

A. PURPOSE, SCOPE AND COVERAGE

New Section __. What is the purpose of the Mortgage Broker Practices Act?

To establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.
RCW 19.146.050

New Section __. What is the purpose of the Mortgage Broker Practices Act rules?

The purpose of these rules is to administer and interpret the Mortgage Broker Practices Act in order to govern the activities of licensed mortgage brokers, loan originators and other persons subject to this chapter.
RCW 19.146.223, .225

New Section __. What is the difference between the Mortgage Broker Practices Act and the Mortgage Broker rules?

A statute is a law that is passed by the state legislature. A rule (or regulation) is an order or directive adopted by a state agency after a public hearing is held allowing for citizen input. Rules are used by agencies to implement a statute or "fill in the gaps" of legislation. A rule is generally applicable to a group of people, industries, activities, or circumstances, the violation of which may subject a person or business to a penalty or administrative sanction.

New Section __. What is the scope and coverage of the Mortgage Broker Practices Act and these rules?

Scope and Coverage. There are four tests to determine the scope and coverage of the Mortgage Broker Practices Act and these rules. All of the tests must be met in order for a person or entity to fall under the scope and coverage of the Act and these rules. The tests are: (1) the persons or entities conducting business; (2) the type of transactions performed when conducting the business; (3) the identification of residential real estate; and (4) the location of residential real estate.

(1) What persons or entities are covered? The Mortgage Broker Practices Act and these rules apply to all persons or entities defined as mortgage brokers or loan originators under RCW 19.146.010(10) and (12), however, certain mortgage brokers and their loan originators may be exempt from all or part of the Act under RCW 19.146.020 as discussed in part under the Exemption Section of these rules.

(2) What type of transactions are covered? The Mortgage Broker Practices Act and these rules cover the making or assisting in obtaining of any "residential mortgage loan" defined under RCW 19.146.010(15) and WAC 208-660-XXX. The terms "making" and "assisting" are further defined under WAC 208-660-XXX.

(3) What is residential real estate? Residential real estate is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units. See examples in Section B Definitions.

(4) Where must residential real estate be located in a residential mortgage transaction governed by the Mortgage Broker Practices Act? Residential real estate located in Washington is covered by the Act and these rules. Residential real estate located outside Washington will be governed by the laws of that state or country regardless of the location of the mortgage broker or the residency of the borrower. [CC050506: Note that I want to make it clear under the prohibited practices or other section that a license may be revoked for violations committed in other jurisdictions.]

New Section __. What examples are there of business falling under the scope and coverage of the Mortgage Broker Practices Act and these rules?

(1) A loan originator employed with ABC Mortgage, Inc. with a physical office in Redmond, Washington takes a loan application from a Kirkland, Washington resident for the purchase of a home located in Bellevue, Washington. ABC Mortgage, Inc. is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020(1)(a)(i). The home located in Bellevue meets the definition of residential real estate and the purchaser intends to reside in the home.

[CC050506: Additional examples will be drafted.]

B. DEFINITIONS

New Section __. What definitions are applicable to these rules?

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

(2) "Advertising material" means any form of sales or promotional materials to be used in connection with the mortgage broker business.

~~(3) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.~~

(4) "Application" means the same as in Regulation X, Real Estate Settlement Procedures Act, 24 C.F.R. Sec.3500 as of the effective date of these rules, which is the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a residential mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

(5) "Application deposit" means a deposit in immediately available funds consisting of the equivalent of ten hours investigation fees under WAC 208-660- for each license applied for and the equivalent of five hours investigation fees under WAC 208-660- for each branch office certificate applied for.

(6) "Approved licensing or continuing education course" means a licensing or continuing education course approved by the director.

(7) "Bait and switch" means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While

bait and switch will be determined by the facts of a case, the following examples, alone or in combination may exhibit a bait and switch practice:

(a) A deceptive change of loan program from fixed to variable rate.

(b) A deceptive increase in interest rate.

(c) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(d) A deceptive increase in fees or other costs.

(e) Deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, but leading the borrower to believe that such amounts are included.

(f) Additional undisclosed terms such as prepayment penalties or balloon payments.

(g) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(h) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(i) Advertising or offering rates, programs or terms that are not available at the time.

(8) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(9) "Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage

broker.

(10) "Branch office certificate" means a branch office license issued by the director to engage in the mortgage broker business as the branch office indicated in the certificate, pursuant to RCW [19.146.265](#).

(11) "Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

(12) "Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

(13) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

(14) "Consumer Protection Act" means chapter [19.86](#) RCW.

(15) "Control" including the terms "controls", "is controlled by", or "is under common control" shall mean the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person shall be presumed to control another person if such person is a general partner, officer, director, or employer of another person; directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests of another person; or any person having similar status or function in the business.

(16) A person is "convicted" of a crime, irrespective of the pronouncement or suspension of sentence, if the person:

(a) is convicted of the crime in any jurisdiction;

(b) is convicted of a crime which, if committed within this state would constitute such a crime under the laws of this state;

(c) has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

(d) has been found guilty of such a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury.

(17) "Department" means the department of financial institutions.

(18) "Designated broker" means a natural person designated by the mortgage broker licensee as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter, whose application must be accepted and approved by the department, and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(19) "Director" means the director of financial institutions.

(20) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(21) "Examination" or "Compliance examination" means the examination performed by the Division to determine whether the licensee is in compliance with applicable laws and regulations.

(22) Federal statutes and regulations.

(a) "Truth in Lending" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.

(b) "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

(c) "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

(d) "Alternative Mortgage Transactions Protection Act" means the Alternative Mortgage Transactions Protection Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

(e) "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202.

(f) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 C.F.R. Part 3500 et seq.

(g) "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

(h) "Gramm-Leach-Bliley Act" means the Gramm-Leach-Bliley Act (GLBA), at 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

(i) "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

(j) "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 C.F.R. Part 310.

(k) "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

(23) "Financial institution" means a federally insured bank, savings bank, savings and loan association, or credit union, whether state or federally chartered, authorized to conduct business in this state.

(24) "Financial misconduct" means without limitation:

(a) Any conduct prohibited by the act;

(b) Any similar conduct prohibited by statutes governing mortgage brokers in other states if such conduct would constitute a violation of the act;

(c) Any similar conduct prohibited by statutes governing other segments of the financial services industry, including but not

limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; and,

(d) Any conduct commonly known as white collar crime, including, but not limited to, identity theft, mail fraud, wire fraud, money laundering, check fraud, or similar crimes.

