

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

IN THE MATTER OF DETERMINING) NO. 2001-126-C01
WHETHER THERE HAS BEEN A)
VIOLATION OF THE MORTGAGE) STATEMENT OF CHARGES AND NOTICE
BROKER PRACTICES ACT BY:) OF INTENTION TO ENTER AN ORDER
R & A ENTERPRISES INC.) REVOKING LICENSE, ASSESSING
D.B.A. TAYLOR MORTGAGE LOANS,) MONETARY FINES, AND PROHIBITING
ROGER TAYLOR, DESIGNATED BROKER) FROM PARTICIPATION IN THE
AND OWNER, AND JONI ELLER, LOAN) INDUSTRY
OFFICER)
RESPONDENTS)

I. STATEMENT OF CHARGES

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). After having conducted an investigation, and based upon the facts available as of October 23, 2001, the Director institutes this proceeding and finds as follows:

II. FACTUAL FINDINGS

A. R & A Enterprises Inc. d.b.a. Taylor Mortgage Loans (R & A) is known to conduct business as a mortgage broker at 580 7th Street NE, East Wenatchee, WA 98802.

B. R & A was issued a permanent license to conduct business by the Department of Financial Institutions (Department) on February 22, 1994.

C. On March 8, 2001, the Department began an investigation based on information provided to the Department by Cashmere Valley Bank, Cashmere WA (CVB). CVB provided the

1 Department with documentation of two instances in which R & A and Taylor had paid referral fees
2 to one of CVB's loan officers.

3 D. Following suspicions of referral fees paid in violation of Regulation X, 24 CFR, §
4 3500.14, of the Real Estate Settlement Procedures Act (RESPA), the Department conducted an
5 onsite investigation of the books, records and accounts of R & A on May 31, 2001. Department
6 examiners found written documentation of:

7 1. 17 instances where R & A paid fees to third party non-employees for the
8 referral of mortgage business. 11 of these fees were paid to either Joni Eller or her husband Cori
9 Eller.
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11 2. R & A accepting trust funds from borrowers without depositing those funds in
12 an authorized trust account.

13 E. On May 31, 2001, Roger Taylor, designated broker and president of R & A
14 Enterprises Inc. (Taylor), stated under oath to a Department examiner that:

15 1. R & A had paid fees to the individuals in the 17 instances identified by the
16 examiners for the referral of residential mortgage loans and that 11 of those payments were made
17 to Joni Eller, either directly or through her husband Cori Eller for the referral of residential
18 mortgage loans.

19 2. R & A and Taylor did not have a trust account and that all funds for the
20 payment of third party services are deposited into R & A's general business account.

21 F. On June 18, 2001, Taylor signed an affidavit affirming the facts in E. above.

22 G. Joni Eller is known to have been employed by CVB as a loan officer, however,
23 the loans she referred to Taylor for compensation were apparently done so without the
24

25 knowledge or consent of CVB. There is no evidence that CVB benefited from the referral of
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PO Box 41200/210 11th Ave. W
Olympia, WA 98504-1200
360-902-8795

1 these loans. Joni Eller is not now nor has she ever been licensed by the Department as a
2 mortgage broker, nor is she an employee or independent contractor of a licensed mortgage
3 broker.

4 H. Pursuant to Regulation X, 24 CFR, §3500.14(b) to RESPA, Prohibition Against
5 Kickbacks and Unearned Fees:

6 No person shall give and no person shall accept any fee, kickback or other thing of value
7 pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of
8 a settlement service involving a federally related mortgage loan shall be referred to any person.

9 Any referral of a settlement service is not a compensable service, except as set forth in
10 §3500.14(g)(1). A company may not pay any other company or the employees of any other
11 company for the referral of settlement service business.
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13 Pursuant to the real estate settlement procedures act, 12 USC, Section 2601,
14 Congressional Findings and Purpose, Congress found that reforms were needed to provide
15 greater information on the costs of the settlement process to protect from unnecessarily high
16 settlement charges caused by abusive practices that developed in certain areas of the country. It
17 is also the purpose of RESPA to result "in the elimination of kickbacks or referral fees that tend
18 to increase unnecessarily the costs of certain settlement services."
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20 I. Subsequent to the investigation of the books and records of R & A on May 31,
21 2001, the Department received loan files from R & A. The Department examiner's review of the
22 ten loan files revealed that R & A failed to provide all of the disclosures required by the Act.

