

**THE STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION
and
THE STATE OF TENNESSEE
SECURITIES DIVISION OF THE TENNESSEE DEPARTMENT OF COMMERCE
AND INSURANCE**

JOINT ADMINISTRATIVE CONSENT ORDER

In the matter of)	Alabama Securities Commission
)	
PROMINENCE HOMES, LLC,)	NO. CO-2019-0035
)	
Respondent.)	Tennessee Securities Division
)	
_____)	TSD No.: 21-038

WHEREAS, Prominence Homes, LLC, an Alabama limited liability company ("Prominence"), is an Alabama homebuilder with a principal place of business at 2084 Valleydale Road Birmingham, Alabama 35244; and

WHEREAS, the Securities Division of the Tennessee Department of Commerce and Insurance (the "Tennessee Division") was notified on or about August 29, 2018 that Prominence had engaged one or more third parties to assist it in offering for sale promissory notes issued by Prominence (the "Notes"), and the Tennessee Division commenced an investigation into the facts surrounding such engagement and Prominence's offer and sale of such Notes (the "Tennessee Investigation");

WHEREAS, the Alabama Securities Commission (the "Alabama Commission" and, together with the Tennessee Division, the "Commissions") was notified on or about October 5, 2018 that Prominence had engaged one or more third parties to assist it in offering for sale the Notes, and the Alabama Commission commenced an investigation into the facts surrounding such engagement and Prominence's offer and sale of such Notes (the "Alabama Investigation" and, together with the Tennessee Investigation, the "Investigations"); and

WHEREAS, Prominence and the Alabama Commission previously agreed to resolve the Alabama Investigation with respect to Prominence and Prominence's members and employees on the terms specified in Alabama Securities Commission Consent Order CO-2019-0035 dated as of October 18, 2019 (the "Former Consent Order"), and Prominence and the Alabama Commission desire to amend and restate, and replace in its entirety, the Former Consent Order with this Joint Administrative Consent Order to which the Tennessee Division now joins (the "Joint Order"); and

WHEREAS, Prominence now agrees to resolve both of the Investigations with respect to it and its members and employees on the terms specified herein, and Prominence agrees to comply in all material respects with the undertakings specified herein; and

- WHEREAS, Prominence elects to permanently waive all further procedural steps and all rights to seek judicial review of, or otherwise challenge the validity of this Joint Administrative Consent Order (the "Joint Order") under the Tennessee Securities Act of 1980 ("Tennessee Act"), as amended, Tennessee Code Annotated ("*Tenn. Code Ann.*") Sections 48-1-101 *et seq.*, including Prominence's waiver of the right to a hearing and appeal under the Tennessee Act and the Tennessee Uniform Administrative Procedures Act, *Tenn. Code Ann.* Sections 4-5-101 *et seq.*, the stipulations and imposition of discipline contained herein, or the consideration and entry and execution of this Joint Order by the Tennessee Division or the approval of the Commissioner of the Tennessee Division (the "Tennessee Commissioner"); and

WHEREAS, Prominence elects to permanently waive any right to a hearing and appeal under Title 8, Chapter 6, *Code of Alabama* (1975) (the "Alabama Act") with respect to this Joint Order;

NOW, THEREFORE, the Alabama Commission as administrator of the Alabama Act, the Tennessee Division, as the lawful agent through which the Tennessee Commissioner discharges the administration of the Tennessee Act pursuant to *Tenn. Code Ann.* Section 4-5-115, and the Tennessee Commissioner, as administrator of the Tennessee Act, hereby enters this Joint Order:

I. FINDINGS OF FACT

1. Prominence admits to the jurisdiction of the Alabama Commission and the Tennessee Division and admits to the Findings of Fact, Conclusions of Alabama Law, and Conclusion of Tennessee Law contained in this Joint Order, and consents to the entry of this Joint Order by the Alabama Commission and the Tennessee Division.
2. Commencing on or about October 16, 2017, Prominence entered into various oral and written agreements with unregistered agents for the offering and sale of the Notes by such unregistered agents in exchange for the payment of a commission by Prominence in connection therewith. On October 5, 2018, a review of the Alabama Commission's registration files disclosed no current filing for securities/exemption registration for Prominence in the state of Alabama. On or after October 16, 2018, a review of the Tennessee Division's registration files disclosed no current filing for securities/exemption registration for Prominence in the state of Tennessee.
3. Commencing as early as June 9, 2017, Prominence offered and sold Notes having an aggregate original principal amount of approximately \$18,122,599, and permitted the renewal of such Notes upon maturity, to a total of approximately 148 persons, some of whom were residents of the state of Alabama and some of whom were residents of the state of Tennessee.
4. The Notes typically provided for a nine-month term with the payment on a monthly basis of accrued interest thereon at a minimum interest rate of between 7.5% and 8% per annum. Based on information provided by Prominence, Prominence has kept current with all interest payments due under the Notes but has permitted holders of Notes to renew their Notes upon request for an additional term upon the expiration of their initial term.