(25) A person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationary, brochures, rate lists or other promotional items.

(26) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws. Generally, a person is not subject to the other's right of control if that person is not instructed about when, where and how to work, if the person is not guaranteed a regular wage, the person is not reimbursed for business expenses, if the person maintains a separate business, if the person is exposed to potential profits and losses, and if normal employee benefits such as insurance, a pension plan and vacation and sick pay are not provided.

(27) "Licensee" or "licensed mortgage broker" means:

(a) A mortgage broker licensed by the director;

(b) a loan originator licensed by the director;

(c) any person subject to licensing under RCW 19.146.200; and

(d) any person acting as a mortgage broker or loan originator subject to any provisions of the act.

(28) "Loan Originator" means a natural person who

(a) takes a residential mortgage loan application for a mortgage broker,

(b) offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain, or

(c) holds oneself out to the public as able to perform (a) or (b). Taking a residential mortgage loan application includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application. [CC053006: Loan originator is already defined by law. I don't know that we should redefine it here. What needs defining are the elements from the statute definition that are not yet defined (e.g. "takes", etc.).]

(29) "Loan originator licensee" means a natural person who is licensed as a loan originator or subject to licensing.

(30) "Loan Processor" is a natural person who performs clerical or support duties at the direction of and subject to the supervision of a licensed or exempt mortgage broker. The job responsibilities may include direct contact with applicants but may not include discussing rates, terms, disclosures or solicitation of mortgages with that customer.

(31) A "lock-in agreement" is a written agreement between a borrower and a mortgage broker stating the specific interest rate on a residential mortgage loan if the loan is closed within a specific amount of time.

(32) "Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

(33) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain

(a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or

(b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan. A person "makes" a loan if the loan is closed in that person's name, or that person advances, offers to advance or makes a commitment to advance funds to a borrower for a loan. A person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms, including but not limited to, rates, fees and other costs, preparing loan packages or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X.

(34) "Mortgage Broker Branch Office Licensee" means a location that is licensed as a branch office of a mortgage broker or subject to licensing.

(35) "Mortgage Broker Licensee" means a location that is licensed as a mortgage broker or subject to licensing.

(36) "Mortgage Broker Practices Act" means chapter 19.146 RCW and chapter 208-660 WAC.

(37) "Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

(38) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(39) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the security property.

(40) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(41) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed

of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units. This includes loan applications for a refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on non-owner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

(42) "Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

(a) Residential real estate includes, but is not limited to:

- (i) A single family home;
- (ii) A duplex;
- (iii) A triplex;
- (iv) A fourplex;
- (v) A single condominium in a condominium complex;
- (vi) A single unit within a cooperative; or
- (vii) A manufactured home when the home and real

property together will secure the residential mortgage loan.

(b) Residential real estate does not include:

(i) An apartment building or dwelling of five or more units;

(ii) A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or

(iii) Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

~~(40) "Subsidiary" means a corporation, company, partnership, or association ((that is controlled by another.)) whose parent company owns more than fifty percent (50%) of the voting stock.~~

(43) "Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an

assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned. [CC052306 - Why do we need this definition?]

(44) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(45) "Written examination" means a written test approved by the director.

[CC042406: Additional definitions will be added as they are discussed and drafted.]

C.EXEMPTION FROM LICENSING

New Section __. If I am licensed as an insurance agent under RCW 48.17.060, do I need a separate license to act as a mortgage broker or loan originator?

Yes. If you are a licensed insurance agent and you intend to make a residential loan, or take a residential mortgage loan application for a mortgage broker, or offer or negotiate the terms of a mortgage loan, for compensation or gain, or hold yourself out as being able to do so, you will need a separate license as either a mortgage broker or a loan originator.

New Section __. Are insurance companies exempt from the Mortgage Broker Practices Act?

~~Yes. Authorized insurance companies with a certificate of authority, in any state, are exempt from the Mortgage Broker Practices Act. [CC050506: Let's discuss the exemption for "any state."]~~

Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state Insurance Commissioner are exempt from the Mortgage Broker Practices Act.

~~**New Section . If I am doing business under the Consumer Loan Act when would I have to have a Mortgage Broker license?**~~

~~(1) If you are brokering loans under your Consumer Loan Act license and the loans are subject to the authority of that act and you are including those loans for purposes of the annual assessment payment under the Consumer Loan Act, your activity is exempt from this act.~~

~~(2) If you are brokering loans that are not subject to your Consumer Loan Act annual assessment, you will need a license as a mortgage broker unless you fall under an exemption other than RCW 19.146.020(b).~~

New Section __. If I am making residential mortgage loans under the Consumer Loan Act, RCW 31.04, am I exempt from the Mortgage Broker Practices Act?

If you are licensed under the Consumer Loan Act and are complying with that act, you are exempt from the Mortgage Broker Practices Act. Complying with the Consumer Loan Act includes abiding by the requirements and restrictions of that act and counting all loans made under that act for purposes of your annual assessment.[CC0530076: This needs a little more clarification. We need to make it understood that the exemption is only afforded to the business covered by the Act, and that originations as well as "made" loans must be covered to enjoy the exemption on all loans.]

If I am an exempt mortgage broker because my business has been approved and is subject to audit by Fannie Mae or Freddie Mac, are my loan originators subject to licensing or any other sections of the Act?

Your loan originators do not have to be licensed but they are subject to RCW 19.146.0201 through RCW 19.146.080. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. Your loan originators are also subject to the investigation and enforcement authority of the director.

If I am an exempt mortgage broker because my business has been approved and is subject to audit by Fannie Mae or Freddie Mac, am I subject to licensing or any other sections of the Act?

You do not need to be licensed but you are subject to RCW 19.146.0201 through RCW 19.146.080. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. You are also subject to the investigation and enforcement authority of the director.

New Section __. As an attorney, do I need a mortgage broker or loan originator license to negotiate a residential mortgage loan in the course of my practice?

(1) If you are a licensed attorney and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020(1)(c).

(2) Whether an exemption is available to you depends on the facts and circumstances of a particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the fee structure for your professional legal services, the department may deem you to be principally engaged in the mortgage broker business and you would need a mortgage broker or loan originator license before performing those services.

New Section __. As a licensed real estate broker or salesperson, do I need a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?

You are exempt from the act under RCW 19.146.020(1)(g) if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of ((fees)) compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the purchase and sale agreement for the bona fide sale of the subject property. [CC042406: Consider adding examples here.]

