

## Terms Completed

### ORDER SUMMARY – Case Number: C-09-234

**Name(s):** Mike D. Vernlund

**Order Number:** C-09-234-10-FO01

**Effective Date:** March 17, 2010

**License Number:** DFI: 23375 NMLS ID: 116464  
**Or NMLS Identifier [U/L]**

**License Effect:** none

**Not Apply Until:**

**Not Eligible Until:**

**Prohibition/Ban Until:**

<b>Investigation Costs</b>	\$96	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 10/08/15
<b>Fine</b>	\$3,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 10/08/15
<b>Assessment(s)</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Restitution</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Judgment</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Satisfaction of Judgment Filed?</b>		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

**Comments:**

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State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

**BRIEF ADJUDICATIVE PROCEEDING**

IN THE MATTER OF INVESTIGATING  
Whether there has been a violation of the Mortgage  
Broker Practices Act of Washington (chapter  
19.146 RCW) by:

VERNLUND, MIKE D.,

Respondent.

No. C-09-234-10-FO01

FINAL DECISION AND ORDER

THIS MATTER having come before Scott Jarvis, Director (Director) of the Department of Financial Institutions (Department), on Petition for Review of the Initial Decision and Order (Initial Order) in the above-referenced Brief Adjudicative Proceeding (BAP) for the Division of Consumer Services (Division), in relation to a Statement of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect Investigation Fee (Statement of Charges) under the Washington Mortgage Broker Practices Act, chapter 19.146 RCW (Act), against Mike D. Vernlund, the Respondent (Respondent).

NOW THEREFORE, after full consideration of the complete record on review, including the Statement of Charges and the Initial Order, IT IS HEREBY ORDERED:

1. The Director affirms and incorporates herein by this reference the Findings of Fact and Conclusions of Law contained in the Initial Order.
2. Based upon the Findings of Fact and Conclusions of Law, the Director, as the Final Decision and Order of the Department, AFFIRMS the Initial Decision and Order in this matter.

Dated this 17<sup>th</sup> day of March, 2010, at Tumwater, Washington.

  
SCOTT JARVIS, Director  
Washington State Department of Financial Institutions



State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

**BRIEF ADJUDICATIVE PROCEEDING**

IN THE MATTER OF INVESTIGATING  
Whether has been a violation of the  
Washington Mortgage Broker Practices Act  
(Ch. 19.146 RCW) by:

MIKE D. VERNLUND,

Respondent.

DCS – BAP – C-09-234-09-IO

INITIAL DECISION AND ORDER

THIS MATTER having come before Joseph M. Vincent, General Counsel for the Department of Financial Institutions (“Department”), sitting in his capacity as Presiding Officer (“Presiding Officer”) for Brief Adjudicative Proceedings (“BAP”) for the Division of Consumer Services (“Division”), in relation to a State of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect Investigation Fee (“Statement of Charges”) under the Washington Mortgage Broker Practices Act, Chapter 19.146 RCW (“Act”), against MIKE D. VERNLUND, the Respondent (“Respondent”);

NOW THEREFORE, the Presiding Officer issues the following Findings of Fact, Conclusions of Law, and Initial Decision and Order:

**1.0 RECORD**

The Presiding Officer has considered the following material documents, which comprise the relevant record in this matter (“Record”):

- 1.1 Statement of Charges, dated September 9, 2009;
- 1.2 2008 Annual Report of Respondent, which was dated February 2, 2009, but not received by the Division on September 16, 2009;

- 1.3 Request for Brief Adjudicative Proceeding, dated September 15, 2009, and received by the Division on September 16, 2009, in which Respondent declined a qualified interpreter or to be represented by an attorney;
- 1.4 Letter from James Brusselback, Enforcement Chief of the Division, dated September 17, 2009;
- 1.5 Notice of Assignment and Time to File Additional Materials, from the Presiding Officer, dated October 15, 2009;
- 1.6 Additional Materials from Respondent, as follows:
  - 1.6.1 Email transmission (and PDF attachments) dated November 2, 2009; and
  - 1.6.2 Other memorandum of explanation;
- 1.7 Memorandum of Fatima Batie, dated November 17, 2009, in reply to Respondent's additional materials, including the Department's Resolution and Closure of Complaint in Complaint No. 28601 ("Resolution & Closure");
- 1.8 Order for Setting Oral Argument dated December 4, 2009;
- 1.9 Various email transmissions between November 11, 2009, and January 8, 2010;
- 1.10 IT Services (Seattle Vocational Institute – Dale J. Buzzell) independent report and CD-ROM received from Respondent; and
- 1.11 Audio recording of telephonic oral argument between Fatima Batie of the Division and Respondent dated January 12, 2010.

