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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:

NO. C-08-115-08-SC01

FLEET HOME MORTGAGE dba FLEET HOME
LOANS, and MICHAEL NORMAN BURNS,
President, Owner and Designated Broker, and
PETER ALEXANDER WHITNEY, Loan
Originator,

STATEMENT OF CHARGES and NOTICE OF
INTENTION TO ENTER AN ORDER TO DENY
LOAN ORIGINATOR LICENSE APPLICATION,
REVOKE OR SUSPEND MORTGAGE BROKER
LICENSE, PROHIBIT FROM INDUSTRY, IMPOSE
FINE, ORDER RESTITUTION, AND COLLECT
INVESTIGATION FEE

Respondents.

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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 19.146.210 and RCW 19.146.235, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. Fleet Home Mortgage dba Fleet Home Loans (Respondent Fleet) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker on July 13, 2004, and has continued to be licensed to date. Respondent Fleet is licensed to conduct the business of a mortgage broker at one location in Seattle, Washington.

¹ RCW 19.146 (2007)

1 B. Michael Norman Burns (Respondent Burns) is the Designated Broker, President, and Owner of
2 Respondent Fleet.

3 C. Peter Alexander Whitney (Respondent Whitney) acted as a loan originator for Respondent Fleet
4 from at least April 2007 to February 2008.

5 **1.2 Loan Originator Application.** Respondent Whitney submitted an application to the Department of
6 Financial Institutions of the State of Washington, Division of Consumer Services (Department) for a loan
7 originator license under Fleet Home Mortgage, a mortgage broker licensed under the Act. The on-line
8 application was received by the Department on November 8, 2007. On or about January 10, 2008, the
9 Department notified Respondent Whitney that his application was incomplete and his application was rejected.
10 On or about February 21, 2008, Respondent Whitney submitted the missing application information and
11 materials, and the Department re-opened his application request.

12 **1.3 Prior Criminal Acts.** On or about September 29, 2005, Respondent Whitney was charged under King
13 County Superior Court Cause No. 05-1-11568-4-SEA with one count of Assault in the Second Degree, a felony,
14 pursuant to RCW 9A.36.021(1)(a), and one count of Assault in the Fourth degree, a gross misdemeanor,
15 pursuant to RCW 9A.36.041. On or about January 10, 2006, the charge of Assault in the Second Degree was
16 amended to Assault in the Third Degree, a felony, pursuant to RCW 9A.36.031(1)(f).

17 **1.4** On or about February 21, 2006 Respondent Whitney was convicted under King County Superior Court
18 Cause No. 05-1-11568-4-SEA of Assault in the Third Degree, a felony, pursuant to RCW 9A.36.031(1)(f). As
19 part of the plea agreement, the charge of Assault in the Fourth Degree was dismissed.

20 **1.5** According to Appendix B (Criminal History) of Judgment and Sentence for King County Superior
21 Court Cause No. 05-1-11568-4-SEA, Respondent Whitney was convicted of, among other crimes, the following
22 other felony offenses:

23 A. On or about October 25, 1991, Respondent Whitney was convicted in Snohomish County Superior
24 Court Cause No. 911002619 of Robbery in the First Degree, a felony, pursuant to RCW 9A.56.200.

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1 B. On or about September 30, 1991, King County Superior Court Cause No.911020783, Respondent
2 Whitney was convicted of three (3) counts of Robbery in the First Degree, a felony, pursuant to RCW
3 9A.56.200.

4 C. On or about June 19, 1990, Respondent Whitney was convicted of Assault in the Second Degree, a
5 felony, pursuant to RCW 9A.36.021(1)(a).

6 **1.6** On or about July 3, 2002, Respondent Whitney was charged in King County District Court Cause No.
7 Y20168833 with one count of Theft Third Degree, a gross misdemeanor, pursuant to RCW 9A.56.050. On or
8 about January 29, 2003, this charged was dismissed without findings.