23 J. The investigation into these matters began on March 8, 2001, and continues to
24 date.

1 specifying the fee or fees which inure to the benefit of the mortgage broker and other such
2 disclosures as may be required by rule. A good faith estimate of a fee or cost shall be provided if
3 the exact amount of the fee is not determinable. This subsection shall not be construed to require
4 disclosure of the distribution or breakdown of loan fees, discount, or points between the
5 mortgage broker and any lender or investor.

6 (2) The written disclosure shall contain the following information:

7 (c) If applicable, the cost, terms, duration, and conditions of a lock-in
8 agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement
9 is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered,
10 disclosure in a form acceptable to the director that the disclosed interest rate and terms are
11 subject to change;
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13 (d) A statement that if the borrower is unable to obtain a loan for any
14 reason, the mortgage broker must, within five days of a written request by the borrower, give
15 copies of any appraisal, title report, or credit report paid for by the borrower to the borrower, and
16 transmit the appraisal, title report, or credit report to any other mortgage broker or lender to
17 whom the borrower directs the documents to be sent;

18 (e) Whether and under what conditions any lock-in fees are refundable to
19 the borrower; and
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21 (f) A statement providing that moneys paid by the borrower to the
22 mortgage broker for third-party provider services are held in a trust account and any moneys
23 remaining after payment to third-party providers will be refunded.
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1 R & A and Taylor violated this section at least 8 times when it failed to provide
2 consumers with the disclosures required under subsections c-f above and 2 times when it failed
3 to provide the disclosures required under subsections c and f above.

4 C. Pursuant to RCW 19.146.050, all moneys received by a mortgage broker from a
5 borrower for payment of third-party services shall be deemed as held in trust immediately upon
6 receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third
7 business day following receipt of such trust funds, all such trust funds in a trust account of a
8 federally insured financial institution located in this state. All trust account funds collected
9 under this chapter must remain on deposit in a trust account in the state of Washington until
10 disbursement. The trust account shall be designated and maintained for the benefit of borrowers.
11 Moneys maintained in the trust account shall be exempt from execution, attachment, or
12 garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account
13 or commingle any other operating funds with trust account funds. Withdrawals from the trust
14 account shall be only for the payment of bona fide services rendered by a third-party provider or
15 for refunds to borrowers. The director shall make rules which: (1) Direct mortgage brokers how
16 to handle checks and other instruments that are received by the broker and that combine trust
17 funds with other funds; and (2) permit transfer of trust funds out of the trust account of payment
18 of other costs only when necessary and only with the prior express written permission of the
19 borrower. Any interest earned on the trust account shall be refunded or credited to the borrowers
20 at closing. Trust accounts that are operated in a manner consistent with this section and any rules
21 adopted by the director, are considered exempt from taxation under chapter 82.04 RCW.
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1 R & A and Taylor violated this section when they failed to deposit trust funds into a trust
2 account, instead depositing trust funds on at least 15 occasions into its general business accounts.

3 D. Pursuant to RCW 19.146.200(1), a person may not engage in the business of a
4 mortgage broker, except as an employee of a person licensed or exempt from licensing, without first
5 obtaining and maintaining a license under this chapter. However, a person who independently
6 contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker and
7 the independent contractor have on file with the director a binding written agreement under which
8 the licensed mortgage broker assumes responsibility for the independent contractor's violations of
9 any provision of this chapter or rules adopted under this chapter; and if the licensed mortgage
10 broker's bond or other security required under this chapter runs to the benefit of the state and any
11 person who suffers loss by reason of the independent contractor's violation of any provision of this
12 chapter or rules adopted under this chapter.

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14 Joni Eller violated this section when she accepted fees for mortgage broker services at least
15 11 times without obtaining a mortgage broker license, being otherwise exempt, being an employee
16 of a licensed mortgage broker, or independently contracting with a licensed mortgage broker.

17 E. Pursuant to RCW 19.146.220(1), the director shall enforce all laws and rules relating to
18 the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

19 (2) The director may impose the following sanctions:

20 (b)(iv) Suspend or revoke licenses for any violation of RCW
21 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265; or

22 (c)(i) Impose fines on the licensee, employee or loan originator of the
23 licensee, or other person subject to this chapter for: any violations of RCW 19.146.0201 (1) through
24 (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

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Olympia, WA 98504-1200
360-902-8795

1 (e)(i) Issue orders removing from office or prohibiting from participation in
2 the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or
3 loan originator of any licensed mortgage broker or any person subject to licensing under this chapter
4 for any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080,
5 19.146.200, 19.146.205(4), or 19.146.265

6 (3) Each day's continuance of a violation or failure to comply with any directive
7 or order of the director is a separate and distinct violation or failure.
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9 F. Pursuant to WAC 208-660-165, each mortgage broker and each of its principals,
10 designated brokers, officers, employees, independent contractors, and agents shall comply with the
11 applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable
12 provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the
13 director may, at the discretion of the director, subject the violator to a fine of up to one hundred
14 dollars for each offense. Each day's continuance of the violation is a separate and distinct offense.
15 In addition, the director in his or her discretion may by order assess other penalties for a violation of
16 the Mortgage Broker Practices Act.