5. Prominence has cooperated with the Investigation by the Commissions. Following discussions with the Alabama Commission, Prominence agreed on or about May 23, 2019, to a voluntary rescission offer for all then-outstanding Notes and to mandatorily redeem and repurchase all such then outstanding Notes on or before July 19, 2019.
6. Prominence redeemed and repaid Notes prior to the date of the Former Consent Order such that Prominence had remaining outstanding approximately \$8.4 million of original principal amount of Notes as of such date.
7. However, subsequent to the completion of such rescission offer, Prominence claimed to have suffered financial difficulties and was then currently unable to fully redeem and repurchase all remaining outstanding Notes.
8. Following discussions with the Alabama Commission, Prominence proposed a repayment plan for the redemption and repurchase of all remaining outstanding Notes and agreed to the Former Consent Order.

II. CONCLUSIONS OF ALABAMA LAW

1. The Alabama Commission has jurisdiction over this matter pursuant to Title 8, Chapter 6 Code of Alabama.
2. Pursuant to Section 8-6-2(10) *Code of Alabama* (1975), the definition of a security includes any “note”.
3. Pursuant to Section 8-6-2(5) *Code of Alabama* (1975), the definition of an “issuer” includes every person who proposed to issue, or has issued, any security. Prominence, by issuing securities, to wit: promissory notes issued by Prominence, is an “issuer” as defined under the Alabama Act.
4. Pursuant to Section 8-6-4 *Code of Alabama* (1975), it is unlawful for any person to offer or sell any security in this state unless said security: (1) is registered under the Alabama Act; (2) the security is exempt from registration under Section 8-6-10; or (3) the transaction is exempt under Section 8-6-11. Prominence offered and sold securities, to wit: promissory notes in Prominence, that were neither registered nor subject to a perfected exemption from registration, in violation of the Alabama Act.
5. Pursuant to Section 8-6-3(a), *Code of Alabama* (1975), it is unlawful for any person to employ an agent for the solicitation of a security unless such agent is registered with the Commission. Prominence employed various unregistered agents to solicit and sell securities of Prominence, in violation of the Alabama Act.

III. CONCLUSIONS OF TENNESSEE LAW

1. Pursuant to *Tenn. Code Ann.* Section 48-1-115(a), the responsibility for the administration of the Tennessee Act is vested in the Tennessee Commissioner. The Tennessee Division is the lawful agent through which the Tennessee Commissioner discharges this responsibility pursuant to *Tenn. Code Ann.* Section 48-1-115(b).
2. *Tenn. Code Ann.* Section 48-1-116 sets forth that the Tennessee Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of the Tennessee Act upon a finding that such order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Tennessee Act.
3. Pursuant to *Tenn. Code Ann.* Section 48-1-102(20)(A), the definition of a security includes any “note”.
4. *Tenn. Code Ann.* Section 48-1-104 sets forth that it is unlawful to sell any security in the state of Tennessee unless it is registered or exempt from registration under *Tenn. Code Ann.* Section 48-1-103.
5. *Tenn. Code Ann.* Section 48-1-104(b) that “[t]he Commissioner may, after notice and an opportunity for a hearing . . . impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation[.]”
6. *Tenn. Code Ann.* Section 48-1-109(a) sets forth that “[i]t is unlawful for any person to transact business from, in, or into this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent . . .” and under subsection (e), “[t]he [C]ommissioner may, after notice and an opportunity for a hearing . . . impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation[.]”
7. The Findings of Fact show that Prominence failed to register the Notes as a security. This constitutes violations of *Tenn. Code Ann.* Section 48-1-104.
8. The Findings of Fact detailed above show that Prominence was not registered as a broker-dealer, investment adviser, agent, or investment adviser representative in the state of Tennessee. This constitutes violations of *Tenn. Code Ann.* Section 48-1-109.
9. The Commissioner finds the following relief appropriate, in the public interest, and necessary for the protection of investors.

