

NEW SECTION

**WAC 208-660-009 Application of Administrative Procedure Act.**

(1) What are my rights when the department begins an administrative enforcement action against me? Under the Administrative Procedure Act (APA), chapter 34.05 RCW, you have the right to request a hearing on the agency's action. Hearings are conducted as either formal adjudicative proceedings or may, under certain circumstances, be handled as a brief adjudicative proceeding (BAP).

(2) What must I do when I want to request a hearing? When you are notified of administrative charges filed against you, you are also notified of your right to request a hearing. At that time, the department will also notify you as to whether the hearing will be conducted as a brief adjudicative proceeding. You are required to notify the department, in writing, within twenty days from the date of the director's notice to you notifying you of the enforcement action against you. This notice must be received by the department by the 20th day following service of the charges on you.

(3) What is a brief adjudicative proceeding? Under the APA, a brief adjudicative proceeding is a hearing that is less formal in nature and typically resolves the charges quickly. The department provides a BAP for violations of the act in which the facts are undisputed and under circumstances where the parties may present their case without the need for witnesses. Typical matters to be heard in a BAP include, but are not limited to, license denials or revocations based on certain undisputed facts, including criminal convictions or misrepresentations on an application.

(4) May I request a brief adjudicative proceeding in response to an administrative enforcement action? Yes, but only if the matter has been designated by the department as one for which a BAP is available. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings. Brief adjudicative proceedings shall be limited to a determination of one or more of the following issues:

(a) Whether an applicant for a loan originator license meets the requirements of RCW 19.146.310 (1) (a), (b), (c), (d), (e), or (h);

(b) Whether an applicant for a mortgage broker license meets the requirements of RCW 19.146.210 (1) (a), (b), (c), (d), or (e); and

(c) Whether a mortgage broker has failed to maintain the bond required by RCW 19.146.205.

(5) In a matter not listed in subsection (4) of this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice

and an opportunity to participate to persons other than the parties, and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding. As used in this section, "persons other than the parties" does not include an attorney or representative for a party, or a witness for a party.

(6) How does the BAP work? Brief adjudicative proceedings are controlled by the provisions of RCW 34.05.482 through 34.05.494. The department will use the following procedure:

(a) Presiding officer. The director shall designate a presiding officer to conduct the brief adjudicative proceedings. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(b) Preliminary records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(c) Notice of hearing. The presiding officer will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(d) Written documents. The department's staff or representative and the applicant or their representative may present written documentation for consideration by the presiding officer. The presiding officer will designate the date and number of pages allowed for submission of written documents, including supporting exhibits.

(e) Oral argument. The presiding officer may exercise discretion on whether to allow oral argument.

(f) Witnesses. Live witness testimony will not be allowed. Witnesses providing testimony by sworn declaration or affidavit will be allowed at the discretion of the presiding officer.

(g) If, at the time of the hearing, the presiding officer determines that the alleged violations or evidence concerning the violations is such that a formal adjudicative proceeding is necessary, the presiding officer may immediately adjourn the hearing and direct that the matter be scheduled as a formal adjudicative proceeding.

(h) Initial order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any, to include a written statement describing the decision, the reasons for the decision, and describing the right to request review of the decision by the director. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-350 Loan originators--Licensing.** (1) **How do I apply for a loan originator license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.**

(a) **Be eighteen years or older.**

(b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass a test that assesses your knowledge of the mortgage business and related regulations. See WAC 208-660-360, Loan originators--Testing.

(d) **Submit an application.** You must complete an application in a form prescribed by the director.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee for your application. See WAC 208-660-550, Department fees and costs.

(2) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked within five years of the filing of the present application.

(c) **Criminal history.**

You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within seven years of the filing of the present application.

(d) **Financial background.**

(i) You are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(ii) You may not be eligible to receive a loan originator license if your financial background during the two years prior to the appointment application shows a history of unpaid debts.

**(3) What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR, the department will notify you of any application deficiencies.

**(4) How do I withdraw my application for a loan originator license?** Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR application fee.

**(5) When will the department consider my loan originator license application to be abandoned?** If you do not respond within ten business days to the department's second request for information, your loan originator license application is considered abandoned and you forfeit all fees paid. 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 new application fee.

**(6) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?**

~~((a) The department will notify you if your application is denied.~~

~~(b) If your license application lists any mortgage brokers, the department will also notify the mortgage brokers of the license denial.~~

~~(c) Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request brief adjudicative proceeding. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied.~~

~~(i) Brief Adjudicative Proceeding Adopted. The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings under WAC 208-660-350.~~

~~(ii) Presiding Officer. Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.~~

~~(iii) Preliminary Records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.~~

~~(iv) Notice of Hearing. The department will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.~~

~~(v) Written Documents. The applicant or their representatives may present written documentation. The presiding officer must designate the date for submission of written documents.~~

~~(vi) Oral Argument. The presiding officer may exercise discretion in allowing oral argument.~~

~~(vii) Witnesses. Witnesses will not be allowed to testify.~~

~~(viii) Agency Expertise Considered. The presiding officer may rely upon agency expertise in addition to the written record as a basis for a decision.~~

~~(ix) Initial Order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.) See WAC 208-660-009.~~

**(7) How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) A printed paper license sent to you by regular mail.

(b) A license sent to you electronically that you may print.

(c) A license verification available on the department's web site and accessible for viewing by the public.

**(8) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

**(9) How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLSR. You may be charged a fee.

**(10) What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

**(11) When my loan originator 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.

**(12) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

**(13) May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

**(14) How do I activate my loan originator license?** The

sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and all the companies you are working with of the new working relationship if approved.

(15) **When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

(16) **When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

(17) **How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(18) **If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

(19) **If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

(20) **May I still originate loans if my loan originator license**

**has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

(21) **What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

(22) **May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

(23) **Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(24) **If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

(25) **Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

(26) **When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

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

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

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

(27) **May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."