minimum net worth requirement. Consequently, the Commissioner has been deprived of the opportunity to make an informed determination of whether to grant Respondent a license under the TP Act prior to Respondent entering into title pledge lending agreements with Tennessee consumers.

EMERGENCY RELIEF

Having considered the factual allegations and the causes of action, the Commissioner has determined that the Respondent has violated and is violating the DP

Act, that the Respondent has violated and is violating the TP Act, and that circumstances warrant immediate action.

36. **IT IS THEREFORE ORDERED:**

- a) that Respondent shall cease and desist immediately from engaging in the business of deferred presentment services in the state of Tennessee without a deferred presentment services license pursuant to TENN. CODE ANN. §§ 45-1-107(a)(4), 107(c), TENN. CODE ANN. §§ 45-17-103, 110, 115(1), 116(c); and
- b) that Respondent shall cease and desist immediately from engaging in the business of title pledge lending in the state of Tennessee without a title pledge lending license pursuant to TENN. CODE ANN. §§ 45-1-107(a)(4), 107(c), TENN. CODE ANN. §§ 45-15-105(a), 118(a)(1), 118(b)(3).

36. The provisions of this EMERGENCY CEASE AND DESIST ORDER shall remain in full force and effect unless and until such time as any provision is modified, terminated, suspended or set aside by the Commissioner, an administrative judge, or any court having jurisdiction over the matters addressed herein.

RIGHTS OF THE RESPONDENT

37. The Respondent has the right to a hearing for the purpose of contesting and obtaining rescission of this EMERGENCY CEASE AND DESIST ORDER. If a separate hearing is timely requested by the Respondent, any such hearing shall be

conducted in accordance with the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*

38. The sole issue to be considered at the prompt hearing is whether extraordinary circumstances required immediate action in this matter. This EMERGENCY CEASE AND DESIST ORDER does not constitute a final adjudication upon the merits, but merely constitutes a temporary emergency order until such time that a contested case may be promptly instituted by the filing of a Notice of Charges and Opportunity for Hearing.

39. In order to request a hearing, the Respondent must file a written request within twenty (20) days from receipt of this ORDER. TENN. CODE ANN. § 45-17-116(c); TENN. CODE ANN. § 45-15-118(b)(3). If no such written request is timely filed, then this EMERGENCY CEASE AND DESIST ORDER will be deemed final for all purposes. Any written request for a hearing must be filed with the Commissioner, Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Nashville, Tennessee 37219. If no such written request is timely filed with the Commissioner, this EMERGENCY CEASE AND DESIST ORDER shall be deemed a Final Order without further legal process.

40. Respondent may submit to the Commissioner a petition for stay of effectiveness of this EMERGENCY CEASE AND DESIST ORDER or the Final Order within seven (7) days of entry pursuant to TENN. CODE ANN. § 4-5-316.

41. Respondent may file a Petition for Reconsideration with the Commissioner, stating the specific grounds upon which the relief is requested, within fifteen (15) days of

entry of this EMERGENCY CEASE AND DESIST ORDER or the Final Order pursuant to TENN. CODE ANN. § 4-5-317.

42. Respondent may seek judicial review of this Emergency Cease and Desist Order by filing a Petition for Judicial Review in the chancery court of Davidson County, Tennessee, within sixty (60) days of the date this Order becomes a Final Order. A Petition for Reconsideration does not act to extend the sixty (60) day period; however, if the Petition for Reconsideration is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the Petition for Reconsideration. TENN. CODE ANN. § 4-5-322.

ISSUED this 23rd day of April, 2010.