IV. JOINT ORDER

On the basis of the Findings of Fact, Conclusions of Alabama Law, Conclusions of Tennessee Law, and Prominence's consent to the entry of this Joint Order,

IT IS HEREBY ORDERED:

A. CONCLUSION OF INVESTIGATIONS

1. This Joint Order concludes the Investigations and any other action that the Commissions could commence under applicable Alabama law or Tennessee law as it relates to the substance of the Findings of Fact, Conclusions of Alabama Law, or Conclusions of Tennessee Law herein, provided however, that excluded from and not covered by this paragraph 1 are any claims by either Commission arising from or relating to the undertakings contained herein or Prominence's failure to comply with the same or other matters not fully disclosed.
2. This Joint Order is entered into solely for the purpose of resolving the Investigations and replacing in its entirety the Former Consent Order and is not intended to be used for any other purpose. This Joint Order does not resolve or settle any violation or potential violation of Alabama law or Tennessee law that either Commission may bring against any person who has not been an equity owner or employee of Prominence, further which shall expressly include, without limitation, all of the third parties who were engaged by Prominence to assist it in the offer and sale of the Notes and who received commissions in connection therewith.
3. Prominence shall CEASE AND DESIST from violating the Sections 8-6-4 and 8-6-3(a), *Code of Alabama* (1975), and will comply with Section 8-6-4, *Code of Alabama* (1975), at all times in the future.
4. Prominence shall CEASE AND DESIST from violating *Tenn. Code Ann.* Sections 48-1-104 and 48-1-109, at all times in the future.

B. PROMISSORY NOTE INVESTOR REMEDIATION

1. No later than December 6, 2019, Prominence shall prepare and distribute to all then current holders of Notes (the "Holders") a summary of the proposal for the repayment of all outstanding Notes consistent with this Joint Order and seek to obtain the consent of such Holders to the amendment of their Notes consistent with the repayment plan outlined in this Joint Order.
2. No later than December 6, 2019, Prominence shall schedule at least two in-person meetings in the state of Alabama that is open to all Holders and two in-person meetings in the state of Tennessee that is open to all Holders, and shall notify such Holders in writing of such meeting and invite them to attend and to ask questions of representatives of Prominence regarding the business of Prominence and its owners, the plan for repayment of all outstanding Notes, and this Joint Order. Prominence shall also invite representatives of

the Commissions to attend such meeting either in person or via telephone as the Commissions may determine to answer any questions that may be posed by the Holders regarding this Joint Order.

3. From the date of the Former Consent Order until July 1, 2020, Prominence shall have continued to make payments of accrued interest on a monthly basis on each Note consistent with the terms of each such Note.
4. Commencing on July 1, 2020, Prominence shall have commenced to pay on a monthly basis principal and interest on each then outstanding Note on a pro rata basis with each such Note being deemed amortized over a 60-month period commencing on such date with a balloon payment on all such Notes being due and payable no later than July 1, 2022. In other words, all principal and accrued interest due on the Notes shall be paid in full on or before July 1, 2022.
5. During the above repayment period, Prominence shall be permitted to accrue and retain a working capital reserve of up to \$3,000,000. Prominence shall calculate its working capital as of the last day of each calendar quarter (the "Quarter End Date") and shall distribute any accumulated working capital in excess of \$3,000,000 on a pro rata basis as an additional reduction of outstanding principal under the Notes on or before the 45th day following the Quarter End Date (the "Applicable Date").
6. Until such time as all principal and accrued interest payments due under the Notes have been paid in full, Prominence shall provide a quarterly report to the Commissions and the Holders on or before the Applicable Date to keep the Commissions and the Holders informed of Prominence's efforts in implementing the above repayment plan.
7. No later than July 10, 2022, Prominence shall certify to the Commissions that all principal and accrued interest due on the Notes has been paid in full on or before July 1, 2022.
8. The Commissions shall each have the right to conduct on-site audits, inspections, or examinations of Prominence to ensure full compliance with the undertakings herein. The cost of any such audit, inspection, or examination shall be borne exclusively by Prominence.

C. PENALTY

1. Prominence shall pay as a joint civil penalty to the state of Alabama and the state of Tennessee following the conclusion of the redemption and repurchase of all outstanding promissory notes a reasonable amount to be agreed upon by the Commissions and Prominence as an administrative assessment and an additional amount as partial reimbursement for the Commissions' cost of investigating this matter, all such funds to be tendered in certified funds. Prominence shall pay as a joint civil penalty to the state of Alabama and the state of Tennessee within sixty (60) business days following the conclusion of the redemption and repurchase of all outstanding promissory notes as required by Section III.B. of this Joint Order, the sum of One Hundred Thousand Dollars (\$100,000), with such amount to be paid in the following manner:

- a. That in accordance with Section 8-6-19(j)(1), *Code of Alabama* (1975), Prominence shall pay the state of Alabama an administrative assessment in the total sum of Forty Thousand Dollars (\$40,000), said funds to be tendered in certified funds.
- b. That in accordance with Section 8-6-19(k)(1), *Code of Alabama* (1975), Prominence shall pay the Commission, as partial reimbursement for the Commission's cost of investigating this matter, in the total sum of Thirty Thousand Dollars (\$30,000), said funds to be tendered in certified funds.
- c. That in accordance with *Tenn. Code Ann.* Section 48-1-116, Prominence shall pay the state of Tennessee a civil penalty in the total sum of Thirty Thousand Dollars (\$30,000), said funds to be tendered in certified funds to the Tennessee Department of Commerce and Insurance.