9 **1.7 Application for Licensure-Responses to Application Questions.** The "Criminal Disclosure" section
10 of the loan originator license application consists of eight questions, and includes the following instruction:

11 "If the answer to any of the following is "YES", provide complete details of all events or proceedings."

12 Respondent answered "yes" to the following questions on the "Criminal Disclosure" section of his loan
13 originator license application:

- 14 • 1-Have you ever been convicted of or plead guilty or nolo contendere ("no contest") in a
15 domestic, foreign, or military court to any felony?
- 16 • 2-Have you ever been charged with a felony?

17 However, Respondent only listed the felony conviction listed in paragraph 1.4 above.

18 Respondent answered "no" to question No. 6, which was not truthful. Respondent was obligated by statute to
19 answer questions on the loan originator license application truthfully and to provide the Department with
20 complete details of all events or proceedings.

21 **1.8 Unlicensed Activity.** Respondent Whitney is known to have conducted the business of a loan
22 originator at Respondent Fleet's office located at 1721 33rd Avenue, Seattle, WA 98122 from at least April 2007
23 through February 2008. To date, the Department has not issued a license to Respondent Whitney to conduct the
24 business of a loan originator from any location.

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1 **1.9** Between April 1, 2007 and November 9, 2007, Respondent Whitney assisted at least ten (10) borrowers
2 in applying to obtain or obtaining residential mortgage loans on property located in the State of Washington
3 from Respondent Fleet's office.

4 **1.10 Prohibited Acts.** Between June 15, 2007 and July 31, 2007, Respondents submitted three loan
5 applications for two 'primary residences' for Borrower S.F. to two different lenders. The income listed in at
6 least two of the applications was inflated, and Borrower S.F. was purchasing the properties for investment
7 purposes.

8 **1.11 Failure to Respond to Directives.** On October 26, 2007, the Department served a directive on
9 Respondent Whitney by Federal Express overnight mail. The directive was sent to 7919 Cyrus Place,
10 Edmonds, WA¹ and was signed for by Respondent Whitney. Respondent Whitney was directed to respond
11 within fifteen days of the date of the directive. On or about November 27, 2007, the Department sent a
12 subpoena to Respondent Whitney by Federal Express overnight mail to the same address as the October 26,
13 2007 directive. On December 6, 2007, the subpoena was returned as "customer not available or business
14 closed". On February 11, 2008, the Department served a subpoena by Federal Express overnight delivery on
15 Respondent Whitney at Respondent Fleet's last known address². On or about February 20, 2008 Respondent
16 Whitney contacted a Department Representative acknowledging he had received the Department's directive.
17 Mr. Whitney was instructed to respond immediately. To date, the Department has not received any response
18 from Respondent Whitney.

19 **1.12 Failure to Timely Respond to Directives.** On March 18, 2008, the Department sent a directive to
20 Respondent Fleet and Respondent Whitney to the attention of "designated broker" at Respondent Fleet's last
21 known address via first class mail. This directive was not returned. The directives required Respondents to
22 provide a list of all residential mortgage loans made by Respondent Whitney between September 2005 and the
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24 ¹ Respondent Whitney submitted this address as his current residential address on his loan originator application.

25 ² The subpoena was signed for by R. Gaston on February 12, 2008. On April 11, 2008, R. Gaston also signed for a
subpoena served on Fleet Mortgage and Peter Whitney addressed to the attention of Respondent Burns at Respondent
Fleet's last known address. On April 22, 2008, Respondent Burns provided a list of loans that Respondent Whitney
originated while working for Respondent Fleet in 2007. (See paragraph 1.12)

1 present. Respondents were directed to respond within fifteen days following the date of the directive. On or
2 about April 10, 2008 the Department served a subpoena on Respondent Fleet and Respondent Whitney to the
3 attention of Respondent Burns by Federal Express overnight mail requiring compliance with the Department's
4 previous directive within ten days of the date of the subpoena. On or about April 15, 2008, Respondent Burns
5 submitted a letter regarding Respondent Whitney's employment with Respondent Fleet. No list of loans was
6 attached. On or about April 22, 2008, Respondent Burns submitted a list of loans purportedly originated by
7 Respondent Whitney in 2007.