Greg Gonzalez, Commissioner
Tennessee Department of Financial Institutions

EXHIBIT 1

WESTMORELAND PAWN & GUN

Unlicensed DP Transactions

Exam Date: 4/6/10

ITEM	LOAN DATE	TRANS #	LOAN	FEE	TOTAL
1	12/04/09	01	\$ 175.00	\$ 30.00	\$ 205.00
2	12/09/09	04	\$ 175.00	\$ 30.00	\$ 205.00
3	12/31/09	06	\$ 175.00	\$ 30.00	\$ 205.00
4	01/02/10	07	\$ 175.00	\$ 30.00	\$ 205.00
5	01/11/10	08	\$ 175.00	\$ 30.00	\$ 205.00
6	01/29/10	10	\$ 175.00	\$ 30.00	\$ 205.00
7	02/08/10	14	\$ 175.00	\$ 30.00	\$ 205.00
8	02/08/10	15	\$ 175.00	\$ 30.00	\$ 205.00
9	02/12/10	16	\$ 175.00	\$ 30.00	\$ 205.00
10	02/24/10	17	\$ 175.00	\$ 30.00	\$ 205.00
11	02/27/10	18	\$ 125.00	\$ 22.06	\$ 147.06
12	03/01/10	21	\$ 175.00	\$ 30.00	\$ 205.00
13	03/03/10	22	\$ 175.00	\$ 30.00	\$ 205.00
14	03/05/10	23	\$ 175.00	\$ 30.00	\$ 205.00
15	03/08/10	24	\$ 175.00	\$ 30.00	\$ 205.00
16	03/18/10	25	\$ 175.00	\$ 30.00	\$ 205.00
17	03/19/10	26	\$ 175.00	\$ 30.00	\$ 205.00
18	03/23/10	27	\$ 175.00	\$ 30.00	\$ 205.00
19	04/02/10	28	\$ 175.00	\$ 30.00	\$ 205.00
20	04/02/10	29	\$ 175.00	\$ 30.00	\$ 205.00
21	04/02/10	30	\$ 175.00	\$ 30.00	\$ 205.00
22	04/05/10	31	\$ 175.00	\$ 30.00	\$ 205.00
23	04/06/10	32	\$ 175.00	\$ 30.00	\$ 205.00
TOTAL			\$ 3,975.00	\$ 682.06	\$ 4,657.06

EXHIBIT 2

WESTMORELAND PAWN & GUN**Unlicensed TP Transactions**

Exam Date: 04/06/10

Item	Type	Agreement #	Date	Loan	Total Fees
1	New Agreement	66	1/6/2010	\$100.00	\$22.00
2	New Agreement	42	12/23/2009	\$200.00	\$44.00
	Renewal	42	1/7/2010		\$44.00
	Renewal	42	1/7/2010		\$44.00
3	New Agreement	74	1/11/2010	\$200.00	\$44.00
4	New Agreement	85	1/15/2010	\$300.00	\$66.00
	Renewal	85	3/4/2010		\$66.00
5	New Agreement	100	1/20/2010	\$300.00	\$66.00
6	New Agreement	125	2/1/2010	\$50.00	\$11.00
7	New Agreement	129	2/4/2010	\$350.00	\$77.00
8	New Agreement	201	3/1/2010	\$350.00	\$77.00
9	New Agreement	132	2/5/2010	\$500.00	\$110.00
	Renewal	132	3/4/2010		\$110.00
10	New Agreement	141	2/8/2010	\$200.00	\$44.00
	Renewal	141	3/4/2010		\$44.00
11	New Agreement	156	2/13/2010	\$300.00	\$66.00
12	New Agreement	198	2/27/2010	\$300.00	\$66.00
13	New Agreement	207	3/4/2010	\$200.00	\$44.00
14	New Agreement	217	3/8/2010	\$200.00	\$44.00
15	New Agreement	237	3/15/2010	\$400.00	\$88.00
16	New Agreement	260	3/22/2010	\$200.00	\$44.00
17	New Agreement	265	3/23/2010	\$200.00	\$44.00
18	New Agreement	302	4/1/2010	\$350.00	\$77.00
19	New Agreement	312	4/6/2010	\$400.00	\$88.00
					\$1,430.00

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Emergency Cease and Desist Order" has been deposited with the United States Postal Service ("USPS") to be sent *via* USPS certified mail, return receipt requested, to the Respondent and the Respondent's registered agent as follows:

BKLA, LLC dba
Westmoreland Pawn & Gun
Attn.: Kelly McEvoy, Manager
5426 New Hwy. 31 East
Westmoreland, TN 37186

BKLA, LLC dba
Westmoreland Pawn & Gun
c/o National Registered Agents, Inc.
2300 Hillsboro Road, Suite 305
Nashville, TN 37212

On this, the 23rd day of April, 2010.



Jera L. Bradshaw, B.P.R # 028057
Attorney and Drafter of this Order
Tennessee Department of Financial Institutions
414 Union Street, Suite 1000
Nashville, Tennessee 37219
Telephone: (615) 532-1028
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