



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES

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**CONSUMER LOAN ACT**

**INTERPRETIVE STATEMENT 2010-1**

**DATE:** December 1, 2010

**FROM:** Deborah Bortner, Director, Division of Consumer Services

**RE:** Consumer Loan Act, chapter 31.04 RCW – Exemption from Licensing for Certain Activities

**QUESTIONS PRESENTED:**

1. Am I exempt from licensing under the CLA if I lend money to an immediate family member?
2. Am I exempt from licensing under the CLA if I sell my home and carry the financing for the buyer?

**SHORT ANSWERS:** Yes and Yes.

**DISCUSSION:** The regulatory structure under the Consumer Loan Act (CLA or Act) requires licenses at both the company and individual levels. At the company level, a license is required to make loans (lend money or extend credit whether secured or unsecured), broker residential mortgage loans (unless a company has a license to broker under the Mortgage Broker Practices Act (MBPA), chapter 19.146 RCW), or service residential mortgage loans. At the individual level, a license is required when an individual acts as a residential mortgage loan originator. Under the CLA, the definition of a mortgage loan originator is, in part:

an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. See RCW 31.04.015(15).

The federal SAFE Act (the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008), also requires licensing of individuals who act as residential mortgage loan originators. As implemented through the CLA, the SAFE Act provides an exemption from licensing when an individual offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual or when an individual offers or

negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence. See WAC 208-620-105. The CLA defines immediate family members as a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships. See WAC 208-620-010.

The director has authority under the CLA to waive the applicability of the licensing requirement of the CLA to companies under certain circumstances. The director's authority is limited to waiving the licensing requirement; other provisions of the Act may still apply. The director cannot waive the licensing requirement for individuals acting as mortgage loan originators unless the individuals are exempt from the federal SAFE Act. See RCW 31.04.025(2).

This statement does not excuse the responsibility of any person to provide required state or federal disclosures, when applicable, when lending money or extending credit.

**CONCLUSION:** Individuals who make loans or extend credit, whether secured or unsecured, to immediate family members are not required to obtain the company level license under the CLA. Additionally, those individuals are not required to obtain individual mortgage loan originator licenses under the CLA when acting as such in a residential mortgage transaction.

Additionally, individuals who extend credit on the sale of their primary residence are not required to license at the company level under the CLA provided that they do not sell the note or other evidence of their security in a residential mortgage loan.

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STATUTES AND RULES RELIED UPON: Chapter 31.04 RCW and chapter 208-620 WAC:

**31.04.025**

**Application of chapter (as amended by 2009 c 120).**

...

(2) The director may, at his or her discretion, waive applicability of the consumer loan company licensing provisions of this chapter to other persons, not including individuals subject to the S.A.F.E. act, making loans when the director determines it necessary to facilitate commerce and protect consumers. The director may adopt rules interpreting this section.

**31.04.035**

**License required.**

No person may engage in the business of making secured or unsecured loans of money, credit, or things in action, or servicing residential mortgage loans, without first obtaining and maintaining a license in accordance with this chapter, except those exempt under RCW 31.04.025.

**31.04.221**

**Mortgage loan originator — License required — Unique identifier required.**

An individual defined as a mortgage loan originator shall not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under chapter 120, Laws of 2009. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

**WAC 208-620-104**

**Who is exempt from licensing as a consumer loan company?**

See RCW [31.04.025](#).

**WAC 208-620-105**

**Who is exempt from licensing as a mortgage loan originator under this act?**

The following are exempt from licensing as a mortgage loan originator:

- (1) Registered mortgage loan originators employed by an entity that is exempt from the act;
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;
- (4) A Washington licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and
- (5) Individuals who do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain.

**WAC 208-620-245**

**Does the Consumer Loan Act allow me to make one or two loans without being licensed?**

No. The act does not provide an exemption for a de minimis number of loans. See WAC [208-620-230](#).