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

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

LINDEN LOANS, LLC, doing business as
LINDEN HOME LOANS, and CHRISTOPHER
W. OPDYKE and MARK S. SULLIVAN, as sole
owners and members of Linden Loans, LLC,

Respondents.

NO. C-07-366-07-SC01

STATEMENT OF CHARGES and NOTICE OF
INTENT TO ENTER AN ORDER TO CEASE
AND DESIST, SUSPEND LICENSES, IMPOSE
FINES, AND COLLECT INVESTIGATION FEE

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INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act).¹ After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of the date this Statement of Charges is issued, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

A. Respondents

1.1 Linden Loans, LLC, doing business as Linden Home Loans (Respondent Linden) is an active Washington limited liability company organized in November 2005. Respondent Linden was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Mortgage Broker, #510-MB-29207, on January 3, 2006, and has been continuously licensed to date. Respondent Linden is only licensed at their office in Kirkland, Washington. Respondent Linden limits its services to providing first and second lien mortgage brokering.

¹ The Act, effective in 1994, was amended in 2006, with the changes effective January 1, 2007. Alleged violations referenced in this Statement of Charges that occurred in 2006 are cited as violating the 1994 Act; those that occurred in 2007 are cited as violating the 2007 Act.

1 **1.2 Christopher W. Opdyke (Respondent Opdyke)** is a 50% owner and member of Respondent Linden, and is
2 the Designated Broker, Compliance Officer, and Chief Executive Officer of the firm. Respondent Opdyke was
3 licensed by the Department as a Loan Originator, #29208, effective January 1, 2007.

4 **1.3 Mark S. Sullivan (Respondent Sullivan)** is the other 50% owner and member of Respondent Linden, and is
5 the President of the firm. Respondent Sullivan was licensed by the Department as a Loan Originator, #32914,
6 effective March 16, 2007. Respondents Opdyke and Sullivan are responsible for the day-to-day operations of
7 Respondent Linden.

8 **B. 2006 Radio Advertising**

9 **1.4 January – May 2006.** From January 19, 2006, through May 22, 2006, Respondents aired a 60-second radio
10 advertisement in Washington promoting their low rate, low cost residential mortgage loans. The advertisement
11 consisted of three parts: a “Legal read” disclosing the annual percentage rate (APR) and example loan amount; a
12 “Deadpan read” setting up the promotion; and a “Bright and Cheery read,” set to music, offering 1% mortgage rates
13 with no points and no fees.

14 **1.5** The Legal read portion of the advertisement, the first thing consumers hear, consists of an actor quickly
15 reading the following disclaimer:

16 *APR 6.634 based off \$200,000 loan amount.*

17 The Legal read was over in approximately four seconds, with no appreciable pauses between the words. No special
18 emphasis was placed on the APR, which was not adequately disclosed. The Legal read did not indicate that what
19 was to follow involved a residential mortgage loan promotion from Respondent Linden. The Deadpan read started
20 immediately after the Legal read.

21 **1.6** The Deadpan read portion of the advertisement consisted of an actor slowly reading the following question:

22 How would you like to consolidate all of your debt at 1% interest?

23 The Deadpan read was over in approximately six seconds, and was read with appropriate pauses between words in a
24 somber, conversational tone. The answer to the question posed followed immediately thereafter.

1 **1.7** The Bright and Cheery read was exactly that: in an upbeat, enthusiastic voice, with music starting up and
2 playing in the background, an actor read the following:

3 Well, you're in luck! Because for a limited time only, Linden Home Loans is helping people across
4 Washington "DO IN THEIR DEBT", at unheard of rates. We are actually offering first mortgage
5 rates at 1%, with NO POINTS AND NO FEES! That's right, first mortgages as low as 1% interest
6 with NO POINTS AND NO FEES. But you gotta call Linden Home Loans. With this limited time
offer you can borrow \$200,000 and pay only \$644 a month! Its no secret Mortgage Rates are going
up. You need to call us now! 425-576-LOAN. That's 425-576-LOAN. Again, 1st mortgage rates
at 1% with no points and no fees. Locally owned and operated, Linden Home Loans.

7 (Emphasis in original transcript provided by Respondent Linden.)