8 **1.13 Failure to Disclose Loan Originators License Number on Applications.** During an on-site
9 examination in or around November 2007, the Department determined that Respondents did not disclose the
10 loan originator's license number on any of their residential mortgage applications.

11 **1.14 Failure to Properly Disclose Yield Spread Premium.** In at least twenty (20) loans, Respondents did
12 not properly disclose the Yield Spread Premium (YSP) to consumers or did not disclose the YSP as a dollar
13 amount or dollar range or did not disclose the YSP in the 800 section of the Good Faith Estimate (GFE).

14 **1.15 Use of Line 801 of the HUD 1/1A Settlement Statement for Mortgage Broker Fees.** In at least ten
15 (10) loans, Respondents used line 801 of the GFE or HUD 1/1A Settlement Statement to record mortgage
16 broker fees.

17 **1.16 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
18 Respondents continues to date.

19 20 21 **II. GROUNDS FOR ENTRY OF ORDER**

22 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(12) and WAC 208-660-006,
23 "Mortgage Broker" means any person who, for compensation or gain, or in the expectation of compensation or
24 gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential
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1 mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a
2 person in obtaining or applying to obtain a residential mortgage loan.

3 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010(10) and WAC 208-660-006, "Loan
4 Originator" means a natural person who (a) takes a residential mortgage loan application for a mortgage broker,
5 or (b) offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in
6 expectation of direct or indirect compensation or gain. "Loan Originator" also includes a person who holds
7 themselves out to the public as able to perform any of these activities.

8 **2.3 Definition of Borrower.** Pursuant to RCW 19.146.010(2), a "Borrower" is defined as any person who
9 consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information
10 on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself
11 or herself, regardless of whether the person actually obtains such a loan.

12 **2.4 Requirement to Obtain or Maintain Loan Originator License.** Based on the Factual Allegations set
13 forth in Section I above, Respondent Whitney is in apparent violation of RCW 19.146.0201(2) and (3), RCW
14 19.146.200(1), and WAC 208-660-350(3) for engaging in the business of a loan originator without first
15 obtaining and maintaining a license under the Act.

16 **2.5 Requirement of No Prior Convictions.** Based on the Factual Allegations set forth in Section I above,
17 Respondent Whitney fails to meet the requirements of RCW 19.146.310(1)(d) and (g) and WAC 208-660-
18 350(2)(a) and (c) by having been convicted of a felony within seven years of the filing of the present
19 application.

20 **2.6 Requirement to Comply with Chapter or Rules.** Based on the Factual Allegations set forth in
21 Section I above, Respondent Whitney is in apparent violation of RCW 19.146.310(f) and WAC 208-660-
22 500(3)(i) for negligently making any false statement or willfully making any omission of material fact in
23 connection with any application or any information filed by a licensee in connection with any application,
24 examination or investigation conducted by the department.

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1 **2.7 Requirement to Provide Information on License Application.** Based on the Factual Allegations set
2 forth in Section I above, Respondent Whitney fails to meet the requirements of RCW 19.146.300(1) and (2) and
3 RCW 19.146.310(1)(b) by failing to provide an accurate and complete license application in the form
4 prescribed by the Director.

5 **2.8 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set
6 forth in Section I above, Respondent Whitney fails to meet the requirements of RCW 19.146.310(1)(g) and
7 WAC 208-660-350(2)(a) by failing to demonstrate character and general fitness such as to command the
8 confidence of the community and to warrant a belief that the business will be operated honestly and fairly
9 within the purposes of the Act.