New Section __. Under what circumstances will the director approve an exemption under RCW 19.146.020(4) for the loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?

(1) The director will provide a written exemption from licensing for loan originators working for an affiliate of a bank that is wholly owned by the bank holding company that owns the bank if the director finds that:

(a) The affiliate is in "good standing" with the department;
(b) The loan originators working for the affiliate of a bank ~~work as~~ **are** exclusive agents and do not ~~operate~~ **work** as loan originators for other mortgage brokers;

(c) The affiliate of the bank requires continuing education for loan originators that meets the same or similar requirements approved by the director for licensed loan originators;

(d) The loan originator working for ~~such~~ **the** affiliate of the bank has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony within seven years. ~~of beginning work for the affiliate. This includes having a~~ The affiliate of the bank must have a supervisory plan ~~in place~~ requiring **that includes** ~~notification of~~ **notifying** the department if an approved agent is convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony.

(e) The loan originator working for ~~such~~ **the** affiliate of the bank has not had a loan originator or similar license revoked or suspended within the last five years.

(2) To qualify for this exemption, the affiliate must make a written request to the department. After receipt of this request the department will notify the exclusive agent in writing within 90 days whether or not it qualifies for the exemption.

(3) The exemption granted by the director remains valid until revoked (a) as long as the affiliate maintains the same business model for using loan originators and (b) the affiliate remains in good standing with the department.

(4) If the affiliate changes its business model, it must notify the department and apply for another exemption if applicable.

D. MORTGAGE BROKER MAIN OFFICE

How many designated brokers can my mortgage broker company have?

Your company must appoint only one person to be your designated broker. Your company must have a designated broker at all times. If the designated broker leaves, the company you must immediately appoint another qualified individual.

If my designated broker leaves, can I continue to operate my mortgage broker business?

You may continue to process loans in progress, but you may not make or assist in the making of new loans.

Must I notify the department if my designated broker leaves, or for some other reason is no longer my designated broker?

Yes. You must notify the department in writing, or by electronic means, within five days of the loss of, or change of status, of your designated broker.

How soon must I replace my designated broker?

You must replace the company's designated broker within thirty days of the prior designated broker leaving.

It is a prudent business practice to have more than one qualified individual working in the company who could be appointed as the designated broker. The designated broker does not have to be a principal of the mortgage broker company.

RCW 19.146.200(4)

Can a licensed mortgage broker share an office with a licensed real estate broker?

Yes. A licensed mortgage broker may share an office with a licensed real estate broker. The mortgage broker office must be licensed as a main or branch mortgage office.

If a licensed mortgage broker shares an office with a licensed real estate broker, what are the obligations to advertise the shared office to the public?

The mortgage broker office must be clearly advertised to the public. [CC053006: How?]

What are the disclosure requirements when a mortgage broker is associated with and shares an office with a real estate broker?

Mortgage brokers working in and associated with a real estate office have an additional responsibility to mortgage clients to disclose the relationship with the real estate broker.

In addition to the disclosures required by RCW 19.146.030, the following statement must be provided to these mortgage clients:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING;"

RCW 19.146.0201(14)(b)

May I conduct my mortgage business in more than one name?

Yes. You may operate your business and advertise under a name different from the name on your license if you first obtain written consent from the director to do so.

May I conduct my mortgage business from more than one location?

Yes. You may establish one or more branch offices under a name or names different from that of the main office if the name or names are approved by the director. See WAC 208-660-XXX on branch offices.

As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?

Yes. You are responsible for any conduct violating this chapter by anyone you employ, or engage as an independent contractor, to work in the business covered by your license.

RCW 19.146.245

Am I allowed to pay a loan originator's commission to the loan originator's business instead of directly to the loan originator?

The Department takes no stand on how a mortgage broker pays an independent contractor who has organized themselves as a business. However, the HUD1 settlement statement should not reflect any payment to a loan originator or a loan originator's business. Consult a tax advisor.

E. DESIGNATED BROKERS

1. Designated Brokers - General

How do I become a designated broker?

(1) You are appointed to the designated broker position by the licensed mortgage broker. The licensed mortgage broker accomplishes the appointment through an application and approval process with the department. In addition to supplying the application information, you must:

(a) Be in good standing with the department. See WAC 208-660-XXX.

(b) Have at least two year's experience originating or processing residential mortgage loans (see WAC 208-660-XXX), or

(c) Have five years work experience in a closely related field (see WAC 208-660-xxx for examples of closely related fields). The work experience must be evidenced by a detailed work history, two years of any of the following documentation, and must not be more than five years old:

(i) w-2s in your name
(ii) 1099s in your name
(iii) corporate tax returns signed by you, or
(iv) a letter from a lender on the lender's letterhead stating that you have submitted loans to the lender for two or more years when you were not employed in any capacity by that lender.

(2) You must pass the designated broker test. See WAC 208-660-XXX.

What educational degrees can substitute for one of the required two years experience originating or processing residential mortgage loans?

(1) A Bachelor's degree in business with a concentration in accounting, economics, statistics, business administration, or public administration.

(2) A Master's degree in business with a concentration in accounting, economics, statistics, business administration, or public administration.

(3) A law degree.

[JSL20060529] [CC053006: Why does #2 hold the same weight as #1?]

In what closely related fields of work can I have work experience that will satisfy some or all of the two years of experience originating or processing residential mortgage loans?

(1) If you have two years of work experience in any of the following fields, that experience will satisfy one of the required two years of work experience originating or processing residential mortgage loans:

(a) A finance-related industry such as financial planning, stock brokerage, or insurance brokerage. You must have held a state or national license or certification.

(b) A commercial or consumer loan broker or banker.

(c) A capital equipment leasing agent for a lender or other financial institution.

(d) Customer service or operations experience at a major credit card, credit reporting, or credit repository company.

(2) If you have two years of work experience as a residential mortgage loan originator that work experience will satisfy the two years of required work experience. [CC053006: This seems superfluous.]

(3) If you have three years of experience as a loan processor that experience will satisfy the two years of required work experience. [CC053006: Why do we change the requirement to

three years from two years here? The base requirement above is two years for either loan originator or processor.]

RCW 19.146.210(1)(e)

[JSL20060529]

What must I do to remain a company's designated broker?

(1) Be in good standing with the department. See WAC 208-660-XXX.

(2) Complete three approved continuing education courses in the twelve months prior to the mortgage broker license expiration. See WAC 208-660-XXX for information regarding continuing education.

(3) Pay the applicable fee.

Must the designated broker also hold a loan originator's license?