17 G. Pursuant to WAC 208-660-160(1), the director may deny or condition approval of a
18 license application, or suspend or revoke a license if the applicant or licensee, or any principal or
19 designated broker of the applicant or licensee:
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21 (g) Has violated the provisions of the Mortgage Broker Practices Act, or the
22 Consumer Protection Act; or:

23 (j) Has aided or abetted an unlicensed person to practice in violation of the Mortgage
24 Broker Practices Act;

1 R & A and Taylor violated this section when they paid mortgage broker fees to Joni Eller an
2 unlicensed broker.

3 H. Pursuant to RCW 19.146.228(2), and WAC 208-660-060(2), upon completion of any
4 examination of the books and records of a licensee, the Department will furnish to the licensee a
5 billing to cover the cost of the examination. The examination charge will be calculated at the
6 rate of forty-five dollars per hour that each staff person devoted to the examination.

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8 **IV. NOTICE OF INTENTION TO ENTER AN ORDER**

9 Respondent's violation of the provisions of chapter 19.146 RCW and chapter 208-660
10 WAC, as set forth in the above Factual Findings and Grounds For Entry Of Order constitute a basis
11 for the entry of an Order under RCW 19.146.220, which authorizes the Director to enter an Order
12 against a person subject to the Act. Therefore, it is the Director's intention to ORDER:

13 A. That R & A Enterprises Inc. d.b.a. Taylor Mortgage's mortgage broker license is
14 revoked for a period of (5) five years.

15 B. That R & A Enterprises Inc. d.b.a. Taylor Mortgage and Roger Taylor are to pay a
16 fine of \$1,350.00 for 14 violations of trust account requirements, for 1 day of violation, calculated at
17 \$75.00 per day, and 1 violation of trust account requirements, for three days violation, at \$75.00 per
18 day.

19 C. That R & A Enterprises Inc. d.b.a. Taylor Mortgage and Roger Taylor are to pay a
20 fine of \$27,000.00 for 36 violations of disclosure requirements, for 30 days of violations, calculated
21 at \$25.00 per day.
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1 D. That R & A Enterprises Inc. d.b.a. Taylor Mortgage and Roger Taylor are to pay a
2 fine of \$1,275.00 for 17 violations of paying a referral fee, for one day of violation, calculated at
3 \$75.00 per day.

4 E. That Roger Taylor is prohibited from participating in the conduct of the affairs of a
5 licensed mortgage broker or person subject to the Act, in the capacity of an officer, principal,
6 employee, or loan originator for a period of (5) five years.

7 F. That R & A Enterprises Inc. d.b.a. Taylor Mortgage and/or Roger Taylor pay an
8 investigation fee of 2,160.00 to be calculated at \$45.00 per hour for each staff hour devoted to the
9 examination.

10 G. That R & A Enterprises Inc. d.b.a. Taylor Mortgage maintain all books and records
11 in compliance with RCW 19.146.060.

12 H. That Joni Eller pay a fine of \$825.00 for 11 violations of accepting a referral fee, for
13 one day of violation, calculated at \$75.00 per day.

14 I. That Joni Eller pay a fine of \$1,100.00 for 11 violations of unlicensed conduct of
15 business, for one day of violation, calculated at \$100.00 per day.

16 K. That Joni Eller is prohibited from participating in the conduct or the affairs of a
17 licensed mortgage broker or person subject to the Act, in the capacity of an officer, principal,
18 employee, or loan originator for a period of (5) five years.

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V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Assess Penalties and Suspend License is entered pursuant to the provisions of RCW 19.146.220 and RCW 19.146.230 and is subject to the provisions of chapter 34.05 RCW. Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intent to Enter an Order.


DATED this 23rd day of October, 2001.

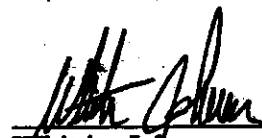



MARK THOMSON
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

Reviewed by:


John Samuelson
Financial Examiner
Investigation/Enforcement


Whittier Johnson
Program Manager
Consumer Services