10 **2.9 Responsibility for Conduct of Loan Originators.** Pursuant to RCW 19.146.245 and WAC 208-660-
11 155(3), a licensed mortgage broker is liable for any conduct violating the Act by the designated broker or loan
12 originator employed or engaged by the licensed mortgage broker. Pursuant to RCW 19.146.200(4)(a) and (b), a
13 designated broker or principal of a licensed mortgage broker is liable for an employee's violations of the act if
14 the designated broker or principal directs or instructs the conduct or with knowledge of the specific conduct
15 approves or allows the conduct, or knows or by the exercise of reasonable care and inquiry should have known
16 of the conduct at the time when its consequences can be avoided or mitigated and fails to take reasonable
17 remedial action.

18 **2.10 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents are in
19 apparent violation of RCW 19.146.0201(1), (2), (3), (6), (7), (13) and (15) for directly or indirectly employing a
20 scheme, device or artifice to defraud or mislead borrowers or lenders or any person, engaging in an unfair or
21 deceptive practice toward any person, obtaining property by fraud or misrepresentation, failing to make
22 disclosures to loan applicants as required by RCW 19.146.030 and any other applicable state or federal law,
23 making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or
24 other financing terms or conditions for a residential mortgage loan, collecting, charging, attempting to collect or
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1 charge or using any fee prohibited by RCW 19.146.030, failing to comply with any provision of RCW
2 19.146.030 through 19.146.080 or any rule adopted under those sections.

3 **2.11 Requirement to Timely and Completely Comply with Department Directives.** Based on the Factual
4 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.235 for failure to
5 comply with the Director's investigatory authority by failure to timely or fully and completely comply with the
6 Department's Directives.

7 **2.12 Requirement to Disclose Loan Originator License Number on Applications.** Based on the Factual
8 Allegations set forth in Section I above, Respondents are in apparent violation of WAC 208-660-350(26) and
9 (27) for failing to include loan originator license numbers on loan applications.

10 **2.13 Requirement to Properly Disclose YSP.** Based on the Factual Allegations set forth in Section I
11 above, Respondents are in apparent violation of RCW 19.146.030(1) or (4), RCW 19.146.0201(6) and (11),
12 Regulation X, 24 C.F.R. Section 3500.7 (1996) and Regulation X, 24 C.F.R. Section 3500, Appendix B (1996),
13 and WAC 208-660-430(4), for failing to properly disclose a YSP or for failing to disclose the YSP as a dollar
14 amount or dollar range or for failing to disclose the YSP in the 800 section of the GFE.

15 **2.14 Use of Line 801 to Disclose Mortgage Broker Fees:** Based on the Factual Allegations set forth in
16 Section I above, Respondents are in apparent violation of RCW 19.146.0201(6) and (11), WAC 208-660-430(4)
17 and (12) (effective 1/1/2007)¹, and Regulation X, 24 C.F.R Section 3500 and Appendix A (1996) for using line
18 801 of the GFE or HUD 1/1A Settlement Statement to record mortgage broker fees.

21 III. AUTHORITY TO IMPOSE SANCTIONS

22 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW 19.146.220(1), the
23 Director may deny licenses to loan originators. Pursuant to RCW 19.146.310(2) and WAC 208-660-350(7), the
24 Director shall not issue a loan originator license if the conditions of RCW 19.146.310(1) have not been met by
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¹ WAC 208-660-430(12) was recodified as WAC 208-660-430(13) effective 3/24/2008

1 the applicant, and shall notify the loan originator applicant and any mortgage brokers listed on the application
2 of the denial.

3 **3.2 Authority to Revoke or Suspend License.** Pursuant to RCW 19.146.220(2)(b),(d), and (e), the
4 Director may revoke or suspend a license for false statements or omission of material information on the
5 application that, if known, would have allowed the director to deny the application for the original license,
6 failure to comply with any directive or order of the Director, or any violation of chapter 19.146 RCW.