No. A designated broker can perform the duties of a loan originator without an additional license.

2. Designated Broker Responsibilities

What is a designated broker's role in a mortgage broker company?

[CF053006: this is a placeholder question for the Misc. sub-panel]

3. Designated Broker Liabilities

[KM051806: Is this section "designated broker liabilities" for the Enforcement sub-panel, or the Licensing sub-panel?]

[CF053006: The Enforcement sub-panel is considering the following questions: **Under what circumstances will the department hold a designated broker liable for the actions of others that violate the act? Can the licensed mortgage broker and the designated broker both be held liable for the same violations?**]

4. Designated Brokers - Testing

Where can I get information about the designated broker test?

The department will publish the names of approved testing providers and their contact information.

How much does the designated broker test cost?

Testing costs are set by contract between the test provider and the department and may be modified from time to time. The department will publish the current testing fee with the testing provider contact information.

How do I register to take the designated broker test?

The department will publish registration information with the testing provider contact information.

[KM050406: author]

What topics will be covered in the designated broker's test?

The designated broker test will require candidates to demonstrate a working knowledge of and competency in the following subjects and any others the director deems appropriate:

(1) Washington law and supporting rules:

- Mortgage Broker Practices Act (RCW 19.146, WAC 208-660)
- Consumer Protection Act (RCW 19.86, WAC XXX-XXX)
- Escrow Agent Registration Act (RCW 18.44, WAC 208-680)
- Usury Act (RCW 19.52)
- Unfair Practices with Respect to Real Estate Transactions (RCW 49.60.222, WAC XXX-XXX)
- Fair Credit Reporting Act (RCW 19.182, WAC XXX-XXX)
- Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW
- Washington principal and agent law
- Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW
- Washington Consumer Loan Act (RCW 31.04, WAC 208-620)

(2) Federal laws and supporting regulations:

- Real Estate Settlement Procedures Act (12 U.S.C. Sec. 2601 et seq., Regulation X, 24 C.F.R. Part 3500 et seq.)
- Truth In Lending Act (15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.)
- Equal Credit Opportunity Act (15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202)
- Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq., Regulation V, 12 C.F.R. Part 222)
- Fair Housing Act (XX USC XXXX, XX CFR XXX)
- Home Mortgage Disclosure Act (12 U.S.C. Sec. 2801, 12 C.F.R. Part 203)
- Community Reinvestment Act (XX USC XXXX, XX CFR XXXX)
- Gramm-Leach-Bliley Act (15 U.S.C. Sec. 6801-6809, 16 C.F.R. Parts 313-314)
- US Patriot Act (XX USC XXXX, XX CFR XXXX)
- Home Ownership Protection Act (15 U.S.C. Sec. 1637 and 1647)
- Bank Secrecy Act (XX USC XXXX, XX CFR XXXX)
- Consumer Protection Act (XX USC XXXX, XX CFR XXXX)
- Private Mortgage Insurance Disclosure

(3) Arithmetical computations common to mortgage lending including but not limited to:

- APR
- Finance charge
- Amount financed
- Payment & amortization
- Debt to income ratio
- Loan to value ratio

(4) Property Types:

- Single family residence
- Multi-family (duplex, tri-plex, four-plex) [WJ053006: The act is limited to residential mortgage activity. Is this a fit?]
-
- Condominiums
- Co-Ops
- Land and lots
- Manufactured housing
- PUD

- Town home

(5) Program Types and disclosures:

- Fixed, fully amortizing
- Balloon
- Adjustable / Variable Rate
- Reverse
- Government
- Commercial
- Conforming
- Non-Conforming
- Interest Only
- Negative Amortization / Deferred Interest
- Temporary buy downs
- Prepayment penalties
- Soft prepay

(6) Occupancy Classes:

- Primary residence / owner occupied
- Second home
- Rental / Investment / Non-owner occupied

(7) Documentation Types:

- Full document
- Stated income documented assets
- Stated income stated assets
- No ratio
- No documentation

(8) Ethics in the mortgage industry

(9) General mortgage industry information:

- state and federally required disclosures
- credit evaluation
- proper use of the federal forms (GFE, TIL, 1003, HUD1, consumer booklets, etc)
- settlement services and processes

(10) Trust account and recordkeeping requirements provided in the act and these rules.

[JSL20060529]

5. Designated Brokers - Continuing Education

Where can I get information about continuing education?

The department will list the approved professional organizations on the department website. The professional organizations will have detailed information about the continuing education courses they offer.

How many clock hours of designated broker continuing education do I need?

The continuing education requirement will be in the form of approved courses. The individual clock hours may vary. A designated broker must complete three courses annually. Alternatively, the designated broker may attend three mortgage broker commission meetings instead of completing two continuing education courses.

Can I take the same continuing education course multiple times to meet my annual requirement?

No. You cannot take the same course in the same or successive years. The benefit of taking a variety of courses is to establish a broad base of expertise to fulfill the designated broker's responsibilities.

[JSL20060529]

Do I have to take continuing education courses every year?

Yes. Designated brokers must complete continuing education courses annually. The courses must be completed during the 12-month period prior to the mortgage broker's license expiration date.

If I take a continuing education course approved by another state, will the department accept it as my continuing education requirement?

If the approved professional organization has approved the course, it can apply toward your continuing education requirement. The course provider should have information about which of the offered courses have been approved by which state. [CC053006: This answer needs discussion and work.]

Will the department accept continuing education from courses designed for real estate brokers or salespersons, attorneys, or appraisers to satisfy the continuing education requirement for designated brokers?

Yes, if the approved professional organization has approved those courses as satisfying the continuing education requirements. The department will publish the list of approved professional organizations. Contact the approved professional organization for detailed information about the continuing education courses offered.

F. MORTGAGE BROKER BRANCH OFFICES

G. LOAN ORIGINATORS

1. General

Do I have to disclose to the borrower the name and location of the mortgage broker I am originating a loan for?

Yes. A loan originator must clearly identify the name of the mortgage broker on the loan application. There can be no confusion in the eyes of the borrower as to the name and location of the mortgage broker the loan originator works for. [CC053006: What about including the license number?]

RCW 19.146.NEW 35.

[JSL20060529]

If I am a loan originator associated with more than one mortgage broker, may I originate mortgage loans to borrowers for all mortgage brokers?

Yes. Absent any federal or municipal restrictions, you may offer residential mortgage loans from more than one mortgage broker.

[JSL20060529] [CC053006: Have we defined "associated?"]