8 **1.8 Bait and Switch Advertising.** During the period this advertisement was airing, Respondents made first lien
9 residential mortgage loans to 91 Washington residents who applied for loans. Only 10 of the 91 borrowers received
10 the advertised 1% rate. Each of the 10 borrowers paid approximately \$10,000 in points and fees, and obtained loans
11 at an average APR of 7.89. None of the 91 borrowers received the low rate, low cost loan advertised.

12 **1.9 Conspicuous APR Disclosure.** Respondents' APR disclosure, coming at the beginning of the advertisement
13 in a quickly-read sentence with no appreciable pauses, does not conspicuously disclose the APR.

14 **1.10 False or Deceptive Statements or Representations of Loan Terms.** Respondents represent a consumer can
15 borrow \$200,000 and pay \$644 a month. This statement misrepresents the loan terms, as the \$644 payment only
16 applies to the first month(s) of the loan. For 25 of the 30 year term the loan payment is more than \$1,500 a month.

17 **1.11 Compliance with Federal Law.** Respondents disclose a monthly payment, a triggering term,² but do not
18 make the required disclosures, including the terms of repayment.³ Respondents further disclose a simple periodic
19 rate more conspicuously than the annual percentage rate.

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23 ² Triggering terms include the down payment (by percentage or amount), the amount of any monthly payment or finance charge, the number
24 of payments, or the period of repayment. Use of any of these terms triggers disclosure of the APR, the terms of repayment, and the amount or
percentage of any down payment. In this advertisement neither the downpayment nor the terms of repayment are disclosed.

25 ³ The terms of repayment for the payment option adjustable rate mortgage loan advertised here would include the number and timing of
payments, the potential largest and smallest payment, and the fact that other payments would vary between those amounts.

1 **1.12 May – July 2006.** From May 8, 2006, through July 26, 2006, Respondents aired a similar advertisement in
2 Washington. The only differences from the advertisement described above are underlined as follows:

3 7.01 APR, 30 year term based off \$200,000 loan amount up to 80% loan to value.

4 How would you like to consolidate all of your debt at 1% interest?

5 Well, you're in luck! Because for a limited time only, Linden Home Loans is helping people across
6 Washington "DO IN THEIR DEBT", at unheard of rates. They're actually offering first mortgage
7 rates at 1%, with NO POINTS AND NO FEES! That's right, first mortgages as low as 1% interest
8 with NO POINTS AND NO FEES. But you gotta call Linden Home Loans. With this limited time
offer you can borrow \$200,000 and pay only \$644 a month! Its no secret Mortgage Rates are going
up. You need to call 'em now! 425-576-LOAN. That's 425-576-L-O-A-N. Again, 1st mortgage
rates at 1% with no points and no fees. Locally owned and operated, Linden Home Loans.

9 (Emphasis in original transcript provided by Respondent Linden.)

10 **1.13 Bait and Switch Advertising.** During the period this advertisement was airing, Respondents made first lien
11 mortgage loans to 68 Washington residents who applied for loans. Only 12 of the 68 borrowers received the
12 advertised 1% rate. Each of the 12 borrowers paid approximately \$9,000 in points and fees, and obtained loans at
13 an average APR of 7.37. None of the 68 borrowers received the low rate, low cost loan advertised.

14 **1.14** This advertisement did not conspicuously disclose the APR; contained false or deceptive statements or
15 representations regarding the loan terms; and did not comply with federal law. See, paragraphs 1.9, 1.10, and 1.11.

16 **1.15 July – December 2006.** From July 26, 2006, through December 20, 2006, Respondents aired a similar
17 advertisement in Washington. The only differences from the advertisement described in paragraph 1.12 occurred in
18 the Legal read, underlined as follows:

19 7.88 APR 30 year term based on \$200,000 loan amount up to 80% loan to value.

20 **1.16 December 2006.** From December 19, 2006, through the end of 2006, Respondents aired a similar radio
21 advertisement in Washington. The only differences from the advertisement described in paragraph 1.15 occurred in
22 the Legal read, underlined as follows:

23 Payments and balances are subject to change 7.88 APR 30 year term based on \$200,000 loan
24 amount up to 80% loan to value

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1 **1.17 Bait and Switch Advertising.** From July 27, 2006 through December 28, 2006, Respondents made first lien
2 mortgage loans to 166 Washington residents who applied for loans. Only 22 of the 166 borrowers received the
3 advertised 1% rate. They each paid approximately \$9,000 in points and fees, and obtained loans at an average APR
4 of 8.45. None of the 166 borrowers received the advertised loan terms.