## 2.0 FINDINGS OF FACT

Based upon the Record, the following facts undisputed as between the Division and the Respondent:

- 2.1 Respondent, doing business as Real Property Lenders, was originally licensed as a mortgage broker on December 5, 2006.
- 2.2 Respondent is the Designated Broker of Respondent and has been since date of original license.

- 2.3 Respondent was required to file a Mortgage Broker Annual Report (“MBAR”) of mortgage activity with the Division on or before March 31<sup>st</sup> of every year following any year in which it held a mortgage broker license.
- 2.4 This change went into effect on January 1, 2007, so the first MBAR was due to the Division no later than March 31, 2008.
- 2.5 Respondent did not submit its 2007 MBAR, which was due March 31, 2008.
- 2.6 The Division issued a Directive on August 20, 2008, requiring Respondent to submit the 2007 MBAR by September 7, 2008.
- 2.7 Respondent still did not submit the 2007 MBAR by September 7, 2008.
- 2.8 On October 29, 2009, the Division issued a Second Directive requiring the 2007 MBAR to be filed.
- 2.9 Finally, the Division received the 2007 MBAR on December 17, 2008.
- 2.10 On January 2, 2009, the Division issued a Resolution & Closure relative to the untimely filing of the 2007 MBAR, putting Respondent on notice that it had:
  - 2.10.1 Violated RCW 19.146.290, by failing to file an MBAR;
  - 2.10.2 Violated WAC 208-660-400(1), by failing to file an MBAR as required;  
and
  - 2.10.3 Violated RCW 19.146.235, by failing to comply with examination authorities, occasioned by the non-responsiveness to the first Directive referenced above.
- 2.11 In its Resolution & Closure of the untimely filing of the 2007 MBAR, the Division also notified Respondent that “future failure to file an annual report or future late filing of an annual report” would subject Respondent to an enforcement action that might include “imposition of fines and investigative costs.”
- 2.12 The 2008 MBAR was due to the Division by March 31, 2009, but the Division did not receive it.
- 2.13 Despite that, the Department did not issue its Statement of Charges until September 9, 2009, at a time when the Respondent had still not filed its 2008 MBAR.

- 2.14 Finally, on September 16, 2009, at the time Respondent made its request for a BAP hearing, the Division received the 2008 MBAR.
- 2.15 The Respondent's explanation for untimely filing is that, while he prepared the 2008 MBAR in a timely manner (February 2, 2009). Respondent asserts that the "02/02/2009" date on the signed 2008 MBAR is proof not only of timely preparation but of timely filing. However, Respondent does not say for certain whether he made such a filing, since his hard drive crashed and there is no independent evidence of a FAX or email transmission to the Department.
- 2.16 There is no evidence or inference to doubt the veracity of Respondent that he did prepare the 2008 MBAR on February 2, 2009, or thereabouts.**
- 2.17 However, the Division, by and through Fatima Batie, has presented testimony and argument to the effect that there is no evidence of receipt of the 2008 MBAR until September 16, 2009. The position of the Division is entitled to greater weight in the absence of proof from Respondent to the contrary, which he is incapable of producing (albeit, perhaps because of his hard driving crashing).**
- 2.18 The BAP Hearing Officer finds that the 2008 MBAR was not filed until September 16, 2009.
- 2.19 Based upon the Findings of Fact above, it is clear that Respondent was on notice of the importance and legal requirement of timely filing of an MBAR, owing to the Directive, Second Directive, and Resolution & Closure in connection with the untimely filing of the 2007 MBAR.
- 2.20 The MBAR is a tool for measuring the activity of Mortgage Broker Licensees so that the Division may allocate its scarce resources in determining such matters as which Mortgage Broker Licensees ought to be examined. It is not an annual report in the manner of renewing one's corporation license with the Secretary of State. Because of the MBAR's purpose, it is essential that it be filed – and filed timely.

2.21 The Respondent's submitted materials, testimony and argument unfortunately lack any assertions of fact that would give rise to a finding of excusable neglect as a matter of law.