If I originate loans for more than one mortgage broker, what information must I provide to borrowers?

Prior to presenting yourself as licensed to originate mortgage loans to a specific borrower, you must state who you represent. You can take an application for only one mortgage broker at a time in any one transaction. You must clearly identify the licensed or exempt mortgage broker on the application, all disclosures, authorization forms and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

[JSL20060529]

What must I do if I begin a loan origination for one mortgage broker but then cannot complete the transaction with that mortgage broker?

You must follow the same procedures as if you were canceling the file, including issuing all disclosures. You must then obtain the borrower's written permission to copy and transfer any loan documentation to another mortgage broker. The new mortgage broker will treat the file as a new loan file. This includes following all the disclosures and processes associated with any new loan application, regardless of the fact that the same loan originator is involved.

[JSL20060529] [CC053006: Does this leave too much control with LOs? Isn't the loan the property of the MB once it has been originated by the LO for the MB?]

Can a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?

No. Only the borrower may submit a written request for the release of information to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. Loan files belong to the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents. The licensed mortgage broker must transmit the information within five days after receiving the borrower's written request.

RCW 19.146.030(2)(d)

May I accept payment of my loan originator commissions in my business name instead of my personal name?

The department takes no stand on how a mortgage broker pays an independent contractor who has organized themselves as a business. Consult a tax advisor. Also investigate this issue with the Washington Department of Revenue and Employment Security. [CC053006: I don't like the last sentence. Also, see comment for same question under the MB section.]

Can a loan originator have clerical or administrative personnel?

Yes. An independent contractor working as a loan originator for a licensed or exempt mortgage broker can have employees or independent contractors as long as the employee or independent contractor provides exclusively clerical or administrative functions for the loan originator. See the definition of loan processor in WAC 208-660-XXX.

Do loan processors have to be licensed?

No. Loan processors are not required to have a license provided they work under the supervision of a licensed or exempt mortgage broker or loan originator and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator.

2. Loan Originators - Testing

Where can I find information about the loan originator's test?

The department will publish the names and contact information of approved testing providers.

How much does the loan originator's test cost?

Testing costs are set by contract between the test provider and the department and may be modified from time to time. The department will publish the current testing fee with the testing provider contact information.

How do I register to take the loan originator's test?

The department will publish registration information with the testing provider contact information.

What topics will be covered in the loan originator's test?

The loan originator test will demonstrate a working knowledge of and competency in the following subjects and any others the director deems appropriate:

(1) Washington law and supporting rules:

- Mortgage Broker Practices Act (RCW 19.146, WAC 208-660)
 - Consumer Protection Act (RCW 19.86, WAC XXX-XXX)
 - Escrow Agent Registration Act (RCW 18.44, WAC 208-680)
 - Usury Act (RCW 19.52)
 - Unfair Practices with Respect to Real Estate Transactions (RCW 49.60.222, WAC XXX-XXX)
 - Fair Credit Reporting Act (RCW 19.182, WAC XXX-XXX)
 - Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW;
 - Washington principal and agent law;
 - Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW;
- [CF051906: should the Consumer Loan Act be here?]

(2) Federal laws and supporting regulations:

- Real Estate Settlement Procedures Act (12 U.S.C. Sec. 2601 et seq., Regulation X, 24 C.F.R. Part 3500 et seq.)
- Truth In Lending Act (15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.)
- Equal Credit Opportunity Act (15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202)
- Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq., Regulation V, 12 C.F.R. Part 222)
- Fair Housing Act (42 U.S.C. XXXX, XX CFR XXX)
- Home Mortgage Disclosure Act (12 U.S.C. Sec. 2801, 12 C.F.R. Part 203)
- Community Reinvestment Act (XX USC XXXX, XX CFR XXXX)
- Gramm-Leach-Bliley Act (15 U.S.C. Sec. 6801-6809, 16 C.F.R. Parts 313-314)
- US Patriot Act (XX USC XXXX, XX CFR XXXX)
- Home Ownership Protection Act (15 U.S.C. Sec. 1637 and 1647)
- Bank Secrecy Act (XX USC XXXX, XX CFR XXXX)
- Consumer Protection Act (XX USC XXXX, XX CFR XXXX)

- Private Mortgage Insurance Disclosure

(3) Arithmetical computations common to mortgage lending including but not limited to:

- APR
- Finance charge
- Amount financed
- Payment & amortization
- Debt to income ratio
- Loan to value ratio

(8) Property Types:

- Single family residence
- Multi-family (duplex, tri-plex, four-plex)
- Condominiums
- Co-Ops
- Land and lots
- Manufactured housing
- PUD
- Town home

(9) Program Types and disclosures:

- Fixed, fully amortizing
- Balloon
- Adjustable / Variable Rate
- Reverse
- Government
- Commercial
- Conforming
- Non-Conforming
- Interest Only
- Negative Amortization / Deferred Interest
- Temporary buy downs
- Prepayment penalties
- Soft prepay

(10) Occupancy Classes:

- Primary residence / owner occupied
- Second home
- Rental / Investment / Non-owner occupied

(11) Documentation Types:

- Full document
- Stated income documented assets
- Stated income stated assets
- No ratio
- No documentation

(8) Ethics in the mortgage industry

(9) General mortgage industry information: [CC052406: Chuck does not want sales related courses here]

- state and federally required disclosures
- credit evaluation
- proper use of the federal forms (GFE, TIL, 1003, HUD1, consumer booklets, etc)
- settlement services and processes

(10) Trust account and recordkeeping requirements provided in the act and these rules.

[JSL20060529]

3. Loan Originators - Continuing Education [CC053006: This section needs to be consistent with the DB section.]

Where can I get information about continuing education?

The department will list the approved professional organizations on the department website. The professional organizations will have detailed information about the continuing education courses they offer.

How many clock hours of continuing education do I need each year under my loan originator's license?

The continuing education requirement will be in the form of approved courses. The individual clock hours may vary. A designated broker must complete three courses annually. Alternatively, the designated broker may attend three mortgage broker commission meetings instead of completing two continuing education courses.

If I have taken continuing education courses approved for designated brokers will that satisfy my loan originator continuing education requirement?

Yes. Loan originators may take and receive credit for successfully completing the more complex designated broker continuing education courses.

[WJ053006:Will there be tiered continuing education?]

RCW 19.146.NEW 33(1)(h)

Can I take the same continuing education course multiple times to meet my annual requirement?

No. You cannot take the same course in the same or successive years. The benefit of taking a variety of courses is to establish a broad base of expertise to fulfill the loan originator's responsibilities.

