

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-260 If I ~~((get))~~ am licensed under the Consumer Loan Act, can I broker loans in the state of Washington? ~~((+1) As a consumer loan licensee,))~~ Yes. You may broker loans ~~((in the state of Washington provided that those loans are brokered))~~ under ~~((either))~~ the Consumer Loan Act or ~~((the))~~ Mortgage Broker Practices Act.

~~((+2))~~ (1) If you broker loans under the Consumer Loan Act, those loans are subject to assessment under WAC 208-620-240 ~~((and must be counted in the calculation of the annual assessment.~~

~~((3))~~ If you broker loans under the Mortgage Broker Practices Act, chapter 19.146 RCW, you must comply with that act).

(2) If you broker loans under the Mortgage Broker Practices Act, chapter 19.146 RCW, you must comply with that act.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-320 What is the amount of the bond required for my consumer loan license? **(1) Loans not secured by real estate.** For licensees making loans not secured by real property, the penal sum of the bond is one hundred thousand dollars for each office up to five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars.

(2) Loans secured by real estate. For a licensee making loans secured by real property, the penal sum of the bond is four hundred thousand dollars for the first ~~((location and one hundred thousand dollars for each branch office up to five licensed))~~ five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars, up to a maximum bond amount of seven hundred thousand dollars. For example:

| Number of Offices | Penal Sum of Bond - Licensee making non real estate loans | Penal Sum of Bond - Licensee making real estate loans |
|-------------------|---|---|
| 1 | \$100,000 | \$400,000 |
| 2 | \$200,000 | \$(500,000) <u>400,000</u> |
| 3 | \$300,000 | \$(600,000) <u>400,000</u> |

| Number of Offices | Penal Sum of Bond - Licensee making non real estate loans | Penal Sum of Bond - Licensee making real estate loans |
|-------------------|---|---|
| 4 | \$400,000 | \$(700,000) <u>400,000</u> |
| 5 | \$500,000 | \$(800,000) <u>400,000</u> |
| 6 | \$510,000 | \$(810,000) <u>410,000</u> |
| 7 | \$520,000 | \$(820,000) <u>420,000</u> |
| 8 | \$530,000 | \$(830,000) <u>430,000</u> |
| 9 | \$540,000 | \$(840,000) <u>440,000</u> |
| 10 | \$550,000 | \$(850,000) <u>450,000</u> |

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-350 If I qualify to use a bond substitute in lieu of a surety bond, what documentation do I have to provide to the department? (1) **Semiannual financial statements required.** A licensee that maintains a bond substitute must submit semiannually to the director year-to-date financial statements prepared in accordance with generally accepted accounting principles, including at a minimum a statement of assets and liabilities and a profit and loss statement.

(2) **More frequent financial reporting.** The director may require that financial reports be submitted more frequently if past financial reports have been prepared incorrectly or were misleading or if there is substantial risk that the licensee will violate the bond substitute standard.

(3) **Additional information to be filed.** The director may require other documents, agreements and information deemed necessary to properly evaluate and ensure that the licensee remains in compliance with this section.

(4) **Failure to file financial statements as required.** The director may require a licensee that fails to file its financial statements under subsection (1) of this section to obtain a surety bond within thirty days of that failure. (~~Failure to obtain the bond as required may result in suspension or revocation of the licensee's license.~~)

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-360 What if I choose the bond substitute alternative and my unimpaired capital falls below the minimum?
~~((1))~~ **Failure to maintain sufficient unimpaired capital.** A licensee that does not maintain a sufficient bond substitute shall notify the director within ten days as required by WAC 208-620-490. The licensee must then obtain and file with the director a surety bond in the amount required by WAC 208-620-320 within twenty days after receiving notice from the director. A licensee that files a surety bond under this section must maintain the surety bond for five years after the date of noncompliance. During this five-year period, the director will not accept a bond substitute.

~~((2)) **Failure to obtain a surety bond.** Failure to file a surety bond as required in this section may result in suspension or revocation of the licensee's license(s).)~~

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-400 Can I share an office with another business?
(1) A licensee may conduct its business in a licensed location in which other persons are engaged in business.