D. CONSTRUCTION AND DEFAULT

1. This Joint Order is not intended to form the basis for any disqualification from registration as issuer under the laws, rules, and regulations of Alabama or Tennessee, and waives any disqualification from relying upon the securities registration exemptions or safe harbor provisions to which Prominence or any of its affiliates may be subject under the laws, rules, and regulations of Alabama or Tennessee.
2. This Joint Order is not intended to be a final order based upon violations of any Alabama or Tennessee statute, rule, or regulation that prohibits fraudulent, manipulative or deceptive conduct.
3. Except in an action by either Commission to enforce the obligations in this Joint Order, this Joint Order is not intended to be deemed or used, and cannot be used, as (a) an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; or (b) an admission of, or evidence of, any such alleged fault or omission of Prominence in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or other tribunal.
4. If payment is not made by Prominence or if Prominence defaults in any of its obligations set forth in this Joint Order, either Commission may institute an action to have this agreement declared null and void with respect to it. Upon issuance of an appropriate order, after a fair hearing, either Commission may reinstitute the action or investigation related to the substance of the Findings of Fact and applicable Conclusions of Law herein relevant to such Commission.
5. This Joint Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the State of Alabama, with respect to the Alabama Commission, and the laws of the State of Tennessee, with respect to the Tennessee Division, in either case, without regard to any choice of law principles.
6. This Joint Order is not intended to state or imply willful, reckless, or fraudulent conduct by Prominence, or its affiliates, directors, officers, employees, associated persons, or


agents.

7. Prominence, through its execution of this Joint Order, voluntarily waives (i) the right to a hearing on this matter and to judicial review of this Joint Order under Section 8-6-32, *Code of Alabama* (1975), and (ii) the right to further procedural steps and all rights to seek judicial review of, or otherwise challenge the validity of this Joint Order under the Tennessee Act and the right to a hearing and appeal under the Tennessee Act and the Tennessee Uniform Administrative Procedures Act, *Tenn. Code Ann.* Sections 4-5-101 *et seq.*
8. Prominence enters into this Joint Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of either Commission to induce Prominence to enter into this Joint Order.
9. This Joint Order shall be binding upon Prominence and its successors and assigns, as well as to successors and assigns of relevant affiliates, with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

Entered into and executed this February 25, 2022, to be effective as of February 25, 2022.




BY ORDER OF ALABAMA SECURITIES COMMISSION



Joseph P. Borg
Director
Alabama Securities Commission


Entered into and executed this ~~February~~ ^{March} 9, 2022, to be effective as of ~~February~~ ^{March} 9, 2022.

BY ORDER OF THE TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE


Carter Lawrence (Mar 9, 2022 10:53 CST)

Carter Lawrence
Commissioner
Tennessee Department of Commerce and Insurance

Approved for entry by:


Elizabeth Bowling (Mar 8, 2022 09:49 CST)

Elizabeth Bowling
Assistant Commissioner for Securities
Tennessee Department of Commerce and Insurance


Vishan J. Ramcharan (Mar 7, 2022 14:48 CST)

Vishan J. Ramcharan
Associate General Counsel
Tennessee Department of Commerce and Insurance

**CONSENT TO ENTRY OF JOINT ADMINISTRATIVE CONSENT ORDER BY
PROMINENCE**

Prominence Homes, LLC, hereby acknowledges that it has been served with a copy of this Joint Administrative Consent Order, has read the foregoing Joint Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

Prominence admits the jurisdiction of the Alabama Commission and the Tennessee Division, and admits the Findings of Fact, Conclusions of Alabama Law, and Conclusions of Tennessee Law contained in this Joint Order; and consents to entry of this Joint Order by the Alabama Commission and the Tennessee Division as settlement of the issues contained in this Joint Order with respect to Prominence and its members and employees.

Prominence agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any administrative monetary penalty that Prominence shall pay pursuant to this Joint Order. Prominence understands and acknowledges that these provisions are not intended to imply that the Alabama Commission or the Tennessee Division would agree that any other amounts Prominence shall pay pursuant to this Joint Order may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

Prominence states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Joint Order and that it has entered into this Joint Order voluntarily.

Michael McMullen represents that he is the Chief Executive Officer of Prominence and that, as such, has been authorized by Prominence to enter into this Joint Order on behalf of Prominence.

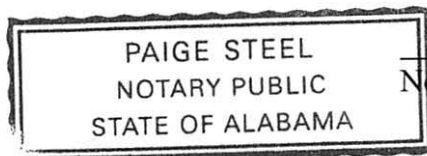
Dated this February 23, 2022.

PROMINENCE HOMES, LLC

By: 
Michael McMullen
Chief Executive Officer

SUBSCRIBED AND SWORN TO before me this February 23, 2022.

My commission expires: 06/05/24
SEAL




Notary