5 **1.18** These advertisements did not conspicuously disclose the APR; contained false or deceptive statements or
6 representations regarding the loan terms; and did not comply with federal law. *See*, paragraphs 1.9, 1.10, and 1.11.

7 **C. 2007 Radio Advertising**

8 **1.19 January – March 2007.** From January 1, 2007 through approximately March 1, 2007, Respondents
9 continued to air the identical advertisement described in paragraph 1.16. This advertisement did not conspicuously
10 disclose the APR; contained false or deceptive statements or representations regarding the loan terms; and did not
11 comply with federal law. *See*, paragraphs 1.9, 1.10, and 1.11.

12 **1.20** In correspondence dated February 27, 2007, the Department recommended that Respondent Linden disclose
13 the terms of the loan and slow the disclosure so that it would be more readily heard and understood by consumers.
14 The Department further recommended that Respondent Linden either remove the reference to “no fees” in the
15 advertisement or explain that fees were being paid by yield spread premium (YSP).⁴ The department advised that
16 the term “no fees” is misleading to consumers when the fees are actually being paid by YSP, particularly as the YSP
17 can cost consumers more over the term of a loan than a broker fee.

18 **1.21 March 2007.** From March 1, 2007 through approximately March 21, 2007, Respondents aired a similar
19 advertisement in Washington. The only difference from the advertisement described in paragraph 1.16 involved the
20 Legal read, which had been slowed somewhat. Though the Legal read had been slowed, this advertisement did not
21 conspicuously disclose the APR; contained false or deceptive statements or representations regarding the loan
22 terms; and did not comply with federal law. *See*, paragraphs 1.9, 1.10, and 1.11.

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24 ⁴ Yield spread premium (YSP) is a fee paid by a lender to a mortgage broker when the broker arranges a loan where the interest rate on the
25 loan is inflated to an amount higher than the "par" rate. The par rate is the base rate at which the lender will make a loan to a borrower on a
given day without additional cost or YSP. Though paid by the lender to the broker, consumers actually pay YSP through a higher rate.

1 **1.22 March – April 2007.** From March 1, 2007 through at least April 12, 2007, Respondents aired a similar
2 advertisement in Washington. The only difference from the advertisement described in paragraph 1.21 involved the
3 Legal read, which had been changed as follows:

4 *Payments and balances are subject to change costs are paid through Yield Spread Premium 7.88*
5 *APR 30 year term based on \$200,000 loan amount Up to 80% loan to value*

6 **1.23** While Respondents explained that “costs” were paid through Yield Spread Premium, they did not remove
7 the reference to “no fees.” Instead of a clarification, the new disclosure, using the terms costs, points, and fees,
8 made the advertisement more confusing. This advertisement did not conspicuously disclose the APR; contained
9 false or deceptive statements or representations regarding the loan terms; and did not comply with federal law. *See,*
10 paragraphs 1.9, 1.10, and 1.11.

11 **1.24 June 2007.** In June 2007, Respondents aired a new 60-second radio advertisement in Washington.

12 *Rates are subject to change fees are paid through Yield Spread Premium 7.84 APR \$300,000 loan*
13 *amount over 40 years to 80% value*

14 Did you miss out on Linden’s first mortgage rates at 1% interest?

15 Well, you’re still in luck, because for a limited time only Linden Home Loans is offering first
16 mortgage rates at 1.9%, with no points and no fees. That’s right Washington, purchase or refinance
17 at 1.9% with no points and no fees. But you gotta call Linden Home Loans. With their newest offer
18 you can borrow \$300,000 and pay under \$900 a month. To lock in this rate you gotta call ‘em now.
19 425-576-LOAN - That’s 425-576-L-O-A-N. Again first mortgage rates at 1.9%, 1.9%, with no
20 points and no fees. Owned and operated in Kirkland. 425-576-LOAN. Linden Home Loans

21 **1.25** Though the disclosure had been changed to reference “fees” instead of “costs,” this advertisement did not
22 conspicuously disclose the APR; contained false or deceptive statements or representations regarding the loan
23 terms; and did not comply with federal law. *See,* paragraphs 1.9, 1.10, and 1.11.
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D. 2007 Television Advertising

1.26 During 2007, Respondents began airing television advertisements in Washington promoting their low rate, low cost residential mortgage loans. The transcript of the advertisement reads as follows:

DID YOU HEAR ABOUT LINDEN HOME LOANS' FIRST MORTGAGE RATES AT 1.9%?