~~(2) ((If the licensee has effective control over the person sharing space, or the person sharing space with the licensee has effective control over the licensee or is under common control with the other by a third person or is a corporation related to another corporation as parent to subsidiary and one refers business incident to or a part of a real estate settlement service to the other, the licensee must comply with RESPA Sec. 3500.15, including required disclosures and prohibitions on referral fees.))~~ The licensee must comply with RESPA Sec. 3500.15, including the required disclosures and prohibitions on referral fees if:

(a) The licensee has effective control over the person sharing space; or

(b) The person sharing space has effective control over the licensee; or

(c) The licensee and the person sharing space are under common control by a third person; or

(d) The licensee is a corporation related to another corporation as parent to subsidiary and one refers business incident to or a part of a real estate settlement service to the other.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-425 May I transfer or assign my license? No. A license is given to a specific entity with specific individuals at a specific location. If ~~((all or part))~~ twenty percent or more of the business is transferred or sold to another person, the licensee ~~((is required to notify the department prior to transfer so the department can determine if the new person is qualified to own all or part of the business))~~ and the proposed new licensee(s) must apply to the department for a license.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-430 What are my annual filing requirements as a consumer loan licensee? Each year you are required to file a consolidated annual report on a form provided by the department. You must also pay a fee (assessment) based on your loan portfolio from the prior calendar year end, plus the loan activity conducted during the reporting year.

(1) **Annual report and assessment due March 1st.** ~~((Each year a licensee is required to file a consolidated annual report on a form provided by the department and pay a fee based upon the amount of business conducted during the prior calendar year under the act. The director will notify each licensee at its official address of the method to calculate the annual fee due along with a worksheet for such purpose and the consolidated annual report form. The licensee will calculate the annual fee on the worksheet. The licensee))~~ You must ((deliver its)) provide the completed consolidated annual report, worksheet, and annual fee to the department by March 1st of ((the following)) each year.

(2) **Late penalties.** A licensee that fails to submit the required annual report ~~((and))~~ worksheet, and assessment by ~~((the))~~ March 1st ~~((due date))~~ is subject to a penalty of fifty dollars per report for each day of delay. For example, if the department receives the consolidated annual report and worksheet on March 4th, the licensee would have to pay an additional three hundred dollars as a late penalty.

(3) **Failure to file.** If a licensee fails to pay its annual assessment and file a worksheet by April 1st the director may file a claim against the licensee's surety bond for failing to faithfully conform to and abide by the Consumer Loan Act. The department may make a claim on the licensee's surety bond for the late penalties under subsection (2) of this section and the greater of:

- (a) The assessment paid the previous year;
- (b) The average annual assessment paid in the previous two

years; or

(c) Fifteen hundred dollars.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-440 How do I calculate my annual ((fee)) assessment for activity in Washington? (1) **Calculation of the annual ((fee)) assessment.** ~~((Each licensee will pay an))~~ The annual assessment ((fee)) is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment ((fee)) is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(2) **All loans counted in ((fee)) assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31 of the prior year; plus

(b) The total ((unpaid balance)) principal loan amount of all first and junior lien Washington loans ((as of year end,)) both under and over twelve percent interest, you made ((or)), brokered ((under the act to Washington residents that were retained, brokered)), or purchased ((by the licensee; and

~~(b) The total unpaid balance of all loans as of year end, both under and over twelve percent, made or brokered under the act to Washington residents that were sold by the licensee with servicing retained (if any); and~~

~~(c) The total amount of all loans as of year end, both under and over twelve percent interest, made or brokered under the act to Washington residents that were sold by the licensee during the previous calendar year with servicing released (if any))~~ during the assessment year.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-460 Must I file my annual report even if I go out of business during the year? (1) A licensee that ceases operations during the year must file the consolidated annual report and pay the annual assessment required in WAC 208-620-430 within thirty days of closure.

(2) Failure to file within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-470 Do I need to notify the department if I move the location of my office? ~~((Before doing business under the act from a new location, either a main office or a branch office, a licensee must file an amendment for a change of address and obtain approval from the director.))~~ Yes. At least ten days prior to changing the location of your main or branch office, you must file an amendment for the change of location with the department, and receive approval from the director.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-475 Must I notify the department if I cease doing business in this state if I am doing business in other states? Yes. You must ((either)) notify the department within twenty days after you cease doing business in the state of Washington ((or continue to file your annual report and worksheet each year)). ((In order)) Additionally, to end your filing responsibilities, you must file a Consumer Loan Closure Form ((along with your)) including the final annual report ((and)) worksheet, and submit any fees owed((, and)). Finally, you must return your license ((certificate)).