[JSL20060529]

If I fail to complete the required continuing education, what happens to my loan originator's license?

If you can finish the continuing education requirement within thirty days after the date your license expires, you can renew the license. During this thirty day window, your license is expired and you must not conduct any business under the act that requires a license.

The other renewal requirements include being in good standing and paying the annual license fee.

How will I know which courses and providers satisfy the continuing education requirement?

The department will approve professional organizations to provide continuing education. The providers and their courses and contact information will be listed on the department's website.

If I take a course approved by another state, will the department accept that course for my loan originator continuing education requirement?

If the approved professional organization has approved the course, it can apply toward your continuing education requirement. The course provider should have information about which of the offered courses have been approved by which state.

Will the department apply continuing education hours from courses designed for real estate brokers, attorneys, or appraisers to a loan originator continuing education requirement?

Yes, if the approved professional organization has approved those courses as satisfying the continuing education requirements. The department will publish the list of approved professional organizations. Contact the approved professional organization for detailed information about the continuing education courses offered.

H. OUT-OF-STATE MORTGAGE BROKERS AND LOAN ORIGINATORS

What additional requirements must I comply with if my business does not have a physical location in Washington?

You must continuously maintain a registered agent in Washington and provide the department with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

RCW 19.146.260

How do I change the information about my registered agent?

You must file a statement of change with the department within five business days from the change. The statement of change must contain:

(1) Your name and license number.

(2) If the agent's office location has changed, the new address.

(3) If the registered agent has changed, the name and address of the new registered agent and the new agent's written consent to the appointment.

If I am a registered agent under this chapter, what must I do to resign as registered agent?

(1) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of the resignation.

(2) Provide a copy of the statement of resignation to the licensed mortgage broker.

(3) The department will terminate the registered agent's appointment on the thirty-first day after the date on which the statement of resignation was delivered.

How does someone contact an out-of-state licensee if there is no registered agent?

If the licensee does not maintain a registered agent, or the registered agent cannot be found, the director will accept any process, notice, or demand and will immediately forward a copy, by certified mail, to the licensee at the address shown in department records.

Where must the director initiate lawsuits arising under this chapter against out-of-state licensees?

In the superior court of Thurston county.

RCW 19.146.260

I. MORTGAGE BROKER LICENSING

1. General

How does a company apply for a mortgage broker license?

(1) **Submit an application.** You must fill out an application and send it to the department for review. The department will reject incomplete applications. Applications are available on-line at the department web page.

(2) **Prove your identity.** You must provide information about your identity, including your fingerprints.

(3) **Pay an application fee.** You will have to pay an application fee to cover the department's cost of processing and reviewing applications. You must also pay a separate annual

license fee in addition to the application fee. See Section T, Department Fees and Costs.

(4) **Provide a bond.** Mortgage brokers must have a bond of \$20,000 to \$60,000 depending on the average number of independent contractors or loan originators the mortgage broker employs. See WAC 208-660-XXX.

What will the department consider when deciding whether to approve my mortgage broker license application? And why does the department want that information?

The department considers the financial responsibility, experience, and general character and fitness of you, the company principals, and the chosen designated broker.

The department considers this information in order to determine if the intended business will be operated honestly, fairly, efficiently and within the purposes of applicable state and federal laws.

What specific pieces of information from the application will the department consider to form the opinion sought in WAC 208-660-XXX?

(1) Whether you, the principals, or the designated broker have had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application.

(2) Whether you, the principals, or the designated broker have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or any felony within seven years of the filing of the present application.

(3) Whether you, the principals, or the designated broker are good standing with the department. See WAC 208-660-XXX.

What information about the designated broker will the department consider in forming an opinion about licensing the company?

Whether the designated broker:

(1) Has at least two years of experience in the residential mortgage loan industry, or has completed the educational requirements established in these rules (see WAC 208-660-XXX).

(2) Has passed a written test (see WAC 208-660-XXX).

(3) Is in good standing with the department. See WAC 208-660-XXX.

RCW 19.146.210(1)

How do I withdraw my application for mortgage broker license?

Send the department a written request to withdraw your application. The request can be sent via regular mail or electronically.

When will the department consider my license application package abandoned?

Within ten business days from the date of the department's second request for information, your application is abandoned. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and fee.

Can the director deny my company's license application?

Yes. If you have not met the licensing conditions, the director will not issue a license. The director will notify you of the license denial. The department will return your bond and will refund the license assessment portion of the application fees you paid. [CC053006: What about excess application fees?]

RCW 19.146.210(2)

J. MORTGAGE BROKER BRANCH OFFICE LICENSING

K. LOAN ORIGINATOR LICENSING

If I work for a bank or other exempt entity can I voluntarily apply for and receive a loan originator license?

Yes, you may apply for a license at any time. If you are not working for a licensed mortgage broker, your license will be considered inactive. As soon as you are associated with a licensed mortgage broker, you can activate your license.

What is an inactive loan originator's license?

If a person holds a loan originator license but is not working for a licensed mortgage broker, they hold an "inactive" license. A person holding an inactive license may not hold themselves out as a licensed loan originator.

When my loan originator's license is inactive, am I subject to the director's enforcement authority?

Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act. For example, the director has the authority and responsibility to revoke the inactive loan originator license of a convicted felon even when that loan originator is employed by an exempt mortgage broker.

Do loan processors have to be licensed?

Loan processors are not required to have a license provided they work under the supervision of a licensed or exempt mortgage broker or loan originator and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator.

L. DISCLOSURE OF SIGNIFICANT OR ADVERSE DEVELOPMENTS

M. PROHIBITED PRACTICES

N. DISCLOSURE REQUIREMENTS

Is a mortgage broker that table funds a loan exempt from disclosures?

No. A mortgage broker, unless exempt under RCW 19.146.020(1)(a) is required to provide disclosures under this act regardless of the funding mechanism employed in the transaction.
RCW 19.146.030(1)

If a mortgage broker enters into a lock-in agreement with the borrower what disclosures are required?

The lock-in agreement, which must be in writing, must disclose the cost, terms, duration, and conditions of the lock-in agreement, whether the lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender. If the mortgage broker uses and completes the form prescribed by the Department for lock-in agreements, it is

presumed that the disclosure meets the statutory requirements under RCW 19.146.030(2)(c).

What must I disclose to the borrower if I do not enter into the lock-in agreement?

If the lock-in agreement has not been entered, the agreement must contain disclosure acceptable to the director that the disclosed interest rate and terms are subject to change.