THAT'S RIGHT WASHINGTON, PURCHASE OR REFINANCE AT 1.9%, 1.9% WITH NO POINTS NO FEES!! BORROW \$300,000 & PAY JUST \$900 A MONTH.

CALL 425-576-LOAN. THAT'S 425-576-L.O.A.N. OR VISIT LINDENLOANS.COM.
HOME OF THE 1% MORTGAGE, LINDEN HOME LOANS.

(Emphasis in original transcript provided by Respondent Linden.)

1.27 The graphic aspect of the advertisement emphasizes the 1.9% simple interest rate. In the second sentence, both times the 1.9% interest rate is read the rate that appears graphically expands to fill most of the visual. By comparison, the only reference to the APR is buried in the legal disclaimer.

1.28 The disclaimer; which begins scrolling on (and off) the screen as the advertisement begins, is located at the bottom of the advertisement. The disclaimer fades away as it reaches the final lines and is replaced by Respondent Linden's phone number. Both the miniature font size and speed at which the disclaimer scrolls—it disappears entirely in less than 10 seconds—makes it virtually unreadable. The disclaimer reads:

Linden Loans, LLC dba Linden Home Loans Washington Mortgage Broker License 510-MB-29207. Payments quoted are required minimum payments. The minimum payments do not cover all the interest due, the loan balance may increase or decrease based on the payment option chosen monthly. The maximum negative amortization is 115% of the original loan balance. The minimum payment can change by 7.5% per year for 5 years and the loan recasts after 5 years. Fully indexed rate (FIR) can change monthly. FIR is determined by the index (monthly treasury average) and the margin. The margin varies based on cost structure, the no points and no fee option requires a 3 year prepayment penalty, fees paid through yield spread premium. Loans are subject to credit and lender approval. Rates are subject to change without notice. Examples are a rate term refinance or purchase up to 80% loan to value on a 40 year term with a 3.45 margin and an estimated 5.25 MTA. \$200,000 loan amount has a 8.685% APR, \$300,000 loan amount has a 8.665% APR, \$400,000 loan amount has a 8.655 APR, \$500,000 loan amount has a 8.649% APR. This is for example only and is for the sole written consent of Linden Home Loans.

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1 **1.29** Like the radio advertisements, this advertisement includes a monthly payment, a triggering term under the
2 Truth in Lending Act. Unlike the radio advertisements, this advertisement discloses some of the terms of
3 repayment, including:

- 4 a. The monthly payment advertised is a minimum payment;
- 5 b. The loan is a negatively amortizing loan;
- 6 c. The minimum monthly payment can increase 7.5% a year for five years;
- 7 d. The loan recasts after five years⁵; and
- 8 e. The no points and no fee option requires a 3 year prepayment penalty.

9 **1.30** This advertisement did not conspicuously disclose the APR; still contained false or deceptive statements or
10 representations regarding the loan terms; and did not comply with federal law. *See*, paragraphs 1.9, 1.10, and 1.11.

11 **E. On-Going Investigation**

12 **1.31** The Department's investigation into the alleged violations of the Act by Respondents continues to date.

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

14 **2.1 Bait and Switch Advertising.** Based on the Factual Allegations set forth in Section I above, Respondents are
15 in violation of RCW 19.146.0201(7) under the 1994 Act for engaging in bait and switch advertising.

16 **2.2 Conspicuous APR Disclosure.** Based on the Factual Allegations set forth in Section I above, Respondents
17 are in violation of RCW 19.146.0201(10), under both the 1994 and 2007 Acts, for advertising a rate of interest
18 without conspicuously disclosing the annual percentage rate implied by such rate of interest.

19 **2.3 False or Deceptive Statements or Representations of Loan Terms.** Based on the Factual Allegations set
20 forth in Section I above, Respondents are in violation of RCW 19.146.0201(7), under both the 1994 and 2007 Acts,
21 for making false or deceptive statements or representations with regard to the terms of a residential mortgage loan.

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25 ⁵ The advertised loan is a payment option adjustable rate mortgage. The disclosure reveals that after five years, the monthly payment is revised upwards (recast) to ensure the monthly payment will fully amortize the outstanding balance over the remaining loan term.