7 **3.3 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a),(b) and (d), the Director
8 may issue orders removing from office or prohibiting from participation in the conduct of the affairs of a
9 licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage
10 broker or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9) or
11 (13), RCW 19.146.030 through RCW 19.146.080, RCW 19.146.200, RCW 19.146.205(4), or RCW 19.146.265,
12 false statements or omission of material information on the application that, if known, would have allowed the
13 Director to deny the application for the original license, or failure to comply with a directive or order of the
14 Director.

15 **3.4 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(b),(d) and (e) and RCW 19.146.220(3) (a)
16 and (b), the Director may impose fines on a licensee, employee or loan originator of the licensee, or other
17 person subject to the Act for any violations of RCW 19.146.0201(1) through (9) or (13), RCW 19.146.030
18 through RCW 19.146.080, RCW 19.146.200, RCW 19.146.205(4), RCW 19.146.265, failure to comply with a
19 directive or order of the Director or any violation of Chapter 19.146 RCW..

20 **3.5 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(b),(d) and (e), the Director may issue
21 orders directing a licensee, its employee or loan originator, or other person subject to the Act to pay restitution.

22 **3.6 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-550(5),
23 upon completion of any investigation of the books and records of a licensee or other person subject to the Act,
24 the Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the
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1 investigation. The investigation charge will be calculated at the rate of forty-eight dollars (\$48) per hour that
2 each staff person devoted to the investigation.

3 **IV. NOTICE OF INTENTION TO ENTER ORDER**

4 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth
5 in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
6 for the entry of an Order under RCW 19.146.210, RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223.

7 Therefore, it is the Director's intention to ORDER that:

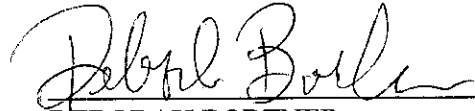
- 8 **4.1** Respondent Peter Alexander Whitney's application for a license to conduct the business of a loan
9 originator be denied; and
- 10 **4.2** Respondent Fleet Home Mortgage's license to conduct the business of a mortgage broker be revoked or
11 suspended; and
- 12 **4.3** Respondent Michael Norman Burns' license to conduct the business of a loan originator and designated
13 broker be revoked or suspended; and
- 14 **4.4** Respondent Peter Alexander Whitney be prohibited from participation in the conduct of the affairs of any
15 mortgage broker subject to licensure by the Director, in any manner, for a period of ten (10) years; and
- 16 **4.5** Respondent Fleet Home Mortgage, Respondent Michael Norman Burns, and Respondent Peter Alexander
17 Whitney jointly and severally pay a fine, which as of the date of these charges totals \$30,000; and
- 18 **4.6** Respondent Fleet Home Mortgage, Respondent Michael Norman Burns, and Respondent Peter Alexander
19 Whitney jointly and severally refund all fees that inured to Respondents' benefit to the borrowers listed in
20 paragraphs 1.9 and 1.14 ; and
- 21 **4.7** Respondent Fleet, Respondent Burns, and Respondent Whitney jointly and severally pay an investigation
22 fee in the amount of \$3,552 calculated at \$48 per hour for the seventy four (74) staff hours, as of the date of
23 this Statement of Charges, devoted to the investigation; and
- 24 **4.8** Respondents maintain records in compliance with the Act and provide the Department with the location of
25 the books, records and other information relating to Respondent Fleet Home Mortgage's mortgage broker
business, and the name, address and telephone number of the individual responsible for maintenance of
such records in compliance with the Act.

V. AUTHORITY AND PROCEDURE

This 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, 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

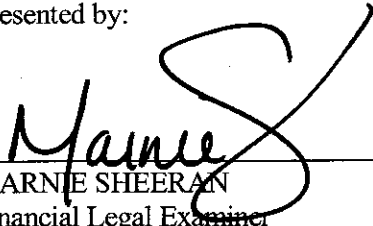
1 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
2 Statement of Charges.

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4 Dated this 4th day of December, 2008.

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DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

8 Presented by:

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11 MARNIE SHEERAN
Financial Legal Examiner



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14 Approved by:

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16 JAMES R. BRUSSELBACK
Enforcement Chief