Does a lock-in agreement always guarantee the terms?

A lock-in agreement may or may not be guaranteed by the mortgage broker or lender. The lock-in agreement must clearly state whether the lock-in agreement is guaranteed by the mortgage broker or lender.

Must a mortgage broker enter into a lock-in agreement with a borrower?

No. The statute does not require a mortgage broker to enter into a lock-in agreement with a borrower.

O. MORTGAGE BROKER AND LOAN ORIGINATOR FEES

P. CONTRACTS

Q. TRUST ACCOUNTING

What are trust funds?

All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are deemed to be trust funds and are considered to be held in trust immediately upon receipt. Trust funds include, but are not limited to, borrower deposits for appraisal fees, credit report fees, title report fees, and similar fees to be paid for services rendered by third-party providers in the borrower's loan transaction.

Am I required to have a trust account?

No. If you do not accept trust funds at any time a trust account is not necessary. A trust account is only necessary if you receive funds identified as "trust funds." If you receive

trust funds at any point before, during, or after the loan transaction, those funds must be deposited into a trust account.

What forms of payment must trust funds take?

Trust funds may be in any form that allows deposit into the trust account, including, but not limited to, cash, check, credit card advance, debit transfer, ACH authorization, or any electronic transmission of funds such as bank wires. However, a check made payable to a third-party, including a lender for lock agreement fees, is not considered trust funds.

What does it mean to receive trust funds "on behalf of borrowers"?

Trust funds are identified by purpose rather than source. If funds are received by the mortgage broker for the payment of third-party provider services for a specific borrower then they are considered trust funds regardless of the source. Trust funds may be received from relatives of borrowers, the seller in a real estate transaction, or an escrow company or lender reimbursing a mortgage broker for payments advanced. Even funds deposited to a borrower's subaccount by the mortgage broker are considered to be funds received on behalf of the borrower and are deemed to be trust funds.

What is meant by the term "subaccount"?

Unless established as a separate bank account for each borrower, the mortgage broker's trust account will be a single deposit account holding the aggregated funds for each borrower. A "subaccount" is a recordkeeping segregation of each borrower's funds held in trust. Added together, the individual subaccounts must exactly equal the total of funds held in trust.

If I am a mortgage broker exempt from licensing must I still have a trust account?

Mortgage brokers exempt under RCW 19.146.020(1)(a), (b), (c), (d), (f), (h) are not required to have a trust account even if they receive trust funds. Mortgage brokers exempt under RCW 19.146.020(1)(e) and (g), and RCW 19.146.020(4) are required to comply with RCW 19.146.050 and these rules.

As a mortgage broker, do I have to establish a trust account for funds I receive from borrowers for payments to third-party providers?

Yes. All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are deemed to be held in trust immediately upon receipt. You must deposit those funds in a trust account in your name as it appears on your license, or if exempt in the name of the exempt broker, in a federally insured financial institution's branch located in this State. The funds must remain on deposit until disbursed to the third party provider except as permitted by the Act and these rules. The mortgage broker is responsible for depositing, holding, disbursing, accounting for and otherwise safeguarding the funds in accordance with the Act and these rules.

May a mortgage broker or loan originator accept and hold a check from a borrower that is made payable to a third party and intended to be used to pay for third-party provider services without depositing the check into a trust account?

Yes. The check must be payable to a specific third-party provider. The payee line may not be left blank. The mortgage broker or loan originator has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. There must also be a written understanding between the borrower and the mortgage broker or loan originator specifying whether the check will be forwarded to the third-party provider or returned to the borrower.

Are lock-in agreement fees paid by a borrower to the mortgage broker considered trust funds?

Yes, these fees are considered trust funds and must be deposited to the mortgage broker's trust account.

Is a lender or mortgage broker, or agent or employee of a lender or mortgage broker considered a third-party?

No, except that a lender, to the extent it provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan is considered a third-party for this limited purpose.

If a mortgage broker receives funds from a third-party, such as a closer, or a lender, as reimbursement for advancements for the payment of third-party services, are these funds considered trust funds?

Yes, all funds received by the mortgage broker on behalf of the borrower for the payment of third-party services are considered trust funds.

Can a loan originator accept trust funds?

A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers.

What books and records must I keep regarding my trust account?

You must maintain as part of your books and records:

(1) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(2) A record of all invoices for payments made on behalf of a borrower including but not limited to payments for appraisals, credit reports, title cancellations, and verification of deposit.

(3) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check, check number, amount of check, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(4) A trust account check register consisting of a record of all deposits to and disbursements from the trust account;

(5) Reconciled trust account bank statements; and

(6) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts

with the related bank statement(s) and the related check register(s). The reconciled balance of the trust account(s) must at all times equal the sum of: (a) The outstanding amount of funds received from or on behalf of borrowers for payment of third-party providers; and (b) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with WAC 208-660-XXX.

(7) A printed and dated source document file to support any changes to existing accounting records

Any alternative records you propose for use must be approved in advance by the director.

How must I handle trust account deposits?

You must deposit all funds you receive that are required to be held in trust in the trust accounts(s) prior to the end of the third business day following receipt. If you receive payment in the form of a check or money order, within one business day after receipt you must either (a) endorse the instrument "for deposit only" with your trust account number and mail it (postage prepaid) to your financial institution, (b) endorse the instrument "for deposit only" with your trust account number and mail it (postage prepaid) by the end of the business day following receipt, in which case your main office must deposit the instrument in its trust account prior to the end of the third business day after receipt, or (c) deposit the instrument directly into your trust account at the branch where your trust account is held or at an ATM of that financial institution.

How must I document deposits?

(1) You must document all deposits to the trust account(s) by having a bank deposit slip which has been validated by bank imprint, or an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker indicating that the funds were actually deposited into the proper account(s).

(2) You must post the receipt of funds by wire transfer or any means other than cash, check, or money order in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the financial institution or transferring entity. You must also retain a receipt for the deposit of the funds which must contain the

traceable identifying name or number supplied by the financial institution or transferring entity.

What funds may be deposited into the trust account?

You must limit the deposits to the trust account(s) to funds delivered to you for payment to third-party providers, except you may deposit your own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of your own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the Act and these rules.

Can I be reimbursed for funds that I have advanced into the trust account?