1 **2.4 Compliance with Federal Law.** Based on the Factual Allegations set forth in Section I above, Respondents
2 are in violation of RCW 19.146.0201(10) of the 1994 Act, and RCW 19.146.0201(11) of the 2007 Act, for failing to
3 comply with the disclosure requirements of the Truth in Lending Act, 15 U.S.C. §1664(d) and Regulation Z,
4 12 C.F.R. §226.24(b) and (c).

5 **2.5 Unfair or Deceptive Practices.** Based on the Factual Allegations set forth in Section I above, Respondents
6 are in violation of RCW 19.146.0201(2), under both the 1994 and 2007 Acts, for engaging in unfair or deceptive
7 practices.

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9 **III. AUTHORITY TO IMPOSE SANCTIONS**

10 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(2)(d)(i) of the 1994 Act, the
11 Director may issue orders directing a licensee, its employee or loan originator, or other person subject to the Act to
12 cease and desist from conducting business in a manner that is injurious to the public or violates any provision of the Act.
13 Pursuant to RCW 19.146.220(4) of the 2007 Act, the Director may issue orders directing a licensee, its employee, loan
14 originator, independent contractor, agent, or other person subject to the Act to cease and desist from conducting
15 business.

16 **3.2 Authority to Suspend Licenses.** Pursuant to RCW 19.146.220(2)(b)(iv) of the 1994 Act, the Director may
17 suspend or revoke licenses issued under the 1994 Act for any violation of RCW 19.146.0201(1) through (9). Pursuant
18 to RCW 19.146.220(2)(e) of the 2007 Act, the Director may suspend licenses issued under the 2007 Act for any
19 violation of the Act.

20 **3.3 Authority to Impose Fines.** Pursuant to RCW 19.146.220(2)(c)(i) of the 1994 Act, the Director may impose
21 fines on a licensee, employee or loan originator of the licensee, or other person subject to the Act, for any violation
22 of RCW 19.146.0201(1) through (9). Pursuant to RCW 19.146.220(2)(e) of the 2007 Act, the Director may impose
23 fines for any violation of the Act.

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1 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.220(2) of the 2007 Act, and
2 WAC 208-660-060(4), and WAC 208-660-061, upon completion of any investigation of a licensee, the Department
3 will collect a fee to cover the cost of the investigation. The investigation fee will be calculated at the rate of forty-
4 eight dollars (\$48.00) per hour that each staff person devoted to the investigation.

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6 **IV. NOTICE OF INTENT TO ENTER ORDER**

7 Respondents' violations of the provisions of chapter 19.146 RCW, as set forth in the above Factual Allegations,
8 Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an Order under
9 RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223 of the 2007 Act. Therefore, it is the Director's intent to
10 ORDER that:

11 **4.1** Respondents Linden Loans, LLC, doing business as Linden Home Loans, Christopher W. Opdyke, and
12 Mark S. Sullivan, their employees, agents, partners, members, officers, and directors, cease and desist all advertising
13 in violation of the Mortgage Broker Practices Act.

14 **4.2** The mortgage broker license held by Respondent Linden Loans, LLC be suspended for 30 days.

15 **4.3** The loan originator license held by Respondent Christopher W. Opdyke be suspended for 30 days.

16 **4.4** The loan originator license held by Respondent Mark S. Sullivan be suspended for 30 days.

17 **4.5** Respondents Linden Loans, LLC, doing business as Linden Home Loans, Christopher W. Opdyke, and
18 Mark S. Sullivan jointly and severally pay a fine. As of the date of this Statement of Charges, the fine totals at least
19 \$150,000.

20 **4.6** Respondents Linden Loans, LLC, doing business as Linden Home Loans, Christopher W. Opdyke, and
21 Mark S. Sullivan jointly and severally pay an investigation fee. As of the date of this Statement of Charges, the
22 investigation fee totals at least \$2,500.

V. AUTHORITY AND PROCEDURE

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This Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Suspend Licenses, Impose Fines, and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230 of the 2007 Act, and is subject to the provisions of chapter 34.05 RCW (the Administrative Procedure Act). 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.

Dated this 14th day of December, 2007.



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

Presented by:

Anthony W. Carter
ANTHONY W. CARTER
Enforcement Attorney

Approved by:

James R. Brusselback
JAMES R. BRUSSELBACK
Enforcement Chief