2.22 Two staff hours were devoted to this investigation.

3.0 CONCLUSIONS OF LAW

Based upon the Findings of Fact above, the Presiding Officer must conclude, as follows:

**3.1 The BAP Hearing Officer lacks jurisdiction to reduce a fine requested in a statement of charges if the Division has authority to impose it. Reduction in fines is a matter for the Director of the Department, Scott Jarvis, either on Petition for Review or Petition for Reconsideration. [See Further Appeal Rights, at Page 7 below]**

3.2 In its untimely filing of the 2008 MBAR, Respondent violated RCW 19.146.290(1) and WAC 208-660-400(1), (2), and (3).

3.3 Pursuant to RCW 19.146.220(2)(e), the Department may impose fines on a Mortgage Broker Licensee for any violation of the Act.

3.4 Pursuant to RCW 19.146.228(2), WAC 208-660-520 and WAC 208-660-550(4), upon completion of any investigation of the books and records of a licensee, the Department will furnish to the licensee a billing to cover the cost of investigation.

3.4 The investigative charge will be calculated at the rate of \$48 per hour for each staff person of the Department devoted to the investigation.

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4.0 INITIAL DECISION AND ORDER

Based upon the Findings of Fact and Conclusions of Law set forth above, IT IS HEREBY ORDERED THAT:

- 4.1 Respondent, MIKE D. VERNLUND, pay a fine of Three Thousand Dollars (\$3,000.00); and
- 4.2 Respondent, MIKE D. VERNLUND, pay an investigative fee of Ninety-Six Dollars (\$96.00).

Dated and mailed on February 1, 2010, at Tumwater, Washington.



Joseph M. Vincent, Presiding Officer  
Brief Adjudicative Proceedings  
Division of Consumer Services  
WASHINGTON STATE DEPARTMENT OF  
FINANCIAL INSTITUTIONS  
P.O. Box 41200  
Olympia, Washington 98504-1200  
Phone: (360) 902-0516  
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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

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IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Mortgage Broker Practices Act of Washington by:  
  
VERNRLUND, MIKE D,  
  
Respondent.

NO. C-09-234-09-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENTION TO ENTER  
AN ORDER TO IMPOSE FINE AND COLLECT  
INVESTIGATION FEE

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**INTRODUCTION**

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondent Vernlund, Mike D (Respondent)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker at all times relevant to the conduct alleged.

**1.2 Failure to File Mortgage Broker Annual Report.** By March 31, 2009, Respondent was required to file an annual report of mortgage broker activity to include the total number of closed loans originated and the total volume of closed loans originated. As of the date of this Statement of Charges Respondent has not filed the 2008 mortgage broker annual report.

**1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by Respondent continues to date.

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STATEMENT OF CHARGES  
Vernlund, Mike D  
C-09-234-09-SC01

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Division of Consumer Services  
150 Israel Rd SW  
PO Box 41200  
Olympia, WA 98504-1200  
(360) 902-8703

1 **II. GROUNDS FOR ENTRY OF ORDER**

2 **2.1 Requirement to File Mortgage Broker Annual Report.** Based on the Factual Allegations set forth in  
3 Section I above, Respondent is in apparent violation of RCW 19.146.290(1) and WAC 208-660-400(1), (2), (3),  
4 and (4) for failing to file the mortgage broker annual report.

5 **III. AUTHORITY TO IMPOSE SANCTIONS**

6 **3.1 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(e) the Director may impose fines on a  
7 licensee or other person subject to the Act for any violations of the Act.

8 **3.2 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-520, and WAC  
9 208-660-550(4), upon completion of any investigation of the books and records of a licensee or other person subject  
10 to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of  
11 the investigation. The investigation charge will be calculated at the rate of \$48 per hour that each staff person  
12 devoted to the investigation.

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

14 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth  
15 in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis  
16 for the entry of an Order under RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the  
17 Director's intention to ORDER that:

- 18 **4.1** Respondent Vernlund, Mike D pay a fine of \$3,000; and
- 19 **4.2** Respondent Vernlund, Mike D pay an investigation fee, which as of the date of these charges is  
20 \$96 calculated at \$48 per hour for two staff hours devoted to the investigation; and
- 21 **4.3** Respondent Vernlund, Mike D file the 2008 annual report of mortgage broker activity.

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V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent may make a written request for a Brief Adjudicative Proceeding as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR BRIEF ADJUDICATIVE PROCEEDING accompanying this Statement of Charges.

Dated this 9<sup>th</sup> day of September, 2009.

[Redacted signature]

DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by:

[Redacted signature]

FATIMA BATIE  
Financial Legal Examiner Supervisor

Approved by:

[Redacted signature]

JAMES R. BRUSSELBACK  
Enforcement Chief