(1) If you deposit your own funds into the trust account as provided in WAC 208-660-XXX, you may receive reimbursement for such deposit at closing into your general business bank account provided:

(a) All third-party provider's charges associated with your deposit have been paid;

(b) The HUD 1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;

(c) The HUD 1 Settlement Statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advances," and the amount reimbursed; and

(d) Any funds disbursed by escrow at closing to you for payment of unpaid third-party providers' expenses charged or to be charged to you are deposited into the borrower's subaccount of the trust account.

(2) If you deposit your own funds into the trust account as provided in WAC 208-660-XXX, and the loan does not close, the funds remain the property of the borrower.

How must I handle trust account disbursements?

(1) All disbursements of trust funds must be made by check, drawn on the trust account, and identified on the check as pertaining to a specific third-party provider transaction or borrower refund, except as specified in this section. The number of each check, amount, date, and payee must be shown in the trust account(s) check ledger as written on the check.

(2) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

May I transfer funds between a borrower's subaccounts?

If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker shall maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

What disbursements are prohibited?

(1) Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any

other account; and

(e) For the payment of fees owed to the broker under RCW 19.146.070 (2)(a).

When may a mortgage broker transfer excess funds from a borrower subaccount?

(1) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account in full or partial payment of fees owed to the mortgage broker upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full, and that the borrower has received credit in the loan closing documents for all funds deposited in the trust account.

(2) Each mortgage broker shall maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account, including documentation in the form of a final HUD-1 Settlement Statement form showing that credit has been received by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn on the trust account and deposited directly into the mortgage broker's general business bank account.

What if there are funds remaining in a borrower's subaccount after all third-party providers have been satisfied?

Any remaining funds in a borrower's subaccount must be returned to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

What if the mortgage broker cannot locate a borrower in order to remit excess funds in the borrower's subaccount?

Any trust funds held by the mortgage broker for a borrower who cannot be located must be remitted in compliance with the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW.

Is a mortgage broker responsible for all disbursement out of its trust account?

Yes. A mortgage broker is responsible for all disbursements from the trust account whether disbursed by personal signature, signature plate, signature of another person authorized to act on its behalf, or any authorized electronic transfer.

If the mortgage broker receives a check from closing that includes both its fee and a payment or payments for third party service providers, how does it lawfully handle the funds?

The mortgage broker may either:

(1) Split the check at the teller window at the time of deposit and route any moneys due to third party service providers to an approved trust account, and moneys due to its general account; or

(2) Deposit the entire check into the trust account. After paying any and all moneys due to third party service providers and seeing to it that the borrower has received credit for all funds deposited in the trust account, the mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account. This amount must be equal to the fee disclosed on the final HUD-1 Settlement Statement, less any amounts already received by the mortgage broker, and must be duly recorded in the trust subaccount ledger. The mortgage broker may not transfer moneys from the trust account to its general business bank account before the loan is closed.

How do I pay a third party appraisal cost if escrow disburses the funds to me and I don't have a trust account?

You must return the funds to escrow for proper disbursement, or maintain a trust account for such incidental occurrences. [CC052506- Chuck might add another question or two to clarify this]

Is the mortgage broker allowed to transfer funds out of its trust account for any reason other than for payment to a third-party provider?

The mortgage broker may transfer the borrower's funds out of the trust account by check back to the borrower or to any party so instructed in writing by the borrower. A mortgage broker, when complying with these rules may transfer excess trust funds to itself, however, failure to comply with these rules is a serious

violation punishable by imprisonment and/or other penalties as authorized by the Act.

How does a mortgage broker disburse funds from a subaccount when there is more than one borrower due to receive those funds?

When disbursing funds back to the borrowers a mortgage broker must make the trust account disbursement check payable to all borrowers with the term "and" written between each borrower's name. When disbursing funds to another party instructed by the borrowers, all borrowers must sign the written notice of instruction.

What are the requirements concerning the checks I write on my trust account?

You must use checks that are pre-numbered by the supplier (printer) unless you use an automated check writing system which numbers all checks in sequence. All trust account checks must have the words "trust account" on the front. If you use an automated program that writes checks, the check number must appear in the magnetic coding which also identifies the account number for readability by financial institution computers and the program may assign suffixes or subaccount codes before or after the check number for identification.

Can mortgage brokers using an interest bearing trust account keep the interest?

No. Mortgage brokers using an interest bearing account must refund or credit to the borrower the interest earned on the borrower's subaccount. The refund or credit to the borrower can be made either at closing or upon withdrawal or denial of the borrower's loan application.

Are there any separate requirements for a computerized accounting system?

Yes. The requirements are as follows:

(1) Your computer system must provide the capability to back-up data files;

(2) (a) You must print the following documents at least once per month and retain them as part of your books and records:

- Trust account deposit register
- Trust account check register

- Trial balance ledger

(b) You must print each subaccount at closure and retain the closure document as part of your books and records;

(3) You must ensure that all written checks are included within your computer accounting system; and

(4) You must print your computer generated reconciliations of the trust account, as described in WAC 208-660-XXX, at least once each month and retain the printouts as a part of your books and records.

Are there penalties for violating trust account requirements under RCW 19.146.050?

A violation of this section is a Class C felony and may be punishable by imprisonment. In addition, a mortgage broker or other person violating this section may be subject to penalties as enumerated under RCW 19.146.220.

R. RECORD KEEPING REQUIREMENTS

S. ADVERTISING

T. DEPARTMENT FEES AND COSTS

U. ANNUAL REPORTING REQUIREMENTS

V. DIRECTOR AND AGENCY POWERS

1. Examination Authority

Do I need to display my loan originator's license at the location where I am registered?

No. Neither you or the mortgage broker company are required to display the license. However, it must be made available for review upon request.

RCW 19.146.225

When do I need to disclose my loan originator license number to the borrower?

There is no requirement that you voluntarily disclose your license number to the borrower. However, in the following situations you must disclose your license number and the name and license number of the mortgage broker you are associated with:

(1) When asked by any party to a loan transaction, including third party service providers;

(2) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(3) When asked by any person that has contacted you about a residential mortgage loan;

(4) When taking an application pursuant to WAC 208-660-XXX.
RCW 19.146.030(1)

In addition to the act, what other laws do I have to comply with?

See WAC 208-660-XXX
RCW 19.146.030(1)

2. Examination Process
3. Examination Procedures
4. Investigation Authority
5. Investigation Process
6. Enforcement Authority
7. Enforcement Process
8. Complaint Process

W. MORTGAGE BROKER COMMISSION

X. OTHER REQUIREMENTS

Y. AGENCY GUIDANCE AND TECHNICAL ASSISTANCE (see RCW 35.04)

Z. FORMS