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-500 What are my reporting requirements if I want to close one or more of my branch offices? ~~((1) Closing a branch office.))~~ If you close a branch office, you must immediately notify the department using the Consumer Loan Office Closure Form ~~((and)).~~ You must also return the original license.

~~((2) Closing the business. If you are going to close your business, you must notify the department using the Consumer Loan Office Closure Form, along with the annual report and worksheet, any fees due and return the original licenses.))~~

WAC 208-620-515 What authority do I have as a licensee? (1)

As a licensee you may:

(a) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(b) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(c) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(d) The powers listed in (a)(~~7~~) and (b)(~~7 and c~~) of this subsection apply only to junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans and nonmortgage loans.

(2) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender.

(3) Charge and collect a penalty of not more than ten (~~cents or less on each dollar~~) percent of any installment payment delinquent ten days or more.

(4) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee.

(5) Make open-end loans as provided in the act.

(6) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

WAC 208-620-550 What business practices are prohibited?
Under RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) **Disclosure of payoff amount.** Failure to provide the exact pay-off amount as of a certain date within five (~~or fewer~~) business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) **Recognition of payment delivery.** Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) **Charging a fee for best efforts.** Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(4) **False advertising of rates and fees.** Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time;

(5) **False filing.** Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(6) **Influencing appraisers.** Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(7) **Documents with blanks.** (~~Allowing a borrower to leave~~) Leaving blanks on a document that is signed by the borrower;

(8) **False advertising.** Soliciting business using advertising that includes:

(a) An envelope or stationery that contains an official-looking emblem, such as an eagle or a crest, or that is otherwise designed to resemble an official government mailing, such as a mailing from the Internal Revenue Service or the U.S. Department of the Treasury;

(b) An envelope or stationery containing warnings or notices citing codes or form numbers made to appear like government codes or form numbers that are not required to be shown on the mailing by the U.S. Postal Service;

(c) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent;

(d) Any suggestion or representation that the solicitation is from an entity other than the licensee;

(e) Any suggestion or representation that the information about a consumer's current loan was provided by any source other than the source disclosed pursuant to WAC 208-620-630;

(9) **Inclusion of taxes and insurance.** Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(10) **Force placed insurance.** Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured;

(11) **Filing an inappropriate lien.** Willfully filing a lien on property without a legal basis to do so;

(12) **Threats and coercion.** Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(13) Failure to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable.

NEW SECTION

WAC 208-620-611 What federal guidance has the director adopted for use by the department in determining if a violation under RCW 31.04.027 has occurred? The director has adopted:

(1) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators Guidance on Nontraditional Mortgage Product Risks; and

(2) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators Statement on Subprime Mortgage Lending.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-630 ~~((If I send out a letter referring to a consumer's existing loan, what source information must I disclose?))~~ What are the advertising restrictions, and what are some examples of those restrictions? ~~((When an advertisement includes information about a consumer's current loan that did not come from a solicitation, application, or loan made or purchased by the licensee, the licensee shall provide to the consumer the name~~

~~of the source from which this information was obtained.))~~ (1) Licensees are prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws? Some examples include, but are not limited to:

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(2) When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR? The type size of the APR must be the same size or larger than any other rates stated in the advertisement.

(3) The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised? Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) Must I quote the annual percentage rate when discussing rates with a borrower? Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 CFR, part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) May a licensee advertise rates or fees as the "lowest" or "best"? No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they

are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

(6) May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am? No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(7) If I advertise using a borrower's current loan information, what must I disclose about that information? When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-640 What are ~~((the requirements))~~ some of the federal laws I must comply with when I advertise any loan subject to the Consumer Loan Act? You must comply with all the applicable advertising requirements under the federal statutes and regulations including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Act, the Telemarketing and Consumer Fraud and Abuse Act, and the Equal Credit Opportunity Act ~~((and you must conspicuously disclose the annual percentage rate implied by the rate of interest that you are advertising))~~.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-650 Will the director waive fees charged under the Consumer Loan Act? The director or designee may waive any or all of the fees and assessments under this chapter when he or she determines that:

(1) The financial services regulation account exceeds the projected minimum fund balance level approved by the office of financial management; and

(2) That the waiver is fiscally prudent(~~(+and~~
~~(3) Good cause is shown by the applicant for the waiver~~)).